

COUNCIL MINUTES

April 10, 2003

The City Council of the City of Mesa met in a Study Session in the lower level meeting room of the Council Chambers, 57 East 1st Street, on April 10, 2003 at 7:30 a.m.

COUNCIL PRESENT

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

COUNCIL ABSENT

None

STAFF PRESENT

Mike Hutchinson
Debbie Spinner
Barbara Jones

1. Discuss and consider modification of the residential zoning surrounding Williams Gateway Airport.

Williams Gateway Regional Economic Activity Area Project Manager Wayne Balmer stated that an issue was raised through the Planning and Zoning Board regarding a requested subdivision plat approval on South Sossaman Road and the item is being brought before the Council to obtain direction. He noted that the Council packet included a copy of the memo with attachments in black and white, and he will present a color version of the same attachments on the Elmo.

Mr. Balmer reported that the subject property is located on Sossaman just north of Elliot, but south of the power line that is situated between Elliott and Guadalupe. He stated that this power line has been used as a dividing line for years by the City of Mesa and the power line is currently referenced in the *General Plan* as the dividing line between residential to the north and employment to the south. Mr. Balmer added that prior to annexation by the City of Mesa in 1990, the Maricopa County property had Rural 43 zoning. He noted that, as required by law, the City of Mesa zoned the annexed property to the nearest equivalent, Rural 43, and the property has remained vacant. Mr. Balmer recalled that there was considerable discussion about the area south of the power line when the new *General Plan* was developed.

Mr. Balmer advised that most of the area north of the power line has been developed for housing and there is pressure to develop the area to the south for housing as well. He noted that the blue section on the displayed map indicated the area set aside for employment. Mr. Balmer reported that the applicant's request to use their existing zoning for the subdivision plat was presented to the Planning and Zoning Board in February and, as the Board was somewhat uncomfortable with the request, the case was continued to March. He stated that now the

applicant has requested that the case be continued to May. Mr. Balmer noted that the reason this item is before the Council is to obtain direction for the Planning and Zoning Board regarding what action the Council would like them to take in this case.

Mr. Balmer noted that the material provided to the Council included a letter from Gary Smith, Chairman of the Economic Development Advisory Board. He added that Attorney Ralph Pew, Pew and Lake, was present on behalf of the applicant and also present was Lynn Kusy, Williams Gateway Airport Executive Director, who wrote a letter to the Council expressing his concern about the platting of this property.

Mr. Balmer explained that the reason the Airport Authority was concerned about the platting of this property was the issue of approach and departure procedures for Williams Gateway Airport, an issue that has been discussed by the Council several times in the past. He reported that the current procedures are being finalized as the official approach and departure procedures for an instrument landing system and will be included in the FAA's book of procedures for airports around the country. Mr. Balmer noted that the approval process is ongoing and that Williams Gateway was essentially a one-way airport with arrivals from the southeast and departures to the northwest. He advised that large aircraft are required to quickly turn east when departing to prevent conflict with eastbound traffic from Sky Harbor and to avoid as much of the residential area to the north of the power lines as possible. Mr. Balmer referred to the graph on display that indicated the altitude and location of departing planes and noted that the subject property is located in the middle of the flight patterns. He added that some planes would go directly north or south of the subject property, but he pointed out the proximity of the property to the end of the runway and the concentration of aircraft in that flight area.

Mr. Balmer noted that the issue has been brought before Council by one property owner, but staff has reviewed other properties in the area that are also zoned R-43 and the map provided in the Council packet indicates the location of these properties. He also pointed out the property locations using the map displayed on the Elmo.

Mr. Balmer said that staff is recommending that the *General Plan* be the guiding document for land use in this area and, while the applicant does have Rural 43 zoning, staff does not believe that the zoning is vested in terms of requiring approval of the subdivision plan. He added that staff is also requesting that the Council determine if the City could initiate rezoning on the applicant's property as well as other properties in the area around the airport in order to avoid residential housing. Mr. Balmer offered to answer any questions.

Mayor Hawker said he spoke with Mr. Pew earlier in the week and indicated to him that Mr. Pew would have the opportunity to address the Council. He asked the Council if there were any questions for Mr. Balmer. Mayor Hawker stated he had a question, but he was not sure whether he should direct the question to Mr. Kusy or the attorney from the airport. He asked how vested rights were determined. He also asked what were the entitlements of the property owner when the City annexes County property zoned Rural 43 and the City is required by law to give the property the same zoning classification.

Mr. Balmer said he would start and then, if necessary, he would have Attorney Nick Wood of Snell & Wilmer continue the presentation. He stated that the County is required to give all privately owned property in the County a zoning designation and Rural 43, one home per acre, is the most common designation. Mr. Balmer advised that when the City annexes County land,

the City is required to use the same zoning designation. He noted that the zoning designation is not vested unless the applicant takes specific proactive steps to develop the property under that zoning. Mr. Balmer stated that the first proactive step would be approval of a subdivision plat. He continued that after the applicant submits a preliminary plat and the engineering is completed to approve a final plat, the next step could be lot sales, or home construction or whatever the applicant wants to do. Mr. Balmer advised that having a certain zoning classification does not entitle the applicant to use that zoning, as other administrative steps have to be accomplished. He said that after the preliminary steps are taken and substantial money has been spent on developing a plat or building a home, that is the point in time when a property is considered to be vested and the property owner has perfected their right to use the zoning classification.

City Attorney Debbie Spinner, responding to Mayor Hawker's question, stated she agreed with the interpretation presented by Mr. Balmer. She confirmed that a property owner does not have a vested right in the zoning of an undeveloped property. Ms. Spinner advised that once the owner takes action to develop the property, some costs are incurred and the owner relies on actions of the government entity, the rights of the property owner become vested.

Councilmember Whalen referred to Mr. Kusy's letter to Mayor Hawker dated March 31 and noted that the top two paragraphs on page two, section three, discuss the fact that Mr. Pew stated that a *General Plan* Amendment was not necessary and indicates that Deputy City Attorney Joe Padilla agreed. He requested an explanation.

Ms. Spinner suggested that Mr. Padilla address this issue, as he was involved in the project.

Mr. Padilla advised that at the time the applicant attempted to file the preliminary plat, the applicant was informed that residential development would be inconsistent with the *General Plan*. He stated that the applicant was instructed to file his own amendment to the *General Plan*. Mr. Padilla said the position of the applicant was that the City had no authority to require the filing of an amendment when the applicant was attempting to file a preliminary plat. He added that the issue then came under the "Growing Smarter" statute, and staff agreed that under the subdivision regulations and under "Growing Smarter," the City had no authority to force the applicant to file an amendment to rezone his own property consistent with the *General Plan*.

Councilmember Whalen asked if he was correct in understanding that the applicant's plan for the R1-43 was consistent with the existing zoning designation of mixed use, which allows for residential and mixed use, but is high-density residential.

Mr. Padilla confirmed that R1-43 allows residential and that the applicant wanted to file a preliminary plat with residential.

Councilmember Whalen commented that the applicant was interpreting mixed use to allow acre lot residential and asked Mr. Padilla if his letter stated that the applicant was not required to file a *General Plan* Amendment at that point.

Mr. Padilla responded affirmatively and confirmed that there was no mechanism by which the applicant could be forced to file a *General Plan* Amendment.

Acting Planning Director Dorothy Chimel stated that perhaps some confusion existed about the *General Plan*. She recalled that in 1996 there was a mixed-use component on the subject property and the surrounding lot and the plan allowed for a percentage of high-density residential of 15 or 30 percent. Ms. Chimel noted that the new *General Plan* has two different categories of mixed use: mixed-use employment and mixed-use residential. She advised that the subject property and surrounding land has mixed-use employment and does not allow for any residential use.

Councilmember Thom addressed Mr. Balmer and asked how many acres were involved and the number of property owners.

Mr. Balmer referred to a map that indicated the number of property owners and noted that there are slightly more than 1,200 acres of property involving approximately 40 property owners. He noted that some would be grouped together in approximately twelve zoning cases. Mr. Balmer stated that all property owners would be notified when their particular zoning case was going to be coming forward.

Mr. Balmer responded to a question from Councilmember Thom by confirming the fact that anyone requesting a *General Plan* designation or zoning change was required to go through a notification process to inform the neighborhood of the proposed change.

Councilmember Thom commented that in all fairness, the City should go through the notification process as well.

Mr. Balmer stated that staff is proposing to do just that.

Councilmember Thom suggested that the City meet with all of the property owners and neighbors so that everyone is informed. She also noted that staff is proposing to change the designation to M-1 for all of these properties.

Mr. Balmer advised that staff is proposing to have two different groups in terms of meeting with the neighbors and zoning classifications. He stated that subject to Council approval, staff plans to review the property north of the airport in two parts: first would be the applicant's property and the surrounding property as the applicant currently has a plat pending approval, and second would be the property owners north of Elliott Road which staff recommends to be designated for a planned employment park with some type of industrial use such as that located east of Superstition Springs Mall. Mr. Balmer added that the south side of the airport, in the area from Pecos Road to Germann, staff is recommending the area be designated M-1, which is light industrial. He noted that M-1 would allow for outside parking of vehicles while all assembly or storage would be restricted to an enclosed building, but allowing for more outside activity than allowed in a planned employment park zone.

Councilmember Thom commented that this information was not reflected in Mr. Balmer's report. She asked if bringing the property owners together to discuss what non-residential uses are available would be appropriate. Ms. Thom also asked about the possibility of having commercial in that area rather than telling the property owners to do something specific. She suggested that property owners should have the opportunity to select some options.

Mr. Balmer replied that commercial development would be more of an option for property owners on the north side as more of these areas were designated in the *General Plan*, such as the corner of Elliott and Ellsworth. He noted that if some areas are already developing a plan for a shopping center or an office complex and, staff would be glad to incorporate that project into the process as well.

Councilmember Thom referred to parcels located at the northeast corner of Signal Butte and Elliott and asked Mr. Balmer to confirm if one parcel owned by the City is planned to be a water treatment plan and that the parcel to the north is the SRP substation.

Mr. Balmer stated that Councilmember Thom was correct and noted that the Browning Substation is on the north half. He was not sure if the purchase of the south half has been completed, but he confirmed that the City is considering the purchase of that parcel. Mr. Balmer noted that this was one of the cases where the zoning designation was Rural 1-43 when the property was annexed. He advised that the parcel was once State Land and, although the property has now been purchased, the City has never adjusted the zoning to reflect the change. He noted that this parcel would be reviewed at the same time as the others.

Councilmember Walters addressed Mr. Padilla and asked if he could clarify an issue that was pending at the time she joined the Council. She recalled that there was an issue regarding a parcel annexed from the County on which the City had to allow housing, as that was the current County zoning at the time of annexation. Councilmember Walters asked what made this case different.

Mr. Padilla answered that each parcel would have to be reviewed separately. He noted that in going through the *General Plan* process, some rights were already vested as a result of filing preliminary subdivision plats or final plats, construction had started, permits had been pulled, or there were development agreements where rights were vested under a contract. Mr. Padilla said that the City Attorney's Office issued a legal opinion stating that the *General Plan* can designate parcels with inconsistent zoning due to the fact that the *General Plan* is a concept plan of future development. He advised that a parcel with residential zoning by virtue of being annexed could be designated as industrial on the *General Plan*. Mr. Padilla stated that this is what happened with the subject case.

Councilmember Walters questioned why the Council had to rule that way on the earlier case. She addressed Mr. Padilla and stated that the legal opinions he presented made sense to her, but questioned what caused a different opinion to come forward on the earlier case.

Mayor Hawker recalled that the parcel was referred to as the Tom Lowell property and consisted of a little subdivision a bit south of the runway. He noted that the property had streets, had been plotted and recorded as residential and had infrastructure in place. Mayor Hawker said the Resolution Trust Corporation (RTC) auctioned the property and, in fact, the City of Mesa attempted to acquire the parcel.

Mr. Balmer concurred with Mayor Hawker noting that the parcel was an existing approved subdivision that had gone into foreclosure. He commented that the Council authorized him to bid at the RTC auction, as that was the only way the City could acquire the property to insure that there would be no residential development.

Vice Mayor Kavanaugh noted that Mr. Pew and his client have taken some steps and incurred expenses while working with the City on this project. He asked if the Council moved forward with recommendations to revise or change the zoning, would the City have the option to offer the applicant some type of equitable credit in terms of future development to offset some of the expense.

Mr. Balmer expressed the opinion that some type of credit would be possible and stated that the reason staff came before Council was to determine the policy direction of the Council regarding this case. He added that the applicant's subdivision plat has been continued until May 15. Mr. Balmer indicated that staff would like to meet with the Planning and Zoning Board before May 15 so that the applicant and Mr. Pew know what to expect. He said that after the Council has made a decision, staff would expect to meet with Mr. Pew and his client to determine an equitable way to provide credit to offset expenses incurred in this project. Mr. Balmer noted that Mr. Pew is present and could inform the Council regarding the amount of investment his client has made to date. He advised that Mr. Pew held the opinion that the applicant should have been notified last summer not to waste time or money on the project, but he noted that staff could not foresee the results of the November election. Mr. Balmer commented that there should be a way to have a smoother transition rather than having an abrupt cutoff in this case.

Councilmember Griswold said he concurred with Vice Mayor Kavanaugh that some kind of equity should be arranged for the applicant who spent money in good faith and that type of action would be the fair thing for government to do. He asked how much expense would be incurred for a developer to rezone a 20-acre parcel.

Ms. Chimel advised that the information was not available, but staff could gather the data by polling some developers.

Mr. Balmer addressed Councilmember Griswold's question by stating that there were really two parts to the question: one is what would be paid to the City in terms of a filing fee that is based on land use and acreage, and the second is the expense incurred to prepare the submission to the City, including hiring an engineer, having a plat drawn, real estate commissions and other similar items. He said his estimate of costs from beginning to end for an industrial case, including a plat and the time of any attorney, would be \$20,000 to \$25,000. Mr. Balmer noted that the share paid to the City was relatively small and the major expenses were incurred in preparing the necessary materials required by the City for the process.

Councilmember Griswold asked if the City initiates a rezoning of this area with a dozen different property owners, does the City require the property owners to bear the expense or does the City bear the expense.

Mr. Balmer advised that the City would not charge the owners any expense to rezone their properties. He stated that the expenses for an attorney, engineer or architect would be paid by the City and the property would be rezoned and shown on the City's map with the new zone designation. Mr. Balmer stated that staff is willing to work with applicants and, if a plan has already been developed for submission, the City could accept the plan and work through the process. He noted that the only caveat the City would make was in regard to neighborhood compatibility and, in order to develop the property, the applicant would have to develop a site plan for approval at a later date that can be shown to the neighbors when the applicant is ready to proceed.

Discussion ensued relative to the fact that the rezoning could be beneficial for property owners, particularly those with larger parcels as the cost to rezone is based on acreage, and that the City would have a lot of contact with neighbors to the north during the rezoning process.

Mr. Balmer referred to the map and noted that the applicant's property was identified as number three on the map and the area to the north is proposed to be a church. He noted the location of single-family homes and vacant lots to the east and he advised that staff has spoken to some of the owners in this area regarding their rezoning concerns and assured the owners that no one would be forced to move. He added that in some cases, owners expressed a desire to move if the zoning was changed. Mr. Balmer reported that most of the property owners on the south side are aware of the M-1 zoning and when he spoke to these owners, many were considering different kinds of uses that may require a zoning change to commercial in the future. He noted that commercial zoning requires a site plan that shows the shape of the development and what the user proposes to do with the property. Mr. Balmer pointed out a particular parcel on which the owner would like to develop a large shopping center and added that this owner will be meeting with Ms. Chimel and her staff next week. He referred to a parcel identified by Councilmember Thom and, noting that the owner does not have a plan for residential use, he indicated that showing the site on the *General Plan* as a public use for the substation site would be good.

Mr. Balmer, in response to Councilmember Whalen's question, advised that these changes would not be amendments to the *General Plan* as the actions being taken are consistent with the *General Plan*.

Councilmember Thom stated she wanted to address some of Councilmember Griswold's concerns and noted that the lower zoning classifications are residential and the higher are commercial and manufacturing, commonly referred to as "industrial" by the City of Mesa. She explained that the action would be an up zoning and not constitute a taking. She recalled that a bill was introduced last year in the Legislature to provide compensation for government takings by regulation, but the bill failed. Councilmember Thom noted that the bill was very comprehensive and the Council might find the document interesting to read.

Attorney Ralph Pew, Pew & Lake at 10 W. Main Street, stated that he was present on behalf of the applicant, Peter Martens, to respond to some of the questions that have been raised and to discuss future actions. He acknowledged the presence of the Board of Economic Development along with the head staff members, and his friend Attorney Nick Wood of Snell & Wilmer. Mr. Pew noted that this small development of 26 acres had stirred a great amount of interest. He expressed the hope that the 21 lots being proposed would not ruin the whole City of Mesa. Mr. Pew stated that the Council could approve the plat of the 21 lots and no one would know the difference. He continued that the people buying the lots would be happy, Mesa would thrive, the airport would work and those present at the meeting would not go down in flames. Mr. Pew acknowledged that members of City staff and the Council might feel differently. He said he would first provide a brief history of the subject zoning case and he would also address Councilmember Whalen's question.

Mr. Pew advised that the subject property has been in the Mesa *General Plan* since the 1988 version, and is in the current version for non-residential uses. He indicated that the only issue brought forward by the applicant was a zoned piece of property requesting a preliminary plat

and stated that the property had nothing to do with the *General Plan*. Mr. Pew added that Mr. Padilla and Mr. Wood agree that the *General Plan* is a guide for future land use decisions rather than a basis for current platting related to existing zoning. He commented that the Council has a good legal opinion from Mr. Padilla and there will be no disagreement on that. He added that the applicant has not begun construction on the site and does not have a recorded plat. Mr. Pew noted that Mr. Padilla answered the question that was asked of him regarding the requirement for the applicant to amend the *General Plan* in order to proceed with the plat, but the opinion did not address the possibility of initiating a zoning case on the site or determining if the site was vested. Mr. Pew stated that the Planning and Zoning Board was not uncomfortable when hearing this case and three members firmly believed the owner had R1-43 zoning and the right to do a plat. He added that the other three members were concerned with protecting the City's interests as outlined in the *General Plan*, resulting in a 3 to 3 tie vote.

Mr. Pew stated the opinion that the question in front of the Council is one of policy. He stressed that the Council was about to instruct staff to initiate zoning changes on privately owned property throughout the southeast area. Mr. Pew noted that his position on behalf of his client was that if this is the policy, then don't enforce the policy today. He encouraged the Council to find a way to be equitable to Mr. Martens for where he has been in the last ten months of this process.

Mr. Pew recalled that to his knowledge there have been three cases similar to this over the years and in each case, the City Council decided not to rezone the property. He said one case was an 80-acre parcel south of the freeway, east of Ellsworth, called Sierra Ranch, and another was 160 acres on the northwest corner of Ellsworth and Germann near the end of the runway, closer in fact than the parcel presently being considered. Mr. Pew noted that the Council then consciously decided in the three cases not to initiate a zoning case, and he asked why this Council would suddenly start a new policy. He encouraged the Council to give the applicant the opportunity to work something out or at least look at alternative zoning categories. Mr. Pew acknowledged that everyone in the room except Mr. Martens and himself thought that all of the land was going to develop as industrial, but he pointed out that the parcel is too far from the freeway, not located near the airport, and is adjacent to a church and therefore not suitable for a large industrial user.

Mr. Pew asked the Council to give the applicant some time rather than making a quick decision. He hoped a zoning designation other than industrial could be used, but the applicant would like time to review the alternatives and meet with staff. Mr. Pew noted that when an applicant files a preliminary plat an engineer is simply hired, but in this case Mr. Martens called on his firm for assistance as a result of the issue raised regarding the *General Plan*. He noted that Mr. Martens has incurred more expenses as a result. Mr. Pew urged the Council to delay a decision on zoning to allow the applicant time to meet with staff and consider the alternatives before returning to Council for a decision.

Mayor Hawker noted that Mr. Pew has contacted most of the Councilmembers. He added that the direction he provided to Mr. Pew was that Mesa has a Master Plan and the citizens of Mesa want a balance on residential and commercial at build out. Mayor Hawker noted that several areas around Falcon Field and Williams Gateway have been designated as job centers. He expressed the opinion that the subject parcel was not compatible with job centers, the airport, or residential development. Mayor Hawker stated that the applicant could take time to work

through the details as the City was in no rush to rezone, but he stressed that all parcels need to be rezoned to bring them into compliance with the *General Plan*.

Mayor Hawker expressed the opinion that the City should take steps to initiate rezoning so that everyone knows that the City is committed to protecting that area as a job center. He believed that the owners of many parcels mentioned during this meeting would welcome rezoning by the City at the City's expense. Mayor Hawker said there might be individual circumstances where this rezoning would not be welcome, but he requested direction from staff on how quickly the Council needs to proceed. He concurred with Mr. Pew that the policy change should have occurred nine years ago, but in his opinion the policy change should begin now in order to protect Williams Gateway.

Councilmember Griswold advised that he spent two years working on the Joint Master Plan and having grown up around airplanes, he was aware that one of the basic, common sense rules was that houses are not built at the end of a runway. He noted that many on the Council are intractable on some of these issues for the protection of the citizens as well as the airport. Councilmember Griswold stated the opinion that there is room for the City and the property owner to work together to arrive at a solution that is in the interest of both parties.

Councilmember Whalen asked what would be the value of the proposed residential development if huge signs were posted saying, "Your house will vibrate every time a plane flies over."

Mr. Pew responded that there would be value due to the fact that people have the right and the opportunity to purchase the house. He noted that the Council and City staff receive many complaints, but people who want to purchase a house in that location should be allowed to do so. Mr. Pew acknowledged that if a sign such as the one mentioned by Councilmember Whalen were erected, there would be diminished value to the property.

Councilmember Whalen commented that some people do not mind living near an airport, but he expressed the opinion that "if you build it, they will come." He continued that once the area is established, residents with one-acre lots tend to have a little more power to organize which could endanger the airport operation.

Mr. Pew said he understood Councilmember Whalen's concerns.

Councilmember Thom stated that she was a big proponent of property rights and she was frequently invited to speak on the subject. She has always said that she hates to see a case come before a Council that is not initiated by the property owner due to the fact that she believes that property owners should always have the primary decision about the use of their own property. Councilmember Thom noted that she and Mr. Pew discussed the subject yesterday and she concurred with Mr. Pew that a quick decision by the Council was not necessary. She expressed the opinion that City staff should discuss the subject not only with Mr. Pew and his client but also with the other property owners in the area in order to arrive at solutions that are mutually agreeable and that do not constitute a hardship for the airport, the City or the property owners.

Vice Mayor Kavanaugh said he was glad that Mr. Pew mentioned the Sierra Ranch area due to the fact that most of the airport complaints received by the City are from this area. He stated

that this was an example of a decision made by a Council at the time that has had adverse consequences for the both the community at large and for the residents in particular. Vice Mayor Kavanaugh expressed his support for the Mayor's recommendation that the Council move forward with rezoning. He noted that expectation and reliance are two factors that he has discussed many times over the years and he believes that property owners should have an expectation and reliance regarding the City's requirements so that the owners can move forward with the development and plan for the appropriate expenses. Vice Mayor Kavanaugh stated that if the City moves forward with the process of working with the property owners, he hoped that a rezoning could be achieved that provides a degree of certainty for the owners while still protecting the airport. He noted that having different policies overlaying the subject parcels creates uncertainty for the property owners. Vice Mayor Kavanaugh expressed the opinion that a goal of the City should be to reduce the uncertainty for property owners so that there is a greater reliance on the City's policy regarding property development.

Councilmember Jones stated that based on the discussion, Mr. Pew should be aware that the Council is committed to protecting the airport and resolution of the zoning issues has yet to be determined. He noted that the philosophy of "build it, they will come" eventually results in problems for the City. Councilmember Jones expressed his opinion that regardless of how the zoning issue is resolved, this Council will not accept additional residential development in the flight path.

Councilmember Jones recalled a conversation he had a few days ago during which Mr. Balmer stated that he was hesitant about initiating rezoning without having good, solid communication. He stressed the importance of City staff communicating with all of the appropriate parties. Councilmember Jones noted that he trusted staff, but when the rezoning involves so many parcels, he would feel more comfortable knowing the opinions of the people involved. He said that he recognizes the need for rezoning, but he would like to give property owners the opportunity to express their views and provide input on the rezoning with the understanding that the Council will not allow residential zoning in the flight paths.

Mr. Balmer agreed that rezoning was a concern for both the property owner and the surrounding neighbors. He noted that the owner would not want the zoning changed without his knowledge and the neighbors would wonder how the rezoning would affect their property, and for these reasons, staff recommended that the process be broken down into three steps.

Mr. Balmer stated that the immediate concern is Mr. Pew's client who has a preliminary plat pending before the May 15 meeting of the Planning and Zoning Board. He said staff could request a letter from Mr. Pew on behalf of his client to delay presentation of the case to the Board, but if the case goes before the Board, the plat is approvable and the Board is seeking direction from the Council regarding whether or not the Board should grant approval.

Mr. Balmer noted that due to the fact that the rezoning involves so many parcels and that taking time to hear each individual owner would be difficult, staff is proposing to divide the parcels into two groups and consider the rezoning as two separate cases. He said that after the first case was resolved, the first could be used as a precedent for working on the second case. Mr. Balmer reported that staff has suggested planned employment park in M-1 zoning, but there are many zones that meet the mixed-use employment classification outlined in our *General Plan*. He noted that mixed use could include everything from offices to industrial and commercial

would also be one. Mr. Balmer stated that staff could meet with the property owners to learn their preferences before a rezoning request is initiated.

Councilmember Jones said his proposal was that the Council direct staff to perform preliminary work in preparation for a rezoning, but the Council should withhold any blanket approval to initiate the rezoning.

City Attorney Debbie Spinner said she had advice for the Council regarding time sensitivity on this issue. She explained that although one property owner may be willing to postpone the May P&Z Board discussion of their preliminary plat, the City may be causing some concern and some rights may become vested if the owner does not request a delay. Ms. Spinner stated that another concern involved the other property owners due to the fact that the City does not know what type of work is being performed and some may be ready to come forward with preliminary plats. She emphasized that the longer the Council delays making a decision, there is more likelihood that the rights of property owners will become vested. Ms. Spinner stated that staff is recommending that the Council give direction that the properties are going to be rezoned. She added that this action would not prevent the City from negotiating with Mr. Pew to reach an agreement on some type of equitable relief for his client. Ms. Spinner continued that Council direction to rezone the properties would send a message to the owners to not move forward with investment and development.

Ms. Spinner addressed Councilmember Jones' question regarding notice and explained that the statute specifically states that notice must be provided to property owners when someone other than the property owner submits a rezoning application. She added that the statute sets out specific notice requirements and the notice may require first class postage.

Mayor Hawker noted that he has seen a first class mailing fail and suggested that staff make telephone calls.

Ms. Spinner advised that staff plans to go beyond the statute requirements for notification and added that many of the property owners have already been notified about the impending issue of rezoning.

City Manager Mike Hutchinson noted that the Council had concerns regarding the notification process and suggested that staff be directed to prepare a detailed plan. He added that the plan would be ready for review by the Council in one week and the specific steps to be taken to notify the property owners and neighbors would be outlined. Mr. Hutchinson noted that the Council could then provide their input on the notification process.

Councilmember Walters expressed the opinion that the Council should direct staff to initiate the rezoning without designating the rezoning categories, which would allow Mr. Pew time to work with staff. She asked Mr. Pew his view on changing the date of the May hearing.

Mr. Pew responded that changing the hearing date could be discussed and an answer could be provided quickly. He noted that based on the attitude expressed by the Council and the statements made on the record at this meeting, the Planning and Zoning Board would most likely deny his client's plat. Mr. Pew said he looked forward to reading the City's Citizen Participation Plan when the rezoning case is submitted. He added that he will be checking to

see if the Plan complies with every "jot and tiddle" of other plans and, if the plan does not comply, the plan will be rejected.

It was moved by Councilmember Walters, seconded by Councilmember Griswold, that staff be directed to initiate rezoning on the subject properties without stipulating the zoning designations and that staff also be directed to prepare a notification process for this rezoning to be brought back for review by the Council in one week.

Councilmember Thom stated that she would like to meet with all the property owners at one time to obtain their input prior to the Council making any decision on this issue. She suggested a meeting be scheduled on a Tuesday and asked if a room at the airport or the church could be used for that purpose.

Mr. Hutchinson agreed that a meeting location would be reserved.

Mayor Hawker suggested that staff incorporate the meeting details into the notification process coming back for review by Council.

Councilmember Thom emphasized that everyone involved should be notified about the meeting. She expressed her opinion that the property owners should not be split in two groups, and that everyone participating in one meeting would result in more input and ideas.

Mayor Hawker stated that he preferred Mr. Balmer's original approach of having separate groups for the north side and the south side rather than Councilmember Thom's recommendation for one group meeting. He explained that there are different demands in each area with the south having more industrial possibilities as opposed to the north where the focus would be on general employment. Mayor Hawker noted that his position regarding the meeting was a bit in conflict with that of Councilmember Thom, but the subject would continue to be discussed.

Mr. Balmer suggested having a meeting with all the property owners to explain the steps involved for the north and south sides to make sure everyone is comfortable with the process and that each side knows how all the pieces fit together. He added that the rezoning could still be split into two cases, but by having one joint meeting the property owners would see the big picture and how the north and south sides fit into that picture.

Mayor Hawker agreed and requested that staff ensure that the notification process involves more than a first class letter. He noted that addresses change frequently and requested that staff make a strong effort to keep a record of the names, dates and times when speaking to property owners about this issue to ensure thorough follow-up and notification.

Mr. Balmer said he concurred with the Mayor's request.

Councilmember Whalen stated he agreed with Mayor Hawker's position regarding the group meeting. He recalled that the large group meetings held during the *General Plan* process were quite onerous when many different opinions were expressed. Councilmember Whalen said he appreciated Councilmember Thom's willingness to have one inclusive meeting, but noted that there really are different issues for each group.

Councilmember Jones concurred with Councilmember Whalen that large meetings are difficult when many people have different points of view. He expressed the opinion that a one-on-one initial approach would be best prior to having a joint meeting. Councilmember Jones noted that the effort could be unsuccessful without proper preparation and he encouraged staff to make sure the preliminary work is completed prior to the meeting.

Mr. Hutchinson stated that staff would present to Council an outstanding, multi-faceted participation plan.

Mayor Hawker noted that a motion was made and seconded. He restated the motion and asked if that was correct.

Councilmember Walters noted that the City Clerk's staff has the motion written down.

Mayor Hawker asked that the motion be read back to the Council.

Deputy City Clerk Linda Crocker read the motion: "It was moved by Councilmember Walters that we direct staff to initiate the rezoning and to bring the case back to the City Council with staff recommendations of how to proceed with a classification of the rezoning."

Councilmember Walters clarified that staff will come back to the Council with recommendations on the notification process and staff is to initiate the rezoning, but classifications for rezoning will not be designated at this time.

Mayor Hawker stated that the motion was now clear to everyone and he called for the vote.

Carried unanimously.

Mayor Hawker expressed the opinion that this was the action the Council needed to take. He agreed with Councilmember Kavanaugh that the Council should be consistent with the *General Plan*. Mayor Hawker emphasized that the industrial center and the asset of Williams Gateway will be protected, and noted that the Council took a big step to give credibility to Mesa's *General Plan* by going forward on this issue.

Mr. Balmer thanked the Mayor and Council.

2. Acknowledge receipt of minutes of boards and committees.

- a. Economic Development Advisory Board meeting held March 4, 2003

It was moved by Vice Mayor Kavanaugh, seconded by Councilmember Walters, that receipt of the above-listed minutes be acknowledged.

Carried unanimously.

3. Hear reports on meetings and/or conferences attended.

The following members of the Council provided brief updates on various meetings/conferences they attended as follows:

Dennis Kavanaugh: Recognition Awards
Claudia Walter: ADOT – Landscaping for overpass
Rex Griswold: Homeowners Association at Alta Mesa Apache Wells
Kyle Jones: Citizens' Police Academy Graduation
Keno Hawker: Groundbreaking at Falcon Field for two new businesses
Mike Whalen: Mesa Convention & Visitors' Bureau Update; Aquatics Center project suspended; going to lose Sheraton designation on hotel.
Janie Thom: Ribbon cutting for new businesses at Falcon Field; also meeting with downtown merchants

4. Scheduling of meetings and general information.

City Manager Mike Hutchinson stated that the meeting schedule is as follows:

Thursday, April 17, 2003, 7:30 a.m. – Study Session

Monday, April 21, 2003, 3:00 p.m. – Finance Committee

Monday, April 21, 2003, TBA – Study Session

Monday, April 21, 2003, 5:45 p.m. – Regular Council Meeting

Thursday, April 24, 2003, 7:30 a.m. – Study Session

5. Prescheduled public opinion appearances.

There were no prescheduled public opinion appearances.

6. Items from citizens present.

There were no items from citizens present.

7. Adjournment.

Without objection, the Study Session adjourned at 8:39 a.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 Study Session of the City Council of Mesa, Arizona, held on the 10th day of April 2003. I further certify that the meeting was duly called and held and that a quorum was present.

BARBARA JONES, CITY CLERK

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