

COUNCIL MINUTES

September 4, 2007

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on September 4, 2007 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

STAFF PRESENT

Christopher Brady
Debbie Spinner

Vice Mayor Walters participated in the entire meeting through the use of telephonic equipment.

Invocation by Pastor Steven A. Kunkel, Christ the King Catholic Church.

Pledge of Allegiance was led by Jaden Bankhead of Scout Troop #553.

Mayor's Welcome.

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 Councilmember Griswold, seconded by Councilmember Somers, that the consent agenda items be approved.

Carried unanimously.

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

Minutes of the March 29, June 7, and August 16 and 27, 2007 Council meetings.

3. Take action on the following liquor license applications:

*3a. 7-Eleven #19613H

New Beer & Wine Store license for 7-Eleven #19613H, 2010 W. Guadalupe Road, 7-Eleven, Inc.– Applicant; Nicholas Carl Guttilla – Agent. The Beer & Wine Store license previously held at this location by Sandhu Corporation, issued 03/21/2002, will revert back to the State. **(District 3)**.

*3b. Bar Tepo New American Tapas

New Restaurant license for Bar Tepo New American Tapas, 1652 S. Val Vista Drive, Bar Tepo LLC – Applicant; Steve Lynn Short – Agent. This is new construction with no previous liquor license at this location. **(District 2)**.

4. Take action on the following contracts:

4a. One emergency response trailer for the Fire Department (Fully Grant Funded - 2006 UASI Federal Homeland Security Grant Program).

The Procurement Services Department recommends authorizing purchase from Utility Trailer Sales Company of Arizona at \$46,591.10, including sales tax.

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

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried by majority vote.

4b. Purchase of one replacement electronic message center marquee sign for the Parks, Recreation and Commercial Facilities Department, Mesa Convention Center (Mesa Convention & Visitors Bureau Funding).

The Procurement Services Department recommends authorizing the purchase off the MCCCCD contract with Young Electric Sign Company in the amount of \$184,399.09, including applicable sales tax, removal of current sign and installation of the new sign.

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

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried by majority vote.

- *4c. Northwest Water Reclamation Plant UV disinfection upgrade at 960 North Riverview, City of Mesa Project No. 03-082-001.

This project will upgrade the UV disinfection equipment at the Northwest Water Reclamation Plant.

Recommend award to Garney Construction, in the amount of \$2,554,810.00 plus an additional \$255,481.00 (10% allowance for change orders) for a total award of \$2,810,291.00. Funding is available from the adopted FY 07/08 Wastewater Capital Bond Program.

5. Introduction of the following ordinances and setting September 17, 2007, as the date of the public hearing on these ordinances:

- *5a. Amending Title II, Chapter 2, of the Mesa City Code by deleting all references to the City of Mesa as a Community Action Program Board, including membership requirements and powers and duties of the Human Services Advisory Board. Mesa relinquished its Community Action Agency (CAA) designation. The State approved A New Leaf as the CAA.

- *5b. **A06-32 (District 5)** Annexing land located on Sossaman Road north of McDowell Road (1.13 ± ac). Initiated by the property owner, Bela Bunkoczy.

- *5c. **Z07-57 (District 6)** The 8700 to 9200 block of East Warner Road (south side) and the 4400 to 4800 block of South Ellsworth Road (west side). Located south of Warner Road and west of Ellsworth Road (216± acres). Rezone from M-1 AF to M-1 and C-2 with a BIZ overlay on the M-1 on the western portion of the site as part of the approval for the "Entrada" Development Master Plan (an exhibit is available for review in the Planning Division). This request will establish the development pattern for a regional employment center. Via West Properties, Steven Schwarz, owner; Jason Morris, applicant. **(Held a neighborhood meeting and notified property owners.)**

P&Z Recommendation: Approval with conditions. (Vote:6-0 with Boardmember Salas absent.)

- *5d. **Z07-85 (District 2)** 845 and 851 North Gilbert Road. Located north of the northeast corner of Gilbert Road and Adobe Street (1.83 acres). Site Plan Review and rezone 851 N. Gilbert Road from R1-9 to O-S. This request will allow the development of a professional office condominium building. **(Held two neighborhood meetings, notified property owners, homeowners associations and registered neighborhoods.)**

P&Z Recommendation: Approval with conditions. (Vote: 6-0 with Boardmember Salas absent.)

- *5e. **Z07-88 (District 6)** 5850 East Still Circle. Located west of Recker Road and north of Baseline Road (17.38± acres). Rezone from PEP-PAD to M-1-PAD-CUP, Site Plan Modification and modification of a PAD overlay. This request will allow the development of a new student housing/assisted living complex and new YMCA facility within the A.T.

Still University campus. ***(Held a neighborhood meeting, notified property owners, homeowners associations and registered neighborhoods.)***

PHO Recommendation: Approval with conditions.

- 5f. **Z07-83 (District 2)** 4225 East University Drive. Located on the southwest corner of University Drive and Greenfield Road (24.9 acres). Rezone from R-4 to R-4 PAD and Site Plan Review. This request will allow for the conversion of apartments to townhomes for sale. D. Gregory Hales, Carlsbad Development Inc LLC, owner; Mark Tomecak, applicant. ***(Notified property owners)***.

PHO Recommendation: Approval with conditions.

Planning Director John Wesley advised that this case includes the revised stipulations requested by the Council at the August 27th meeting. He reported that the developer has requested a continuation to the September 17th Council meeting in order to address concerns regarding certain language included in the stipulations.

In response to a question from Councilmember Somers, City Attorney Debbie Spinner advised that she has not discussed the language issue with the applicant. She suggested that the case be continued to the September 17th Council meeting and that additional information could be obtained from the applicant in the interim.

It was moved by Councilmember Griswold, seconded by Councilmember Somers, that Case Z07-83 be continued to the September 17, 2007, Regular Council meeting.

Carried unanimously.

6. Take action on the following resolutions:

- *6a. Extinguishing a Drainage Easement at 1940 North Rosemont Avenue – Resolution No. 9072. **(District 5)**.

This easement is no longer required, as the design of the property has changed and a new drainage easement will be dedicated.

- *6b. Extinguishing two Public Utility Easements at 4827 East McKellips Road – Resolution No. 9073. **(District 5)**.

These easements are no longer required, as the development of the property will dedicate new easements.

- *6c. Extinguishing a Roadway Easement at 4520 and 4534 East Fairfield Circle – Resolution No. 9074. **(District 2)**.

This easement is no longer required, as the adjacent development did not require the street to be extended.

- *6d. Approving and authorizing the City Manager to execute an Intergovernmental Agreement between the Mesa Unified School District and the City of Mesa for cooperative planning services. This agreement allows the School District and Mesa to share the cost of a planning staff position. Mesa Unified School District's cost share is \$67,932 and Mesa's cost share is \$25,144 – Resolution No. 9075.
- *6e. Approving and authorizing the City Manager to execute an agreement between the City of Mesa and the Arizona Department of Public Safety Victims of Crime Act (VOCA) to secure grant funds in the amount of \$47,207 for salaries and fringe benefits for the City Prosecutor's Office Victim Assistance Program assisting restitution-eligible victims of crime – Resolution No. 9076.
- *6f. Approving and authorizing the City Manager to execute an agreement between the City of Mesa and the Arizona Criminal Justice Commission (Crime Victim Assistance) to secure grant funds in the amount of \$30,600 for salaries and fringe benefits for the City Prosecutor's Office Victim Services Program assisting all crime victims – Resolution No. 9077.
- *6g. Approving and authorizing the City Manager to execute an agreement between the City of Mesa and the Arizona Department of Public Safety Victims of Crime Act (VOCA) to secure grant funds in the amount of \$45,942 for salaries and fringe benefits for the City Prosecutor's Office Victim Services Program assisting domestic violence victims of crime – Resolution No. 9078.
- *6h. Approving and authorizing the City Manager to execute an agreement between the City of Mesa and AGL Networks LLC for construction and joint use of a fiber optics communication network as recommended by the Transportation and Infrastructure Committee – Resolution No. 9078. (Approval. Vote: 3-0)
- *6i. Approving and authorizing the City Manager to execute an Amendment to the Intergovernmental Agreement between Mesa Unified School District No. 4 and the City of Mesa for the joint use of facilities in the event of a major emergency or catastrophic event that requires temporary shelter or evacuation – Resolution No. 9079.
- *6j. Approving and supporting the submittal of four grant applications to the Gila River Indian Community – Resolution No. 9080.

These applications are submitted for Police, Fire, Utilities and Neighborhood Services. Police: \$22,600 for public safety outreach programs. Fire: \$211,900 for paramedic heart monitors and high-risk injury education. Utilities: \$300,000 over three years for residential AC upgrades for low-income residents. Neighborhood Services: \$30,000 for tool lending trailer and equipment for neighborhood clean up projects – Resolution No. 9081.

7. Approving the expenditure of Local Transportation Assistance Funds (LTAF II) for FY07-08 in the amount of \$732,010 to be utilized for transit operations and maintenance.

It was moved by Councilmember Jones, seconded by Councilmember Somers, that the expenditure be approved.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried by majority vote.

8. Take action on the following ordinance and resolution:

- *8a. Amending the City of Mesa Zoning Code to provide the remaining seven (7) of forty-four (44) Level 1 Historic Structures identified in a 1984 Historical Survey of the City of Mesa the opportunity to apply for a Special Use Permit to allow office use – Ordinance No. 4754.
- *8b. Adopting guidelines for Office Uses in a Level 1 Historic Structures – Resolution No. 9082.

9. Discuss, receive public comment, and take action on the ordinances introduced at a prior Council meeting. Any citizen that 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.

- *9a. **A07-16 (District 5)** Annexing land located on Crismon Road north of Brown Road (0.15± acres). Initiated by the property owner, Warren Petersen – Ordinance No. 4755.
- 9b. **Z07-43 (District 6)** 8659 East Pecos Road. Located south and east of Hawes Road and Pecos Road (10.59± acres). Rezone from AG to O-S-PAD for the southern 110' of the site, and M-1-PAD for the remainder of the site, and Site Plan Review. This request will allow for the development of an office/warehouse development. Jeff Phillippe, Pecos 77, LLC, owner; Reese Anderson, Pew & Lake, PLC, applicant. ***(Held neighborhood meetings, notified property owners, homeowners associations and registered neighborhoods.)*** **LEGAL PROTEST FILED – ¾ VOTE REQUIRED. CONTINUED FROM THE AUGUST 27, 2007 COUNCIL MEETING.**

P&Z Recommendation: Approval with conditions. (Vote: 4-2-1 with Boardmembers Esparza and Langkilde nay; Carter abstaining due to a potential conflict of interest).

Reese Anderson, an attorney with Pew & Lake, the applicant, addressed the Council and noted that Jeff Phillippe, the owner, was also present. He provided an overview of the proposed project, and he outlined the offers of compromise extended by the developer to the Queens Park residents. Mr. Anderson stated that the developer has proposed setbacks that include a screen wall at 50 feet and the building at 110 feet. He further stated that by including the 60-foot roadway, the screen wall is actually located at 110 feet and the building at 170 feet. Mr. Anderson noted that under the current AG (agricultural) zoning, the developer could construct a wall that is 30 feet high. He added that although the proposed building setback at 110 feet is more than twice the Code requirement, the residents continue to request a 200-foot setback.

Mr. Anderson stated that the developer is prepared to commit to providing the following features as a compromise to the Queens Park residents:

- The screen wall would be constructed to match the wall of the adjacent development in order to provide continuity relative to height, color, texture, materials and landscaping.
- A “radius design” would be installed at the corners of the screen wall to facilitate the transition, and the developer of the adjacent property has agreed to incorporate this design feature.

Mr. Anderson advised that the developer was willing to redesign the project to include setbacks of 80 feet for the screen wall and 140 feet for the building.

In response to a question from Councilmember Somers, Planning Director John Wesley stated that a new site plan submitted to the Planning Department by noon on Monday, September 10th, could be placed on the September 17th Regular Council meeting agenda.

Councilmember Somers reported that although he had numerous meetings and telephone conversations with the developer and the Queens Park residents, his efforts to negotiate a compromise were unsuccessful. He said that the residents are considering the pursuit of options, and he expressed concern that should those options fail, the development could move forward without incorporating the design features offered by the applicant as a compromise. Councilmember Somers stated that the legal aspect of this case seems to favor the developer in that the Zoning Code requires a 20-foot setback. He recommended that the redesigned site plan be submitted for Council consideration on September 17th.

Responding to a question from Councilmember Jones, Mr. Anderson confirmed that in the absence of a compromise with the Queens Park residents, the setbacks for the walls of the two adjacent projects would transition from 50 feet on the north to 119 feet on the south. He added that he was unable to locate any reference in the Code that requires the walls of adjacent projects to match. Mr. Anderson noted that these are two separate projects designed to address two different types of business operations. He stated the opinion that his client has made a significant effort to attain a compromise with the Queens Park neighborhood regarding these issues.

Councilmember Rawles said that although he was prepared to support the project as presented, he was confused as to what the developer was requesting of the Council.

Mr. Anderson clarified that the developer is soliciting input from the Council regarding the proposed compromise for an 80-foot setback before requesting a continuance. He stated that the developer is prepared to submit a new site plan for consideration at the September 17th Council meeting.

Councilmember Rawles indicated that he could support the project based on either the current zoning requirement or the developer’s proposal for a compromise.

Kent McClure, 8609 East Woodland Avenue, said that the Zoning Code for R-143 clearly states “that industrial and commercial shall not encroach upon R-143.” He noted that although the property was purchased with an agricultural (AG) zoning designation, the developer is now requesting that the property be rezoned for industrial use. He stated the opinion that the

property rights of the residents are being ignored, and he added that the neighborhood has a history of compromising with developers.

Mayor Hawker responded to Mr. McClure by advising that State law requires the City to apply comparable zoning to properties annexed into the City, which may not correspond to the Master Plan. He advised that the Master Plan designates most of the area surrounding Williams Gateway Airport as industrial, which is the reason for the subject rezoning application.

Councilmember Somers stated that a table included in the Code specifies that 20 feet is the required setback for this project, and he added that he would provide that information to Mr. McClure.

Mr. McClure advised that several residents have joined in an effort to purchase other property for use by the developer in order to maintain the subject property as agricultural. He noted that at one time, the developer indicated that he would be agreeable to this proposal.

In response to a question from Councilmember Rawles, Mr. Wesley confirmed that industrial zoning is not being imposed on any property with R-143 zoning and therefore, there is no encroachment of industrial zoning onto R-143 zoning.

The following citizens addressed the Council in opposition to the project:

Mark Underwood, 8625 East Woodland Avenue
Rosanne Casterton, 8745 East Waterford Circle
Roger V. Trinko, 8626 East Waterford Circle
Craig W. Merkley, 8559 East Woodland Avenue
Colene White, 8561 East Waterford Circle
Ladell Call, 8660 East Waterford Circle
Steve Vaughn, 8744 East Waterford Circle
Doug Chapman, 8715 East Woodland Avenue
Diane Woods, 1426 West Pepper Place
Greg Woods, 1426 West Pepper Place
Ann Call, 8660 East Waterford Circle

Comments made in opposition to the development include the following:

- Queens Park residents are attempting to prevent an illegal development, which will negatively affect property values.
- The interpretation of the zoning ordinance should be that a 20-foot setback is required for compatible uses rather than for industrial zoning adjacent to residential areas.
- The City demonstrates a preference for developers at the expense of the residents.
- The fence would provide a hiding place for the criminal element.
- A project located across the street from Queens Park should be aesthetically pleasing.
- The safety and property ownership rights of Queens Park residents are being placed at risk.
- The proximity and size of the proposed buildings will negatively affect property values.
- The developer could provide a greater setback without reducing the size of the project.
- Plans for the former General Motors Proving Grounds now include residential development.

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

Dan Sundstrom, 8627 East Waterford Circle
Steve Plant, 8663 East Winnston Circle
Kathryn Plant, 8663 East Winnston Circle
Bonnie Vaughn, 8744 East Waterford Circle
Tere Rope, 8611 East Waterford Circle
LeAnn Merkley, 8559 East Woodland Avenue
William T. Cooper, 20404 East Bronco Drive, Queen Creek

Mr. Anderson stated that the applicable section of the Zoning Code does not include the words "shall not" or "encroach." He advised that the Code does include the wording "to maintain without conflict," and he suggested that the buffers proposed by the developer address this issue. Mr. Anderson said that the proposed redesign includes a 140-foot setback to the O-S section of the project. He added that the deed restrictions proposed by the developer to the Queens Park neighborhood would prohibit junkyards, auto dismantling, overnight or idling trucks, etc. Mr. Anderson noted that Mr. Call's project in this area has a building setback from the road of 64 feet, and that another project in the area has a 91-foot setback. He suggested that the Queens Park residents were holding this project to a higher standard, and he expressed the opinion that the threat of litigation is not conducive to the process.

Mr. Wesley reported that the proposed project comprises 10-1/2 acres on the south side of Pecos Road with a General Plan designation for light industrial uses. He said that the project proposes a mix of O-S and M-1 zoning, and he noted that the issues of contention relate to the transition between the project and the residential development to the south. Mr. Wesley stated that the proposal before the Council has a recommendation for approval from the Planning and Zoning Board.

In response to comments by Councilmember Somers, Mr. Anderson displayed a drawing of the proposed buildings (a copy is available for review in the City Clerk's Office) and said that the highest point of the project is 27 feet. Mr. Anderson noted that at one point in the negotiations, the developer offered to install a 100-foot buffer in exchange for a commitment by the residents to remove the legal protest. He reported that the residents rejected the offer, and he advised that his client indicates that the proposal for a 100-foot buffer is no longer available. Mr. Anderson stated that although his client is willing to continue discussions, the Code requires a setback of only 20 feet. He added that the developer's current offer is to increase the setback of the screen wall from the original proposal of 50 feet to 80 feet.

Responding to a question from Councilmember Rawles, Mr. Anderson confirmed that the developer is requesting that this case, which includes an 80-foot setback of the screen wall, be continued to the September 17th Regular Council meeting.

In response to a request from Councilmember Rawles, Ms. Spinner stated that an analysis would be provided at the September 17th Regular Council meeting regarding the contention of some Queens Park residents that this zoning case represents "illegal encroachment," "circumvention of the law" and "non-enforcement of the law."

It was moved by Councilmember Rawles, seconded by Councilmember Whalen, that Zoning Case Z07-43 be continued to the September 17, 2007, Regular Council meeting.

Vice Mayor Walters said that her concern regarding public safety issues were addressed by the applicant's intention to curve the corners of the screen wall and install landscaping that is compatible with neighboring projects.

Councilmember Somers referred to Chapter 15 of the Zoning Code and stated that M-1 is permitted adjacent to residential development. He expressed concern that an unsuccessful legal action initiated by the residents could result in a project with setbacks that are less than those currently proposed by the developer.

In response to comments by Councilmember Griswold, Mayor Hawker provided an historical overview of the Queens Park neighborhood. He advised that when the County approved the Queens Park site plan, the City recognized that residential housing was incompatible with plans for the airport. He reported that the City's attempt to purchase the land at auction was unsuccessful. Mayor Hawker said that although he anticipated receiving numerous noise complaints from Queens Park residents, few complaints have been received. He added that he did not anticipate the opposition to the job center. Mayor Hawker stated the opinion that the developer has been generous in proposing a compromise.

Mayor Hawker called for the vote.

Carried unanimously.

- *9c. **Z07-84 (District 5)** 2759 North Val Vista Drive. Located at the southeast corner of Val Vista Drive and McDowell Road (2.62± acres). Rezone from O-S PAD to O-S. Jennifer Hassan, owner; City of Mesa, applicant – Ordinance No. 4756. **(Notified property owners and homeowners associations.)**

PHO Recommendation: Approval with Conditions.

10. Take action on the following subdivision plat:

- *10a. "GATEWAY AIRPORT BUSINESS CENTER, A CONDOMINIUM" **(District 6)** – 7200-7300 blocks of South 89th Place (west side) located south and west of Pecos Road and Ellsworth Road. 30 M-1 PAD industrial condominium units (6.03 ac) Gateway Airport Business Center I, LLC, Brent Payne, manager, owner.

11. Items from citizens present.

Marvin Tate, 11944 East Beryl Avenue, Scottsdale, expressed concern that the City of Mesa, unlike other Valley cities, requires solid skirting at the base of signs. He stated the opinion that the solid skirting obstructs a driver's view of traffic when installed at certain intersections (Mr. Tate provided a schematic of an intersection and the proposed and existing signs, a copy of which is available for review in the City Clerk's Office).

Erin Henderson, 630 West 2nd Street, submitted a speaker/comment card, but was not present to address the Council. Ms. Henderson also submitted a letter, which was cosigned by N. Margaret Byrnes, dated September 4, 2007 (copies were distributed to the Councilmembers

and to the Chief of Police, and a copy is available for review in the City Clerk's Office). Ms. Henderson's letter outlined concerns regarding neighborhood juveniles utilizing pellet guns and alleged retaliation by the juveniles for reporting this activity to the Police Department. She requested that the Council take action to ban the use of pellet guns and other similar toys in the City of Mesa.

Frank Alger, 1009 North April Street, representing the Mesa Veterans Parade Association, thanked Mayor Hawker for issuing a proclamation declaring September as Mesa Veterans Parade Association month. He expressed appreciation to Councilmembers Griswold and Somers for donating their time to the association, and he added that another Councilmember made an anonymous personal financial contribution. Mr. Alger reported on future fundraising events, which are listed on Association's website, and he added that the annual Parade will be held on November 12, 2007.

12. Adjournment.

Without objection, the meeting adjourned at 7:32 p.m.

KENO HAWKER, MAYOR

ATTEST:

LINDA CROCKER, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Council Meeting of the City Council of Mesa, Arizona, held on the 4th day of September 2007. I further certify that the meeting was duly called and held and that a quorum was present.

LINDA CROCKER, CITY CLERK

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