



## COUNCIL MINUTES

July 5, 2005

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on July 5, 2005 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

Mike Hutchinson  
Debbie Spinner  
Barbara Jones

Invocation by Reverend Jack D. O'Brien, Grace Fellowship Bible Church.

Pledge of Allegiance was led by Mayor Hawker.

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 by MARC Center.

Randy Gray, CEO and President of the MARC Center, and Pat Gilbert, past president of the MARC Center Board of Directors, presented a balloon payment in the amount of \$130,000 to City Manager Mike Hutchinson. Mr. Gray explained that the check represents the purchase price of the property located at 833 West McLellan and is being repaid to the City six months earlier than originally scheduled.

Mayor Hawker expressed appreciation to Mr. Gray and Mr. Gilbert for the check and added that the City is proud to have the MARC Center located in Mesa.

### 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 Councilmember Griswold, seconded by Vice Mayor Walters, that the consent agenda items be approved.

Carried unanimously.

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

Minutes from the June 20, 2005 Council meeting.

3. Conduct a public hearing to release the petition for signatures for the following proposed annexation:

- 3a. **A05-04 (District 6)** Located on the southeast corner of Elliot and Signal Butte Roads. (236.32± ac). Initiated by the property owner, GBGM Limited Partnership, LLLP for Nova Vista Development by US Homes/Greystone Homes.

Mayor Hawker announced that this is the time and place for a public hearing to release the petition for signatures for the proposed annexation located on the southeast corner of Elliot and Signal Butte Roads.

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

4a. Conduct a public hearing and consider an amendment to the land use map for the following Minor General Plan Amendment and possible adoption of the corresponding Resolution:

- \*4a1. **GPMInor05-03 (Maricopa County, between Districts 1 and 5)** Conduct a public hearing and consider an amendment to the land use map. The 3000-3600 blocks of N. Val Vista Drive (west side) and the 2800 – 3500 blocks of E. Lehi Road (south side). Generally located south of Thomas Road between Lehi Road and Val Vista Drive (299.6 ac). Minor General Plan Amendment to change the General Plan Land Use Map from Medium Density Residential 2-4 dwelling units per acre (MDR 2-4), Medium Density Residential 6-10 dwelling units per acre (MDR 6-10), High Density Residential 10-15 dwelling units per acre (HDR 10-15) and Office to Medium Density Residential 2-4 dwelling units per acre (MDR 2-4), Medium Density Residential 4-6 dwelling units per acre (MDR 4-6) and Community Commercial. Engle Enterprises Limited Partnership (Rodney E. Engle, Jr. & Janelle A. Yancey), Richard K. Winslow & Marjorie Shreeve, Robert M. & Priscilla Clark, owners; Paul Gilbert, Beus, Gilbert, PLLC, applicant. **THE APPLICANT HAS REQUESTED THIS CASE BE CONTINUED TO THE AUGUST 15, 2005 CITY COUNCIL MEETING.**

P&Z Recommendation: Approval. (Vote: 6-0 with Carpenter absent)

- \*4a2. **GPMInor05-03 (Maricopa County, between Districts 1 and 5)** Consider adoption of the corresponding Resolution. The 3000-3600 blocks of N. Val Vista Drive (west side) and the 2800 – 3500 blocks of E. Lehi Road (south side). Generally located south of Thomas Road between Lehi Road and Val Vista Drive (299.6 ac). Maricopa County, between Districts 1 and 5. Minor General Plan Amendment to change the General Plan Land Use Map from Medium Density Residential 2-4 dwelling units per acre (MDR 2-4),

Medium Density Residential 6-10 dwelling units per acre (MDR 6-10), High Density Residential 10-15 dwelling units per acre (HDR 10-15) and Office to Medium Density Residential 2-4 dwelling units per acre (MDR 2-4), Medium Density Residential 4-6 dwelling units per acre (MDR 4-6) and Community Commercial. Engle Enterprises Limited Partnership (Rodney E. Engle, Jr. & Janelle A. Yancey), Richard K. Winslow & Marjorie Shreeve, Robert M. & Priscilla Clark, owners; Paul Gilbert, Beus, Gilbert, PLLC, applicant. **THE APPLICANT HAS REQUESTED THIS CASE BE CONTINUED TO THE AUGUST 15, 2005 CITY COUNCIL MEETING.**

P&Z Recommendation: Approval. (Vote: 6-0 with Carpenter absent)

5. Consider the following liquor license applications:

\*5a. PAUL JAMES MARCIANTI, AGENT

Person Transfer Bar License for Hambone, 903 E. Main Street. This is an existing business. This is a Person Transfer from Milenko Djukic, Agent, Djukic Enterprises, LLC. This license will transfer to the applicant. District #4.

\*5b. VINAY K. BINJRAJKA, AGENT

New Beer & Wine Store License for Shell 1166, 1166 N. Higley Road. This is an existing business. The license previously held at this location by Amy S. Nations, Agent, C&M Convenience Stores, Inc., will revert back to the State. District #5.

\*5c. DAVID RUDOLFO AGADO, AGENT

New Restaurant License for Buffalo Wild Wings Grill & Bar, 4425 E. McKellips Road, Ste 109. This is new construction. No previous liquor license at this location. District #5.

\*5d. DONNA MARIE SALIM AGENT

New Restaurant License for Giordano's Italian Restaurant, 2909 S. Dobson Road. This is an existing business. The Restaurant license previously issued to Patrick McMullen, Agent, Giordano's, was terminated by the State on 03/31/05. District #3.

\*5e. RANDY D. NATIONS, AGENT

New Restaurant License for Sauce Pizza & Wine, 3426 E. Baseline Road, Ste 120. This is an existing building. No previous liquor licenses at this location. District #2.

6. Consider the following contracts:

\*6a. Three-year supply contract for DNA Crime Lab Supplies as requested by the Police Department. (Contract 2005140).

The Purchasing Division recommends accepting the bid by Applied Biosystems at \$99,974.94, based on estimated annual requirements.

- \*6b. Additional Purchase of Dual Voltage Pole Top Transformers as requested by the Electric Division of the Utilities Department. (Contract 2004151)

The Purchasing Division recommends authorizing an additional purchase option with the original bidders as follows:

Items 1 and 2 to Border States at \$19,474.22, including sales tax; and

Item 3 to WESCO at \$12,006.72, including applicable use tax.

The combined award is then \$31,480.94.

- \*6c. One-year renewal of the supply contract for Large Type Books as requested by the Mesa Public Library. (Contract 2002142).

The Purchasing Division recommends exercising the one-year renewal with the primary contract to Gale Groups for annual purchases estimated at \$40,000.

Also, renewing the secondary contract to Baker & Taylor for annual purchases estimated at \$5,000.

The combined award is then \$45,000 based on estimated annual purchases.

- 6d. Mesa City Plaza Parking Lot, City of Mesa Project No. 04-918-001.

This project will provide improvements that include demolishing the former bank teller building and asphalt paving this area, fog sealing the north half of the parking lot, and constructing new curbs and striping. These improvements will provide an additional eleven parking spaces.

Recommend award to low bidder Breinholt Contracting Company, Inc., in the amount of \$47,550.92 plus an additional \$4,755.09 (10% allowance for change orders) for a total award of \$52,306.01.

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 Walters for action on this agenda item.

It was moved by Councilmember Jones, seconded by Councilmember Thom, that the recommendations of staff be approved.

Upon tabulation of votes, it showed:

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

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

Vice Mayor Walters yielded the gavel back to Mayor Hawker.

- \*6e. Sewer Replacement on Mesa Drive North of Brown Road, City of Mesa Project No. 01-656-002.

This project will replace a section of sewer line that is in poor condition and has been a source of repeated operational problems. The project will install approximately 100 lineal feet of new 8-inch sewer line.

Recommend award to low bidder Roto Rooter Plumbers, in the amount of \$39,969.80 plus an additional \$3,996.98 (10% allowance for change orders) for a total award of \$43,966.78.

- 6f. Sewer Line Video Inspection, City of Mesa Project No. 04-919-001.

This is an annual contract to perform video inspection on development and City projects for the upcoming fiscal year to verify that new lines being taken into the City system from developers are ready to receive sewer flows.

Recommend award to low bidder Professional Pipe Services, Inc., in the amount of \$77,350.00 plus an additional \$7,735.00 (10% allowance for change orders) for a total award of \$85,085.00.

It was moved by Vice Mayor Walters, seconded by Councilmember Rawles, that the recommendations of staff be approved.

Councilmember Jones stated that he removed this item from the consent agenda to make everyone aware of the fact that when the City issues bids in the future, that the appropriate information is disseminated to potential bidders.

Mayor Hawker explained that at the Study Session immediately preceding this meeting, the Council had suggested that staff implement new procedures to apprise potential bidders that they have the ability to access prior bids to view the quantities listed on the bid schedules. He added that he would be unwilling to re-bid a contract once the City has been made aware of the bid amounts.

Vice Mayor Walters stated that as a follow-up to Mayor Hawker's comment, she feels certain that if the Council believed there were irregularities during the bid process, they would be willing to start the process over again.

Mayor Hawker called for the vote.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried by majority vote.

7. Introduction of the following ordinances and setting July 11, 2005, as the date of public hearing on these ordinances:

- \*7a. **Z05-60 (District 2)** The 1600-1700 blocks of South Val Vista Drive (west side). Located at the northwest corner of Val Vista Drive and Baseline Road (14.3 ac. ±) Site Plan Review. This request is for a retail tenant building and future commercial/retail development. Mike Clements, owner; Paul Gilbert, applicant.

P&Z Recommendation: Approval with conditions. (Vote: 4-1-1-1 Esparza voting nay, Saemisch abstaining, Mizner absent)

8. Consider the following resolutions:

- \*8a. Approving and authorizing the City Manager to execute a City Share Reimbursement Agreement for the reimbursement of regional offsite street lighting improvements that are being required by Mesa in conjunction with the proposed development of Huber and Val Vista, Lot 9 Oasis Citrus Groves located at 1301 North Val Vista Drive – Resolution No. 8530.

- \*8b. Extinguishing three temporary retention easements adjacent to Hampton Avenue in Crismon Business Park – Resolution No. 8531.

The right-of-way and Public Utility and Facility Easements are no longer needed as a new alignment has been designed pursuant to a new development plan.

- \*8c. Vacating right-of-way for Hampton Avenue and extinguishing Public Utility and Facility Easements in Crismon Business Park – Resolution No. 8532.

The right-of-way and Public Utility and Facility Easements are no longer needed as a new alignment has been designed pursuant to a new development plan.

- \*8d. Extinguishing a portion of a 1-foot Vehicular Non-Access Easement at 2919 North Oakland Street – Resolution No. 8533.

The extinguishment of a portion of this easement will allow a driveway onto Greenfield for the development of this property.

9. Consider the following ordinances:

- 9a. Adding a new Chapter 19 to Title 6, of the Mesa City Code pertaining to recovery of costs for Police services; second or subsequent response to disruptive parties, gatherings or events as recommended by the Police Committee – Ordinance No. 4429.

It was moved by Councilmember Jones, seconded by Vice Mayor Walters, that Ordinance No. 4429 be approved.

Councilmember Rawles expressed opposition to the motion. He stated that the intent of the ordinance is to make property owners and parents civilly liable for the costs associated with a City of Mesa police officer responding on a second or subsequent occasion to a citizen

complaint of a disruptive gathering or event. He stated that even though the “responsible party” would receive a written warning the first time a police officer responds to such a complaint, in his opinion, he cannot support moving toward the concept of “collectivism” whereupon society is responsible for each other.

Councilmember Griswold stated the opinion that parents and landlords are responsible for their children and tenant’s actions, respectively, and therefore, he would support the motion.

Councilmember Thom noted that what the Council is being asked to consider is if the police respond to a second call within 90 days concerning a disruptive party, whether the responsible party would be fined \$1,000 for that violation. She explained that there are already laws in effect that address disturbing the peace and said that a police officer can respond to complaints of a loud party or disruptive situation at any time without issuing a fine to the property owner. Councilmember Thom added that if this ordinance is adopted, in her opinion, it would constitute a situation where citizens would be fined, without the benefit of a trial, and denied their due process of law.

In response to Councilmember Thom’s comments, Assistant Police Chief Les Portee clarified that the ordinance does, in fact, provide the cited property owner with an appeal process. He explained that a person would be warned the first time a police officer responds to a call regarding a disruptive party or event; that subsequent calls would result in the police issuing a sanction, which could be appealed to a Civil Hearing Officer appointed by the City Manager; that in Tempe and Phoenix, upon which Mesa’s ordinance is modeled, the hearing officer makes the final determination regarding the case; and that Police Department internal policies still need to be developed relative to the ordinance.

Responding to an inquiry from Mayor Hawker, City Attorney Debbie Spinner advised that if an individual wished to challenge the decision of the hearing officer, the person could file a civil suit in Maricopa County Superior Court. She also noted that during the hearing process, the Police Department has the burden of establishing by a preponderance of the evidence that the costs of the police response should be imposed and that the amount is reasonable under the circumstances.

Vice Mayor Walters explained that this issue was brought forward to the Police Committee at the urging of Councilmember Jones to assist those neighborhoods confronted by noise disturbances caused by large gatherings and to which the police respond on a repeated basis. She also stated the opinion that the proposed ordinance is one tool in the Police Department’s “toolbox” to assist in dealing with these difficult situations.

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 carried by majority vote and Ordinance No. 4429 adopted.

- \*9b. Amending the City of Mesa Zoning Ordinance, by adding a new Subsection 11-6-3 (D) permitting "Commercial Recreation/Entertainment Uses", such as pool and dance halls, nightclubs, cocktail lounges, bars, and similar uses in the C-2 District, subject to a Council Use Permit – Ordinance No. 4424.

P&Z Recommendation: Split vote. (Vote: 3-3 Finter, Mizner, and Cowan voting nay, Carpenter absent)

10. Consider the following recommendations from the Police Committee:

- \*10a. Implementing an annual fee of \$50 per officer to be charged to outside agencies utilizing the Mesa Firing Range.
- 10b. Maintaining the current level fee structure for the Police Training Academy, except that future incremental direct costs for staff or staff time which are incurred as a result of training outside agency recruits would be assessed to the outside agency, or the outside agency would supplement training staff in lieu of paying the assessment. In addition to the incremental direct costs, increases in the cost of materials above the current level of \$500 should be charged to the outside agency.

It was moved by Councilmember Rawles, seconded by Councilmember Jones, that this agenda item be approved.

Councilmember Jones, as Chairman of the Police Committee, provided a brief overview of this agenda item. He expressed support for the Committee's recommendations and noted that although the City is trying to implement various cost recovery measures throughout the organization, it is also important for the Mesa Police Department to maintain a positive relationship with other public safety agencies.

Mayor Hawker stated that he would prefer that the City pursue a greater cost recovery than just the proposed \$500 in order to train recruits from other jurisdictions. He also commented that it is difficult for him to vote against this item because of the positive interactions that do occur between the various agencies during the training academy process.

Councilmember Rawles commented that he initially had the same mindset as Mayor Hawker, but explained that when the Police Committeemembers considered this item, they learned that other training academies throughout the State do not charge a fee. He commented that if the Committee had recommended an increase in the current fee level structure, the possibility existed that the recruits would train at the academies that did not charge a fee.

Mayor Hawker called for the vote.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried by majority vote.

10.1. Consider authorizing the execution of a new professional services contract between the City of Mesa and the Greater Phoenix Economic Council (GPEC) in the amount of \$174,264.00 for Fiscal Year 2005-2006.

It was moved by Vice Mayor Walters, seconded by Councilmember Jones, that this agenda item be approved.

Councilmember Rawles expressed opposition to the motion and stated that Mesa's professional services contract with GPEC is an inappropriate use of taxpayer funds. He added that he does not believe it is the role of government to create jobs and said that the private sector would be a more suitable venue for such activities.

Councilmember Thom stated that GPEC is currently under new leadership and commented that she welcomes the changes in the organization. She noted, however, that while other Valley cities are attracting new businesses and generating jobs, Mesa has lost more than 11,000 jobs in the last five years. Councilmember Thom stated that in her opinion, GPEC's "track record" does not warrant the City's investment and added that she would not support the motion.

Vice Mayor Walters commented that for many years, Mesa has been a bedroom community and is now moving in the direction of becoming a boardroom community. She explained that components to assist the City in that regard include Williams Gateway being positioned as a major business location and also the recent opening of the freeway to Power Road and beyond in the future. Vice Mayor Walters stated that she anticipates a boom in Mesa's job market, which would enable the City to compete regionally, and added that Mesa's continued participation in GPEC would greatly benefit the community.

Mayor Hawker expressed support for the motion. He noted that GPEC's assistance is greatly needed in the East Valley, especially with the development of the Williams Gateway and Falcon Field areas and the opening of the freeways to the east. Mayor Hawker added that in his opinion, "it is our turn" and said that a lot is expected of GPEC in order to balance Mesa's jobs-to-housing ratio.

Councilmember Griswold commented that Mesa is not competing for relocates with local municipalities, but rather states in other regions of the country. He emphasized the fact that Mesa relies heavily on GPEC to bring projects and businesses to the community.

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 carried by majority vote.

11. Consider the following cases from the Planning and Zoning Board and possible adoption of the corresponding ordinances:

- 11a. **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. **CONTINUED FROM THE MAY 3, 2004, MAY 17, 2004, JUNE 7, 2004, JULY 6, 2004, AUGUST 16, 2004, SEPTEMBER 7, 2004, OCTOBER 4, 2004, DECEMBER 6, 2004, FEBRUARY 7, 2005, MARCH 7, 2005, APRIL 4, 2005, AND MAY 16, 2005 CITY COUNCIL MEETINGS. THE APPLICANT HAS REQUESTED THIS CASE BE CONTINUED TO THE OCTOBER 10, 2005 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.

Vice Mayor Walters declared a potential conflict of interest and said she would refrain from discussion/participation in this agenda item.

It was moved by Councilmember Rawles, seconded by Councilmember Griswold, that Zoning Case Z03-64 be continued to the October 10, 2005 Regular Council meeting.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried unanimously by those voting.

- \*11b. **Z05-47 (District 6)** The 8800 – 9100 block of East Baseline Road (south side) and the 2100 – 2400 block of South Ellsworth Road (west side). Located south and west of Baseline Road and Ellsworth Road (145± ac). Modification of the Monte Vista Village

Resort Development Master Plan, modification of an approved PAD, and site plan modification. This request is to allow for Monte Vista's second phase of development of a manufactured home and RV resort. Monte Vista Two (Scott Brown), owner; David Evans and Associates (Eric Toll), applicant – Ordinance No. 4425.

P&Z Recommendation: Approval. (Vote: 6-0 Carpenter 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. Compliance with the Residential Development Guidelines.
3. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
4. 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.
5. All street improvements and perimeter landscaping to be installed in the first phase of construction.
6. Compliance with all requirements of the Subdivision Technical Review Committee.
7. Full compliance with all current Code requirements, unless modified through appropriate review and approval of the modifications outlined in the staff report.
8. Owner granting an Avigation Easement and Release to the City, pertaining to Williams Gateway Airport which will be prepared and recorded by the City (concurrently with the recordation of the final subdivision map, prior to the issuance of a building permit).
9. View fences on residential lots shall comply with the City of Mesa pool fence barrier regulations.
10. Retention basins to be 6:1 slopes maximum when adjacent to public rights-of-way or pedestrian walkways.
11. Lots 1-238 of the Recreational Vehicles section of the development, located at the southern portion of the subject site (the "Temporary Residence Area"), shall only be used by Class A Motor homes, Fifth Wheels, or similar recreational vehicles designed to be driven or pulled on a highway (collectively, "Recreational Vehicles").
  - a. The Temporary Residence Area shall have no above-ground lot improvements or structures other than those improvements shown on the approved construction plans; and
  - b. There shall be no permanent additions or build-ons to the Recreational Vehicles including, but not limited to, Arizona rooms, or other similar structures; and
  - c. Recreational Vehicles in the Temporary Residence Area shall be of a maximum width (with pop outs) no greater than 26-feet wide; and
  - d. The Temporary Residence Area shall not be used for manufactured or modular housing, factory built buildings, or park models.
12. No two-story homes along Ellsworth Road or adjacent to the commercial development along the northeast corner of the subject site.

- \*11c. **Z05-53 (District 6)** The 10800 – 11200 block of East Ray Road (north and south side). Located between the Signal Butte Road alignment and Mountain Road north and south of the Ray Road alignment (138± ac). Rezone from R1-43 and R1-6 (conceptual R-2) to R1-6 PAD and R-2 PAD and modification of the Mountain Horizons Development Master Plan. This request is to allow for the further development of a residential master planned community. Pulte Homes, Tim Loughrin, owner; Sean Lake, Pew & Lake, PLC, applicant – Ordinance No. 4426.

P&Z Recommendation: Approval. (Vote: 6-0 Carpenter absent)

1. Compliance with the basic development as described in the project narrative and as shown on the site plan, preliminary plat, (without guarantee of lot yield, building count, lot coverage).
2. Compliance with the Residential Development Guidelines.
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. Compliance with all requirements of the Subdivision Technical Review Committee.
7. View fences on residential lots shall comply with the City of Mesa pool fence barrier regulations.
8. Written notice to be given to future residents that this subdivision is within one (2) miles of Williams Gateway Airport.
9. Owner granting an Avigation Easement and Release to the City, pertaining to Williams Gateway Airport, which will be prepared and recorded by the City (concurrently with the recordation of the final subdivision map, prior to the issuance of a building permit).
10. Noise attenuation measures be incorporated into the design and construction of the homes to achieve a noise level reduction of 25 db.

- \*11d. **Z05-54 (District 5)** The 9800 – 10000 block of East Brown Road (north side). Located at the northwest corner of Brown Road and Crismon Road (23± ac). Rezone from R1-43 to R1-15 PAD and site plan review. This request is to allow for the development of a single residence subdivision. Warren Peterson, VIP Construction, Inc., owner; Kimberly Acton, Hoskin-Ryan Consultants, Inc. – Ordinance No. 4427

P&Z Recommendation: Approval. (Vote: 6-0 Carpenter 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).
2. Compliance with the Residential Development Guidelines.
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 Native Plant Preservation Ordinance No. 3693 requiring submittal of a Native Plant Preservation Plan.
  9. Compliance with Ordinance No. 3694 requiring a grading permit.
  10. Lots along the western property line are to be single story only.
  11. Front yards to maintain a natural desert theme with landscaping palette from the Preferred Desert Plant List of the Desert Uplands Ordinance.
- 11e. **Z05-55 (District 4)** 805 North Country Club (east side). Located at the northeast corner of Country Club Drive and 8<sup>th</sup> Street (4± ac). Rezone from R1-6 and C-2 to O-S, and site plan review. This request is to allow for the development of the Family Enrichment Center, which will be an extension of the Child Crisis Center's shelter program. First Christian Church of Mesa, owner; Ralph Pew – Pew & Lake PLC, applicant – Ordinance No. 4430.

P&Z Recommendation: Approval. (Vote: 5-0-1 Saemisch abstaining, Carpenter absent)

1. Compliance with the basic development as described in the project narrative and as shown on the site plan, elevations and landscape plan submitted, (without guarantee of lot yield, building count, lot coverage) except as noted below.
2. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
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 requirements of the Subdivision Regulations.
5. Compliance with all requirements of the Design Review Board.
6. Full compliance with all current Code requirements, except for the modifications outlined in this staff report, which will be permitted through the approval of a Substantial Conformance Improvement Permit.
7. Retention basins to be 6:1 slopes maximum when adjacent to public rights-of-way or pedestrian walkways.

Ralph Pew, 10 West Main Street, an attorney representing the applicant, addressed the Council and introduced Chris Scarpetti, Director of the Child Crisis Center, Vince DiBella, the architect of the project, and Pastor Bill Jacobs of First Christian Church of Mesa.

Mr. Pew reported that this case comes before the Council with a full recommendation for approval from the Planning & Zoning Board, City staff and the Design Review Board. He suggested that instead of making a lengthy presentation at this time, he would prefer to respond to any concerns expressed by the neighbors who may wish to address the Council regarding this item.

The following citizens spoke in opposition to Zoning Case Z05-55:

Mark Couch	333 West 9 <sup>th</sup> Street
Machelle Couch	333 West 9 <sup>th</sup> Street
Tom Brew	315 West 9 <sup>th</sup> Street
Salima Keegan	303 West 9 <sup>th</sup> Street

The above-referenced citizens stated the following opinions:

- The size of the building (22,000 square feet) and the fact it is two stories will “overpower” the neighborhood.
- The proposed colors for the building (i.e., purple, green and orange) seem inappropriate for the area, which is designated as a historic neighborhood.
- The hours of operation at the facility could include nighttime meetings, which may result in noise disturbances for the neighbors.
- When the neighbors met with representatives of the Child Crisis Center regarding this project, they were promised that another meeting would take place, which has not occurred.
- One of the major concerns for the residents is whether they will be able to maintain permanent access to their backyards by crossing the First Christian Church property.
- The case should be continued in order to provide Child Crisis Center representatives, City staff and the neighbors the opportunity to further address the residents’ ongoing concerns.
- It is the opinion of the neighbors that the Council should address the access issue because there are legal questions that the Child Crisis Center and the homeowners need clarified regarding a private prescriptive easement.
- It will be necessary for the utility company to have access to the power poles and transformers located along the property line between the homeowners and the church.

Mr. Pew responded to a series of concerns raised by the speakers. His comments included, but were not limited to, the following: that the proposed building is located in the northeast corner of the site and its size does not exceed coverage limitations; that only a small portion of the building is two stories and meets all of the City’s setback requirements for two-story structures adjacent to residential homes; that the applicant conducted outreach with the adjoining property owners early on in the process and subsequently responded to their questions and concerns in writing; that with regard to access, the property owners have had vehicle access into their backyards from the First Christian Church property and that it is the position of the church that those access rights are permissive and consensual by the church and can be terminated at any time; that if there is an issue regarding a prescriptive easement and a claim is filed, that is a private matter between a property owner and the church and not to be adjudicated by the Council; and that because there is a blanket easement, as opposed to a specific described easement, with regard to the existing power poles and transformers along the property line in question, the utility company can come onto the property whenever necessary to repair and maintain the lines as they deem necessary.

Planning Director John Wesley reiterated many of Mr. Pew’s comments and stated that it is the recommendation of staff and the Planning & Zoning Board that the case be approved.

In response to a question from Mayor Hawker, City Attorney Debbie Spinner concurred with Mr. Pew's opinion that the access issue between the neighbors and the church is a private matter to be resolved by those parties and added that the City should not be involved in that process.

Vice Mayor Walters commented that the neighbors have expressed concerns to her regarding whether they would continue to have access to their backyards if the project was approved. She reiterated Ms. Spinner's comments regarding the fact that the resolution of the access issue is a private matter and that the City cannot represent private citizens in such causes of action. Vice Mayor Walters also stated that if a cause of action were filed, the applicant would come back to the Council to request approval for changes to the site plan. She added that although she is sympathetic to the neighbors, she would support the rezoning request.

Mayor Hawker expressed support for the rezoning, but stated that he wished there was more time to discuss and consider the site plan. He said he has difficulty with the fact that the applicant has proposed a two-story building with a 25-foot setback next to a residential neighborhood where the residents had previously experienced the quiet enjoyment of the First Christian Church parking lot. Mayor Hawker added that although he welcomes the development of the Family Enrichment Center, in his opinion, this is a somewhat unique situation, especially with a neighborhood in transition such as this.

Discussion ensued relative to the proposed color palette for the building; the fact that the design of the building satisfies City Code requirements and the applicant is not asking for a deviation from such requirements; that the setback and height requirements are appropriate with regard to transitioning from office to residential uses; and a variety of reasons why it would not be feasible to redesign the site plan and relocate the proposed Family Enrichment Center to the south of the property and the parking lot along the northern boundary of the site.

Councilmember Jones voiced support for the rezoning request, but stated he has serious concerns regarding the configuration of the site plan. He acknowledged that the Council has no control regarding the outcome of the neighbors' access issues, but stated that once the site plan is approved and the building constructed, the access would become a moot issue.

In response to Councilmember Jones' concerns, Councilmember Rawles stated that if the zoning case is approved tonight, the construction would not start immediately and the neighbors would have time to litigate the prescriptive easement issue and potentially obtain a preliminary injunction until the matter was resolved.

Additional discussion ensued relative to the fact that the power poles in question are located along the southern boundary of the residential lots; that the applicant proposes to build a block wall, per City Code, that would restrict access to the poles or lines; and that the utility company does have access to the poles according to the blanket easement.

Councilmember Thom suggested that the applicant speak with the utility company prior to the construction of the project to apprise them of the applicant's plans relative to the power poles and transformers.

In response to a question from Vice Mayor Walters, Mr. Pew clarified that the issue of pedestrian access for the neighbors would ultimately require the penetration of the block wall

that the applicant intends to construct as part of the project. He stated that the installation of gates in the wall through which the neighbors could walk could probably be accomplished, but said he did not have the church's authority tonight to make such a representation that they would agree to such access. Mr. Pew added, however, that vehicular access across the church parking lot to accommodate four to five homes would significantly reduce the number of parking spaces and also require the applicant to reengineer the water retention on the northern boundary.

It was moved by Councilmember Rawles, seconded by Councilmember Whalen, that Zoning Case Z05-55 be approved and Ordinance No. 4430 be adopted.

Further discussion ensued relative to the legal definition of prescriptive easement.

Mayor Hawker commented that the neighbors have been fortunate to have vehicular access across the church property to their backyards for many years and stated that the residents "should not use it against the church" with regards to the manner in which the church chooses to develop its land.

Councilmember Rawles stated the opinion that just because the church has not utilized all of their property in the past, does not convey the fact that it would not be used differently in the future.

Councilmember Griswold voiced concerns regarding the utility company's ability to access the power lines, and said that issue should be resolved before construction of the project begins.

City Manager Mike Hutchinson assured the Council that the City would address the power line access issue and deal with it as effectively as possible.

Ms. Scarpetti urged the Council to approve this case and stated that the Child Crisis Center is anxious to proceed forward with this project as soon as possible. She also noted that she has met on several occasions with Mr. Brew in an effort to resolve the pedestrian access issue. Ms. Scarpetti added that the Child Crisis Center would be a good neighbor in the community.

Councilmember Jones urged the parties to continue to work together in an effort to resolve the neighbors' concerns.

Mayor Hawker called for the vote.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried by majority vote and Ordinance No. 4430 adopted.

- \*11f. **Z05-57 (District 5)** The 1650 to 1750 block of North Power Road (east side) through to the 1650 to 1750 block of North 72<sup>nd</sup> Street (west side). Located south and east of McKellips Road and Power Road (38± ac). Rezone from R1-35 to R1-15 PAD and site

plan review. This request is to allow for the development of a residential subdivision. Cornerstone Homes (Scott Hironaka), owner/applicant – Ordinance No. 4428.

P&Z Recommendation: Approval. (Vote: 6-0 Carpenter 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. Compliance with the Residential Development Guidelines.
3. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
4. 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.
5. Compliance with all requirements of the Subdivision Technical Review Committee.
6. Full compliance with all current Code requirements, unless modified through appropriate review and approval of the modifications outlined in the staff report or on the site plan.
7. View fences on residential lots shall comply with the City of Mesa pool fence barrier regulations.
8. Retention basins to be 6:1 slopes maximum when adjacent to public rights-of-way or pedestrian walkways.
9. Housing elevations on lot 19 (lot located at far northeast corner of subject site) of the subject site not to exceed one-story in elevation.

12. Consider the following subdivision plats:

- \*12a. "63<sup>RD</sup> PROFESSIONAL CENTER OFFICE CONDOMINIUMS" (Council District 5) – 6300 - 6400 block of East Main Street (south side) and the 200 - 300 block of South 63<sup>rd</sup> Street (east side) through to 64<sup>th</sup> Street (west side) located south of Main Street and east of Recker Road. 2 C-2 PAD office condominium units (1.64 ac) Sixty Third Professional Center, LLC, Michael Hamberlin, member, owner; Hunter Engineering and Survey, engineer.
- \*12b. "SUNLAND SPRINGS VILLAGE UNIT 5" (Council District 6) – 10900 - 11200 block of East Guadalupe Road (north and south sides) located east of Signal Butte Road and north and south of Guadalupe Road. 150 R1-6 DMP single residence lots (51.62 ac) Transnation Title Insurance Company, trustee; Clouse Engineering, Inc., engineer.

13. Items from citizens present.

There were no items from citizens present.

14. Adjournment.

Without objection, the Regular Council Meeting adjourned at 7:32 p.m.

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KENO HAWKER, MAYOR

ATTEST:

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BARBARA JONES, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Council Meeting of the City Council of Mesa, Arizona, held on the 5<sup>th</sup> day of July 2005. I further certify that the meeting was duly called and held and that a quorum was present.

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BARBARA JONES, CITY CLERK

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