



COUNCIL MINUTES

May 3, 2004

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on May 3, 2004 at 5:45 p.m.

COUNCIL PRESENT

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

COUNCIL ABSENT

None

OFFICERS PRESENT

Mike Hutchinson
Debbie Spinner
Linda Crocker

Invocation by Pastor Reverend Paul A. Whitlock, Desert Heritage Church.

Pledge of Allegiance was led by Adam Brooks, Boy Scout Troop No. 554.

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 2004 Historic Preservation Awards.

Victor Linoff, Historic Preservation Committee Chairman, provided a brief overview of the City's historic preservation activities. He stated that the 2004 award recipients were as follows:

Dilworth C. Brinton, recognized posthumously for his work in obtaining and preserving the Park of the Canals, which has been recognized by the National Geographic Society as one of the fifty most important Native American sites.

East Valley Institute of Technology, for the restoration and adaptive reuse of the mule barn that was constructed in 1920 on the old University of Arizona farm site, located at Longmore and Main Street.

Mary Olive Mott, for her dedicated work and volunteerism at the Mesa Southwest Museum, Mesa Historical Society, and the Mesa Room of the Mesa Public Library.

Mayor Hawker presented the awards to representatives of Mr. Brinton's family, Dr. Sally Downing of the East Valley Technical Institute and Mary Olive Mott. He also expressed appreciation on behalf of the Council for their efforts.

1. Consider all consent agenda items.

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

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

Carried unanimously.

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

Minutes from the April 1, 19, 22 and 29, 2004 Council meetings.

3. Consider the following liquor license applications:

*a. DAVID G. CISIEWSKI, AGENT

New Beer and Wine Store License for Quiktrip #417, 3563 E. Main Street. The license previously held at this location by David G. Cisiewski, Agent, Quiktrip Corp. will revert back to the State. District #2.

*b. MARK E. CRAIG, AGENT

New Restaurant License for Double G Steakhouse & Saloon, 7000 E. Main Street. This is an existing business. The license previously held at this location by Robert Michael Gregory, Owner, Double G Steakhouse will revert back to the State. District #5.

*c. HECTOR LOMELI, AGENT

New Restaurant License for Jalisience Mexican Food, 1948 W. Broadway Road Ste. 106. This is an existing building. No previous liquor licenses at this location. District #3.

*d. MICHAEL E. JARAMILLO, AGENT

New Restaurant License for Popo's Too!!, 4210 E. Main Street. This is an existing business. The license previously held at this location by Christine Gray, Individual, The Panhandler Restaurant was cancelled December 1998. District #2.

4. Consider the following contracts:

- *a. 100 Britax child safety seats as requested by the Fire Department.

The Purchasing Division recommends accepting the low bid by Bellini Juvenile Furniture at \$18,917.50 including applicable sales tax. (This purchase is 100% funded by the Fire Act Grant).

- *b. Two-year renewal of the supply contract for drafting print paper as requested by the Engineering Division.

The Purchasing Division recommends exercising the two-year renewal with the original overall low bidder as follows:

Sections A–D to Media Paper Company at \$63,785.44 based on estimated requirements.

In order to assure continuity of supply, it is also recommended to renew the secondary contracts as follows: Sections A, C and D to ScottBlue Reprographics, and Section B to Thomas Reprographics.

- *c. Two replacement fairway mowers as requested by the Parks and Recreation Division.

The Purchasing Division recommends accepting the low bid by Arizona Machinery Company at \$62,457.16 including applicable sales tax.

- *d. Two-year renewal of the supply contract for fertilizers as requested by the Parks & Recreation Division.

The Purchasing Division recommends exercising the two-year renewal option as follows:

Items 1, 2, 3, 4 and 5 to Fertizona Casa Grande LLC at \$105,751.86;

Items 6, 7 and 8 to Ewing Irrigation at \$37,443.16; and

Item 10 to Global Organics at \$18,494.93.

The combined award is then \$161,689.95 based on estimated requirements.

- *e. Three-year supply contract for magnesium anodes for warehouse inventory to be used by the Utility Construction Division.

The Purchasing Division recommends accepting the low bid by Mountain States Pipe & Supply at \$16,635.21 based on estimated annual requirements.

- *f. Replacement carpeting at the Center Against Family Violence as requested by Development Services.

The Purchasing Division recommends authorizing purchase from Arizona State Contract with Continental Flooring Company at \$19,143.61.

- *g. Sun Microsystems Hardware as requested by Information Services.

The Purchasing Division recommends authorizing purchase from the lowest overall bidder, Agile IT Solutions, Inc., for a total of \$19,893.98, including applicable sales tax.

- *h. One-year supply contract for traffic paint as requested by the Transportation Division.

The Purchasing Division recommends authorizing purchase from the State ADOT contract with TMT-Pathway, LLC as the primary contractor, and Pervo Paint Company as the secondary contractor, for combined annual purchases estimated at \$142,551.00 based on estimated annual requirements.

- i. Brown Road Sanitary Sewer – 40th Street to Greenfield Road. City of Mesa Project No. 02-368-001.

This project will increase sewer capacity for the northeast area. Improvements to be constructed by this project include over 2,500 feet of 15-inch sewer line, manholes, pavement and traffic signal fiber optic conduit.

Recommend award to low bidder, Pierson Construction, in the amount of \$274,808.00 plus an additional \$27,480.00 (10% allowance for change orders) for a total award of \$302,288.00.

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 Kavanaugh for action on this agenda item.

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

Upon tabulation of votes, it showed:

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

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

Vice Mayor Kavanaugh yielded the gavel back to Mayor Hawker.

- *j. Centennial Hall Lighting Dimmer Replacement. City of Mesa Project No. 01-902-001.

This project will replace the existing dimming control system with newer and more functional equipment. The new system will allow staff to better accommodate their customers.

Recommend award to low bidder, Corbins Electric, in the amount of \$71,688.00 plus an additional \$7,168.00 (10% allowance for change orders) for a total award of \$78,856.00.

- *k. Extending Coral Energy's current natural gas supply contract until March 31, 2005.

*1. Centennial Hall Cooling Tower Replacement. City of Mesa project 02-315-001

This project will replace the existing cooling tower with a new cooling tower. This new equipment will ensure a reliable air conditioning system in the building.

Recommend award to low bidder, Interstate Mechanical Co., in the amount of \$25,678.00 plus an additional \$2,567.00 (10% allowance for change orders) for a total award of \$28,245.00.

5. Consider the following resolutions:

*a. Deleted from the agenda.

b. Authorizing the City Manager to enter into a Development Agreement between the City of Mesa and the Superstition Springs Investors Limited Partnership, d.b.a. DMB Associates, Inc. (SSILP) for a 36-acre parcel auto center at the southwest corner of Hampton Avenue and Sossaman Road north of the Superstition Freeway – Resolution No. 8225. **(Continued from the April 19, 2004 Council Meeting.)**

Karrin K. Taylor, 11201 N. Tatum, Suite 830, Phoenix, representing the Superstition Springs Limited Partnership, stated that the subject property, owned by her client since 1991, is considered to be a prime location for vehicle dealerships, but the physical conditions of the site have posed challenges to the development. She provided background information on the site and the proposed development:

- The setback of the property reduces the visibility of the site from the freeway.
- The removal of the ramps at Sossaman Road on the east side of the property restricts access.
- There is increased competition in the East Valley as a result of the construction of the 101 and 202 freeways.
- The Council approved the rezoning last year to permit the development of automobile dealerships on the 36-acre site.
- The proposed development agreement provides an economic incentive with a cap of \$12 million and a term limit of 10 years.
- The development provides a significant employment opportunity for the City of Mesa with an estimated 875 new jobs at build out, paying an average annual salary of \$45,000 to \$55,000, which equates to a payroll of \$40 million per year.

Ms. Taylor noted that the proposed freeway sign has been a topic of discussion, and she displayed some photographs to depict the visibility of signage at the location.

Economic Development Director Richard Mulligan advised that staff recommends approval of the development agreement. He stated that the incentives offered in this agreement are modest and necessary in order to meet the pressure of increased competition from proposed auto centers in Gilbert and Chandler.

Mayor Hawker noted that the developer would receive 50 percent of any increase in the sales tax. He stated his opposition to the development agreement, and expressed the opinion that a regional policy should be developed rather than continuing the practice of

each Valley community bidding against the other for retail development. Mayor Hawker also advised that he preferred that the Council address the sign policy prior to making an exception to the present regulations.

Councilmember Griswold expressed support for the proposal due to the fact that the development would generate jobs and sales tax revenue in the area.

It was moved by Councilmember Griswold, seconded by Councilmember Thom, that Resolution No. 8225 be adopted.

Councilmember Thom stated that under other circumstances she would concur with the Mayor's opinion, but she was in support of this item due to the freeway access problems that exist for the property and the economic benefit that the development would provide to the community.

Vice Mayor Kavanaugh expressed opposition to the development agreement due to the fact that public sales tax funds would be provided to developers and automobile dealers. He stated the opinion that the practice was not fair to existing businesses in the community, and that the proposal presented an unwise tax policy that could have long-term ramifications. Vice Mayor Kavanaugh further stated that the subject proposal was an indication of the flawed financing system employed by the City of Mesa, and that the City's over reliance on sales tax revenue has impacted policy decisions.

Councilmember Whalen noted that at the time that Highway 60 was developed, earlier Councils mistakenly determined that the Highway 60 corridor would consist of residential development. He expressed the opinion that the subject location was well suited for an auto mall.

Councilmember Jones stated that although he had concerns relative to offering incentives, he would support the proposal.

Councilmember Walters stated that offering incentives to developers is the current environment in which the City has to compete. She noted that the sign issue was her primary area of concern in that the Council action would send a signal to the Board of Adjustment that other signs of this type and size would meet with Council approval. Councilmember Walters added that approval of the signage requires that additional steps be taken, including the review by the Board of Adjustment and participation in the Design Review process, and could include additional review by the Council if requested by a Councilmember.

Mayor Hawker called for the vote.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried by majority vote and Resolution No. 8225 adopted.

- *c. Authorizing the City Manager to execute an agreement between the City of Mesa and the Arizona Governor's Office of Highway Safety to provide for funds to pay overtime to officers for education and enforcement of safety belt use – Resolution No. 8221.
- *d. Modifying fees and charges for the Parks and Recreation Division and declaring this resolution and said fees and charges to be a public record – Resolution No. 8222.
- *e. Authorizing the City Manager to execute an agreement between the City of Mesa and the Arizona Automobile Theft Authority to acquire funds to purchase equipment and fund overtime for auto theft prevention and education – Resolution 8223.
- f. Authorizing and directing the City Manager or his designated representative to execute necessary documents to acquire certain real property located at 45 West University Drive – Resolution No. 8226.

Councilmember Whalen declared a potential conflict of interest and refrained from discussion/participation in this agenda item.

Councilmember Thom expressed opposition to the purchase of the property due to the fact that removing property from the tax rolls places a burden on other City of Mesa business owners and homeowners. She stated the opinion that the City should not be in the real estate business, particularly in the downtown area.

Councilmember Jones explained that the property would be purchased through an allocation of Community Development Block Grant (CDBG) funds and that these Federal dollars were previously budgeted for expansion of the existing Senior Center. He noted that acquiring the subject property represents a cost savings from the original expansion plans. Councilmember Jones added that the City has been divesting property at a higher rate than it has been purchasing property.

Councilmember Walters commended the Mesa Senior Center staff for finding a lower cost alternative to the expansion project, and she expressed her support for this agenda item. She also noted that while the Senior Center is a nonprofit organization, the Center employs a number of people in addition to providing services to the community.

Councilmember Griswold expressed opposition to the proposal and noted that a new building would provide many advantages, including a new air conditioner rather than the possible maintenance problems of an older system. He also stated that the City would be responsible for the costs to remove and relocate existing tenants.

Property Acquisition Supervisor Craig Crocker advised that an inspection of the property and air conditioning units by the Housing Authority and Facilities Maintenance concluded that the property and the air conditioning units were in good condition and require only routine maintenance.

Mayor Hawker expressed his support for the project due to the fact that it is a cost-effective alternative to the expansion of the existing Senior Center. He noted that this proposal also provides additional parking for the facility and avoids the disruption to daily operations that would exist during a construction project.

Community Revitalization Director Kit Kelly advised that properties purchased by the City with CDBG dollars are leased back to nonprofit organizations at a cost of \$1 per year for 20 years with renewable options. She noted that the City's policy permits a title transfer to the nonprofit organization after 15 years if the property has been held and properly maintained.

It was moved by Vice Mayor Kavanaugh, seconded by Councilmember Walters, that Resolution No. 8226 be adopted.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried by majority vote of those voting and Resolution No. 8226 adopted.

- *g. Approving and authorizing the City Manager to execute an agreement between the City of mesa and the United States of America acting through the Arizona Department of Transportation to amend existing Grant E3S03 to allow pavement management on the Falcon Field Airport Roadway System – Resolution 8224.

5.1. Introduction of the following ordinances and setting May 17, 2004 as the date of public hearing on these ordinances:

- *a. Adjusting the Transient Occupancy Tax (Bed Tax) from 2.5% to 3.0% of the gross revenue, effective July 1, 2004 as approved by voters in the March 2004 Primary Election.
- *b. Pertaining to the sign regulations of the zoning ordinance of the Mesa City Code; amending Sections 11-19-5 and 11-19-8 creating a definition of and establishing provisions regarding the regulation of Freeway Landmark Monuments; and providing penalties for the violation thereof.

5.2. Consider the following recommendation from the Utility Committee:

- a. Deleted from the agenda.

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

- *a. **Z03-64 (District 3)** Northwest corner of Sycamore and Main Street (14.46 ac.). Rezone from C-2 and C-3 to C-2 BIZ and C-3 BIZ and Site Plan Modification. This

request is for the development of a bus/light rail transfer lot and park-and-ride facility to serve the Mesa light rail station and to reserve a site for future Transit Oriented Development (TOD). Judith A. Klein, Rising Sun, LLC., owner; Jeff Martin, City of Mesa, applicant. **THE APPLICANT HAS REQUESTED THIS CAE BE CONTINUED TO THE MAY 17, 2004 CITY COUNCIL MEETING.**

P&Z Recommendation: Approval with conditions (Vote: Passed 6-0, Saemisch abstaining).

1. Compliance with the basic development as described in the project narrative and as shown on the site plan and elevations submitted.
 2. All street improvements and perimeter landscaping to be installed in the first phase of construction.
 3. Dedicate the right-of-way required under the Mesa City Code at the time of application for a building permit, at the time of recordation of the subdivision plat, or at the time of the City's request for dedication whichever comes first.
 4. Compliance with all City development codes and regulations.
 5. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
 6. Compliance with all requirements of the Design Review Board.
 7. Review and approval by the Planning and Zoning Board, Design Review Board and City Council of future development plans.
 8. Transit oriented development is encouraged for the 3.67 acre lot.
- b. **Z04-01 (District 6)** Northeast and Northwest corners of Ellsworth Road and Germann Road (320 ac.). Rezone from R1-43 to M-1 and M-1 (conceptual C-2). This request is to bring zoning into conformance with Mesa 2025 General Plan. Various owners; Wayne Balmer, Project Manager WGAA, applicant. **(3/4 VOTE REQUIRED TO APPROVE THE CASE.) (2 ORDINANCES – OPTION A AND OPTION B.)**

P&Z Recommendation: Approval with conditions (Vote: Passed 5-0-2, Finter and Adams absent).

OPTION A

1. Compliance with all requirements of the Mesa Zoning Ordinance and land development regulations. This includes (but is not limited to) the following:
 - a. Provision of all required infrastructure including, but not limited to, street, water, sewer, fire protection and other improvements at the time of development.
 - b. Recordation of avigation easements, overflight easements and overflight disclosure statements with all subdivision plats approved and/or building permits issued.
 - c. Recordation of Covenants, Conditions and Restrictions (CC&R's) to address land use, property maintenance, landscaping, etc., with any new subdivision plats approved.
2. Review and approval by the Planning and Zoning Board, Design Review Board and City Council of the development plans for all uses proposed for the property. Site Plan Review documentation may include, but is not limited to, presentation

of a citizen participation plan, exhibits detailing the proposed land use(s), site plans, design guidelines, landscape plans, and building elevations.

Note: Items 1 and 2 apply to both the properties on the east and west sides of Ellsworth Road. Conditions 3 through 10 apply to the 160 acres on the west side of Ellsworth Road only.

3. No vehicular access to South 88th Street between Germann Road and East Woodland Avenue (adjacent to the Queens Park subdivision) from the property to either the north or east.
4. Completion of the pavement of the east half of South 88th Street between Germann Road and East Woodland Avenue (adjacent to the Queens Park subdivision) in conjunction with of the development of the property to the east. In addition to the right-of-way needed to complete south 88th Street, a fifteen-foot (15') Public Utilities and Facilities Easement (PUFE), to enhance the area to be landscaped, will also be required.
5. Installation of an eight-foot decorative masonry wall on the east side of the future PUFE on the east side of South 88th Street between Germann Road and East Woodland Avenue (adjacent to the Queens Park subdivision) as part of the development of the property to the east. Landscaping shall be installed in the South 88th Street right-of-way and the public utilities and facilities easement, east of the completed street and west of the wall, per City Code at the time of development. The City of Mesa will maintain the landscaping in both the dedicated right-of-way and public utilities and facilities easement, once completed. The designs for both the decorative masonry wall and landscaping in the right-of-way and PUFE will be reviewed and approved by the Design Review Board prior to construction.
6. All buildings constructed within 200 feet of the east side of South 88th Street between Germann Road and East Woodland Avenue (adjacent to Queens Park subdivision) to be limited to 30 feet in height. In addition, a 40-foot building setback would be required for all future buildings from the new property line on South 88th Street.
7. No open storage of construction or other materials, heavy equipment or commercial vehicles (other than standard passenger vehicles) will be allowed on the western 200 feet of those properties on the east side of South 88th Street between Germann Road and East Woodland Avenue (adjacent to the Queens Park subdivision) nor on those properties on the north side of Germann Road to a depth of 200 feet between South 88th Street and Ellsworth Road.
8. Buildings constructed within 200 feet of Germann Road between South 88th Street and Ellsworth Road to be limited to 30 feet in height. In addition, a 30-foot building setback would be required for all future buildings from the new property line on Germann Road.
9. Site Plan Review requests, rezoning requests and/or subdivision plats located west of Ellsworth Road should, if possible, be at least 10 acres in size, pursuant to Resolution 7838.
10. When development is proposed on the area identified in conditions 6, 7 and 8 above, the applicants will be asked to consider the proximity of the homes to the west and the south in the project design process in order to identify and incorporate proposed compatibility measures. Examples of compatibility

measures might include: locating future storm water retention basins on the west and south sides of the property, no bay doors facing west adjacent to 88th Street and south adjacent to Germann Road, placing loading docks on the east or north sides rather than the west or south sides of the buildings, locating compressors and air conditioning units in noise attenuated surroundings, etc.

OPTION B (CHANGES ARE IN BOLD)

1. Compliance with all requirements of the Mesa Zoning Ordinance and land development regulations. This includes (but is not limited to) the following:
 - a. Provision of all required infrastructure including, but not limited to, street, water, sewer, fire protection and other improvements at the time of development.
 - b. Recordation of avigation easements, overflight easements and overflight disclosure statements with all subdivision plats approved and/or building permits issued.
 - c. Recordation of Covenants, Conditions and Restrictions (CC&R's) to address land use, property maintenance, landscaping, etc., with any new subdivision plats approved.
2. Review and approval by the Planning and Zoning Board, Design Review Board and City Council of the development plans for all uses proposed for the property. Site Plan Review documentation may include, but is not limited to, presentation of a citizen participation plan, exhibits detailing the proposed land use(s), site plans, design guidelines, landscape plans, and building elevations.

Note: Items 1 and 2 apply to both the properties on the east and west sides of Ellsworth Road. Conditions 3 through 10 apply to the 160 acres on the west side of Ellsworth Road only.

3. No vehicular access to South 88th Street between Germann Road and East Woodland Avenue (adjacent to the Queens Park subdivision) from the property to either the north or east.
4. Completion of the pavement of the east half of South 88th Street between Germann Road and East Woodland Avenue (adjacent to the Queens Park subdivision) in conjunction with of the development of the property to the east. In addition to the right-of-way needed to complete south 88th Street, a fifteen-foot (15') **privately owned tract**, to enhance the area to be landscaped, will also be required.
5. Installation of an eight-foot decorative masonry wall on the east side of the future **privately owned tract**, on the east side of South 88th Street between Germann Road and East Woodland Avenue (adjacent to the Queens Park subdivision) as part of the development of the property to the east. Landscaping shall be installed in the South 88th Street right-of-way and the **privately owned tract**, east of the completed street and west of the wall, per City Code at the time of development. **The property owner to the east** will maintain the landscaping in both the dedicated right-of-way and **privately owned tract**, once completed. The designs for both the decorative masonry wall and landscaping in the right-of-way and **the tract** will be reviewed and approved by the Design Review Board prior to construction.

6. All buildings constructed within 200 feet of the east side of South 88th Street between Germann Road and East Woodland Avenue (adjacent to Queens Park subdivision) to be limited to 30 feet in height. In addition, a 40-foot building setback would be required for all future buildings from the new property line on South 88th Street.
7. No open storage of construction or other materials, heavy equipment or commercial vehicles (other than standard passenger vehicles) will be allowed on the western 200 feet of those properties on the east side of South 88th Street between Germann Road and East Woodland Avenue (adjacent to the Queens Park subdivision) nor on those properties on the north side of Germann Road to a depth of 200 feet between South 88th Street and Ellsworth Road.
8. Buildings constructed within 200 feet of Germann Road between South 88th Street and Ellsworth Road to be limited to 30 feet in height. In addition, a 30-foot building setback would be required for all future buildings from the new property line on Germann Road.
9. Site Plan Review requests, rezoning requests and/or subdivision plats located west of Ellsworth Road should, if possible, be at least 10 acres in size, pursuant to Resolution 7838.
10. When development is proposed on the area identified in conditions 6, 7 and 8 above, the applicants will be asked to consider the proximity of the homes to the west and the south in the project design process in order to identify and incorporate proposed compatibility measures. Examples of compatibility measures might include: locating future storm water retention basins on the west and south sides of the property, no bay doors facing west adjacent to 88th Street and south adjacent to Germann Road, placing loading docks on the east or north sides rather than the west or south sides of the buildings, locating compressors and air conditioning units in noise attenuated surroundings, etc.

Williams Gateway Regional Economic Activity Area Project Manager Wayne Balmer, speaking as the applicant, stated that at the request of the City Council, staff initiated the rezoning of properties around the Williams Gateway Airport (WGA) from residential R1-43, which was inherited from the County, to M-1, light industrial, in order to comply with the General Plan. He advised that the subject property consists of 320 acres at the northeast and northwest corners of Ellsworth and Germann Roads, about $\frac{3}{4}$ of a mile from the south end of the WGA runways. Mr. Balmer reported that when the case was presented to the Planning and Zoning (P&Z) Board, a number of meetings were held with the Queen's Park residents, neighborhood representatives, property owners and representatives of the property owners in an effort to reach a consensus. He noted that Queen's Park was developed as a subdivision in Maricopa County prior to being annexed by the City.

Mr. Balmer stated that two options are being presented to the Council:

- Option A is the recommendation from the Planning and Zoning Board that provides for an additional landscape buffer as a Public Utilities and Facilities Easement (PUFE) between 88th Street and the industrial area to the east to separate Queen's Park from the industrial area, with the landscape area to be maintained by the City.

- Option B is the recommendation from the Transportation Department that rather than a PUFÉ, the additional landscape buffer be owned and maintained by the property owners to the east similar to the manner in which landscaping is maintained by a homeowners' association or subdivision.

Mr. Balmer advised that Ladell Call planned to address the Council regarding a possible third option relative to the development of this property. He noted that staff met with Mr. Call to provide assistance in his efforts to prepare a development plan. Mr. Balmer also noted that Ralph Pew, as a representative of the property owners, agreed to additional design review requirements over and above those that are typically required. Mr. Balmer recommended that the Council approve Option B.

Councilmember Thom requested that stipulation number 9 of Options A and B be removed. She noted that a ten-acre size restriction on parcels limits the owner's ability to come forward with a site plan.

City Attorney Debbie Spinner explained that the stipulation includes the wording "if possible" so the provision would not prohibit landowners with a four-acre parcel from coming forward with a site plan.

Councilmember Thom expressed the opinion that including the stipulation indicates the City's unwillingness to approve site plans or rezoning requests for parcels smaller than ten acres, and she requested that the stipulation be removed.

Ms. Spinner stated that the stipulation could be removed, but the ordinance would have to be reintroduced on May 17, 2004.

Mr. Balmer explained that the reason for including the condition is that Resolution No. 7838, passed by the Council in 2002, was intended to prohibit dividing the parcel one acre at a time and to insure that planned development occurred in this area.

Councilmember Thom stated that Arizona Real Estate Law prohibits the holder of an 80-acre parcel to sell one-acre parcels without subdividing. She encouraged the Council to consider removing the stipulation.

Mayor Hawker stated that the Council would now have the opportunity to hear public comment.

Ladell Call, 8600 E. Waterford Circle, advised that the Queen's Park residents have provided a list of speakers in addition to the blue speaker cards. He explained that after the April 19th Council Meeting, Mr. Balmer arranged to have him meet with representatives of City staff to refine his plan, which he was led to believe would be presented at this meeting as Option C. He advised that 15-1/2 acres of the subject property have been placed in escrow, and that as part of the transaction, he agreed to comply with a request made by AIRCOM and Mr. Pew to not speak in opposition to the current zoning case. Mr. Call explained that he was requesting that items be added to the zoning case so that the issue could be resolved at this meeting.

Mayor Hawker noted that if the Council approved Option B, Mr. Call, or any individual with a site plan, could come forward for approval.

Mr. Call stated that if an Option C was considered, the process could be accomplished in a shorter period of time. He noted that property is usually in escrow when a site plan is presented due to the fact that moving forward with purchase is subject to the zoning.

Ralph Pew, 10 W. Main Street, representing AIRCOM, the owner of 74 of the 320 acres in the subject case, confirmed that his client has entered into an agreement to sell 15-1/2 acres to Mr. Call. He understood that Mr. Call was requesting that the Council amend an ordinance in order to approve the plan at this meeting. Mr. Pew noted that the Council was legally prohibited from taking that action, and he encouraged the Council to adopt Option B. Mr. Pew explained that Mr. Call's contract with his client provides a timeframe through November, plus an option to extend the contract through December.

Councilmember Walters addressed Mr. Call and explained that the law stipulates that any new ordinance or a revision to an ordinance must be introduced prior to being considered by the Council, and that the process takes a month. She noted that the change requested by Councilmember Thom would also require a reintroduction of the ordinance. Councilmember Walters suggested that City staff assist Mr. Call in moving forward with his proposal, and that the City consider waiving certain fees.

Ms. Spinner clarified that Mr. Call could come forward as the applicant with his proposal and a request for rezoning. She stated that the Council could not treat one group differently than another, and therefore the waiving of fees may not be possible. Ms. Spinner advised that she would investigate the matter further, but as the subject was not on this agenda, no action on Mr. Call's proposal could be taken at this time.

Mr. Call explained that the neighborhood's primary concern was that if the property were rezoned to M-1, the zoning would never be changed. He added that AIRCOM is concerned that without approval of the rezoning, the property would not be marketable.

Mayor Hawker announced that the Council would hear comments from the public, and the citizens listed below, in the order of their appearance, spoke in opposition to the zoning case:

William E. Soltis, 8609 E. Woodland Avenue
Roger Trinko, 8626 E. Waterford Circle
Roseann Casterton, 8745 Waterford Circle
Barbara D. Trinko, 8626 E. Waterford Circle
LeAnn Merkley, 8559 E. Woodland Avenue

Mayor Hawker announced at 8:03 p.m. that the Council would stand at recess, and the meeting was reconvened at 8:15 p.m. with all members present.

Public comment continued and the individuals listed below spoke in opposition to the zoning case:

Robert VanBeekum, 8759 E. Waterford Circle

Diane Ware, 8642 E. Waterford Circle
Floyd Hardin, 8661 E. Waterford Circle
Karla Chapman, 8715 E. Woodland Avenue
Ann Call, 8660 E. Waterford Circle
Peggy Underwood, 8625 E. Woodland Avenue
Carla Soltis, 8609 E. Woodland Avenue
Ronald K. Arnson, 8746 E. Winnston Circle
Dean Arnson, 8547 E. Waterford Circle
Duran Thompson, 1833 W. Main Street

Comments made by the speakers in opposition to the case included the following:

- Queen's Park residents oppose M-1 zoning on the subject property.
- The proposed buffer between Queen's Park and the subject property is inadequate.
- The Queen's Park residents support Mr. Call's proposal.
- Mr. Call was led to believe that his proposal for an "Option C" would be presented to the Council at this meeting.
- Residents believe that M-1 zoning will negatively impact the value of their property.
- City staff has misled the neighborhood during this process.
- The action of the Council would benefit private investors at the expense of Queen's Park residents.
- The City of Mesa is interfering with the rights of private property owners.
- Queen's Park residents do not object to the airport.
- Approval of industrial zoning could result in a legal challenge by Queen's Park residents.
- Residents were advised by City staff not to seek legal counsel.
- Queen's Park residents were concerned about pollutants and hazardous materials that may result from M-1 zoning.
- The residents were told that the City of Mesa could take their homes.
- The City of Mesa is placing heavy industrial developments next to \$300,000 homes.

Doug Chapman, 8715 E. Woodland Avenue, designated by the Queen's Park residents as their representative to summarize their opposition to the case, stated that the residents were seeking proactive assistance in order to protect the subdivision. He advised that as a mortgage banker and a Queen's Park homeowner, he was aware that property values in the area have increased dramatically. Mr. Chapman noted that he was shocked to learn of the City's plans to rezone the adjacent property to M-1, and he added that the rezoning would severely impact property values. He stated that the residents would like to avoid litigation, but they would find it necessary to recover any losses as a result of M-1 zoning negatively impacting their property values. Mr. Chapman added that the residents also would like to avoid initiating a recall or referendum process. He expressed the opinion that Mr. Call's plan is financially viable and has the support of the entire neighborhood. Mr. Chapman recommended that the Council approve a 30-day continuance in order to obtain zoning on the contiguous property to the east as outlined in Mr. Call's proposal.

In response to Mr. Chapman's question regarding the possibility of changing the zoning at this meeting, Planning Director John Wesley advised that any change to the M-1

zoning would have to be approved by the Planning and Zoning Board prior to consideration by Council.

Mr. Chapman urged the Council not to approve the M-1 zoning adjacent to the residential subdivision.

The following citizens completed blue speaker/comment cards to indicate their opposition to the item, but did not wish to address the Council:

Steve Plant, 8663 E. Winnston Circle
Kathryn Plant, 8663 E. Winnston Circle
Diana Messersmith, 8730 E. Waterford Circle
Ann Benton, 8760 E. Winnston Circle
Tricia Smith, 8716 E. Waterford Circle
Steven M. Smith, 8716 E. Waterford Circle
Josie Hardin, 8661 E. Waterford Circle
Lana Chapman, 8659 E. Woodland Avenue
Jim & Caline White, 8561 Waterford Circle
Dr. Lori A. Dobrowski, 8644 E. Winnston Circle
Brian Ware, 8642 E. Waterford Circle
C. Alex Romero, 8718 E. Winnston Circle
Dan Montgomery, 8732 E. Winnston Circle
Bonnie Vaughn, 8744 E. Waterford Circle
Sheila Black, 8545 E. Woodland Avenue
Derek K. Arnson, 8757 Woodland Avenue
John Buscaglio, 8610 E. Waterford Circle
Anson L. Call II, 8660 E. Waterford Circle
Steven D. Casterton, 8785 E. Waterford Circle
Barbara Edwards, 8549 E. Winnston Circle
Kenneth Fraizer, 8730 E. Waterford Circle
Teresa Fraizer, 8731 E. Waterford Circle
DeLores Geiser, 305 South Val Vista, #5
Peter A. Geiser, 305 South Val Vista, #5
Dave Hanson, 8643 E. Waterford Circle
Tim Hilton, 8747 E. Winnston Circle
Elaine McIntyre, 8548 E. Winnston Circle
Paul McIntyre, 8548 E. Winnston Circle
Craig Merkley, 8559 E. Woodland Avenue
Michael J. Messersmith, 8730 E. Waterford Circle
David & Tere Rope, 8611 E. Waterford Circle
Dan Sundstrom, 8627 E. Waterford Circle
Sandy Sundstrom, 8627 E. Waterford Circle
Karen L. VanBeekum, 21279 E. Alyssa Road
Meredith VanBeekum, 8759 E. Waterford Circle
Ericka Vaughn, 8744 E. Waterford Circle
Steve Vaughn, 8744 E. Waterford Circle
Todd Wyman, 8662 E. Winnston Circle

Russ Brandt, 625 N. Gilbert Road, stated that his property is not adjacent to Queen's Park, but he is involved in partnerships throughout that area. He commended Ladell Call for his efforts on behalf of the neighborhood. Mr. Brandt stated he wanted to clarify some misunderstandings that existed. He advised that a statement attributed to City staff relative to the City purchasing property and bulldozing homes and neighborhoods was actually a comment he made relative to what he foresaw in the future. Mr. Brandt said that the opinion he expressed, that homeowners would receive offers to purchase their property in the future, was based on the potential for industrial development in the area. He noted that after further investigation, he reached a different conclusion. Mr. Brandt stated that he now believes that the area is desirable for residential development to support the projected employment that will be generated in the airport area.

Mr. Brandt said that other incorrect information provided during the public comment period was that the City of Mesa approved the zoning on the subject property. He explained that the zoning was approved by Maricopa County, and then the property was annexed by the City of Mesa. He added that Wayne Balmer was authorized to bid \$6,000 or \$6,500 to purchase the property on behalf of the City, but the City was outbid. Mr. Brandt further explained that the City of Mesa was required by law to issue building permits for the subdivision. He noted that for over 15 years a plat has existed that indicates industrial zoning on the property. Mr. Brandt added that his group has had an agreement with the City of Mesa for 15 years that the subject property would not be sold to any developer with plans for residential development.

Ralph Pew, 10 W. Main Street, representing AIRCOM Industrial Park Partnership, stated that the partnership purchased the property 13 years ago, and the group has maintained their commitment to the City not to pursue residential development. He acknowledged that the Queen's Park residents were sincere in expressing their concerns, but his clients held a different point of view. Mr. Pew provided the following information regarding the case:

- The Council instructed City staff to initiate the rezoning on the subject property to be consistent with the General Plan.
- The concern of Queen's Park residents relative to pollutants, hazardous materials, and dangerous truck traffic was unwarranted due to the fact that the rezoning prohibits outside storage.
- The buffer that is currently proposed includes the 15-foot landscape tract, a wall, an additional 40 feet in which nothing can be built, a 30-foot height limit on the building, bay doors that are required to face away from the subdivision, and no traffic from 88th Street is allowed into the industrial area.

Mr. Pew urged the Council to adopt Ordinance B in order to create the M-1 zoning. He stated that his client has executed a contract with Mr. Call that is in force through December in order to provide Mr. Call the opportunity to develop a plan.

Mr. Pew referred to Mr. Chapman's comment that the Queen's Park residents would initiate a referendum if the M-1 zoning were approved. He stated the opinion that the City Attorney would not permit a rezoning proposal on the M-1 property to move forward if a referendum was pending, and therefore a referendum would, in effect, negate Mr. Call's efforts. Mr. Pew advised that his clients support Mr. Call's proposal, and they have

entered into a contractual agreement that provides adequate time to develop the plan. He also stated that remarks insinuating that the contract with Mr. Call would be terminated upon approval of the M-1 zoning were disparaging to the integrity of his clients.

Mayor Hawker asked if Mr. Call or any other person in the audience wished to address the Council relative to this item and, as no additional speakers came forward, he announced that the public comment period was closed.

Mr. Balmer, speaking as the applicant, provided information on the history of the subject property, the property surrounding the airport, neighborhood meetings, and discussions with Mr. Call. He noted that staff met with Mr. Call to explain the process to enable him to make an informed decision regarding the viability of the project. Mr. Balmer clarified that Mr. Call was advised that only Options A and B would be presented to the Council, that a continuance was not being proposed, and that Mr. Call or his representative would be responsible for presenting any other alternative for Council consideration.

Mr. Balmer also advised that the neighborhood's proposal for a common stormwater retention basin in the greenbelt area in order to provide a larger buffer to the subdivision posed problems relative to possible accidental release of hazardous materials from the industrial lots.

In response to Mayor Hawker's question relative to procedural requirements in addressing this issue, Ms. Spinner advised that discussions with Mr. Wesley and Mr. Pew indicate that it may be possible for Mr. Call's plan to move forward under the M-1 zoning and, if that is correct, Mr. Call would be required to submit a site plan application and go through the normal procedures. She added that if a determination were made that the 15 acres must be separated from the subject property, the proposed ordinance would have to go through the entire process from the beginning.

Discussion ensued relative to the fact that Mr. Call's proposal has the support of the neighborhood, the Council, and the property owners, but there are legal requirements that must be addressed; and that separating the property for changes to the zoning would require the full P&Z review process, notifications, and citizen participation, which is typically a five-month long process.

Mayor Hawker stated that the Councilmembers appear to be in support of Mr. Call's proposal. He advised that the present dilemma was the manner in which the proposed plan could be accomplished within the required legal framework.

Additional discussion ensued relative to the fact that M-1 zoning would allow an employment park and an office zone; that Mr. Call's proposal could be accomplished within M-1 zoning; that if Mr. Call planned to sell the buildings individually, a Planned Area Development (PAD) would be required.

Ms. Spinner clarified that O-S, as described in Chapter 7, item 11-7-2 has the following limitations: (a) no individual retail store shall exceed an area of ten thousand (10,000) square feet, and (b) no group commercial development shall exceed an aggregate area of fifty thousand (50,000) square feet. She also noted that Mr. Call's site plan would be

required to comply with all of the conditions set forth in the ordinances, which would include a 40-foot setback from the wall.

In response to a concern relative to Mr. Call's plan for office use being accomplished under M-1 zoning, Councilmember Walters suggested that Mr. Call include a deed restriction prohibiting industrial use by any future occupant or tenant.

Mr. Pew requested that the Council move forward on Option B.

Further discussion ensued relative to the fact that consideration of Option A or B without the 15 acres represents a significant change to the published zoning case; that returning the case to Planning and Zoning would be consistent with the law; and that changing the M-1 zoning case to an M-1 and O-S zoning case without P&Z review would be subject to a legal challenge.

Councilmember Jones noted that everyone appears to agree on the desired result, but the Council must follow the required legal process. He expressed concern relative to the fact that some individuals made comments questioning the integrity of the Councilmembers and City staff.

In response to a question from Councilmember Walters, Mr. Pew noted that the Council has the prerogative to continue the case. He explained that his clients are anxious to move quickly for proprietary reasons relative to the development that they do not want discussed in a public forum. He suggested separating the 200 or 400-foot strip from the case, republishing the ordinance, reintroducing the ordinance at the next regular meeting and then bringing the ordinance forward for Council consideration in one month. Mr. Pew also noted that this action could pose a problem for his clients if Mr. Call were unable to have the property rezoned.

Ms. Spinner concurred with Councilmember Walters' suggestion that discussions be held in an effort to resolve the problem. She noted that some planning and zoning attorneys believe that a down zone can be accomplished without republishing and going through the entire process. Ms. Spinner noted that the courts have not yet reviewed this type of matter, but the action could be challenged at any point in the future. She recommended that the Council consider the issue prior to taking any action.

Councilmember Thom thanked the Queen's Park residents for their input and expressed support for determining a process to allow Mr. Call's proposal to move forward. She repeated her concern relative to stipulation number 9 of the proposed ordinances, and she requested that the stipulation be removed in order to allow landowners the ability to subdivide their land into parcels of less than ten acres.

It was moved by Councilmember Thom that Case Z04-01 be continued.

Mayor Hawker advised that the motion died for lack of a second. He noted that staff should be provided with direction from the Council relative to the length of the continuance and the actions to be taken.

Councilmember Thom amended the motion to state that Case Z04-01 would be continued for 30 days.

In response to a question from Councilmember Griswold, Ms. Spinner advised that staff would research the issue regarding Mr. Call's proposal for residential zoning on the 15 acres.

Vice Mayor Kavanaugh stated that prior to becoming aware of the case or any of the details, he was threatened with recall and received many negative emails. He suggested that a more positive approach could be utilized when citizens are seeking the support of elected officials regarding an issue. Vice Mayor Kavanaugh noted that at the April 19th Council meeting, the Council directed staff to assist Mr. Call with his plan. He stated that no opposition to Mr. Call's plan has been expressed by the Councilmembers or by City staff, but he emphasized that any action taken by the Council must comply with the law. Vice Mayor Kavanaugh added that the Council is required to make fair and difficult decisions, and that impugning the integrity of the Council and questioning their motives was inappropriate. He indicated support for the continuance and expressed the hope that the project could be implemented.

Vice Mayor Kavanaugh referred to Councilmember Thom's request to remove stipulation number 9 and explained that the resolution adopted by the Council in 2002 was designed to prevent "piece meal" zoning.

In response to a question from Councilmember Jones, Ms. Spinner advised that two weeks would be sufficient time for staff to provide advice regarding the legal process required relative to Mr. Call's proposal.

Councilmember Jones requested that Councilmember Thom consider amending the motion to stipulate a continuance for 15 days rather than 30 days.

Councilmember Thom concurred with Councilmember Jones' request and amended the motion to state that Case Z04-01 should be continued for 15 days. Councilmember Jones seconded the motion.

Councilmember Walters expressed support for the motion and noted that all parties involved were acting in good faith. She added that misunderstandings appear to exist relative to the legal requirements and processes that are involved in the issue. Councilmember Walters noted that individuals attending a meeting could interpret information differently, and she expressed the hope that a satisfactory resolution could be reached during the 15-day continuance.

Mayor Hawker requested that City staff meet with the parties involved in an effort to resolve the issues in a manner that meets all of the legal requirements.

Mayor Hawker called for the vote.

Carried unanimously.

- *c. **Z04-23 (District 4)** 809 West Main Street. Southwest corner of Main Street and Extension Road (0.58 ac. ±). Rezone from C-3 to C-3HL. This request is for the historical designation of the Landmark Restaurant. Don and Candy Ellis, owners and applicants – Ordinance No. 4188.

P&Z Recommendation: Approval (Vote: Passed 5-0-2, Finter and Adams absent).

- *d. **Z04-24 (District 5)** The 6300 to 6400 block of East Main Street (south side) and the 200 to 300 block of 63rd Street (east side) through to 64th Street (west side). Located south and east of Main Street and Recker Road (1.64 ac. ±). Rezone from C-2 to C-2 PAD. This request is for the development of office condominiums. Michael Hamberlin, owner; Steven Nevala, applicant. Also consider the preliminary plat “63rd Professional Center” – Ordinance No. 4189.

P&Z Recommendation: Approval with conditions (Vote: Passed 5-0-2, Finter and Adams absent).

1. Compliance with the basic development as described in the project narrative and as shown on the site plan and preliminary plat submitted except as noted below.
2. Compliance with all requirements of the Design Review Board.
3. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
4. Compliance with all requirements of the Subdivision Technical Review Committee.
5. Dedicate the right-of-way required under the Mesa City Code at the time of application for a building permit, at the time of recordation of the subdivision plat, or at the time of the City's request for dedication whichever comes first.
6. All street improvements and landscaping to be installed in the first phase of construction.
7. Retention basins to be 6:1 slopes maximum when adjacent to public rights-of-way or pedestrian walkways.

- *e. **Z04-25 (District 1)** 2310 and 2320 East Brown Road. Located north and east of Gilbert Road and Brown Road (1.22 ac. ±). Rezone from R-4 to O-S. This request is for the development of two medical office buildings. Dr. Jerry R. Shockey, owner; Vince Dalke, applicant – Ordinance No. 4190.

P&Z Recommendation: Approval with conditions (Vote: Passed 5-0-2, Finter and Adams absent).

1. Compliance with the basic development as described in the project narrative and as shown on the site plan except as noted below.
2. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
3. Recordation of cross-access and reciprocal parking easements between parcels 141-11-091 and 141-11-092.
4. Recordation of cross-access easement between parcels 141-11-091 and 141-11-092.

5. Dedicate the right-of-way required under the Mesa City Code at the time of application for a building permit, or at the time of the City's request for dedication whichever comes first.
6. All street improvements and landscaping to be installed in the first phase of construction.
7. Compliance with all requirements of the Design Review Board.
8. Full compliance with all current Code requirements, unless modified through the Development Incentive Permit.
9. Retention basins to be 6:1 slopes maximum when adjacent to public rights-of-way or pedestrian walkways.
10. Owner granting an Avigation Easement and Release to the City, pertaining to Falcon Field Airport which will be prepared and recorded by the City prior to the issuance of a building permit.

*f. **Z04-26 (District 5)** The 9200 and 9300 block of East Main Street (north side) and the 50 to 100 block of North Ellsworth Road (east side). Located north and east of Main Street and Ellsworth Road (5.73 ac ±). Site Plan Review. This request is for the development of a commercial development. Mike Pearlstein, owner and applicant – Ordinance No. 4191.

P&Z Recommendation: Approval with conditions (Vote: Passed 5-0-2, Finter and Adams absent).

1. Compliance with the basic development as described in the project narrative and as shown on the site plan, preliminary plat and elevations submitted, (without guarantee of lot yield, building count, lot coverage) except as noted below.
2. Review and approval by the Planning and Zoning Board, Design Review Board and City Council of future development plans for Pad "A" and Pad "B".
3. Compliance with all City development codes and regulations.
4. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
5. Dedicate the right-of-way required under the Mesa City Code at the time of application for a building permit, at the time of recordation of the subdivision plat, or at the time of the City's request for dedication whichever comes first.
6. All street improvements and perimeter landscaping to be installed in the first phase of construction.
7. Compliance with all requirements of the Subdivision Technical Review Committee.
8. Compliance with all requirements of the Design Review Board.
9. Retention basins to be 6:1 slopes maximum when adjacent to public rights-of-way or pedestrian walkways.

7. Items from citizens present.

Roger Trinko, 8626 E. Waterford Circle, stated that he regretted his earlier comments regarding the Council's lack of integrity relative to agenda item 6b, and he requested that the Council accept his apology.

8. Adjournment.

Without objection, the Regular Council Meeting adjourned at 9:56 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 3rd day of May 2004. I further certify that the meeting was duly called and held and that a quorum was present.

BARBARA JONES, CITY CLERK

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