



## COUNCIL MINUTES

December 6, 2004

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on December 6, 2004 at 5:45 p.m.

### COUNCIL PRESENT

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

### COUNCIL ABSENT

None

### OFFICERS PRESENT

Mike Hutchinson  
Barbara Jones  
Debbie Spinner

Invocation by Vice Mayor Claudia Walters.

Pledge of Allegiance was led by Bob Saemisch, Saemisch Di Bella Architects, Inc.

Presentation from representatives of the Mesa Storytelling Festival.

Beth Coons, a representative of the Mesa Storytelling Festival, reported on the success of the second annual event and expressed appreciation to Mayor Hawker for his participation as one of the guest storytellers. She also acknowledged the efforts and hard work of the sponsors and volunteers associated with the festival. Ms. Coons introduced Anita Farnsworth, who presented a check to Mayor Hawker for \$5,000, the funds of which would be allocated to the Mesa Public Library children's section.

Mayor Hawker stated that he enjoyed participating in the event and encouraged children as well as adults to attend future Mesa Storytelling Festivals.

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.

Councilmember Whalen advised that 10a was misread into the record as 9a and requested that the consent agenda be amended to reflect that change.

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

Carried unanimously.

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

Minutes from the November 1 and 15, 2004 Council meetings.

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

- a. **GPMinor04-09 (District 6)** The 7600 to 7800 blocks of East Baseline Road (north side). Located north of Baseline Road and east of Sossaman Road (8.7 ac). Proposed change to the General Plan Land Use Map from Neighborhood Commercial (NC) to High Density Residential 10-15 dwelling units per acre (HDR 10-15). Baseline Sossaman II Partnership, Charles Clausen, owner, Del Pueblo Homes, Elizabeth Ross, applicant.

Mayor Hawker announced that this is the time and place for a public hearing regarding the 7600 to 7800 blocks of East Baseline Road (north side). Located north of Baseline Road and east of Sossaman Road (8.7 ac). Proposed change to the General Plan Land Use Map from Neighborhood Commercial (NC) to High Density Residential 10-15 dwelling units per acre (HDR 10-15).

Beverly Selvage, 2627 S. Hibiscus, stated that although she is not opposed to the associated Zoning Case **Z04-99** (agenda item 11I), she questioned its impact on her neighborhood. She expressed a series of concerns regarding the future quality of life in her area, increased traffic congestion as a result of the proposed number of townhouses in the project, and also a greater number of children in the neighborhood.

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

- b. **GPMinor04-09** Consider adoption of the corresponding resolution – Resolution No. 8375.

It was moved by Councilmember Whalen, seconded by Councilmember Thom, that **GPMinor04-07** be approved and Resolution No. 8375 adopted.

Carried unanimously.

4. Consider the following liquor license applications:

- \*a. **Deleted.**
- \*b. **Deleted.**
- c. RANDY D. NATIONS, AGENT

Person and Location Transfer Beer and Wine Bar for Monte Vista Village Resort, 8865 E. Baseline Road. This is an existing business. This is a person and location transfer from Bobby Wong, Agent, Wong-Yu, Inc., at 8565 NW Grand Avenue, Peoria. This license will transfer to the applicant. District #6.

Councilmember Griswold declared a potential conflict of interest and said he would refrain from discussion/consideration of this agenda item.

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

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried unanimously by those voting.

5. Consider the following contracts:

- \*a. Additional purchase option for 15kV metalclad switchgear for Fraser Substation, as requested by the Electric Division.

The Purchasing Division recommends exercising an additional purchase option from RFB #2004135 with the original low bid meeting specification by Powercon Corporation at \$177,530.72 including options and applicable use tax.

- \*b. Theatrical draperies, one gas kiln, and assorted chairs and tables for the Mesa Arts Center.

The Purchasing Division recommends accepting/authorizing the following:

- The low bid by Stagecraft Industries for theatrical draperies at \$159,171.68;
- The low bid meeting specification by Layton Construction for a gas kiln at \$70,066.00 including a 10% allowance for change orders;
- Purchase of chairs from the MCCD contract with Concert Business Group at \$26,320.80; and
- Purchase of chairs and tables from the US Communities contract with Walsh Brothers at \$45,378.22.

The combined award is then \$300,936.70.

- \*c. Glock semiautomatic pistols, as requested by the Police Department.

The Purchasing Division recommends accepting the only bid by OMB Police Supply at \$80,752.00 including applicable sales tax. (Sole Source)

- \*d. Two new Microscope Systems for the Police Department Crime Lab.

The Purchasing Division recommends accepting the only bid by McBain Instruments at \$86,622.69. (This purchase is 100% funded by a Federal grant for the DNA Backlog Reduction Program). (Sole Source)

- \*e. Network Equipment, as requested by Information Services Division.

The Purchasing Division recommends authorizing purchase from the State of Arizona contracts with Ames Business and Learning Environments, Inc. for a total of \$203,780.81, including applicable sales tax.

- \*f. Additional purchase option for transformers, as requested by the Electric Division.

The Purchasing Division recommends exercising an additional purchase option from RFB #2004136 with the original low bid by Virginia Transformer Corp. at \$291,186.37, including options and applicable use tax.

- \*g. Municipal Building Columns Repair, City of Mesa Project No. 03-003-001.

This project will repair the nine damaged columns, including addition of waterproofing to the damaged columns to prevent the problem from occurring again. In addition, the remaining columns on the exterior building will also be excavated and closely examined for damage, and repaired and waterproofed if damage is discovered.

Recommend award to low bidder, Robert E. Porter Construction Company, Inc., in the amount of \$60,740.00 plus an additional \$6,074.00 (10% allowance for change orders) for a total award of \$66,814.00.

- h. Sewer Line Installation at Mesa Drive and McKellips Road and at Southern Avenue and Serrine, City of Mesa Project No. 03-916-001.

In an effort to reduce surcharging in this area, this project will install a larger sewer line on North Mesa Drive and a sewer line with a greater slope and capacity along Southern Avenue.

Recommend award to low bidder, Five-Points Excavating, in the amount of \$81,460.00, plus an additional \$8,146.00 (10% allowance for change orders) for a total award of \$89,606.00.

Mayor Hawker declared potential conflicts of interest on agenda items 5h and 5i and said he would refrain from discussion/consideration of these items. He yielded the gavel to Vice Mayor Walters for action on this item.

It was moved by Councilmember Griswold, seconded by Councilmember Whalen, that the recommendations of staff be approved.

Upon tabulation of votes, it showed:

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

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

- i. Mesa Town Center Streetscape Improvements – Phase 5, City of Mesa Project No. 01-213-001.

This project will install improvements to create a more pedestrian friendly environment, add new landscaping, street furniture, and improve lighting and directional signage.

Recommend award to low bidder, Valley Rain Construction Corporation, in the amount of \$1,872,928.75 plus an additional \$187,292.00 (10% allowance for change orders) for a total award of \$2,060,220.75.

Councilmember Rawles commented that upon the completion of Phase 5 of the Mesa Town Center Streetscape Improvements, the City of Mesa would have spent over \$20 million in order to provide benches and street lighting in the downtown area. He noted that he drove the area along Main Street today and counted over 200 benches on the south side of the road and said he would assume there is also an equal number on the north side of the street. Councilmember Rawles stated, "If the City is not ashamed and Mesa residents are not outraged because of this large expenditure, I don't know what shame is." He added that in his opinion, it is inappropriate for City government to engage in these kinds of improvements.

Councilmember Griswold expressed opposition to this item. He commented that with the soon-to-be-completed Mesa Arts Center, he would prefer that the City focus its attention on maximizing parking in the downtown area as opposed to making streetscape improvements.

In response to a series of questions from Councilmember Whalen, City Attorney Debbie Spinner clarified that on February 3, 2003, the effective date of a Development Agreement that the City entered into with Outsource International LLC, Section 3.8 of the agreement states: "City shall improve the Macdonald Streetscape from Main Street to 1<sup>st</sup> Street. City shall coordinate with the Developer in its construction of the Macdonald Streetscape improvements, including the completion of the construction drawings." She explained that the above-referenced agreement does not specifically set out what improvements the City was required to make, but noted that at the time the developer entered into such an agreement, a streetscape plan was already in existence that the parties used as a basis for the improvements the City would be obligated to complete.

City Manager Mike Hutchinson provided the Council with a short historical chronology of various downtown streetscape projects along Main Street, with the first phase beginning in 1998. He stated that in his opinion, the projects have improved the Town Center's image and created pride throughout the community. Mr. Hutchinson commented that when the developer of the One Macdonald Center building entered into a Development Agreement with the City, he had certain expectations that the City would make improvements similar to those completed during the other four phases of the streetscape project. He added that if the Council is not inclined to approve the contract tonight, he would recommend that the matter be continued to allow staff to do additional work on this issue.

Discussion ensued relative to the fact that throughout the various phases of the Mesa Town Center Streetscape Improvements, funds have been earmarked for upgrades to the City's utility system to accommodate present and future needs; and that \$200,000 has been allotted in the Phase 5 project not only for street improvements and landscaping, but also for a number of utility system improvements at that location.

Councilmember Whalen commented that in view of the commitments of prior Councils to improve the Town Center area, as well as the legal contract that the City has entered into with the developer of the One Macdonald Center building, in his opinion, it would be prudent for the Council to move forward with this item.

It was moved by Councilmember Whalen that the recommendations of staff be approved.

Councilmember Thom stated that upon completion of Phase 5, seven to eight City employee parking spaces in an adjacent City parking lot would be eliminated and that once the One Macdonald Center building is finished, another 23 parking spaces would be lost. She emphasized that this is a significant number, especially considering the fact that Mesa has minimal onsite street parking. Councilmember Thom also noted that although the developers of the One Macdonald Center building are desirous of the proposed improvements, she questioned whether the individuals and companies on the west side of Macdonald Street feel the same way. She added that it is also her understanding that the alley between 1<sup>st</sup> Street and the back of the businesses on Main Street would be closed and transferred to the developer as the site for the building's garbage dumpsters and electric utility. Councilmember Thom said that for these reasons, she could not support the motion.

Vice Mayor Walters asked Councilmember Whalen if he would be willing to withdraw his motion so she could make an alternative motion. She commented that there are significant legal issues associated with this item that could impact the City and added that if this item was voted down by the Council tonight, the City could potentially become involved in litigation that could ultimately cost more than simply completing the streetscape improvements.

Councilmember Whalen withdrew his motion.

It was moved by Vice Mayor Walters, seconded by Councilmember Griswold, that the agenda item be continued to a future Council meeting to enable staff to conduct further research regarding the matter.

Vice Mayor Walters advised that significant underground improvements were made during the initial project on Main Street in 1998 and suggested that it would be helpful for the

Councilmembers who were unaware of those improvements to review information regarding the project. She also stated that it would be incorrect to suggest that all of the funds were allocated for park benches only. Vice Mayor Walters also stated that similar to the other phases of the Mesa Town Center Streetscape Improvements, Phase 5 would include the reduction of curb heights and the replacement of underground utilities. She added that according to the approved site plan for the One Macdonald Center building, the alley would not be closed but merely rerouted.

Councilmember Rawles expressed appreciation for the historical overview of the underground utility component of the streetscape improvement project. He suggested that in the future if staff would like the Council to consider similar issues, that such information be included as part of the Councilmembers' backup materials. Councilmember Rawles added that in his opinion, it should be the responsibility of those individuals who live, work and own property in the downtown area to make it a vibrant area of Mesa.

Upon tabulation of votes, it showed:

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

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

Vice Mayor Walters yielded the gavel back to Mayor Hawker.

- \*j. Neighborhood Street Lighting, 6<sup>th</sup> Street to University Drive and Center Street to Mesa Drive, Community Development Block Grant Funding (CDBG), City of Mesa Project No. 01-335-003.

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

Recommend award to low bidder, Utility Power Plus, Inc., in the amount of \$199,863.00 plus an additional \$19,986.00 (10% allowance for change orders) for a total award of \$219,849.00.

- \*k. Riverview Park Pump Station, City of Mesa Project No. 03-922-001.

This project will replace and upgrade the existing irrigation system pump station, which has reached the end of its useful life.

Recommend award to low bidder, Jenson Commercial Contracting, L.L.C., in the amount of \$94,960.00 plus an additional \$9,496.00 (10% allowance for change orders) for a total award of \$104,456.00.

6. Introduction of the following ordinances and setting December 20, 2004 as the date of public hearing on these ordinances:

- \*a. Amending various sections of the Mesa City Code relating to Sanitary Sewer Regulations.

7. Consider the following resolutions:

- \*a. Extinguishing a Drainage Easement at 217 South 63<sup>rd</sup> Street – Resolution No. 8369.  
  
This easement is no longer required.
- \*b. Extinguishing a portion of a Public Utility & Facilities Easement located at 6463 East Odessa Street – Resolution No. 8370.  
  
This easement is no longer required.
- c. Approving and authorizing the City Manager to execute an Intergovernmental Agreement between the Arizona Department of Transportation and the City of Mesa for the pavement of dirt roads at various locations throughout the City of Mesa (ADOT JPA NO. 04-012) – Resolution No. 8376.

Mayor Hawker declared a potential conflict of interest and said he would refrain from discussion/consideration of this agenda item. He yielded the gavel to Vice Mayor Walters for action on this agenda item.

It was moved by Councilmember Griswold, seconded by Councilmember Thom, that Resolution No. 8376 be adopted.

Upon tabulation of votes, it showed:

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

Vice Mayor Walters declared the motion carried unanimously by those voting and Resolution No. 8376 adopted.

Vice Mayor Walters yielded the gavel back to Mayor Hawker.

- \*d. Approving and authorizing the City Manager to execute an Intergovernmental Agreement between the Arizona Department of Transportation and the City of Mesa for the installation of traffic signal conduit and fiber optic communication system along Stapley Drive from University Drive to McKellips Road (ADOT JPA NO. 04-059) – Resolution No. 8371.
- \*e. Approving and authorizing the City Manager to execute an Intergovernmental Agreement between the Arizona Department of Transportation and the City of Mesa for

the utility and freeway enhancements along the Red Mountain Freeway from Higley Road to Power Road (ADOT JPA NO. 03-108) – Resolution No. 8372.

- f. Authorizing the City Manager to execute a Development Agreement between the City of Mesa and DeRito/Kimco Riverview, LLC and DeRito/Kimco Mesa, LLC for Phase I of the Riverview at Dobson development – Resolution No. 8377.

This agreement will include the development of a movie theatre and other retail specialty shops.

Mayor Hawker and Councilmember Rawles declared potential conflicts of interest and said they would refrain from discussion/consideration of these agenda items. Mayor Hawker yielded the gavel to Vice Mayor Walters on this agenda item.

Vice Mayor Walters discussed the order in which she would proceed with agenda items 7f and 7g. She suggested that City Manager Mike Hutchinson provide a brief explanation of the Development Agreements for Phase I and Phase II and then City Attorney Debbie Spinner address several legal issues related to these items. Vice Mayor Walters stated that subsequent to both presentations, she would permit citizens who submitted speaker cards to address the Council for three minutes each.

City Manager Mike Hutchinson addressed the Council and provided a short synopsis of this agenda item. He expressed appreciation to City staff, various outside legal counsel and Ernst & Young for their efforts and hard work which has culminated in the Development Agreements for Phase I and Phase II of the Riverview at Dobson development. Mr. Hutchinson reported that as the City entered into this project, one of its primary goals was to create a quality development in northwest Mesa that would enhance Mesa's image throughout the community and the region. He explained that cities throughout the Valley are offering incentives to developers and that Mesa must confront and deal with this issue. Mr. Hutchinson also expressed concerns regarding "sales tax leakage" (caused by Mesa residents who travel to other communities to shop) and suggested that the proposed development could assist in minimizing such leakage. He added that the Council is vitally concerned regarding Mesa's aging neighborhoods, and in his opinion, the Riverview at Dobson development would infuse a new vitality into northwest Mesa, as well as provide restaurants, shopping and job opportunities to many Mesa residents.

Mr. Hutchinson highlighted various developer obligations and economic incentives relative to the Phase I and Phase II Development Agreements (including economic incentives to attract vehicle dealerships) and also discussed minimum and maximum scenarios associated with a summary of City tax benefits. (See Attachment 1.) He concluded his remarks by commenting that he is confident that the Development Agreements protect the City's interest and bring an exciting and important project to Mesa.

City Attorney Debbie Spinner reported that on December 3, 2004, the Council received a letter from Thomas Irvine, an attorney representing a number of individuals (including Jan Hibbard and David Molina) who supported Proposition 104, which is now Section 613 of the Mesa City Charter. She explained that Mr. Irvine expressed the opinion that the Development Agreements (7f and 7g) fall within Section 613 and would require a public vote prior to becoming effective. Ms. Spinner advised that in reviewing Mr. Irvine's letter, she disagrees with his opinion. She noted that Section 613 limits the Council's ability to spend public funds or grant tax concessions

or relief in excess of \$1.5 million “to construct or aid in the construction of any amphitheater, sports complex, cultural or entertainment facility, arena, stadium, convention facility or multi-purpose facility.” She said that the question then becomes whether this project falls within one of the above-referenced definitions.

Ms. Spinner indicated that Phase II, which includes Bass Pro Shop, auto dealers and large retailers and restaurants, is composed of private commercial businesses. She explained that although Mr. Irvine believes that the Bass Pro Shop would fall within the definition of “sports complex,” as contained in the Charter provision, she disagrees with that opinion. She acknowledged, however, that there is no specific definition in the Charter provision and stated that she would have to consider “what else.” Ms. Spinner added that she does not believe that a private commercial business would fall within the definition of a sports complex.

Ms. Spinner reported that in reviewing the pro and con arguments submitted when Proposition 104 was placed before the voters, the reference to “public facilities” listed examples such as the Cardinals Stadium, the Mesa Arts Center or the Mesa Aquatic Center. She stated there was no indication that there was an intent to place an entity such as a Bass Pro Shop within this provision. Ms. Spinner stated that other parts of the Arizona Revised Statutes also define “sports complex.” She acknowledged that the statutes don’t specifically deal with this Charter provision, but an examination of the definitions would conclude that a Bass Pro Shop would not fall within the definition of a sports complex. She concluded her comments by stating that in her opinion, Phase II does not fall within the definition of Section 613.

Ms. Spinner stated that Phase I of the development includes movie theaters and 50,000 square feet of retail space; that the intent of the Charter provision was to address public or quasi-public facilities and not private commercial businesses; that it was not the intent of the Charter to prohibit incentives for commercial movie theaters; that separate Development Agreements for Phase I and Phase II are not tied legally to one another; that assuming that a commercial movie theater was an entertainment facility, Phase I would not fall within the definition of Section 613 because it states that a public vote is necessary if the Council receives public funds or tax concessions in excess of \$1.5 million; and that the Development Agreement for Phase I provides a maximum of \$1.5 million.

Ms. Spinner stated that a second argument raised by Mr. Irvine was that the Development Agreements would violate Article 9, Section 7 of the Arizona Constitution (Gift Clause), which prohibits gifts from a city to a private entity. She disagreed with this viewpoint and noted that Arizona Revised Statutes Section 9-500.11 specifically grants the City Council the authority to spend public funds for economic development. Ms. Spinner commented that the statute defines economic development as “anything that will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of the city.” She stated that in reviewing a Council decision on spending funds for economic development, the Court would apply an abuse of discretion standard, and she advised that an individual challenging the Council’s action must prove that the consideration received by the City is so inequitable or unreasonable that it amounts to an abuse of discretion. Ms. Spinner said that in her opinion, there is clearly sufficient consideration in these agreements and the benefit to the City is clear both in the language and the description of the project that the Court would not find that these Development Agreements violate the Gift Clause.

Ms. Spinner commented that the third issue raised by Mr. Irvine was that the Development Agreements would violate the procurement requirements. She stated, however, that Section 3.1 of both agreements specifically requires the contractor, who is making the public improvements, to follow the public bid requirements in accordance with applicable laws. Ms. Spinner concluded her remarks by stating that in her opinion, the Council can proceed forward and take action on both Development Agreements if it so desires.

Vice Mayor Walters declared the meeting open for public comment.

Vice Mayor Walters advised that the following citizens submitted cards indicating their support for agenda item 7f, but did not wish to speak:

Steve Mitton	1615 W. Pueblo Avenue
Sheila Mitton	1615 W. Pueblo Avenue
Linda Lloyd	1137 N. Cherry Street
Dennis Lloyd	1137 N. Cherry Street
Keith Crandell	1035 W. 4 <sup>th</sup> Place
Carolyn Crandell	1035 W. 4 <sup>th</sup> Place
Paul Bentz	2062 S. Beverly

The following citizens spoke in support of authorizing the City Manager to execute a Development Agreement between the City of Mesa and DeRito/Kimco Riverview, LLC and DeRito/Kimco Mesa, LLC for Phase I of the Riverview at Dobson development:

W. Dea Montague	553 N. Orange Street
Marion Whipple	1637 W. Alcott
Bob Parker	534 W. 1 <sup>st</sup> Street
Earnie Johnson	1414 N. Hibbert
Charmaine McCleve	445 N. Ash
Cecilia E. Fleming	1356 W. Esplanade Street
Stephanie Wright	535 N. Orange Street
Jared N. Huish	632 N. Hosick Circle
John H. Wright	923 N. Heritage
LaRue Gates	10457 E. Adobe Road
Richard T. Tracy, Sr.	2238 S. Cottonwood Street
Sheila Mitton	1615 W. Pueblo Avenue

The foregoing citizens stated the following opinions:

- The development would benefit not only northwest Mesa, but also the entire community.
- Incentives are necessary in order to attract high quality businesses to Mesa that generate sales tax revenues for the City, attract consumers from other areas of the Valley, and provide employment opportunities for Mesa residents.
- Individuals who have filed referendums regarding this item are attempting to undermine the efforts of the public process and elected officials. Such action is counterproductive to the majority of Mesa residents who wish to improve and attract great projects to northwest Mesa.
- Bass Pro Shop would be a vacation destination spot.

- This project may be Mesa's "last chance" to attract quality businesses to the City and ease its "tough economic times."
- It is imperative that the City Council gives serious consideration to the wishes of the Hurley family and the surrounding neighborhoods in northwest Mesa.
- The location of the development, at the confluence of the 101 and 202 freeways, would be easily accessible to citizens from throughout the Valley and the entire state.
- It is important that the City reinvest in northwest Mesa and provide a major infusion of new development to the area.
- The developers have met on many occasions with the surrounding neighbors to solicit their input regarding the development.
- It takes money to make money.
- Residents in northeast Mesa "are tired of their neighborhoods being held hostage by bullies."
- Mesa schools would benefit from the property taxes generated by the development.
- The site of the development is "a jewel" and would continue to thrive for many years as one of Mesa's prime commercial areas.
- The project would make Mesa a major retail player in the East Valley.
- If the petition opposing the Riverview at Dobson project is ruled valid, it is imperative that the voters of Mesa derail it.
- The Riverview at Dobson project should not be used as a political pawn to further the agenda of a small group of Mesa residents.

The following citizens spoke in opposition to agenda 7f:

Thomas C. Schuellce  
Jim Cavender

7604 E. Wolf Canyon  
1510 N. 26<sup>th</sup> Street

The above-referenced citizens stated the following opinions:

- The City planning and permit fees should be set at a level to cover the cost for providing these services.
- Mesa should not pay \$500,000 in impact fees on the development.
- Gaylord Entertainment owns 26% of Bass Pro. Gaylord Entertainment has experienced cash flow problems and is producing net losses.
- The Riverview at Dobson development and Tempe's proposed project across the freeway cannot reach their full potential and will be in direct competition for sales tax dollars.

Vice Mayor Walters closed the public comment period for this item.

Vice Mayor Walters stated that several speakers referred to the Bass Pro Shop as being a component of 7f. She clarified that 7f refers to the execution of a Development Agreement for the development of a movie theatre and other retail specialty shops only and that 7g includes the development of a Bass Pro Shop, auto dealers and other retail shops.

Councilmember Thom voiced her support for this item and reiterated the comments of several speakers that the proposed site is vacant and "begging for development." She also expressed

appreciation to the many neighborhood residents for sharing their opinions with the Council at tonight's meeting.

Vice Mayor Walters stated that if, for some reason, Phase I was the only portion of the project that was ultimately constructed, it would still result in significant improvements to Dobson Road for any future development at that site. She explained that west Mesa would have the necessary infrastructure in place to enable the types of businesses to locate to the area that the neighbors have long desired. Vice Mayor Walters added that one of the conclusions of the Ernst & Young market analysis was that west Mesa is underserved in many categories including shopping, dining and recreating and stated that the Riverview at Dobson development would assist in recapturing such amenities.

It was moved by Councilmember Griswold, seconded by Councilmember Jones, that Resolution No. 8377 be adopted.

Upon tabulation of votes, it showed:

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

Vice Mayor Walters declared the motion carried unanimously by those voting and Resolution No. 8377 adopted.

(Vice Mayor Walters declared a recess at 7:45 p.m. The meeting reconvened at 7:53 p.m.)

- g. Authorizing the City Manager to execute a Development Agreement between the City of Mesa and DeRito/Kimco Riverview, LLC and DeRito/Kimco Mesa, LLC for Phase II of the Riverview at Dobson development – Resolution No. 8378.

This agreement will include the development of a Bass Pro Shop, auto dealers and other retail shops.

Vice Mayor Walters advised that she previously received speaker cards from individuals who wished to address the Council regarding 7f and 7g. She stated that now would be the appropriate time for those individuals to express their comments and concerns relative to the Bass Pro Shop as well as the other components of Phase II.

Vice Mayor Walters stated that she received a speaker card from Jim Pinkerman, 1461 E. Edgewood, that indicated he did not wish to address the Council, but expressed the following opinion: "I am opposed to government purchasing land for promoting Bass Pro Shop in direct competition with private enterprise."

The following citizens spoke in opposition to authorizing the City Manager to execute a Development Agreement between the City of Mesa and DeRito/Kimco Riverview LLC and DeRito/Kimco Mesa LLC for Phase II of the Riverview at Dobson development:

Greg Fife  
J.T. Ready

2433 E. Impala Avenue  
215 E. 1<sup>st</sup> Avenue

Don Conover	134 S. Hibbert Street
Thomas C. Schuellce	7609 E. Wolf Canyon
Jim Cavender	1510 N. 26 <sup>th</sup> Street

The following comments were made:

- It is unnecessary for the City to subsidize Bass Pro Shop with taxpayers' money in an attempt to bring them to Mesa.
- Bass Pro Shop would directly impact existing local sporting goods establishments in Mesa.
- Mesa should invest tax dollars for resources that would be of value to the entire community and not commercial businesses.
- The primary purpose of pursuing the Development Agreement is to enable the City to collect sales taxes from non-Mesa residents.
- The proposed Development Agreement would result in less revenue to the City due to the "cannibalization" of existing sales.

The following citizens spoke in support of this agenda item:

Gregory S. Woods	1426 W. Pepper Place
Diane Woods	1426 W. Pepper Place
Earnie Johnson	1414 N. Hibbert
Charmaine McCleve	445 N. Ash
Cecilia E. Fleming	1356 W. Esplanade
Jared N. Huish	632 N. Hosick Circle
LaRue Gates	10457 E. Adobe Road
Richard T. Tracy, Sr.	2238 S. Cottonwood Street
Marion Whipple	1637 W. Alcott

(The speakers expressed similar comments as contained under agenda item 7f.)

Vice Mayor Walters closed the public comment portion of this item.

In response to a series of questions from Vice Mayor Walters, Ms. Spinner clarified that under Section 7.5 of the Development Agreement, if Bass Pro Shop is closed for business following completion of construction of the minimum improvements and does not reopen, the developer agrees to pay "Bass Closure Damages" to the City for each fiscal year during the term when the Bass Store is closed (excluding the initial 365 day period following closure of the Bass Store), with such amount to be payable by the developer to the City within 60 days following the close of each such fiscal year during the term. She explained that the "Bass Closure Damages" means an amount equal to the greater of: 1. any amount received by the developer from Bass Stores as a result of closure of the Bass Store, or 2. an amount equal to two percent of the average gross sales of the Bass Store during the two fiscal years prior to the closure of the Bass Store. Ms. Spinner added that if the developer does not recoup his initial investment at the end of the 20 year agreement on the east side of Dobson Road, the City is not obligated to reimburse those monies.

Councilmember Whalen provided a brief historical chronology regarding the property owners' (the Hurley family) participation throughout this entire process leading up to the Development Agreements. He also commented that as a result of numerous public meetings conducted by

the developer and the input received by the Hurley family and the surrounding neighbors, a determination was made that it was important to develop a high quality project at the site as opposed to a more generic shopping center. Councilmember Whalen stated that the developer successfully negotiated with Bass Pro Shop to come to Mesa and that part of that enticement included offering incentives to the company. He stated the opinion that the various components of Phase II, including the Bass Pro Shop, auto dealerships and other retail shops, would provide Mesa with a more competitive retail identity that is currently lacking.

It was moved by Councilmember Whalen that Resolution No. 8378 be approved.

Councilmember Griswold expressed support for the motion and commented that unlike other cities that report their retail development incentives in today's dollars, Mesa lists those incentives plus interest up to 20 years. He emphasized that the developer, and not the City, is taking the financial risk by paying the upfront costs for the development, and if the project proves to be successful, Mesa would share in the revenue generated from the development.

Councilmember Jones voiced support for the motion and provided a brief recap of the various retail components of Phase I and Phase II. He emphasized that if Bass Pro Shop does not come to Mesa, it would most certainly come to another community within the Valley. Councilmember Jones added that although he does not generally like economic incentives, if Mesa does not offer them at this development, he could foresee local auto dealerships moving, at the insistence of the manufacturers, to other Valley city freeway locations and Mesa would suffer severe "sales tax leakage."

Councilmember Thom stated that it is her understanding that Bass Pro Shop is touted as a vacation destination and would be a great asset for Mesa. She expressed concerns, however, that Bass has sold 26% of its enterprise to Gaylord Entertainment and stated she is unclear as to the reasoning behind that action. She also commented that she has learned that Bass plans to expand its business by nearly 50% in one year and commented that perhaps the rapid expansion could signal problems in the future. She further stated that the development plan was originally brought to the Council in three parts, with the movie theaters and restaurants in one phase, the Bass Pro Shop in a second phase, and a third phase for the car dealerships located on west side of Dobson Road. Councilmember Thom stated that "at the last minute," Bass Pro and the auto dealerships are now included under one Development Agreement. She stated she would prefer that this item be continued so that staff could revise the documentation to allow the Council to consider a separate Development Agreement for the auto dealers and added that she does not like being "held hostage" just to bring the dealerships to this site.

Discussion ensued relative to the fact that per the Development Agreement, if the Bass Pro Shop never opened, the City would not be obligated to pay anything and all of the risk would be on the developer; the manner in which the City would be compensated if Bass opened a second store within a 30 miles radius of the Riverview at Dobson development; and that the developer would only be repaid his initial investment and interest if sales taxes are generated from the development.

Vice Mayor Walters stated that although she is not "a big fan" of incentives, other East Valley communities have offered to entice auto dealers and major retail and commercial businesses to locate to those cities. She explained that with regard to Bass Pro Shop, some communities have issued bonds or used monies from their general funds to build the facilities and thereby

placed the respective city's general fund at risk. Vice Mayor Walters assured everyone that Mesa would not put its existing tax dollars at risk for the development. She also stated that what makes this site so unique is the fact that Mesa is in competition with the surrounding communities for sales tax revenues, which begs the question does Mesa get a portion of those revenues or lose 100% of it somewhere else. She commented that in her opinion, if a Wal-Mart were to come to the site, she would prefer that the Development Agreement specifically state that the company would not receive incentives. Vice Mayor Walters concluded her remarks by expressing thanks to the west Mesa residents who provided input to the developer and to the developer who conducted countless neighborhood meetings and took to heart the residents' suggestions to create an outstanding project not only for the benefit of west Mesa residents, but the entire community.

Councilmember Jones seconded Councilmember Whalen's motion.

Upon tabulation of votes, it showed:

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

Vice Mayor Walters declared the motion carried by majority vote of those voting and Resolution No. 8378 adopted.

Vice Mayor Walters yielded the gavel back to Mayor Hawker.

- \*h. Authorizing the City Manager to enter into agreements with VALIC Retirement Service Company and the Hartford Life Insurance Company to provide plan recordkeeping, administration and investment services for the City of Mesa's Internal Revenue Code 457(b) Deferred Compensation Plan – Resolution No. 8373.

These providers will supplement and expand the investment opportunities available through the City's current providers including ING, ICMA-RC and Great West Retirement Services.

- \*i. Authorizing the City Manager to enter into an Intergovernmental Agreement with the Arizona Department of Public Safety, allowing the Mesa Police Department to be actively involved in the Arizona Counterterrorism Information Center (ACTIC) by assigning a police detective to the ACTIC – Resolution No. 8374.

\*8. Write-off of utility and miscellaneous accounts in the amount of \$361,346.00.

\*9. **Deleted.**

10. Consider the following ordinances:

- \*a. Amending various sections of the Mesa City Code regarding the following traffic modifications – Ordinance No. 4316.

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

On the north side of Main Street from Stapley Drive to a point 373 feet east of Stapley Drive and on the south side of Main Street from Stapley Drive to a point 290 feet west of Stapley Drive (at the intersection of Main Street and Stapley Drive). Council Districts 1, 2, and 4.

- \*b. Amending Chapter 10 of Title 6 of the Mesa City Code relating to consumption of spirituous liquor in public parks – Ordinance No. 4317.
- \*c. **A04-11** Annexing the northwest corners of Ray and South Mountain Roads (412± acres). Initiated by the property owner – Ordinance No. 4318

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

- a. **Z03-64 (District 3)** Northwest corner of Sycamore and Main Street (14.46 ac.). Rezone from C-2 and C-3 to C-2 BIZ and C-3 BIZ and Site Plan Modification. This request is for the development of a bus/light rail transfer lot and park-and-ride facility to serve the Mesa light rail station and to reserve a site for future Transit Oriented Development (TOD). Judith A. Klein, Rising Sun, LLC., owner; Jeff Martin, City of Mesa, applicant. **CONTINUED FROM THE MAY 3, 2004, MAY 17, 2004, JUNE 7, 2004, JULY 6, 2004, AUGUST 16, 2004, SEPTEMBER 7, 2004 and OCTOBER 4, 2004 CITY COUNCIL MEETINGS. THE APPLICANT HAS REQUESTED THIS CASE BE CONTINUED TO THE FEBRUARY 7, 2005 CITY COUNCIL MEETING.**

P&Z Recommendation: Approval with conditions (Vote: Passed 6-0, Saemisch abstaining).

1. Compliance with the basic development as described in the project narrative and as shown on the site plan and elevations submitted.
2. All street improvements and perimeter landscaping to be installed in the first phase of construction.
3. Dedicate the right-of-way required under the Mesa City Code at the time of application for a building permit, at the time of recordation of the subdivision plat, or at the time of the City's request for dedication, whichever comes first.
4. Compliance with all City development codes and regulations.
5. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
6. Compliance with all requirements of the Design Review Board.
7. Review and approval by the Planning and Zoning Board, Design Review Board and City Council of future development plans.
8. Transit oriented development is encouraged for the 3.67-acre lot.

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

It was moved by Councilmember Griswold, seconded by Councilmember Whalen, that Zoning Case **Z03-64** be continued to the February 7, 2005 Regular Council Meeting.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried unanimously by those voting.

- \*b. **Z04- 80 (District 6)** Southwest corner of Southern Road and Crismon Road (1.15± ac.). Site Plan Review. This request is to allow for the development of a bank. Southern & Crismon Road Property II, owner (J. White); Paul Gilbert, applicant – Ordinance No. 4319.

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

1. Compliance with the basic development as described in the project narrative and as shown on the site plan, preliminary plat and elevations submitted, (without guarantee of lot yield, building count, lot coverage) except as noted below.
2. Compliance with 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. Compliance with all requirements of the Subdivision Technical Review Committee.
6. Compliance with all requirements of the Design Review Board.
7. Materials and design of the solid waste enclosure to be complimentary to the building.
8. Retention basins to be 6:1 slopes maximum when adjacent to public rights-of-way or pedestrian walkways.

- \*c. **Z04-89 (District 6)** The 4300 block of East Southern Avenue (south side). Located south and west of Southern Avenue and Greenfield Road (1.86± ac.). Site Plan Modification. This request is for the development of a neighborhood commercial building. Paul Mathews, Lexon Developer Services, LLC, owner; Mark Bowker, K&I Architects, applicant – Ordinance No. 4320.

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

1. Compliance with the basic development as described in the project narrative and as shown on the site plan submitted, except as noted below.
2. Compliance with all requirements of the Design Review Board.
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 street frontage landscaping to be installed in the first phase of construction.
6. Recordation of cross-access easements between all lots shown to have cross access.

\*d. **Z04-90 (District 3)** The 450 block of West Holmes Avenue. Located west of Country Club Road and north of US 60 (2.4± ac.). Rezone from C-2 BIZ to C-2 and Site Plan Modification. This request is to allow the development of a church. Rajeshwar Sharma, owner; Vincent P. DiBella, Saemisch, DiBella Architects, applicant – Ordinance No. 4321.

P&Z Recommendation: Approval with Conditions. (Vote: Passed 6-0-1; Saemisch abstaining)

1. Compliance with the basic development as described in the project narrative and as shown on the site plan, preliminary plat and elevations submitted, (without guarantee of lot yield, building count, lot coverage) except as noted below.
2. Compliance with 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. Retention basins to be 6:1 slopes maximum when adjacent to public rights-of-way or pedestrian walkways.

\*e. **Z04-91 (District 6)** The 1200 block of South Greenfield Road (west side). Located south and west of Southern Avenue and Greenfield Road (1.72± ac.). Site Plan Modification. This request is for the development of a neighborhood commercial building. Paul Mathews, Lexon Developer Services, LLC, owner; Mark Bowker, K&I Architects, applicant – Ordinance No. 4322.

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

1. Compliance with the basic development as described in the project narrative and as shown on the site plan submitted, except as noted below.
2. Compliance with all requirements of the Design Review Board.
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 street frontage landscaping to be installed in the first phase of construction.
6. Recordation of cross-access easements between all lots shown to have cross access.

- f. **Z04-92 (District 6)** 4704 East Southern Avenue. Located north and east of Southern Avenue and Greenfield Road (2.2± ac.). Rezone from AG to O-S PAD and Site Plan Review. This request is for the development of office buildings. James Hold, owner; Daniel Brock, Brock, Craig, Thacker, applicant – Ordinance No. 4326.

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

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

Wallace Haws, 560 S. Spur, representing HEC Engineering, LLC, the owners of the property, provided a brief overview of the case for the benefit of the Council. He highlighted a series of proposed improvements beyond the basic development requirements and also commented that his firm had hired a professional traffic engineer to address traffic concerns including left-turn movement in and out of the project. Mr. Haws reported that he initially received letters of protest from the Sunny Mesa Homeowners' Association, Wade and Cindy Kempton and C. Max Killian regarding this case and said that after consulting with those individuals and implementing certain changes to the site plan, the objections have now been withdrawn. He stated that the agreed changes include reducing the combined total square footage of the project building area by 1,000 square feet and also making the westernmost driveway of the proposed site plan a right-in, right-out only driveway.

Robert Johnson, 4762 E. Harmony, President of the Sunny Mesa Homeowners' Association, commented that his group had sent a letter of protest regarding the zoning application and in particular, had expressed concerns relative to driveway access in and out of the subdivision. He stated that since that time, the HOA has reached an agreement with Mr. Haws with regard to the previously referenced changes to the site plan and has agreed to withdraw its protest.

It was moved by Councilmember Rawles, seconded by Vice Mayor Walters, that Zoning Case **Z04-92** be approved and Ordinance No. 4326 adopted.

Councilmember Whalen expressed appreciation to the parties for resolving the matter in a courteous and timely manner.

Councilmember Thom stated that although she is supportive of the case, she is unhappy with the removal of many mature pecans trees situated on the property. She also voiced concerns regarding the potential for increased traffic congestion in the area and commented that when

the site plan comes before the Council for approval, she would encourage the installation of a traffic light at that location to accommodate such congestion.

Carried unanimously.

- g. **Z04-93 (District 4)** The 100 – 400 block of West Baseline Road (north side). Located north of Baseline Road and east of Country Club Drive (32.82± ac.). Site Plan Modification. This request is to allow for the development of a commercial shopping center. John E. Clarke/Wal-Mart Stores, Inc., owner; Sean B. Lake, Pew & Lake, applicant – Ordinance No. 4327.

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

1. Compliance with the basic development as described in the project narrative and as shown on the site plan submitted, except as noted below.
2. Compliance with all requirements of the Design Review Board.
3. All pad buildings to be architecturally compatible with the center.
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, or at the time of the City's request for dedication, whichever comes first.
6. All street improvements and street frontage landscaping to be installed in the first phase of construction.
7. Recordation of cross-access easements between all lots proposed in the subdivision plat.
8. Review and approval of a Special Use Permit by the Board of Adjustment for a comprehensive sign plan and gas station.
9. Compliance with all requirements of the Subdivision Technical Review Committee.

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

Flavio E. Galbar, 841 W. Kiva Avenue, a resident to the west of the proposed development, reported that he and his neighbors were unaware until this morning that this case was scheduled to come before the Council for consideration. He voiced concerns regarding the impact of a Wal-Mart in the area which would include increased traffic congestion and commented on its effect on the neighborhood children walking to and from a nearby elementary school. Mr. Galbar asked that the Council delay its vote on the matter until the neighbors obtain more information relative to the case.

Sean Lake, 10 W. Main Street, an attorney representing the owner, provided a brief historical overview of the case. He reported that in 1998, the property was zoned and approved for a retail operation in excess of 75,000 square feet and advised that tonight's request is a site plan modification to permit such a development. Mr. Lake stated that the neighborhood participation program was performed, including notification of the property owners within 600 feet of the site. He added that he personally contacted the representative of the homeowners' association and received no negative feedback. Mr. Lake commented that in his opinion, the site is a good location for a Wal-Mart store and anticipates that a substantial amount of business would be

generated not only from Mesa residents, but also from consumers in the surrounding communities.

Planning Director John Wesley stated that it is the recommendation of staff and the Planning and Zoning Board that the case be approved. He also explained that the case includes less square footage of retail space than the previously approved site plan.

Councilmember Rawles commented that although the site for the proposed Wal-Mart is located in Councilmember Jones' district, Mr. Galbar resides in his district. He suggested that Mr. Galbar monitor the traffic situation in his neighborhood once the development goes forward, and said that if it is determined that the Council should implement additional protection for the neighborhood along Extension Road south of Baseline, that Mr. Galbar contact him or City staff to address those concerns. He stated that those matters could be resolved without delaying action on this case tonight.

It was moved by Councilmember Thom, seconded by Councilmember Rawles, that Zoning Case **Z04-93** be approved and Ordinance No. 4327 adopted.

Councilmember Jones said that although he is not particularly supportive of a Wal-Mart being constructed at this site, the site plan modification would reduce slightly the overall square footage of the facility as compared to the original 1998 zoning. He also noted that in his opinion, the store would be located too close to other Wal-Marts in the area, but stated if that was the desire of the parent corporation, he would support the motion.

Councilmember Thom voiced support for the motion. She stated that because this site is located on the north side of Baseline Road and "a stone's throw" from Costco in Gilbert, she would be pleased to have a viable retail establishment in Mesa to compete with that enterprise.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried unanimously by those voting and Ordinance No. 4327 adopted.

- \*h. **Z04-94 (District 4)** 1511 South Mesa Drive. Located north of the Superstition Freeway and east of Mesa Drive (2.39± ac). Rezone from R1-6 to C-1 and Site Plan Review. This case is to allow for the development of a retail center. Venancio Macias, owner; Robert Gomez, applicant. **(CONTINUED TO THE DECEMBER 20, 2004 REGULAR COUNCIL MEETING.)**

P&Z Recommendation: Approval with Conditions. (Vote: Passed 4-3 (Mizner, Cowan, Esparza voting nay))

1. Compliance with the basic development as described in the project narrative and as shown on the site plan, preliminary plat and elevations 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. Compliance with all requirements of the Design Review Board.
5. No vehicular access to East Holmes Avenue from the subject property.

- \*i. **Z04-95 (District 4)** The 1100 block of West Birchwood Avenue. Located east of Alma School Road and north of Broadway Road (0.79± ac.). Council Use Permit and Site Plan Review. This request is to allow for the development of a recycling center. E.W. Buehner, Jonathon Buehner, owners; Ralph Pew, Pew and Lake, PLC, applicant – Ordinance No. 4323.

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

1. Compliance with the basic development as described in the project narrative and as shown on the site plan and elevations as 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. Review and approval of a DIP through the Board of Adjustment for the Deviations from Code.

- j. **Z04-96 (District 5)** The 3600 block of North Power Road (west side). Located north of Thomas Road and west of Power Road (5.5± ac.). Rezone from C-2-DMP to C-2-PAD-DMP and Site Plan Modification. This case is to allow for the development of an office condominium complex. Brendan Lundy/SPB Commercial, LLP, owner; Erik Peterson/Peterson Architecture, applicant – Ordinance No. 4328.

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

1. Compliance with the basic development as described in the project narrative and as shown on the site plan, preliminary plat and elevations submitted, (without guarantee of lot yield, building count, lot coverage) except as noted below.
2. Compliance with 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.
5. Compliance with all requirements of the Design Review Board.

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

John A. Vitale, 3832 N. St. Elias Circle, expressed a series of concerns regarding the proposed development. He explained that the area in question fronts on Rafriver Road, which is immediately north of the Red Mountain Ranch Elementary School. Mr. Vitale stated that Rafriver is a residential road, and in his opinion, there should not be a connection between the proposed office complex, through a restaurant and bakery facility, to Rafriver Road. He commented that the residents in the area would like the Council to consider eliminating access between the office complex and restaurant/bakery at this point. He added that because the

project fronts on Thomas Road almost from Rafriver to Power, that perhaps the developer could make some improvements to the landscape islands on Thomas Road.

Planning Director John Wesley addressed the Council and provided a brief overview of the case. He stated, among other things, that there was a previous site plan approval on the property which connected all of the sites together as one development; that several years ago, the property on the west side of the site was approved for a bakery and has yet to be built, but still maintains the cross access agreement; that because the property is being developed as one site, there are landscape requirements between those property boundaries that are not being applied currently to the common property line; that it is staff's opinion that it is important to maintain the cross access arrangement so that traffic can flow between the various uses without having to go out on the street; that staff acknowledges the concerns of the neighborhood with regard to the access out to Rafriver and its impact on increased traffic flow; that it is unclear whether the bakery would be developed at that location; and that if another site plan were to be considered at that location which included cross access between the subject zoning case and the western property, it would provide staff with an opportunity to reexamine those accesses and possibly even eliminate them altogether on Rafriver and Thomas Road. He also stated that discussions took place this afternoon regarding retaining the access easement and delaying construction of the driveway at that location until such time as the issue with regard to the property to the west is resolved. He added that the matter would have to be explored further.

Karrin Taylor, 11201 North Tatum, Phoenix, an attorney representing the applicant, acknowledged the concerns expressed by Mr. Vitale and stated that she would like to work with the neighbors to address those concerns. She noted, however, that the applicant is caught in somewhat of a "Catch 22" situation in that they have been requested by the City to provide cross access, but do not have control over that piece of property (to the west) because they do not own it. She stated that she would be willing to listen to the suggestions of Council and staff in an effort to resolve this matter.

Discussion ensued between Councilmember Griswold and Traffic Engineer Alan Sanderson regarding possible alternatives relative to the issue of cross access on the development site and also traffic mitigation on Rafriver Road.

Councilmember Griswold suggested that the case be continued in order to provide staff and the applicant additional time to resolve the issue to the satisfaction of the parties involved.

Councilmember Rawles commented that although he does not object to Councilmember Griswold's suggestion for a continuance of the matter, in his opinion, he does not see the need for keeping the cross access at the development site. He commented that because the western piece of property is small, the traffic generated by it would be very limited. Councilmember Rawles added that he does not believe the neighbors would have a problem with the two access points, one off of Thomas Road and one off of Rafriver Road, if all they are serving is the one piece of property.

Mr. Wesley advised that one of the complicating factors regarding the case is the fact that the site plan has been developed with the idea that the cross access is a joint development and stated that there are certain landscape requirements along the common property line that have

been reduced as a result thereof. He stated that if the common access was cut off, additional landscaping would be required.

In response to a question from Councilmember Rawles relative to whether the applicant would be willing to meet the additional landscape requirements per Mr. Wesley's scenario, Ms. Taylor clarified that the applicant would be required to significantly redesign the site. She suggested that the site plan remain as is to provide the eventuality that is necessary, that the applicant would not develop that connection and would wait to see what comes in on the other piece of property.

Councilmember Rawles concurred with Councilmember Griswold's suggestion that the case be continued to allow staff to draft new language to incorporate such flexibility as outlined by Ms. Taylor.

Mayor Hawker expressed support for the plan as drafted and stated that he would prefer to vote on the case this evening.

It was moved by Mayor Hawker, seconded by Councilmember Whalen, that Zoning Case **Z-04-96** be approved and Ordinance No. 4328 adopted.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried by majority vote of those voting and Ordinance No. 4328 adopted.

- \*k. **Z04-98 (District 6)** The 10700 block of East Pecos Road (north side). Located north and west of Pecos Road and the Signal Butte Road alignment (40± ac.). Rezone from R1-43 to M-1. This request is to bring the existing zoning into conformance with the General Plan. Dave Jarvis, owner; Wayne Balmer, applicant – Ordinance No. 4324.

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

1. Review and approval by the Planning and Zoning Board, Design Review Board and City Council of all future development plans.
  2. Compliance with all City development codes and regulations.
- l. **Z04-99 (District 6)** The 7600 to 7800 blocks of East Baseline Road (north side). Located north of Baseline Road and east of Sossaman Road (8.7± ac.). Rezone from C-2 to R-3-PAD and Site Plan Review. This request is to allow for a townhouse/condominium development. Baseline Sossaman II Partnership, Charles Clausen, owner; Del Pueblo Homes, Elizabeth Ross, applicant – Ordinance No. 4329.

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

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 requirements of the Design Review Board.
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.
5. Compliance with the Residential Development Guidelines.
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. Owner granting an Avigation Easement and Release to the City, pertaining to Williams Gateway Airport, which will be prepared and recorded by the City (concurrently with the recordation of the final subdivision map, prior to the issuance of a building permit).

Beverly Selvage, 2627 S. Hibiscus, addressed the Council and reiterated her previous comments stated under agenda item 3a.

Planning Director John Wesley stated that it is the recommendation of staff and the Planning and Zoning Board that the case be approved.

In response to a question from Vice Mayor Walters, Sean Lake, 10 West Main, attorney for the applicant, advised that 49% of the development would be open space and that within that open space component there would be a swimming pool, clubhouse, tot lots and grassy areas.

Vice Mayor Walters expressed appreciation to Ms. Selvage for coming tonight to address the Council and emphasized that her neighborhood is an important part of the community.

It was moved by Councilmember Rawles, seconded by Councilmember Jones, that Zoning Case **Z04-99** be approved and Ordinance No. 4329 be adopted.

Councilmember Thom also thanked Ms. Selvage for addressing the Council and commented that in her opinion, the traffic impact at this site would be lessened with a residential application as compared to a commercial development.

Carried unanimously.

- \*m. **Z04-101 (District 4)** 1152 East Broadway Road. Located at the northwest corner of Broadway Road and Stapley Drive (0.5+ ac.). Rezone from C-1 and R-2 to C-1 and Site Plan Review. This request is to allow for the development of a retail building. Ken Crane, owner; Tim Rasnake, Archicon, applicant – Ordinance No. 4325.

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

1. Compliance with the basic development as described in the project narrative and as shown on the site plan, preliminary plat and elevations submitted, (without guarantee of lot yield, building count, lot coverage) except as noted below.
2. Compliance with all requirements of the Development Services Department (Engineering, Traffic Engineering, Solid Waste and Facilities, etc.).
3. Dedicate the right-of-way required under the Mesa City Code at the time of application for a building permit, at the time of recordation of the subdivision plat, or at the time of the City's request for dedication, whichever comes first.
4. Compliance with all requirements of the Design Review Board.
5. Review and approval of a Development Incentive Permit (D.I.P.) by the Board of Adjustment.
6. Retention basins to be 6:1 slopes maximum when adjacent to public rights-of-way or pedestrian walkways.

12. Consider the following subdivision plats:

- \*a. "WALGREENS AT GUADALUPE ROAD AND ALMA SCHOOL ROAD," – (Council District 3) – 1100 block of West Guadalupe Road (north side) located north and east of Guadalupe Road and Alma School Road. 1 C-2 commercial lot (1.88 ac) Walgreen Arizona Drug Co., an Arizona Corporation, owner; Olsson Associates, Inc., engineer.
- \*b. "SANTAN COMMERCE CENTER", – (Council District 6) – 4100 block of South Power Road (east side) located north and east of Warner Road and Power Road. 3 PEP PAD, M-1 PAD, and M-1 industrial lots (13.60 ac). Santan Commerce Park, L.L.C., Frank Richards, Managing Member, owner; Hunter Engineering, engineer
- \*c. **Deleted.**
- \*d. "GEMINI BUSINESS PARK", – (Council District 5) – 4500 block of East Jensen Street (south side) located south and east of McKellips Road and Greenfield Road. 10 M-1 PAD office warehouse units (2.10 ac). Gemini Construction of Washington, Inc., owner; AZCA Engineering, Inc., engineer.
- \*e. "EASTGATE BUSINESS PARK", – (Council District 3) – 600 block of West Baseline Road (north side) located north and east of Baseline Road and Extension Road. 8 M-1 industrial lots (23.60 ac). Millet Family Properties, Inc., Torry Loftgreen, Jr., owner; Hess-Rountree, Inc., engineer.

13. Items from citizens present.

There were no items from citizens present.

14. Adjournment.

Without objection, the Regular Council Meeting adjourned at 9:55 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 6<sup>th</sup> day of December 2004. 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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**A. PHASE I DEVELOPMENT AGREEMENT**

**• Developer Obligations**

- o The Construction and Opening for Business of the Minimum Improvements:
  - A movie theater with: (i) at least sixteen (16) screens; and (ii) a building area of not less than 55,000 square feet.
  - At least 50,000 square feet of general-and specialty merchandise retail, including restaurants.
  - Public Improvements (i.e., City Improvements) mainly on the east side of Dobson Road, including reconfiguring medians, installation of utilities, two new traffic signals.
- o Minimum Improvements must be completed and open for business by July 1, 2007 or the Developer does not receive any economic incentives and the Agreement terminates.

**• Economic Incentives**

- o After the Construction and Opening for Business of the Minimum Improvements, the City reimburses the Developer for the following costs:
  - The City fees (i.e., developer impact, planning permit fees, and building permit fees) paid by the Developer, up to a cap of \$500,000.
  - The cost of the Public Improvements, up to a cap of \$ 1 million.
- o NO SALES TAX REBATE: Developer is not entitled to receive any of the sales tax generated from the Phase I development.

**B. PHASE II DEVELOPMENT AGREEMENT**

**• Developer Obligations**

- o OPTION A: The Construction and Opening for Business of the following Minimum Improvements:
  - At least 350,000 square feet of general and specialty merchandise retail.
  - A Bass Pro Shops Outdoor World, with a minimum of 150,000 square feet.
  - An anchor tenant, with a minimum of 100,000 square feet.
  - At least two Vehicle Dealerships located on at least 22 acres. The primary focus of the Dealerships will be the sale of new vehicles.
  - Public Improvements to Dobson Road, 8th Street, Alma School Road, and a new public road from Alma School Road to the eastern limits of the project.
- o OPTION B: The Construction and Opening for Business of the following Minimum Improvements:

- A Bass Pro Shops Outdoor World, with a minimum of 150,000 square feet.
  - An anchor tenant, with a minimum of 100,000 square feet.
  - Public Improvements to Dobson Road, 8th Street, Alma School, and a new public road from Alma School to the eastern limits of the project.
  - Sufficient additional improvements so that the entire Project generates \$270 million of revenue that is subject to sales tax for at least one fiscal year (July 1-June 30).
- o Minimum Improvements must be completed and open for business by July 1, 2010 or the Developer does not receive economic incentives (except, possibly \$1 million for public improvements upon commencement of construction for the Bass store) and the Agreement terminates;
- **EXCEPT:**
    - **If the Developer has constructed and opened for business:**
      - o The Bass Store
      - o The Anchor Tenant
      - o The Public Improvements
      - o Sufficient Additional improvements so that the entire Project generates **\$200 million** of revenue for at least one fiscal year
- then the Developer has until July 1, 2012 to meet the requirements of either OPTION A, or OPTION B.**
- If the Developer does not meet the requirements of either Option A or Option B before July 1, 2012, but the Project has maintained an average of \$200 million of revenue from 2010-2012, then:
    - o The Developer receives the economic incentives, but does not receive any interest on the \$30 million sales tax incentive amount.

• **Economic Incentives for Development of Project**

- o After the actual commencement of construction of the Bass Store, the City reimburses the Developer:
  - The cost of the Public Improvements, up to \$1 million.
- o After the Construction and Opening for Business of the Minimum Improvements: The City reimburses the Developer for the following costs:
  - The City fees (i.e., developer impact, planning permit fees, and building permit fees) paid by the Developer, up to a cap of \$1.8 million.

- The cost of the Public Improvements, up to a cap of \$2 million (total reimbursement of Public Improvements - \$3 million).
- The Developer is entitled to a rebate of a portion of the City's 1% transaction privilege tax (but not the City's "quality of life" transaction privilege tax) as follows:
  - CONSTRUCTION SALES TAX: 100% of the construction sales tax, up to a cap of \$700,000, minus the cost of the City's archeological survey of the Property.
  - RETAIL SALES TAX:
    - o Developer receives 50% and the City receives 50% of the 1 % retail sales tax from the Project, until the City receives \$4.8 million (i.e., Developer's reimbursable costs), plus interest at 7%.
    - o After the City receives \$4.8 million, plus interest, the Developer receives 75% and the City receives 25% of the retail sales tax from the project, until the Developer receives \$5 million, without interest, and \$30 million, plus interest at 7%.
  - LIMITATIONS ON DEVELOPER'S SALES TAX REBATE:
    - o The Developer's right to receive the sales tax rebate terminates 20 years after the City first receives retail sales taxes from the Project.
    - o The total amount of interest that the Developer may receive is capped at \$25 million.
    - o The Developer is not entitled to receive the sales tax rebate unless the Minimum Improvements (including the Bass Store) are completed and open for business by the performance date.
  - NO SHARING OF CITY'S QUALITY OF LIFE SALES TAX: The Developer is not entitled to receive any of the City's quality of life transaction privilege tax.

• **Economic Incentives to Attract Vehicle Dealerships**

- o Beginning 10 years after the City first receives retail sales taxes from the Project and continuing for 10 years:
  - The Developer receives 75% of the City's 1% retail sales tax on taxable revenue generated from Vehicle Dealerships. The Developer may assign this rebate to the Dealerships.
  - This sales tax rebate is in addition to the \$35 million (plus 7% interest on \$30 million) sales tax rebate the Developer receives for development of the Project.

• **Bass Store Requirements**

- o LEASE: Developer must provide the City with evidence that it has entered into a lease with the Bass store within 1 year of the Agreement.
- o EXCLUSIVE AREA: If, during the time the Developer is receiving the sales tax rebate, a second Bass store is opened within 30 miles from the Mesa Bass store, the Developer shall pay to Mesa:
  - The difference between:
    - the sales tax the City should have received from sales at the Mesa Bass store, assuming the Mesa Bass store generated the same amount of revenue it generated the year before the second store opened (plus an inflation factor of 3%), and
    - the sales tax the City actually received from sales at the Mesa Bass store.
- o BASS STORE CLOSURE: If, during the time the Developer is receiving the sales tax rebate (after the Minimum Improvements are completed), the Mesa Bass store closes and does not reopen within 1 year, the Developer shall pay to Mesa at the end of each fiscal year:
  - The greater of:
    - any amount received by the Developer as a result of the Bass store closure, or
    - 2% of the average gross sales of the Bass store during the 2 fiscal years prior to the store closing (or the actual time the store was open if the Bass store was not open for 2 fiscal years).

**MINIMUM SCENARIO - SUMMARY OF CITY TAX BENEFITS**

**PHASE I**

	30 Year Total Cash Flow			Discounted Cash Flow - 7%		
	Developer	City	Total	Developer	City	Total
Privilege Tax	\$0	\$8,662,123	\$8,662,123	\$0	\$2,942,419	\$2,942,419
Occupancy Tax	0	593,664	593,664	0	195,966	195,966
Construction Tax	0	64,838	64,838	0	64,838	64,838
Quality of Life Tax	0	2,330,156	2,330,156	0	800,806	800,806
Permit & Impact Fees	500,000	102,200	602,200	500,000	102,200	602,200
<b>Total Phase I Revenues</b>	<b>\$500,000</b>	<b>\$11,752,981</b>	<b>\$12,252,981</b>	<b>\$500,000</b>	<b>\$4,106,228</b>	<b>\$4,606,228</b>
Percentage	4.1%	95.9%	100.0%	10.9%	89.1%	100.0%

City is paid back it's \$1.5 million developer incentive in present value dollars in 10 years.

**PHASE II**

	30 Year Total Cash Flow			Discounted Cash Flow - 7%		
	Developer/Auto	City	Total	Developer/Auto	City	Total
Privilege Tax	\$53,944,678	\$73,484,985	\$127,429,663	\$26,089,514	\$21,358,439	\$47,447,953
Occupancy Tax	0	2,598,033	2,598,033	0	941,665	941,665
Construction Tax	482,950	0	482,950	482,950	0	482,950
Quality of Life Tax	0	32,627,662	32,627,662	0	12,218,142	12,218,142
Permit & Impact Fees	1,800,000	438,100	2,238,100	1,800,000	438,100	2,238,100
<b>Total Phase II Revenues</b>	<b>\$56,227,628</b>	<b>\$109,148,779</b>	<b>\$165,376,408</b>	<b>\$28,372,464</b>	<b>\$34,956,347</b>	<b>\$63,328,811</b>
Percentage	34.0%	66.0%	100.0%	44.8%	55.2%	100.0%

City is paid back it's \$4.8 million developer incentive in present value dollars in 4 years.

**PHASE I & II**

	30 Year Total Cash Flow			Discounted Cash Flow - 7%		
	Developer/Auto	City	Total	Developer/Auto	City	Total
Privilege Tax	\$53,944,678	\$82,147,109	\$136,091,787	\$26,089,514	\$24,300,858	\$50,390,372
Occupancy Tax	0	3,191,696	3,191,696	0	1,137,632	1,137,632
Construction Tax	482,950	64,838	547,788	482,950	64,838	547,788
Quality of Life Tax	0	34,957,818	34,957,818	0	13,018,948	13,018,948
Permit & Impact Fees	2,300,000	540,300	2,840,300	2,300,000	540,300	2,840,300
<b>Total Revenues</b>	<b>\$56,727,628</b>	<b>\$120,901,760</b>	<b>\$177,629,388</b>	<b>\$28,872,464</b>	<b>\$39,062,575</b>	<b>\$67,935,039</b>
Percentage	31.9%	68.1%	100.0%	42.5%	57.5%	100.0%

Schedule based on terms defined in the Development Agreements and cash flows from Market Analysis prepared by Ernst & Young.

**MAXIMUM SCENARIO - SUMMARY OF CITY TAX BENEFITS**

**PHASE I**

	30 Year Total Cash Flow			Discounted Cash Flow – 7%		
	Developer	City	Total	Developer	City	Total
Privilege Tax	\$0	\$21,436,457	\$21,436,457	\$0	\$7,281,706	\$7,281,706
Occupancy Tax	0	1,700,772	1,700,772	0	561,419	561,419
Construction Tax	0	130,107	130,107	0	130,107	130,107
Quality of Life Tax	0	5,816,834	5,816,834	0	1,993,308	1,993,308
Permit & Impact Fees	500,000	752,500	1,252,500	500,000	752,500	1,252,500
<b>Total Phase I Revenues</b>	<b>\$500,000</b>	<b>\$29,836,670</b>	<b>\$30,336,670</b>	<b>\$500,000</b>	<b>\$10,719,040</b>	<b>\$11,219,040</b>
Percentage	1.6%	98.4%	100.0%	4.5%	95.5%	100.0%

City is paid back it's \$1.5 million developer incentive in present value dollars in 4 years.

**PHASE II**

	30 Year Total Cash Flow			Discounted Cash Flow – 7%		
	Developer/Auto	City	Total	Developer/Auto	City	Total
Privilege Tax	\$78,789,525	\$128,003,667	\$206,793,192	\$40,573,032	\$36,397,968	\$76,971,000
Occupancy Tax	0	3,617,644	3,617,644	0	1,309,605	1,309,605
Construction Tax	700,000	100,499	800,499	700,000	100,499	800,499
Quality of Life Tax	0	52,802,834	52,802,834	0	19,770,276	19,770,276
Permit & Impact Fees	1,800,000	1,278,500	3,078,500	1,800,000	1,278,500	3,078,500
Impact for Retail Closure	0	(26,369,251)	(26,369,251)	0	(9,906,606)	(9,906,606)
<b>Total Phase II Revenues</b>	<b>\$81,289,526</b>	<b>\$159,433,893</b>	<b>\$240,723,418</b>	<b>\$43,073,032</b>	<b>\$48,950,243</b>	<b>\$92,023,275</b>
Percentage	33.8%	66.2%	100.0%	46.8%	53.2%	100.0%

City is paid back it's \$4.8 million developer incentive in present value dollars in 3 years.

**PHASES I&II**

	30 Year Total Cash Flow			Discounted Cash Flow – 7%		
	Developer/Auto	City	Total	Developer/Auto	City	Total
Privilege Tax	\$78,789,525	\$149,440,124	\$228,229,649	\$40,573,032	\$43,679,674	\$84,252,706
Occupancy Tax	0	5,318,416	5,318,416	0	1,871,024	1,871,024
Construction Tax	700,000	230,606	930,607	700,000	230,606	930,607
Quality of Life Tax	0	58,619,668	58,619,668	0	21,763,584	21,763,584
Permit & Impact Fees	2,300,000	2,031,000	4,331,000	2,300,000	2,031,000	4,331,000
Impact for Retail Closure	0	(26,369,251)	(26,369,251)	0	(9,906,606)	(9,906,606)
<b>Total Revenues</b>	<b>\$81,789,526</b>	<b>\$189,270,563</b>	<b>\$271,060,088</b>	<b>\$43,573,032</b>	<b>\$59,669,282</b>	<b>\$103,242,315</b>
Percentage	30.2%	69.8%	100.0%	42.2%	57.8%	100.0%

Schedule based on terms defined in the Development Agreements and cash flows from Market Analysis prepared by Ernst & Young.