

COUNCIL MINUTES

February 21, 2006

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on February 21, 2006 at 5:45 p.m.

COUNCIL PRESENT

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

COUNCIL ABSENT

None

OFFICERS PRESENT

Christopher Brady
Debbie Spinner
Barbara Jones

Invocation by Pastor Doug Davidson, Trinity Baptist Church.

Pledge of Allegiance was led by Tanner Jones, Boy Scout Troop # 857.

Mayor's Welcome.

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

1. Consider all consent agenda items.

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

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

Carried unanimously.

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

Minutes from the January 26, February 2, 6 and 9, 2006 Council meetings.

3. Consider the following liquor license applications:

James Michael Heckert, Jr.

Agent Change, Acquisition of Control for Molly Brannigan's, 1744 S. Val Vista Drive. A Restaurant License previously held at this location by Thomas Staab, Agent, Molly Brannigan's will revert back to the State. District #2.

4. Consider the following contracts:

- *4a. Sample Ballot/Publicity Pamphlet Printing for the May 16, 2006 General Election as requested by the City Clerk's Office. (Mesa Contract #2006100)

The Purchasing Division recommends accepting the low responsive, responsible bid from Cenveo, Inc. at \$25,483.91, including overrun charges and sales tax.

- *4b. Two Vehicles as requested by the Utilities Administration Division, Utility Services and the Water Utility Division, Water Quality. (State Contract #AD 040004)

The Purchasing Division recommends authorizing purchase from the State of Arizona contract with Five Star Ford at \$38,642.45, including applicable sales tax.

- *4c. Two-year renewal of Supply Contract for Residential Refuse and Recycling Containers (blue, black and green barrels) as requested by the Solid Waste Division. (Mesa Contract #2002205)

The Purchasing Division recommends authorizing a two-year renewal with Rehrig Pacific Company for a total of \$841,101.94 annually based on estimated requirements.

- *4d. Warner Road 12-inch Waterline – Ellsworth Road to Santan Freeway (SR 202L), City of Mesa Project No. 04-866-001.

This project will install a new 12-inch waterline from Ellsworth Road west along Warner Road to the Santan Freeway. The waterline will provide water service for future landscape irrigation along the Santan Freeway and new and future development within the southeast areas of the zone. This waterline is part of the City's Water Master Plan.

Recommend award to low bidder, Visus, Inc., in the amount of \$247,175.00 plus an additional \$24,717.50 (10% allowance for change orders) for a total award of \$271,892.50.

- *4e. Wastewater Diversion Structures Rehabilitation at Lindsay and Baseline Roads and Greenfield and Baseline Roads, City of Mesa Project No. 01-687-002.

This project will rehabilitate two of the City's sewer diversion structures that have deteriorated to below acceptable condition. Work includes repairing access hatches, replacing ladders and gates, restoring surface coatings, and repairing damaged concrete walls and slabs.

Recommend award to low bidder, JPCI Services, Inc., in the amount of \$228,575.50 plus an additional \$22,857.55 (10% allowance for change orders) for a total award of \$251,433.05.

- *4f. Water Transfer Stations No. 1 and No. 3 Improvements, City of Mesa Project No. 03-070-001.

City Council is asked to ratify an increase to the contract amount of Project No. 03-070-001, to pay for unforeseen items discovered during construction and additional work added to the project.

Early on in project construction, it was discovered that an existing underground pipe was incorrectly identified on the as-built drawings. This required additional piping to be added to the project as well as a new shoring system due to the piping for this project being located more than 35 feet below ground.

In accordance with City Policy on Construction Contract Change Orders, the Council is asked to ratify this increase in the contract amount of \$75,000.00. With this increase, the total Contract amount is \$2,350,975.90.

- *4g. Baseline Wastewater Interceptor Siphon Inlet and Outlet Structure Rehabilitation, City of Mesa Project No. 03-083-001.

This project will rehabilitate the siphon structures by repairing and lining concrete surfaces, and repairing or replacing the various appurtenances damaged by corrosion. This project will use the Construction Manager at Risk (CM@R) delivery method. This initial phase of work will be the Design Phase Services.

Recommend award to the Construction Manager at Risk, B & F Contracting, Inc., in the amount of \$22,983.90 for Design Phase Services.

5. Consider the following resolutions:

- *5a. Extinguishing a Temporary Drainage Retention Easement at 5404 E. Southern Avenue – Resolution No. 8667.

This easement is no longer required because a new drainage area has been identified and an easement dedicated.

- *5b. Extinguishing a Public Utility Easement at the northwest corner of Brown Road and Greenfield Road – Resolution No. 8668.

This easement is no longer required because a new easement has been dedicated by the property owner.

- *5c. Approving and authorizing the City Manager to execute an Intergovernmental Agreement between Maricopa County and the City of Mesa for the FY 05/06 Special

Transportation Services (STS) program. The City of Mesa's portion of the STS program is \$59,000 – Resolution No. 8669.

6. 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 City 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.

*6a. Amending various sections of the Mesa City Code regarding the following traffic modifications – Ordinance No. 4515:

Prohibiting Left Turns From Driveways: 10-3-15 (B)

On the west side of Higley Road from the driveway with centerline 500 feet south of the centerline of McKellips Road. (West side of Higley Road south of McKellips Road, Council District 5)

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

On the east side of Decatur Street from 8th Street to Dixon Circle. (South of 8th Street and east of Dobson Road, Council District 1)

On the south side of Pueblo Avenue from the Eastern Canal right-of-way to a point 240 feet west of the Eastern Canal right-of-way and on the north side of Pueblo Avenue from the Eastern Canal right-of-way to a point 460 feet west of the Eastern Canal right-of-way. (South of Broadway Road and west of Greenfield Road, Council District 6)

On Surrine from 14th Place to Shill Drive. (North of Brown Road and east of Center Street, Council District 1)

On Shill Drive from Surrine to a point 450 feet west of Surrine. (North of Brown Road and east of Center Street, Council District 1)

No Parking: 10-3-24 (F 1) (No Parking between 8:00 a.m. and 4:00 p.m. on any day that the public schools of Mesa are in session)

On Juanita Avenue from Longmore to Pennington. (North of Baseline Road and east of Dobson Road, Council District 3)

On the west side of Pennington from a point 325 feet north of Baseline Road to Juanita Avenue. (North of Baseline Road and east of Dobson Road, Council District 3)

No Parking: 10-3-24 (F 2) (No Parking between 7:00 a.m. and 4:00 p.m. on any day that the public schools of Mesa are in session)

On Feliz from Madero Avenue to Los Lagos Vista Avenue. (South of Baseline Road and east of Crismon Road, Council District 6)

On Lobo Avenue from Feliz to the centerline of Chatsworth. (South of Baseline Road and east of Crismon Road, Council District 6)

On Los Lagos Vista Avenue from Abbey to Chatsworth. (South of Baseline Road and east of Crismon Road, Council District 6)

Chatsworth from Los Lagos Vista Avenue to Lobo Avenue. (South of Baseline Road and east of Crismon Road, Council District 6)

- *6b. **Z06-01 (District 6)** The 1100 to 1200 block of South Ellsworth Road (west side). Located north of Southern Avenue and west of Ellsworth Road (0.6± acres). Rezone from R1-43 to C-2. This request is to rezone property for future retail development. Mickey Toli, owner; Jeff Swan, applicant – Ordinance No. 4516. (**Held neighborhood meetings, notified neighbors, registered neighborhoods and homeowners associations.**)

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

- *6c. **Z06-02 (District 5)** 430 North Power Road. Located north of University Drive and west of Power Road (1± acres). Council Use Permit. This request is to allow a restaurant with a bar in a C-2 district. David Moore, owner; George Smith, applicant – Ordinance No. 4517. (**Held neighborhood meetings, notified neighbors, registered neighborhoods and homeowners associations.**)

P&Z Recommendation: Approval with Conditions. (Vote: 4-3 with Langkilde, Carpenter, and Mizner nay)

- 6d. **Z06-03 (District 6)** The 9200 to 9600 blocks of East Elliot Road (north side). Located north of Elliot Road and east of Ellsworth Road (75± acres). Rezone from R1-43 to C-2 and PEP. This request is to bring the zoning of the property into conformance with the Mesa 2025 General Plan. The Cardon Company (Will Cardon), owner; City of Mesa, applicant. (**Held a neighborhood meeting, notified property owners and nearby neighbors.**) **LEGAL PROTEST FILED. ¾ VOTE REQUIRED.**

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

Williams Gateway Area Project Manager Wayne Balmer reported that after the City adopted the Mesa 2025 General Plan in 2002, staff worked with the property owners in the area of Williams Gateway Airport whose properties were zoned residential in order to find alternative land uses that not only would accommodate their future needs, but also be consistent with the General Plan. He explained that the rezoning request was initiated by staff as a result of a subdivision plat filed by Cornerstone Homes (which is in escrow to buy the property from The Cardon Company). Mr. Balmer advised that he was somewhat surprised by the request inasmuch as the property owners had previously indicated to him that it was their intention to hold the property for the development of a shopping center once the freeway was extended to Elliot Road.

Mr. Balmer displayed a map in the Council Chambers that depicted 759 aircraft departures from Williams Gateway Airport for a one-month period in 2002. He explained that when an aircraft leaves the airport, it is instructed by the control tower to turn to the east as soon as possible and to stay south of the power line located between Elliot and Guadalupe Roads. Mr. Balmer indicated that in January of this year, the Federal Aviation Administration (FAA) announced that Williams Gateway was ranked as the 42nd busiest airport in the United States and said that it accounted for approximately 15,000 departures per month. He added that if the subject property remained zoned residential, the new homeowners would be significantly impacted by increased over flight activity departing the airport.

Discussion ensued relative to the subdivision plat submitted by the property owners and various design challenges associated thereto.

Mr. Balmer further indicated that the case was brought forward to the Council because of their longstanding policy to discourage residential development around Williams Gateway Airport. He added that if the subdivision plan goes forward, he would suspect that the Council would see similar requests from the property owners to the east and north.

Mayor Hawker thanked staff for initiating zoning changes near Williams Gateway in an effort to comply with the General Plan. He commented that he is very supportive of the area being designated for employment uses. Mayor Hawker also noted that he wanted to make it perfectly clear that there is, in fact, an historical basis upon which the City's rezoning application has been initiated.

Paul Gilbert, 4800 North Scottsdale Road, Scottsdale, an attorney representing the owners and Cornerstone Homes, stated that the property owners vigorously oppose the "down zoning" of the subject property. Mr. Gilbert advised that the property was annexed into the City with R1-43 zoning and acknowledged that although the General Plan changed in recent years, the zoning has remained the same.

Mr. Gilbert further indicated, among other things, that the property owners have been unsuccessful in their attempts to market the property for industrial and Planned Employment Park (PEP) uses; that the highest and best use of the property is one-acre custom homes built in conformance with the existing zoning; that such a development would attract high-end employers to the area and allow executives to live in close proximity to jobs located at Williams Gateway Airport; and that although the property is located in the airport's third level flight path, it is "well outside the established noise contours" and the impact of flights over the property would not be significant.

Gilbert Mayor Steve Berman, speaking as a member of the Williams Gateway Airport Authority, urged the Council to approve the rezoning application in order to protect the Authority's long-term "vision" for the airport. He also stated that it is important for the Council to consider not only what would be the most beneficial solution for the property owners, but for the citizens in the surrounding communities.

Jim Ravens, a representative of Silver State Helicopters, commented that his company initially located near Williams Gateway Airport because of its ability to fly low-level helicopters without disturbing residential communities. He stated that if the property owners proceed with their

proposal for a residential subdivision, his company's flight operations would be significantly impacted. Mr. Ravens urged the Council to approve staff's rezoning application.

Richard Lee, a representative of Boeing Company, concurred with the comments of the previous speaker. He also voiced concerns that the development of a residential subdivision around Williams Gateway Airport would "defeat" the Fly Friendly policy; subject residents to over flight noise day and night as a result of various flight operations conducted by Boeing; and jeopardize the future economic viability of the community.

Further discussion ensued relative to the Fly Friendly procedure; and that the rezoning application calls for 28 acres of commercial and 55 acres of Planned Employment Park, but staff would be willing to work with the property owners if they preferred to modify the land use percentages.

Responding to a series of questions from Councilmember Thom, Mr. Balmer provided a short synopsis of his communications with the property owners and Mr. Gilbert concerning this matter. He stated, among other things, that subsequent to staff reviewing the pre-submittal from Cornerstone Homes, he sent a lengthy e-mail to the property owners detailing the Council's vision for Williams Gateway and stating that staff would like to propose zoning changes; that when he failed to receive a response, he proposed the C-2 and PEP zoning designations; and that he subsequently advised Mr. Gilbert he would work with the property owners if they had an alternative proposal, but received no response in that regard.

Councilmember Griswold questioned whether the City could assist the property owners, for example, in relocating the proposed residential subdivision to an alternative site outside of Williams Gateway's flight path.

Responding to Councilmember Griswold's inquiry, Mr. Balmer stated that he was confident other properties were available but noted, however, that the property owners would have to consider their investment in this project, as well as the purchase price of an alternative site.

Planning Director John Wesley commented that if the property were allowed to develop as a residential subdivision, it would set a dangerous precedent for the Williams Gateway Airport and thwart the goals of the General Plan that the area be developed as a major employment hub. He stated that the property would be an appropriate location for commercial and employment uses and noted that the power line located between Elliott and Guadalupe Roads is an appropriate transition zone for residential uses to the north and employment to the south. Mr. Wesley added that for these reasons, it is staff's recommendation that the Council uphold the approved General Plan and adopt the rezoning application.

Responding to a series of questions from Mayor Hawker, Will Cardon, the property owner, clarified that he has not received any written commercial offers on the property to date because of a substantial amount of similar development immediately adjacent to the site. He stated the opinion that a portion of the property being designated for residential use would be appropriate and added that he is interested in incorporating innovative design elements to foster a live/work environment.

Councilmember Whalen expressed concerns regarding FAA's "lack of cooperation or proper planning" and the difficulties that aircraft departing from Williams Gateway encounter so they do not enter Sky Harbor Airport's "takeoff pattern." He commented that that has resulted in Mesa limiting mixed-use projects (i.e., high density residential, retail and office space) in the area around Williams Gateway, and added that property owners to the east and north of the airport are penalized because of the "forced" aircraft departures.

Mayor Hawker stated that he strongly believes the area around Williams Gateway Airport should be a major employment center at build-out for the entire East Valley. He commented that while this property would not be an appropriate site for a residential subdivision because of its location underneath the airport's flight path, there are other areas, such as the General Motors property, that are not similarly situated and would be more suitable for residential uses. Mayor Hawker further commented that if the proposed residential development were to proceed, Mesa's relationship with Sky Harbor Airport would be jeopardized because, in his opinion, Sky Harbor may not want to partner with an airport that does not protect its arrival and departure routes.

It was moved by Vice Mayor Walters that Zoning Case Z06-03 be approved; that staff be directed to work with the property owners and bring the case back to the Council if it is necessary to make changes to the land use designations; that the City incur any charges associated with rezoning the property; and that if a Minor Plan amendment is required, the City would address the matter and incur such charges.

Vice Mayor Walters commented that Mesa's investment in Williams Gateway Airport is not only financial, but also extremely important in terms of its ability to provide employment opportunities for residents in the future. She noted that once the freeway is extended to Ellsworth Road, she is confident that the property owners would be able to successfully market the property for uses other than residential. Vice Mayor Walters added that the City's investment in Williams Gateway Airport could be jeopardized not only by approving residential zoning on the subject property, but also the fact that adjacent parcels would come forward and request similar zoning.

Mayor Hawker seconded the motion.

Councilmember Whalen stated that he would only support the zoning designations recommended by staff because he does not want aircraft over flights in residential areas.

Councilmember Rawles indicated that he is torn on this item because of the City's consistent policy relative to homes being located north of the power line. He stated that the City has sufficient acreage near Williams Gateway for its proposed employment base, but also acknowledged the rationale that the proposed residential subdivision could eventually lead to the possible closure of the airport. Councilmember Rawles noted that although he would like to support the motion to ensure that the City has a consistent public policy regarding the above-referenced power line, there is also value in maintaining a consistent personal philosophy and voting record. He said for those reasons, he would oppose the motion.

Councilmember Griswold voiced a series of concerns regarding the difficulties encountered by aircraft departing from Williams Gateway Airport and avoiding Sky Harbor's airspace. He commented that for the good of the City, it is crucial that Mesa adhere to its vision for Williams

Gateway and added that the facility has the potential to become a major reliever airport for Sky Harbor.

Councilmember Jones stated that although he respects the rights of the property owners to market their property in the most financially beneficial manner, it is equally important that the zoning around Williams Gateway remain consistent with the General Plan.

Councilmember Thom advised that she did not wish to offer any comments and was prepared to vote on the case.

Mayor Hawker restated the motion, which included approval of Zoning Case Z06-03, and that staff would work with the property owners to change the zoning as long as there was not a residential component involved. He added that since a legal protest has been filed, six positive votes would be required for the motion to pass.

Mayor Hawker called for the vote.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion failed for lack of a majority vote.

Mayor Hawker stated that this is the most disappointing vote he has experienced during his tenure as Mayor.

Vice Mayor Walters noted that it was her remembrance that the City Charter requires Councilmembers who voted no on a matter to explain their vote.

Mayor Hawker requested Councilmember Thom to explain her vote for the record.

Councilmember Thom commented that in her opinion, Mr. Balmer did not work with the property owners in a sufficient manner to reach consensus regarding alternative zoning designations that would have been beneficial to the owners. She also provided a short synopsis of two previous rezoning cases handled by Mr. Balmer in which staff was able to reach amicable agreements with the property owners so that they could maintain their property rights and utilize their land in a suitable manner. Councilmember Thom further indicated that the fact Mr. Balmer sent an e-mail to the property owners relative to the rezoning application (as opposed to a Certified Letter), and then proceeded with the application process prior to receiving a reply was, in her opinion, unfair. She also suggested that Mr. Balmer or another staff member work with the property owners in an effort to develop alternative zoning uses for the property other than residential.

In response to a question from Mayor Hawker, Councilmember Thom stated that she did hear Vice Mayor Walters' direction to staff at the time she made her motion.

Mayor Hawker requested that Vice Mayor Walters restate those comments.

Vice Mayor Walters reiterated her previous comments as follows: that if the motion passed, she had directed staff to work with the property owners to develop a plan that would be agreeable with them, but did not include a residential component; that if there was a need for a General Plan amendment, the City would initiate the process and incur those costs; that if it was necessary to rezone the property and change the land use percentages, the City would also initiate that process and incur said costs. She added that the difficulty she sees in this case is that the property owners would bring their plat forward, which would result in a residential subdivision by default, and would result in the potential closure of Williams Gateway Airport.

Councilmember Thom stated that she does not see the airport's closure as an assured event.

7. Consider the following subdivision plats:

- *7a. "LONGBOW BUSINESS PARK AND GOLF CLUB" (**District 5**) – 2800-3100 blocks of North Higley Road (east side to Recker Road) and the 3200-3000 blocks of North Recker Road (west side, south of Red Mountain Freeway) located north and east of McDowell Road and Higley Road. 8 M-1 DMP, C-3 DMP and Conceptual M-1 BIZ commercial/industrial lots (330.46 ac) Dover Associates, LLC, Robert M. McNichols, manager, owner; Site Consultants, Inc., engineer.
- *7b. "LEGACY VILLAGE AT MESA" – (**District 5**) – 5600 block of East McKellips Road (south side) located south and east of McKellips Road and Higley Road. Four C-2 DMP commercial lots (13.75 ac) Alta Mesa & McKellips LLC, Stan Wasserkrug, manager and Western States Lodging, LLC, Gary K. Griffiths, partner, owners; Land Survey Services PLC, engineer.
- *7c. "VILLA RIALTO, A CONDOMINIUM" – (**District 6**) – 7600-7800 blocks of East Baseline Road (north side) located east and north of Sossaman Road and Baseline Road. 121 R-3 PAD condominium units (8.77 ac) VR Lots, LLC, Lynn A. Hoebing, president, owner; CMX, Inc., engineer.
- *7d. "EL DORADO BROWN COMMERCE CONDOMINIUMS" – (**District 5**) – 6300 block of East Brown Road (north side) located north and east of Brown Road and Recker Road. Four O-S PAD condominium units (2.30 ac) El Dorado Brown, LLC, William Cleverly, authorized member, owner; Val-Tech, Inc., engineer.

8. Items from citizens present.

There were no items from citizens present.

9. Adjournment.

Without objection, the Regular Council Meeting adjourned at 7:15 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 21st day of February 2006. 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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