



**CITY OF
MESA**

Great People, Quality Service!

OFFICE OF CITY CLERK

COUNCIL MINUTES

April 5, 2004

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

COUNCIL PRESENT

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

COUNCIL ABSENT

None

OFFICERS PRESENT

Mike Hutchinson
Debbie Spinner
Barbara Jones

Invocation by Pastor Mike Cash, East Valley Free Will Baptist Church.

Pledge of Allegiance was led by Alex Gorall, Boy Scout Troop No. 355.

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.

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

It was moved by Vice Mayor Kavanaugh that the consent agenda items be approved with item 7b deleted from the Council agenda in its entirety. Vice Mayor Kavanaugh amended the motion to remove item 12c from the consent agenda, and the amended motion to approve consent agenda items was seconded by Councilmember Walters.

Carried unanimously.

1.1. Consider the City Manager's recommendation to appoint Lisha Adela Garcia as Neighborhood Services Manager.

City Manager Mike Hutchinson reported that following a national recruitment process, he was pleased to recommend the appointment of Lisha Garcia to the position of Neighborhood Services Manager.

It was moved by Councilmember Walters, seconded by Vice Mayor Kavanaugh, that the City Manager's recommendation be approved.

Carried unanimously.

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

Minutes from the January 15 and 22, February 17 and 18, March 1, 4, 11, 15 and 25, 2004 Council meetings.

3. Consider the findings and recommendation of the Judicial Advisory Board to reappoint Magistrate Robin Allen for a four-year term beginning July 1, 2004 and ending June 30, 2008.

It was moved by Vice Mayor Kavanaugh, seconded by Councilmember Walters, that the recommendation of the Judicial Advisory Board be approved.

Carried unanimously.

4. Consider the findings and recommendation of the Judicial Advisory Board to reappoint Magistrate Rebecca Standage for a four-year term beginning July 1, 2004 and ending June 30, 2008.

It was moved by Councilmember Jones, seconded by Councilmember Griswold, that the recommendation of the Judicial Advisory Board be approved.

Carried unanimously.

5. Consider the following liquor license applications:

*a. JACK SELLERS, PRESIDENT

Special event application of Jack Sellers, President, Sister City Association of Mesa, a two-day charitable event to be held Friday, April 30, 2004 from 5:00 p.m. to 10:00 p.m. and Saturday, May 1, 2004 from 10:00 a.m. to 10:00 p.m. at 530 E. Main Street, Pioneer Park. District #4.

*b. DENISE TAMMINEN, ENTERTAINMENT CHAIRMAN

Special event application of Denise Tamminen, Entertainment Chairman, St. Anne Little Flower Montessori School, a one-day religious event to be held Saturday, April 24, 2004 from 5:00 p.m. to 11:00 p.m. at 2017 N. Greenfield Road, Falcon Field Airport. District #5.

*c. CLARE HOLLIE ABEL, AGENT

Person and Location transfer Liquor Store for Wal Mart Neighborhood Market #5304, 1916 S. Lindsay Road. This is new construction. This is a person and location transfer from Lori Boulter, Agent Richmar Foods, Inc., at 240 W. Warner, Chandler. This license will transfer to the applicant. District #2.

*d. DAVID G. CISIEWSKI, AGENT

New Beer and Wine Store License for Quiktrip #447, 5957 E. McDowell Road. This is an existing building. The license previously held at this location by Jane E. Griffin, Individual, 7-Eleven 26681B closed in May of 2002. District #5.

*e. ROBERT J. BENTON, AGENT

New Beer and Wine Store License for Target #251, 1135 S. Gilbert Road. This is an existing business. No previous liquor licenses at this location. District #2.

*f. LAUREN KAY MERRETT, AGENT

New Restaurant License for Cleats Bar and Grill, 1356 W. Southern Avenue. This is an existing business. The license previously held at this location by Randy Nations, Agent, Seafood Market & Restaurant, Inc. will revert back to the State. District #3.

*g. HYUNG S. KIM, AGENT

New Restaurant License for Sushi Kee, 6825 E. Main Street. This is an existing business. The license previously held at this location by Ronny Hong, Agent, Black Tiger Inc., will revert back to the State. District #6.

6. Consider the following contracts:

- *a. Replacement Voice Recording System for the 911 Public Safety Communications (Dispatch) Center as requested by the Police Department.

The Purchasing Division recommends authorizing purchase from the State of Arizona contract with Goserco, Inc. at \$53,900.07.

- *b. Three-year supply contract for emergency vehicle lightbars as requested by the Communications Division.

The Purchasing Division recommends accepting the low bidder, Tomar Electronics, at \$47,730.50 based on estimated annual requirements.

- *c. Emergency Operations Center Field Map Software as requested by the Information Services Division (ISD).

The Purchasing Division recommends authorizing purchase from the State of Arizona contract with IKON Technology Solutions for a total of \$28,106.00, including applicable sales tax. (This purchase is 100% funded by Homeland Security grant funds.)

- *d. Three-year supply contract for precast electric vaults for the Electric Department.

The Purchasing Division recommends accepting the bid by Utility Vault at \$228,693.66 based on estimated requirements (single responding bidder).

- *e. Seven 2000 KVA "Step Up" pad mounted transformers as requested by the Electric Division.

The Purchasing Division recommends accepting the low bid by Betz Transformers, Inc. at \$84,638.40 including applicable use tax.

- *f. 5 replacement vehicles for Solid Waste and Utilities Gas Divisions.

The Purchasing Division recommends authorizing purchase from the following State of Arizona contracts:

Five Star Ford for item A at \$38,618.67; and Midway Chevrolet for item B at \$61,698.34. The combined award is then \$100,317.01.

- *g. Neighborhood Street Lighting (CDBG #8320). City of Mesa Project No. 01-335-001.

This project replaces existing street lighting in need of upgrading and install new street lighting where needed to enhance the illumination and safety of these streets.

Recommend award to low bidder, Utility Power Plus, Inc., in the amount of \$216,899.85 plus an additional \$21,690.00 (10% allowance for change orders) for a total award of \$238,589.85.

- *h. Subdivision Sewer Line Video Inspection. City of Mesa Project No. 02-901-002.

This is an annual contract to perform video inspection on development and City projects for the upcoming year.

Recommend award to low bidder, View Pipe, Inc., in the amount of \$58,800.00 plus an additional \$5,880.00 (10% allowance for change orders) for a total award of \$64,680.00.

- *i. Sunshine Acres Force Main Replacement. City of Mesa Project No. 02-413-002.

This project will install a new sewer force main from the new lift station to the City gravity sewer just north of McDowell Road on Higley Road.

Recommend award to low bidder, Five Points Excavation, in the amount of \$76,600.00 plus an additional \$7,660.00 (10% allowance for change orders) for a total award of \$84,260.00.

7. Introduction of the following ordinances and setting April 19, 2004 as the date of public hearing on this ordinance:

- *a. Amending Title 3, Chapter 6 of the Mesa City Code by adding a new section pertaining to volunteer parking enforcement as recommended by the Police Committee.

8. Consider the following resolutions:

- *a. Authorizing the City Manager to execute a Development Agreement for City Share Reimbursement between JM Land Development LLC, a Limited Liability Company, and the City of Mesa, for regional improvements that are being constructed in conjunction with the development of the proposed subdivision known as Legacy which is located on the southeast corner of 32nd Street and McLellan Road – Resolution No. 8203.
- b. Authorizing the City Manager to execute a Settlement Agreement between Roosevelt Water Conservation District (RWCD) and the City of Mesa – Resolution No. 8206.

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

It was moved by Vice Mayor Kavanaugh, seconded by Councilmember Walters, that Resolution No. 8206 be adopted.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried unanimously by those voting and Resolution No. 8206 adopted.

- *c. Extinguishing a drainage easement and covenant running with the land at 4821 East Indigo Street – Resolution No. 8204.

This easement and covenant is no longer needed because a new easement is being required as part of the new plat and development.

- d. Authorizing the City Manager, or his designated representative to proceed with an application to the Department of Housing and Urban Development (HUD) for FY 2004/2005 funding through the CDBG, HOME, AND ESG programs and approving program activities and budget.

Councilmembers Whalen and Walters declared potential conflicts of interest and refrained from discussion/participation in this agenda item.

Mayor Hawker noted that John Smith, President of Housing for Mesa, was present to address the Council, and he congratulated Mr. Smith and Housing for Mesa for receiving

recognition from President George W. Bush during the President's recent visit to the Valley.

Mr. Smith displayed pictures of Housing for Mesa clients meeting with President Bush, and he noted that the only Arizona cities to participate in a "Section 8 home ownership" program are Mesa and Yuma. Mr. Smith reported that Housing for Mesa has assisted 700 families to become first-time homeowners, and he expressed appreciation to the Council for their support.

Mayor Hawker advised that a motion on this item would require the support of four of the remaining five Councilmembers for approval. He expressed opposition to funding the Business Redevelopment Program proposed by NEDCO (Neighborhood Economic Development Corporation). Mayor Hawker requested a legal opinion relative to making a motion that would exclude the proposed allocation of funds to one agency and direct the proposed allocation to the contingency fund.

City Attorney Debbie Spinner declared a conflict of interest regarding this item and referred the inquiry to Deputy City Attorney Joe Padilla, who advised that a motion could be made that excluded the allocation of funds to one agency.

Tena Morgan, 1720 N. Abner, President of NEDCO, addressed the Council and thanked the Council and City staff for past funding allocations. She noted that the agency has had many accomplishments in the current year.

Ms. Morgan reported that as shown on the reports (see Attachment 1), NEDCO presently has five active loans totaling \$93,000 and other investments of approximately \$175,000; that three loans were made in the current year, two of which utilized NEDCO capital that was obtained from banks and one loan that was in partnership with the Community Reinvestment Fund; that several projects are presently in the loan pipeline; and that NEDCO is subject to different loan requirements than banks.

Ms. Morgan referred to the spreadsheets (see Attachment 2) and noted that NEDCO is leveraged three to one between private sector investment and public sector funds; that to fund operations, NEDCO has raised two dollars in private sector investment for each dollar of public sector funds; that NEDCO's cost per job created or retained is \$10,887, which is comparable to the national average of \$10,000 to \$15,000 per job; that only \$3,500 of public funds are expended for each job retained or created; and that operating funds are obtained from the private sector, including Washington Mutual Bank, the Mesa Tribune, Northern Trust Bank and Mesa Bank.

In response to a question from Mayor Hawker regarding marketing efforts, Ms. Morgan stated that the list of companies and organizations contacted reflects NEDCO's effort to build relationships in order to solicit funds and/or technical assistance that would benefit NEDCO clients.

Pat Gilbert, 635 East Broadway, Executive Director of MesaCAN (Mesa Community Action Network), stated that he was present in his capacity as an Advisory Board Member for NEDCO. He noted that several years ago Mayor Hawker requested his personal commitment to work with NEDCO in order to develop access to capital, retain

jobs and create new job growth. Mr. Gilbert expressed the opinion that although NEDCO was in the beginning stages of development, the organization was an efficient producer. He emphasized that the City allocates only Federal dollars to NEDCO, and that the organization does not receive any City General Revenue funds. Mr. Gilbert added that many people have contributed time and energy to develop this organization. He invited Mayor Hawker to review the loan packages, and requested Mayor Hawker's support for funding NEDCO with CDBG (Community Development Block Grant) dollars.

Councilmember Jones noted that the public hearings regarding allocation of funds have been held, and that staff has invested a great amount of time and effort to prepare the recommendations. He said that each member of the Council could have a personal objection to some portion of the proposal, but he expressed the opinion that the proposal was fair and that now was the time for the Council to make a decision.

It was moved by Councilmember Jones, seconded by Vice Mayor Kavanaugh, that staff's recommendation be approved.

In response to a question from Councilmember Griswold, Karen LaFrance, Executive Director of NEDCO, advised that counseling is provided to business clients similar to the efforts employed by Housing for Mesa with potential homeowners. She noted that NEDCO's efforts focus on the business plan and how the business can be strengthened to become bankable.

Discussion ensued relative to the fact that the HOUSE (Housing Under Section Eight) Program is not funded by CDBG dollars; and that the homeowner counseling services provided by Housing for Mesa are supported by Section 8 funds.

Councilmember Thom stated the opinion that the proposed allocation to NEDCO should not be approved; that CDBG funds are often utilized to purchase properties that could be sold to private individuals; that people from other parts of the Valley use City of Mesa's facilities; that Mesa's image has suffered due to the fact that Mesa has become the low-income housing provider for the Valley; and that Federal tax dollars should not be invested in a program for developing businesses.

Mayor Hawker also stated that he would not support the funding allocation to NEDCO, and he suggested that the amount designated for NEDCO be placed in reserve to meet any unforeseen requirements for other programs during the year.

In response to an inquiry from Vice Mayor Kavanaugh, Mr. Padilla advised that the Mayor has the discretion to request separate Council consideration of each of the City's 2004/2005 funding applications to HUD for CDBG, HOME (Home Investment Partnership Program), and ESG (Emergency Shelter Grant) funds. He confirmed that a request by three Councilmembers could also accomplish separate consideration of the funding requests, and that funding allocations for the non-profits and City departments could be considered independently.

Discussion ensued relative to the fact that the maker and the second could withdraw the motion; that separate consideration of the funding allocations for each program would enable Councilmembers Whalen and Walters to vote on those programs where a

potential conflict of interest does not exist; that the agenda item could be continued to the April 8th Study Session to enable the preparation of separate resolutions for Council consideration; and that the Councilmembers and staff who have declared a potential conflict of interest could discuss the procedural issues related to this item.

Vice Mayor Kavanaugh withdrew his second, and Councilmember Jones withdrew his motion.

Mayor Hawker advised that it was the consensus of the Council that staff be directed to prepare separate resolutions for Council consideration at the April 8th Study Session.

9. Consider the following ordinance:

- *a. Amending various sections of the Mesa City Code regarding the following traffic modifications – Ordinance No. 4168:

Prohibiting Left Turns From Driveways: 10-3-15 (B) – (District 5)

The east and west side of Power Road from driveways with centerlines approximately 620 feet north of McKellips Road. (Power Road north of McKellips Road)

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

On the south side of Enid Avenue from Sunnyvale to a point 95 feet west of Sunnyvale. (north of Southern Avenue and east of Higley Road) **(District 6)**

On the west side of 54th Street from Sunnyvale to a point 50 feet south of Sunnyvale. (north of Southern Avenue and east of Higley Road) **(District 6)**

The east side of Pasadena from McLellan Road to Jasmine Street. (Remove Prohibition) (south of McKellips Road and east of Center Street) **(District 1)**

The west side of Pasadena from McLellan Road to Jacarnada Street. (Remove Prohibition) (south of McKellips Road and east of Center Street)

No Parking: 10-3-24 (F 2) (No Parking, School Days, 7:00 am – 4:00 p.m.) (District 1)

On the south side of McLellan Road from Pasadena to a point 140 feet west of Pasadena. (south of McKellips Road and east of Center Street)

On the west side of Pasadena from McLellan Road to a point 122 feet north of McLellan Road. (south of McKellips Road and east of Center Street)

On the east side of Pasadena from McLellan Road to a point 145 feet north of McLellan Road. (south of McKellips Road and east of Center Street)

10. Consider a resolution and ordinance repealing the existing Personnel Rules applicable to City of Mesa Employees and adopting by reference new Personnel Rules – Resolution No. 8208, Ordinance No. 4182.

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

It was moved by Vice Mayor Kavanaugh, seconded by Councilmember Jones, that Resolution No. 8208 and Ordinance No. 4182 be adopted.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried unanimously by those voting and Resolution No. 8208 and Ordinance No. 4182 adopted.

- *11. Consider a resolution and ordinance relating to the Privilege License Tax; adopting "The 2003 Amendments to the Tax Code of the City of Mesa" by reference; establishing an effective date; providing for severability and providing penalties for violations – Resolution No. 8205, Ordinance No. 4169.
- 11.1. Discuss and consider the default under the Disposition and Development Agreement for Redevelopment Site 21 with Outsource International, LLC and the related options regarding the redevelopment of Site 21 (One Macdonald Center).

Donovan Ostrom, Outsource International, introduced the members of the development team for One Macdonald Center, and stated that they remain committed to the City's vision for downtown Mesa and Site 21. He advised that Outsource International's project costs are in excess of \$300,000 to date, and he requested that the Council grant an extension of time in order to secure a financing partner.

Marc Pierce, a partner in Lee and Associates Commercial Real Estate Company, stated that he was responsible for leasing and marketing One Macdonald Center. He advised that signed lease agreements for approximately 35,000 square feet of space in One Macdonald Center are anticipated in the near future. Mr. Pierce noted that Ralph Larsen, a new member of the development team, was a quality developer and office landlord in the City of Mesa.

Ralph Larsen, owner of AmeriFirst Financial Inc., advised that his firm, which originates residential mortgages in excess of \$200 million annually, requires additional office space, as do several of his tenants. He recently became aware of this project through the efforts of Mr. Pierce. Mr. Larsen stated that he was prepared to write a check for \$1 million, but prior to presenting a financing commitment to the City, he was requesting an extension of 90 days in order to have the leases in place, obtain appraisals and complete "due diligence" efforts regarding the development.

Mayor Hawker noted that staff's recommendation was to grant an extension of time only if the developer could provide a binding commitment for financing by this date. He clarified, and Mr. Larsen confirmed, that a binding commitment was not presently available.

Councilmember Thom expressed concern that the City has invested approximately \$2 million in this building, and that at the end of the land lease agreement the developer would be able to purchase the building from the City for one dollar. She suggested that selling the building to recoup some of the costs would be in the City's best interest. Ms. Thom stated that she would not support an extension of the Disposition and Development Agreement.

Mayor Hawker explained that the agreement requires that the project be developed as a "Class A" office building in order to create a showplace for the downtown area. He added that the City established specific standards for the redevelopment, and that the one dollar buy-out was the tradeoff for meeting those standards.

Redevelopment Director Greg Marek reported that the City purchased the building and the parking lot to the north for \$1.5 million, and that the City's expense to remove asbestos was approximately \$500,000. He noted that as part of the Development Agreement, the City retains ownership of the parking lot, which is estimated to be worth \$300,000.

In response to questions from Mayor Hawker, Mr. Marek confirmed that staff's recommendation included the stipulation that the developer was to secure a viable financing partner by April 5th. He noted that while a binding financial commitment does not exist, the financial information provided by Mr. Larsen and the status of the pre-leasing agreements indicate that the developer appears to be very close to obtaining the commitment. Mr. Marek advised that Economic Development Director Richard Mulligan has confirmed the need for additional Class A office space in Mesa, and he expressed support for granting Outsource International a 90-day extension of the Disposition and Development Agreement for Site 21.

Additional discussion ensued relative to the fact that Outsource International estimates the actual development costs for the project at \$6.4 million; that the completed Class A building would be worth approximately \$7 million; and that if the building were sold on the open market for \$2 million, it would not be financially feasible for the buyer to develop the project as a Class A office building.

Councilmember Whalen stated that Mesa Community College has expressed an interest in utilizing space in downtown Mesa, but noted that no decision would be made prior to the November General Election.

It was moved by Councilmember Whalen, seconded by Vice Mayor Kavanaugh, that Outsource International be granted a 90-day extension of the Disposition and Development Agreement in order to secure a binding financing commitment for the redevelopment of Site 21.

In response to a question from City Attorney Debbie Spinner, Councilmember Whalen clarified that his motion was to grant a 90-day extension from the date of this meeting.

Mr. Ostrom addressed Councilmember Jones' concern relative to the fact that to date Outsource International has been unable to secure the binding financial commitment. He explained that the original financial partner terminated participation in the development for reasons unrelated to the project. Mr. Ostrom expressed confidence that a 90-day extension would enable completion of the process. He added that plans have been approved, permits are ready to be issued and significant effort has been made in terms of reaching out to the community and identifying prospective tenants.

Further discussion ensued relative to the fact that in addition to any space requirements for Mr. Larsen's firm, prospective tenants have expressed an interest in leasing approximately 25,000 to 35,000 square feet; that a "start date" or "construction date" must be included in the formal lease documents; and that the developer anticipates that the full 90 days would be required to complete the process.

Mr. Larsen noted that he has been searching for a project, and that this development appears to be a good match for his requirements. He clarified that the building has approximately 50,500 square feet of space available above ground.

Vice Mayor Kavanaugh stated that One Macdonald Center has been the subject of many Council discussions since 1997. He noted that Outsource International has a significant investment in the project, and he emphasized that the availability of Class A office space was important to the future of the downtown area. Vice Mayor Kavanaugh expressed support for granting a 90-day extension

In response to Councilmember Thom's inquiry regarding the possibility of obtaining a conditional loan approval, Mr. Larsen advised that he just recently became aware of this project and has not had an opportunity to request that approval. He noted that if a conditional approval were obtained, he would provide that information to the Council.

Councilmember Walters commented that often a perception exists that the Councilmembers have reached a decision prior to hearing an agenda item. She acknowledged that she had a predisposition to oppose the extension, but stated that as a result of listening to the discussion, she would support the 90-day extension. Councilmember Walters explained that the vision of previous Councils was to provide Class A office space in Mesa, and she noted that the future value of the building would increase when the Mesa Arts Center was completed. She added that the City does not presently have a plan of action in the event the extension was denied, and she expressed the opinion that the City would not suffer adversely by granting the extension. Councilmember Walters suggested that in the event a binding financial agreement is not provided within the next 90 days, that staff be prepared to present the Council with options regarding Site 21.

Mayor Hawker noted that Outsource International received the contract as a result of a bidding process, and that other bidders were willing to perform. He stated the opinion that City government does not conduct real estate transactions in an efficient manner, and he added that he would vote in opposition to the extension.

Mayor Hawker called for the vote.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion to grant a 90-day extension carried by majority vote.

11.2. Discuss and consider filing a petition for writ of certiorari in the U.S. Supreme Court in the case of Petersen v. City of Mesa.

City Attorney Debbie Spinner provided the following background relative to the case of Petersen v. City of Mesa:

- In 2001, the City adopted a drug testing policy for positions that were designated as “safety sensitive,” including positions in the Fire Department.
- The City’s policy requires personnel in “safety sensitive” positions to undergo drug testing at prescribed times and also allows for random testing.
- A firefighter filed a lawsuit against the City claiming that random drug testing violated his constitutional rights under both the Arizona Constitution and the U.S. Constitution.
- The firefighter prevailed at the trial court level.
- The City appealed the decision to the Court of Appeals and prevailed.
- The firefighter appealed to the Arizona Supreme Court, which ruled in his favor under the U.S. Constitution stating that the City’s policy constituted unreasonable search and seizure.

Ms. Spinner stated that the decision before the Council is whether the City should file a petition with the U.S. Supreme Court, which is the final authority on issues regarding the interpretation of the U.S. Constitution. She reported that many of the Circuit Courts have ruled that random drug testing is appropriate for public safety positions, including police officers, customs agents, school maintenance workers, etc. Ms. Spinner noted that due to the fact that this is a public safety issue, the Supreme Court might be more likely to consider the case, but she advised that many cases filed in the U.S. Supreme Court are not accepted. She added that if the City’s case were filed by the April 26th deadline, the Supreme Court would not make a decision to accept or reject jurisdiction until the fall of 2004.

In response to questions from Councilmember Whalen, Ms. Spinner advised that the Supreme Court would consider the small portion of the City’s policy regarding random drug testing. She noted that the Arizona Supreme Court commented that the City’s policy makes every effort to protect the privacy rights of firefighters while implementing random drug testing, but they determined that random drug testing was inappropriate under the U.S. Constitution.

Councilmember Whalen stated that some firefighters believe that a positive random drug test would result in automatic termination.

Ms. Spinner advised that termination occurs only as a result of multiple positive tests or if the employee refuses to submit to the test.

Councilmember Walters noted that some citizens question the reason for random drug testing as opposed to pre-scheduled tests.

Ms. Spinner noted that although the City conducts pre-employment and post-accident testing, the most effective deterrent is random testing.

Councilmember Walters stated, and Ms. Spinner concurred, that the random drug testing policy was not crafted to “catch” people using drugs, but rather to prevent public safety personnel from using illegal substances and to encourage treatment and counseling in the event of a positive test result.

In response to Councilmember Griswold's comment that double tests are performed in the event of a positive result, Ms. Spinner confirmed that specialists perform two levels of tests. She noted that the court complimented the City on these procedures, and she added that the City adopted policies and procedures that were already in place with other government entities, such as the Federal Transportation Administration.

Ms. Spinner explained that the Arizona Supreme Court ruled that police officers could be tested randomly because they carry weapons; that firefighters do not carry weapons and therefore were not subject to the random tests; and that due to the fact that there is no evidence of drug abuse in the Mesa Fire Department, a real or substantial threat to public safety could not be identified.

Councilmember Griswold expressed the opinion that firefighters driving heavy emergency vehicles and administering drugs in medical emergencies are serving in "safety sensitive" positions.

In response to Mayor Hawker's inquiry regarding the expense to the City, Ms. Spinner stated that her office would handle the petition, and that an outside law firm with U.S. Supreme Court experience would be retained. She explained that if directed by the Council to move forward, staff would file a motion to request an additional 30 days in which to prepare the documents. Ms. Spinner estimated that outside counsel fees would be between \$10,000 and \$40,000 and, if the City does not prevail or if the Supreme Court does not accept jurisdiction, the City would have to pay the plaintiff's reproduction costs, which are estimated at no more than \$5,000.

Vice Mayor Kavanaugh advised that random drug testing is an important legal issue for local governments. He explained that a consequence of not pursuing the appeal is that personnel in other safety sensitive positions could challenge the testing policy and procedure. Vice Mayor Kavanaugh expressed the opinion that the Arizona Supreme Court had a fundamental misunderstanding of the safety sensitive nature of a firefighter's work by focusing on the aspect of weapons. He noted that the intent of the policy relative to employees is to provide treatment and rehabilitation rather than punishment, and that the ultimate goal of the City is to protect the public.

It was moved by Vice Mayor Kavanaugh, seconded by Councilmember Whalen, that staff be directed to move forward with the City's petition for writ of certiorari in the U.S. Supreme Court in the case of Petersen v. City of Mesa.

In response to a comment from Councilmember Whalen relative to the fact that off-duty firefighters could be called in on short notice and that a provision exists relative to an allowable blood alcohol level, Human Resources Director Sheryl Currell stated that the allowable blood alcohol level of .04 for firefighters is based on Federal guidelines from the Department of Transportation.

Ms. Spinner clarified that the City's case reference to an allowable blood alcohol level of .04 cannot be changed, as the case submitted for consideration by the U.S. Supreme Court has to be identical to that presented by the City before the Arizona courts.

Ms. Currell noted that regulations for a Commercial Driver's License (CDL) allow a .04 blood alcohol level, and that provision is also based on Federal guidelines.

Mayor Hawker called for the vote.

Carried unanimously.

11.3 Consider adopting a Notice of Intention to adjust current development impact fees, adopt new stormwater and general government development impact fees and establish June 7, 2004 as the date for the public hearing.

Mayor Hawker advised that adoption of the Notice of Intention would initiate a public comment period relative to development impact fees.

It was moved by Vice Mayor Kavanaugh, seconded by Councilmember Walters, that the Notice of Intention be adopted.

Councilmember Walters explained that the Notice of Intention provides an opportunity for public comment regarding possible changes to development impact fees. She expressed the hope that the public and the Chamber of Commerce would provide input to the Council on this subject.

City Manager Mike Hutchinson noted that the date for Council consideration of this item has been changed from June 28th to June 21st.

Mayor Hawker called for the vote.

Carried unanimously.

11.4 Consider the following recommendation from the General Development Committee:

- a. Approving initiation of the adoption process for the Desert Uplands Development Standards.

Mayor Hawker acknowledged the efforts of the General Development Committee and staff in preparing the Desert Uplands Development Standards.

It was moved by Councilmember Jones, seconded by Councilmember Griswold, that the recommendation of the General Development Committee be approved.

Carried unanimously.

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

- *a. **Z03-66 (District 2)** The 2500 block of East Southern Avenue (north side). Located north and west of Southern and Lindsay (1.26± ac.). Rezone from R1-43 to O-S. This request is for the development of a medical office building. S.L.A.M. (Drs. Thomas Sulton, Cynthia Lowe, James Anderson, and Richard Merkley), owner; Marty Fifer, applicant – Ordinance No. 4170.

P&Z Recommendation: Approval with conditions. (Vote: 5-0-1; Esparza absent, Finter abstaining)

1. Compliance with the basic development as described in the project narrative and as shown on the site plan, and elevations submitted, (without guarantee of lot yield, building count, lot coverage) except as noted below.
 2. Compliance with all City development codes and regulations.
 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, or at the time of the City's request for dedication whichever comes first.
 5. Compliance with all requirements of the Design Review Board.
 6. Retention basins to be 6:1 slopes maximum when adjacent to public rights-of-way or pedestrian walkways.
- b. **Z04-03 (District 6)** South and East of the Southeast corner of Power Road and Elliot Road (20.5± ac.). Rezone from R-3 to C-3 within an approved DMP. This request is to bring zoning into conformance with Mesa 2025 General Plan per City Council direction. Farnam Realty Inc., owner; Wayne Balmer, Project Manager WGAA, applicant – Ordinance No. 4183. **A LEGAL PROTEST FILED. ¾ VOTE REQUIRED.**

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

1. Future Site Plan Review by the Planning and Zoning Board and City Council of development plans.
2. Future review by the Design Review Board of development plans.
3. Compliance with all City development codes and regulations.

Williams Gateway Economic Activity Area Regional Manager Wayne Balmer addressed the Council as the applicant and noted that the proposal to rezone the subject property from R-3 to C-3 was initiated at the direction of the Council in order to bring the property into compliance with the General Plan.

Mark Dioguardi, Tiffany & Bosco, an attorney representing the property owner, stated that his client was opposed to the rezoning, and that he believed that a tentative arrangement had been reached with the City to exchange his property for another site at Recker and the 202. Mr. Dioguardi stated that today he became aware of the fact that the City had tentatively settled the lawsuit with the Ruiz party, but he noted that his client has not received a reply from the City with respect to the property exchange. He understood that the City was interested in exploring other options, and therefore he was requesting a 30-day extension so that the alternatives could be pursued.

Mayor Hawker recalled an earlier discussion regarding the property exchange, and stated that it was his understanding that Mr. Dioguardi's client was not interested in the trade because he did not consider the property at Recker and the 202 to be of equal value.

Mr. Dioguardi explained that after reviewing the City's appraisal, his client expressed an interest in pursuing the trade.

Councilmember Walters advised that the subject rezoning case is concerned with land use, and that action on this item would not affect negotiations with Mr. Dioguardi's client. She explained that the proposed action of the Council was to insure that another project did not come forward under the existing zoning.

It was moved by Councilmember Walters, seconded by Councilmember Thom, that Ordinance No. 4183 be adopted.

In response to a question from Mayor Hawker, Mr. Balmer confirmed that if the land exchange did occur, the property could be utilized for a park under the C-3 zoning.

Councilmember Griswold stated that changing the land use would not preclude the land exchange.

In response to a question from Councilmember Whalen, Mr. Dioguardi noted that the appraisal was completed on behalf of both the City and his client, and that the appraisal assumed that the rezoning would occur. He advised that a vote by the Council could initiate a chain of events that could cost the City time and money. Mr. Dioguardi stated that while the City reached an agreement with the Ruiz party, the situation with his client has been overlooked. He explained that his client had a pending contract to sell the property, but he understood the contract was being terminated as a consequence of actions taken by the City and the Airport Authority. Mr. Dioguardi advised that his client would pursue alternatives in an attempt to recover any losses.

Ms. Spinner, responding to Mayor Hawker's request for input, stated that a continuance was not recommended. She noted that rezoning the property would not prohibit the City from negotiating with the Farnam family.

Mr. Balmer stated that he concurred with the advice of the City Attorney.

Mr. Dioguardi responded to questions by stating that the proposed action by the Council would trigger deadlines for a referendum and filing a notice of claim; that a great deal of miscommunication existed regarding the position of his client; that he represented his client before the Council on several occasions to express an interest in the exchange; and that his client would not allow another project to come forward during a continuance.

Ms. Spinner advised that a delay could impact the negotiations with the Ruiz family, and she recommended that the Council move forward on the rezoning.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried by majority vote and Ordinance No. 4183 adopted.

- c. **Z04-05 (District 6)** 517 South Higley Road. Located south of Broadway Road and east of Higley Road (12.69± ac.). Rezone from AG to R1-6 PAD. This request is for the development of a single residence subdivision. Donald R. Allison, Monogram Development Services, L.L.C., owner/applicant – Ordinance No. 4184.

P&Z Recommendation: Approval with conditions. (Vote: 6-0; Esparza 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. Compliance with all requirements of the Subdivision Technical Review Committee.
7. Retention basins to be 6:1 slopes maximum when adjacent to public rights-of-way or pedestrian walkways.
8. Limit southern and eastern tier of lots to one story housing product only.
9. Raise existing perimeter wall along the south and east property lines by one to two courses of block.
10. Staff review and approval of a detailed landscape plan.

Mayor Hawker advised that this item was removed at the request of a citizen.

Clayton Crull, 504 S. Sunnyvale, advised that his property adjoins the proposed development, and he expressed concern relative to the fact that his irrigation lines and those of his neighbor are on the subject property. He stated that they would like an easement to ensure that the irrigation lines cannot be removed and assurance that if damaged during construction, that the lines would be repaired or replaced.

Ronn Walker, 502 S. Sunnyvale, representing the Sunnyvale Neighbors, advised that Councilmember Griswold encouraged the group to meet with Monogram Development. He reported that the meeting was productive, and that the Sunnyvale Neighbors now support the project. Mr. Walker noted that the developer has made several concessions, but the neighbors would like lots 54, 55 and 17 to be single story homes in order to maintain their privacy.

In response to a question from Mayor Hawker, Mr. Walker noted that the irrigation system is an old problem that has resurfaced. He expressed concern that damage or removal of part of the system would cause the remainder of the system to deteriorate and break.

Planning Director John Wesley stated that he was not aware of the irrigation problem, but he explained that this type of issue would typically be addressed during the Subdivision Technical Review stage.

Mayor Hawker requested that Mr. Wesley insure that this matter is addressed.

In response to a series of questions from Councilmember Jones, Mr. Walker stated that only two properties are affected; that the irrigation feed originates from an apartment complex on the corner; that the standup pipes are located on the development's property; that the developer may not intentionally disrupt the irrigation; and that the party responsible for resolving possible problems relative to the irrigation system has not been identified.

Ralph Pew, 10 W. Main Street, representing Monogram Development, stated that any problem with the development is their problem. He advised that the irrigation issue is being addressed, and that contact has been made with the Roosevelt Water Conservation District regarding the issue. Mr. Pew noted that Mr. Wesley was correct in stating that these issues would be addressed when the surveys are presented to the Engineering Department. He added that any necessary easements would be granted, and that the developer does not intend to disrupt irrigation service to the neighbors.

In response to a question from Vice Mayor Kavanaugh regarding Mr. Walker's preference for single story rather than two story homes in certain areas of the development, Mr. Pew stated that the homes in question are located 130 feet from Mr. Walker's home. He added that the developer's plan to plant trees on the boundaries to insure privacy met with the approval of the Planning and Zoning Board.

Councilmember Griswold thanked the developer and the neighbors for working together.

In response to a question from Councilmember Thom, Mr. Pew stated that action on a zoning case would not result in the abandonment of easements. He explained that any action on easements would occur at the time of platting, and that these types of technical engineering issues have not yet been addressed. Mr. Pew stated that he was not aware of any abandoned easement relative to this case.

Councilmember Walters thanked Mr. Walker for contacting the Councilmembers via email. She expressed the opinion that the planned landscaping would provide the necessary privacy. Councilmember Walters noted that based on her experience in living in a two-story home, landscaping is the element that makes the difference.

Mr. Walker noted that he just recently received information on the landscaping, and he was impressed by the maturity of the trees and the canopies that the trees would provide.

It was moved by Vice Mayor Kavanaugh, seconded by Councilmember Griswold, that Ordinance No. 4184 be adopted.

Carried unanimously.

- *d. **Z04-11 (District 6)** 5416 and 5424 East Southern Avenue (3.4± ac.). Located north of Southern Avenue and east of Higley Road. Rezone from O-S to O-S PAD. This case involves rezoning to facilitate condominium ownership on an existing building. David Rothberg (Manager), owner; Clare Abel, applicant – Ordinance No. 4171.

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

1. Compliance with the basic development as described in the project narrative and as shown on the site plan and preliminary plat submitted except as noted below.
2. Compliance with all City development codes and regulations.
3. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
4. Compliance with all requirements of the Subdivision Technical Review Committee.

- *e. **Z04-12 (District 5)** 2835 North Power Road. Located north of McDowell Road and East of Power Road (3.9± ac.). Rezone from C-2 DMP to C-2 PAD DMP. This request is for the development of office condominiums within an approved center. Sam Sprague/Power and McDowell Associates, LLC, owner and applicant – Ordinance No. 4172.

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

1. Compliance with the basic development as described in the project narrative and as shown on the site plan and elevations submitted, (without guarantee of lot coverage) except as noted below.
2. Compliance with all City development codes and regulations.
3. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
4. All street improvements, including entire Power Road and McDowell Road frontages, and perimeter landscaping for the Eckerd Drugstore parcel to be installed in the first phase of construction.
5. Compliance with all requirements of the Design Review Board, to include citizen participation: Notification to include The Board of Directors of the Las Sendas and Spookhill Homeowners Associations. This shall include full compliance with the landscape requirements for arterials.
6. 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.
7. Compliance with all requirements of the Subdivision Technical Review Committee.
8. Review and approval of a Special Use Permit by the Board of Adjustment for a Comprehensive Sign Plan.
9. Plant material within the right-of-way shall meet the requirements of Section 11-15-3-A.

- *f. **Z04-13 (District 6)** West of the southwest corner of Southern Avenue and Ellsworth Road. (3.27± ac.) Rezone from AG to C-2. This request is for the development of an

auto service building. Russell Scaramella, owner; Vince Dalke, V.P. Archicon L.C., applicant – Ordinance No. 4173.

P&Z Recommendation: Approval with conditions. (Vote: 6-0; Esparza 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 or lot coverage).
2. Compliance with all City development codes and regulations.
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 Land Split, or at the time of the City's request for dedication whichever comes first.
5. Compliance with all requirements of the Design Review Board, to include citizen participation.
6. Compliance with all requirements of the Land Split process.
7. Retention basins to be 6:1 slopes maximum when adjacent to public rights-of-way or pedestrian walkways.
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 Land Split, prior to the issuance of a building permit).
9. Installation of the five-foot landscape strip shown along the proposed property line between the proposed developments with the initial construction.
10. The service bay doors along the rear (south) elevation are to remain closed except to bring vehicles in or out of the building.

- *g. **Z04-14 (District 2)** 1102 North Val Vista Drive. Located south of Brown Road and west of Val Vista Drive (0.36± ac.). Rezone from O-S to R1-9. This request is for the development of a single residence lot. Tydam LLC; Tyson M. Tibshraeny, owner; Ray W. Syder, Ray Quality Homes, Inc., applicant – Ordinance No. 4174.

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

1. Compliance with the basic development as described in the project narrative.
2. Compliance with all City development codes and regulations.
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. Owner granting an Avigation Easement and Release to the City, pertaining to Falcon Field Airport, which will be prepared and recorded by the City (prior to the issuance of a building permit).

- *h. **Z04-15 (District 6)** Southeast corner of Southern Avenue and Higley Road (13.39± ac.). Site Plan Review. This request is for the development of a commercial shopping

center. Richard F. Cavanaugh, Southern and Higley Realty Partners, LLC, owner; Nick Wood and Reese Anderson, Snell and Wilmer, applicants – Ordinance No. 4175.

P&Z Recommendation: Approval with conditions. (Vote: 6-0; Esparza 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 or lot coverage).
2. Site Plan Review by the Planning and Zoning Board and City Council of future development plans for Pad.
3. Compliance with all requirements of the Design Review Board.
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.) including the installation of additional trash enclosures if deemed necessary by the Solid Waste Division.
6. 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.
7. All street improvements and perimeter landscaping to be installed in the first phase of construction.
8. Compliance with all requirements of the Subdivision Technical Review Committee.
9. All pad buildings to be architecturally compatible with the center.
10. Review and approval of a Special Use Permit by the Board of Adjustment for a comprehensive sign plan.
11. Retention basins to be 6:1 slopes maximum where adjacent to public rights-of-way and pedestrian walkways.

- *i. **Z04-16 (District 6)** 5800 E. Still Circle. Located north of Baseline Road and west of Recker Road (9.15± ac.). Site Plan Review of PEP, PAD parcel. This case involves the development of a medical office complex as part of the Arizona Health and Technology Park. A.T. Still University, owner; Tim Becker, Alter Group, applicant – Ordinance No. 4176.

P&Z Recommendation: Approval with conditions. (Vote: 5-0-2; Esparza absent, Finter excused prior to this case)

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 all requirements of the Design Review Board.
3. Compliance with the approved project design guidelines for the Arizona Health and Technology Park, including all buildings, landscaping, signage, lighting, pedestrian facilities and site improvements.
4. Compliance with all City development codes and regulations.
5. Full compliance with all current Code requirements, unless modified through appropriate review and approval of the modifications outlined in the staff report.

6. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
7. 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.
8. All street improvements and perimeter landscaping to be installed with the first phase of construction.
9. Compliance with all requirements of the Subdivision Technical Review Committee.
10. Provide documentation of recordation of cross-access and reciprocal parking easements between Lots 1, 2 & 3 with submittal of construction documents.
11. For shared access from South Sunview Street, provide documentation of recordation of a shared access easement and cross-access easements between Lots 1, 2 & 3 and the adjacent properties to the south fronting on Baseline Road.
12. Maintain the recorded one-foot non-vehicular access easement along the entire frontage of Recker Road with the Preliminary Plat.
13. Non-conforming and/or prohibited signs shall be brought into conformance prior to the issuance of a building permit.
14. Retention basins to be 6:1 slopes maximum where adjacent to street frontage.
15. A maximum of ninety percent (90%) of the gross floor area for the overall development may be used for medical or dental offices or outpatient clinics and ten percent (10%) of the gross floor area for permitted non-medical commercial uses.
16. Parking lot landscape islands may be installed up to seventeen (17) spaces apart with covered parking structures covering the fifteen (15) interior parking spaces.
17. The parking lot may encroach up to eight (8) feet into the required twenty (20) feet wide landscape yard abutting Recker Road for that portion as indicated on the site plan.
18. Prior to submitting construction documents provide the Planning staff with a complete street frontage landscape plan in conformance with the Zoning Ordinance and the project design guidelines for the Arizona Health and Technology Park for those areas abutting the required street improvements.

- *j. **Z04-17 (District 5)** The northeast corner of North Sossaman Road and East Willetta Street. South and East of Sossaman and McDowell (2.86± ac.). Rezone from Maricopa County R1-35 to City of Mesa R1-35. This case involves the establishment of City zoning on recently annexed property. Aaron David Smith, owner; City of Mesa, applicant – Ordinance No. 4177.

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

1. Compliance with all City development codes and regulations.
2. Dedicate the right-of-way required under the Mesa City Code at the time of application for a building permit or at the time of the City's request for dedication whichever comes first.

- *k. **Z04-18 (District 6)** The northwest corner of South Signal Butte Road and East Pecos Road. (36.37± ac.). Rezone from Maricopa County Rural 43 to City of Mesa R1-43. This

case involves the establishment of City zoning on recently annexed property. Clark Fox, David Jarvis, owners; City of Mesa, applicant – Ordinance No. 4178.

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

1. Review and approval by the Planning and Zoning Board, Design Review Board and City Council of future development plans.
2. Compliance with all City development codes and regulations.

- *i. **Z04-19 (District 5)** Area south of East Hermosa Vista Drive to East McKellips Roads, and west of North Sossaman Road to the Central Arizona Project Canal. (150.2± ac.). Rezone from Maricopa County R1-35 and R-18 to City of Mesa R1-35 and R-15. This case involves the establishment of City zoning on recently annexed property. Various owners (see list of owners in the packet); City of Mesa, applicant – Ordinance No. 4179.

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

1. Review and approval by the Planning and Zoning Board, Design Review Board and City Council of future development plans.
2. Compliance with all City development codes and regulations.
3. Minimum lot size shall be 18,000 sq. ft. within the R1-15 zoning district.

- *m. **Z04-20 (District 5)** Certain properties south of University Dr. and east of Crismon Rd. between N. 101st Cir. and 102nd St. (2.4± ac.). Rezone from Maricopa County R1-8 to City of Mesa R1-9. This case involves the establishment of City zoning on recently annexed property. D.B./Billie A. Chamberlin, owners; City of Mesa, applicant – Ordinance No. 4180.

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

1. Review and approval by the Planning and Zoning Board, Design Review Board and City Council of future development plans.
2. Compliance with all City development codes and regulations.
3. Compliance with the Residential Development Guidelines.
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.

- *n. **Z04-21 (District 5)** Areas on the east and west sides of Ellsworth Road north of Main Street. (38± ac.). Rezone from Maricopa County R1-8, R-2 RUPD, R-5, C-2, and C-3 to City of Mesa R1-9, R1-6 PAD, and C-2. This case involves the establishment of City zoning on recently annexed property. Various owners (see list of owners in the packet); City of Mesa, applicant – Ordinance No. 4181.

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

1. Review and approval by the Planning and Zoning Board, Design Review Board and City Council of future development plans.
2. Compliance with all City development codes and regulations.

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.

*o. **Z04-22 (District 5)** The 6000 – 6200 block of East McKellips Road (north side) and the 6200 – 6400 block of East Hermosa Vista Drive (south side). Located north of McKellips Road and east of Recker Road (47± ac.). Rezone from R1-6 DMP and R-4 PAD-DMP to R1-6 PAD-DMP; also Modification of a Development Master Plan. This case involves the development of a residential community. Shelby Futch, owner; Ray Mehan, Mehan Construction, and Shelby Futch, applicants. **CONTINUED TO THE APRIL 19, 2004 COUNCIL MEETING.**

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

1. Compliance with the basic development as described in the project narrative and as shown on the revised 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. Owner granting an Avigation Easement and Release to the City, pertaining to Falcon Field 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).
8. Written notice be provided to future residents, and acknowledgment received that the project is within one mile of Falcon Field Airport.
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. The applicant has further stipulated and agreed to the following terms and conditions:
 - a. Review and approval of product elevations and exterior color schemes, which are to be earth tones, by the Design Review Board.
 - b. The applicant shall enter into a deed restriction for the benefit of the property owners adjacent to the development reflecting the stipulations found in paragraphs 1, 2, 3, 6, 9, 11, 12, 13, 14, and 15 of the Neighborhood Agreement For Painted Mountain Townhome Project dated February 15, 2004.
 - c. The height of the architectural elevations of the homes not to exceed 22 feet from finish floor elevation.

- d. For that portion of the subdivision located on the existing nine-hole golf course, all homes are to be one story only above finish floor elevation.
 - e. Walls and fences along the Golf Course shall be wrought iron over a masonry wall. Height of masonry wall portion not to exceed 1.5 feet and overall fence height not to exceed 6 feet.
 - f. For that portion of the subdivision located on the existing nine-hole golf course, provide no more than five standard product plans with multiple elevations.
- p. **Z04-27 (District 6)** Northeast corner of Sunnyvale and Baseline Road. Located east and north of Higley Road and Baseline Road (17.57 ac. ±). Rezone from R3-DMP and PEP-DMP to R4-PAD-DMP. This request is for the development of an apartment complex. Langley Superstition Business Park L.P., owner; Pew and Lake, P.L.C., applicant – Ordinance No. 4185.

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

1. Compliance with the density and basic development as shown on the site plan submitted.
2. Compliance with all City development codes and regulations.
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, 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 Design Review Board.

It was moved by Vice Mayor Kavanaugh, seconded by Councilmember Walters, that Ordinance No. 4185 be adopted.

Councilmember Thom expressed concern relative to the fact that the present zoning allows for an employment park, and that the proposal would change the zoning to high density residential. She noted that the property is located in the proximity of the freeway and the United Parcel Service (UPS) facility. Councilmember Thom explained that the development could create traffic problems for UPS.

Sean Lake, 10 W. Main Street, representing the owner, reported that discussions with representatives of UPS have resulted in the owner agreeing to certain stipulations. He stated that the following stipulations have been outlined in a commitment letter to UPS:

- The developer will not object to any future rezoning or expansion of the UPS facility to the north.
- The developer will provide disclosure and notification to future residents that the development is located in the proximity of the UPS facility.

In response to a question from Councilmember Griswold, Mr. Lake noted that the main entrance to and the exit from the development are off of Baseline, and that the additional

ingress and egress point required by the City of Mesa is from Inverness. He also advised that the development would be a gated community with the majority of vehicles utilizing Baseline to enter and exit the property.

Mayor Hawker called for the vote.

Carried unanimously.

13. Items from citizens present.

There were no items from citizens present.

14. Adjournment.

Without objection, the Regular Council Meeting adjourned at 8:12 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 5th day of April 2004. I further certify that the meeting was duly called and held and that a quorum was present.

BARBARA JONES, CITY CLERK

baa

Attachments 1 and 2

Neighborhood Economic Development Corporation

635 E. Broadway Road, Mesa, Arizona 85204
(480) 833-9200 Ext 117 FAX (480) 833-6308

www.nedco-mesa.org

Current Loans (NEDCO and Partners)

Alter Ego Bike Merchant 160 West Main Street, Mesa, AZ 85201	\$15,000 Inventory
La Musique Academy of Music 7440 East Main Street, Mesa, AZ 85207	\$15,000 Tenant Imp'ts
La Bella Madonna 1758 North Sea Pines, Mesa, AZ 85205	\$8,000 Start Up
Sophisticated Imports 32 West 8th Avenue, Mesa, AZ 85210	\$15,000 Inventory
Winsor Law Firm 1201 S. Alma School Road, Suite 7550, Mesa, AZ 85210	\$40,000 Expansion: Law Library, equipment, working capital
Total Loans: \$93,000	
Total Equity/Others' investments: \$174,500	

Loan Pipeline

Rancho Grande, Fine Mexican Foods New Location, Main Street at Horne, 85201 (Total Project over \$1,000,000)	\$200,000 for Façade
KAP Photography Inc., dba MotoPhoto 1042 North Higley Road, #104 Mesa AZ 85205	\$25,000-\$50,000 Equip.
Restor, The Restoration Experts Andrew J. Kerns/Jeramy L. Monday, Mesa, AZ 85208	\$15,000 Start Up
Giordano's Italian Restaurant 2909 South Dobson Road Mesa, AZ 85202	\$50,000 Tenant Imp/WC
Total Requests in Loan Pipeline:	\$290,000 - \$315,000

Lending Requirements: Banks

1. Two Years' History of Operations shown in Financial Statements
2. Management Experience
3. Looking for \$50,000 loans or larger; refers to personal credit cards
4. Personal/business Assets for Collateral
5. No bankruptcies and at least mid- 600's credit scores
6. If an expansion or new location of an existing business, 1-3 above apply

Lending Requirements: NEDCO as Community Development Lender (CDFI)

1. Business Plan and/or Projections which show profitable operations
2. Personal/business Assets for Collateral, if possible
3. Bankruptcies in last ten years must be explained AND credit repaired since bankruptcies
4. Expansions and Loan Requests must be supported by Business Plan
5. Businesses must document retaining and creating jobs

NEDCO Lending Partners

Arizona MultiBank CDC
Community Reinvestment Fund (www.crfusa.com) Minneapolis (access to New Markets Tax Credits and private lending capital)
Financial Institutions

NEDCO Leverage (See Spreadsheet attached)

NEDCO leverages 3:1 private sector investment to public sector funds spent (\$446,750 Cumulative Total Private Investment by business borrowers compared to \$145,372 in CDBG Funds cumulatively expended to NEDCO through June 2003) in its lending track record. This leverage does not include the private sector funds raised for NEDCO operations.

Private Sector and Public Sector Funds for Operations

For operations, NEDCO raises at least \$1.00 for every \$1.00 of CDBG Funds expended for operations (\$301,012 Cumulative Private Sector funds raised compared to \$145,372 in CDBG Funds cumulatively expended to NEDCO, including guarantees paid for defaulted loans, through June 2003). NEDCO's Executive Director works part time, earning \$35,000 each year (01/02, 02/03, and 03/04); a bonus of \$5000 has been paid in 01/02 and 02/03. She works part time also for Mesa Community Action Network as Project Director, Asset Development.

Cost per Full Time Job Retained or Created

NEDCO expends \$10,887 per job created or retained (\$145,372 public funds + 301,012 private funds = \$446,384 divided by 41 cumulative jobs). The National Average Range for Community Development Financial Institutions' expenditure per job is \$10,000-\$15,000. NEDCO expends only \$3,545.66 per job

retained/created of total public funds expended (\$145,372).

NEDCO Marketing

Arizona Micro-Enterprise Alliance
Arizona MultiBank Community -Development Corporation
Arizona Small Business Association
Arizona State University Business School
Arizona-Mexico Commission
AZ Department of Commerce
Bank of America
Bank One
City of Mesa Departments: Economic Development, Neighborhood Outreach,
Community Revitalization, Redevelopment, Housing Department, Community Services
Mesa Public Library
Entrepreneurial Mothers' Association Mesa
Falcon Field Alliance
Governor's Office of Equal Opportunity
H&R Block
Las Sendas Business Group
Latino Town Hall
Mesa Chamber of Commerce
Mesa Community College
Mesa Grande Community Alliance
Mesa Hispanic Business Association
Mesa Rotary
Mesa Town Center Corporation
MesaBank
National Bank of Arizona
Self Employment Loan Fund
Small Business Development Center
Valley Metro Rail
Washington Mutual
Wells Fargo Bank

NEDCO Outreach

Bankers' Luncheon
November 19, 2003

CPAs' Breakfast
February 19, 2004

Nuestro Neighborhood Economic Development Committee

Mesa Grande Community Alliance
Commercial Revitalization Project

NEDCO Business Development Programs
 Summary April 2004

Year Item	1999/2000	2000/01	2001/02	2002/03	2003/04 (to date)	2004/05
Private Lending Capital Raised						
Wells Fargo Bank		50,000				
National Bank of AZ			50,000		50,000	
Johnson Bank				25,000		
Arizona Community Foundation				13,500		
NEDCO Capital		10,500				
Totals		60,500	50,000	38,500	50,000	0
Cumulative Total		60,500	110,500	149,000	199,000	199,000
Lending Summary						
Number of Loans		5	3	1	3	
NEDCO Loans		6,000	15,000	8,000	45,000	
Others' Loans (incl BDLP)		63,750	150,000	0	25,000	
Totals		69,750	165,000	8,000	70,000	
Cumulative Total		69,750	234,750	242,750	312,750	
Private Equity		4,500	66,500	10,000	98,000	
Total Private Investment		74,250	231,500	18,000	168,000	
Cum. Private Investment		74,250	305,750	323,750	491,750	
Jobs Retained/Created		13	15	1	12	
Cum. Jobs Retained/Created		13	28	29	41	
Business Planning: # of businesses		24	24	37	47	
Private Lending Capital Requested:						
Wells Fargo Bank					100,000	
Bank of America					unknown	
Bank One					unknown	
Washington Mutual					100,000	
Public Lending Capital Requested:						
US Treasury Dept (CDFI Fund)						100,000
Public Sector Funds: Operations						
NEDCO Administration	0	25,000	30,000	34,000	37,400	37,400
Cost of Line of Credit	0	500	500	500	500	500
Guarantees Paid				8,125	10,347	
Program Income				(1,500)		
Totals	0	25,500	30,500	41,125	48,247	37,900
Cum. Public Sector	0	25,500	56,000	97,125	145,372	183,272

Private Sector Funds: Operations							
Banks/Corporations	25,000	30,000	30,000	35,000	35,000	40,000	
Foundations	5,000	5,000	5,000	5,000	8,500	7,000	
Earned Income	2,000	2,400	2,500	5,000	5,000		
Totals	32,000	37,400	37,500	45,000	48,500	47,000	
Cumulative Totals	32,000	69,400	106,900	151,900	200,400	247,400	

Leverage Private (Lending and Investment) and Public (Operations):