



## COUNCIL MINUTES

September 6, 2005

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on September 6, 2005 at 5:45 p.m.

### COUNCIL PRESENT

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

### COUNCIL ABSENT

None

### OFFICERS PRESENT

Mike Hutchinson  
Barbara Jones  
Debbie Spinner

Invocation by President Terry D. Turk, The Church of Jesus Christ of Latter-day Saints.

Pledge of Allegiance was led by Kyle Malone, Scout Troop # 795.

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.

Mayor Hawker briefly reported on Arizona's role in welcoming Hurricane Katrina evacuees to the State. He explained that he, as well as other local Mayors, recently participated in a conference call with Governor Janet Napolitano during which time she provided an update regarding this issue. Mayor Hawker stated, among other things, that there are currently 576 individuals housed at Veterans Memorial Coliseum in Phoenix and it is anticipated that additional evacuees might be flown to Tucson or Phoenix; that eight Mesa firefighters are offering medical assistance to the evacuees at the Coliseum and also working with the Mesa United Way and local Human Services agencies to identify possible shelters for the additional evacuees; and that the Mesa School District has registered a number of the evacuated children to attend local schools. He also provided a list of web sites that citizens could access related to employment opportunities, housing, donations and supplies for the evacuees.

### 1. Consider all consent agenda items.

At this time, all matters on the consent agenda were considered or were removed at the request

of a member of the Council. All items identified with an asterisk (\*) were approved with one Council action.

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

Carried unanimously.

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

Minutes from the August 29, 2005 Council meetings.

3. Consider the following liquor license applications:

\*3a. KELLY PAUL VAUGHAN, AGENT

New Beer & Wine Store License for QuikTrip #478, 14715 S. Power Road. This is a new construction. No previous liquor license at this location. District #6.

\*3b. KELLY PAUL VAUGHAN, AGENT

New Beer & Wine Store License for QuikTrip #496, 2657 S. Power Road. This is a new construction. No previous liquor license at this location. District #6.

\*3c. SITARAS DEMETRIOS, AGENT

New Restaurant License for My Big Fat Greek Restaurant, 6447 E. Southern Avenue. This is an existing building. The license previously held at this location by David N. Candland Jr., Agent, Comida Corporation, closed 12/16/04. District #6.

\*3d ROBERT LEWIS MAURER, AGENT

New Restaurant License for Sau'tee, 1840 S. Val Vista Drive. This is a new construction. No previous liquor license at this location. District #2.

4. Consider the following contracts:

\*4a. One Replacement Aerial Lift Bucket Truck as requested by the Transportation Division. (Contract 2005142)

The Purchasing Division recommends accepting the low bid by Equipment Technology, Inc. at \$70,849.15, including options, extended warranty and applicable taxes.

\*4b. Two Replacement Vehicles as requested by the Utilities Water Division and the Transportation Division. (State Contract #AD040004 and #AD040002)

The Purchasing Division recommends authorizing purchase from the State of Arizona contract with Five Star Ford at \$28,248.83.

- \*4c. Automated Blood Alcohol Analysis System as requested by the Police Department. (Sole Source)

The Purchasing Division recommends authorizing purchase from PerkinElmer Life and Analytical Science for \$58,117.49, including installation, warranty and applicable taxes.

- \*4d. Three-year Supply Contract for Helicopter Airframe Parts and Repairs as requested by the Police Department. (Contract 2005155)

The Purchasing Division recommends accepting the lowest overall bid by Seaside Helicopters, Inc. at \$249,416.67 annually, based on estimated purchases.

- \*4e. Thirty-seven Workstations and One Office for Phase I of the Municipal Building Remodel as requested by Development Services. (State Contract #AD010202-002)

The Purchasing Division recommends authorizing purchase from the State of Arizona contract with Goodmans at \$142,848.71, including design, installation, delivery and applicable sales tax.

- 4f. Power Road Sewer Metering Station Improvements, City of Mesa Project No. 04-045-001 (**Only One Bid Received**).

This project will upgrade the electrical equipment and improve access to the sewer metering station. Improvements include relocating the access manhole outside of Power Road and outside its proposed future widening.

Recommend award to low bidder Highland Engineering, in the amount of \$399,200.00 plus an additional \$39,920.00 (10% allowance for change orders) for a total award of \$439,120.00.

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 Thom, seconded by Councilmember Jones, that the recommendation of staff be approved.

Upon tabulation of votes, it showed:

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

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

Vice Mayor Walters yielded the gavel back to Mayor Hawker.

5. Introduction of the following ordinances and setting September 19, 2005 as the date of public hearing on these ordinances:

- \*5a. **Z05-80 (District 6)** The 8800 block of East Germann Road (north side). Located north of Germann Road and west of Ellsworth Road (16.3 ac). Rezone from PEP and M-1 to O-S PAD, C-1 PAD and M-1 PAD and Site Plan Review. This request will allow for the development of a business park. Anson L. Call, owner; Randolph L. Carter, applicant. ***(Held neighborhood meeting and contacted registered neighborhoods and homeowners' associations.)***

P&Z Recommendation: Approval with conditions. (Vote: Passed 4-0-1 with Finter abstaining; Adams and Salas absent)

- \*5b. **Z05-81 (District 6)** The 3200 – 3300 block of South Sossaman Road (east side). Located at the half-mile point between Guadalupe and Elliot Roads, and just south of the power line easement on Sossaman Road (22.61 ac). Rezone from R1-6 and M-1 to AG and Site Plan Review. This request will allow for the construction of the Paloma Community Church and several accessory sports fields. Pastor Al Wilsey, Paloma Community Church, owner; Steve Anderson, applicant. ***(Held neighborhood meeting and contacted registered neighborhoods and homeowners' associations.)***

P&Z Recommendation: Approval with conditions. (Vote: Passed 5-0 with Adams and Salas absent)

- \*5c. **Z05-82 (District 6)** The 9100 – 9200 block of East Guadalupe Road (south side). Located at the southwest corner of Guadalupe Road and Ellsworth Road (1.6 ac). Site Plan Review. This request will allow for the development of a new convenience store and fuel canopy. Tim Holeman, owner; Justin Gubler, Architekton, applicant. ***(Contacted registered neighborhoods and homeowners' associations.)***

P&Z Recommendation: Approval with conditions. (Vote: Passed 5-0 with Adams and Salas absent)

- \*5d. **Z05-83 (District 6)** The 5600 – 6000 block of South Mountain Road (west side). Located South of Ray Road and east of Signal Butte Road (558± ac). Rezone from R1-6 DMP to R-2 PAD DMP, Modification to the Mountain Horizons Development Master Plan and Site Plan Review. This request will allow for the development of a cluster home project. Pulte Homes, Tim Loughrin, owner; Sean Lake, Pew & Lake, PLC, applicant. ***(Held neighborhood meeting and contacted registered neighborhoods and homeowners' associations.)***

P&Z Recommendation: Approval with conditions. (Vote: Passed 5-0 with Adams and Salas absent)

- \*5e. **Z05-84 (District 5)** The 4200 block of East McDowell Road (south side). Located west of Greenfield Road and south of McDowell Road (19.28 ac). Site Plan Review. This request will allow for the development of a business park. Mike Wilson, owner; Michael Jorgensen, applicant. ***(Contacted registered neighborhoods and homeowners' associations.)***

P&Z Recommendation: Approval with conditions. (Vote: Passed 5-0 with Adams and Salas absent)

- \*5f. **Z05-85 (District 6)** The 2400 – 2500 block of South Signal Butte Road (east side). Located south of Baseline Road and east of Signal Butte Road (19 ± ac.). Rezone from AG to R1-6 PAD-DMP; Site Plan Review and Modification of the Sunland Springs Village Development Master Plan. This request will allow for the development of a townhome project as part of the Sunland Springs Village Development Master Plan. Craig Ahlstrom, Farnsworth Development, owner; Jeff Giles, applicant. ***(Held neighborhood meeting and contacted homeowners' associations.)***

P&Z Recommendation: Approval with conditions. (Vote: Passed 5-0 with Adams and Salas absent)

- \*5g. **Deleted.**

- \*5h. **CUP05-001TC (District 4)** 310 West Main Street. Located on the NEC of Main Street and Country Club Drive. Request to obtain a Council Use Permit to allow a drive-thru lane in the TCC Zoning District for a new Taco Bell located at 310 West Main Street. Mark Peterson, Hualapui Investments, owner; Greg Hitchens, Hitchens Associates Architects, applicant. ***(Property owners and tenants within 300 feet were notified by mail.)***

DDC Recommendation: Approve with conditions. (Vote: Passed 5-0)

6. Consider the following resolutions:

- \*6a. Approving the Assessment Diagram Map for the McLellan Road Scalloped Street Assessment, Project No. 04-004-001 – Resolution No. 8583.

This project installed street improvements along the north and south side of East McLellan Road from North Val Vista Drive east 1,265 feet +/-.

A portion of the project costs will be assessed to the adjacent property owners under the Scalloped Street Assessment laws.

- \*6b. Fixing October 10, 2005 as the Public Hearing for the proposed final assessments for the McLellan Road Scalloped Street Assessment, Project No. 04-004-001 – Resolution No. 8584.

This project installed street improvements along the north and south side of East McLellan Road from North Val Vista Drive east 1,265 feet +/-.

A portion of the project costs will be assessed to the adjacent property owners under the Scalloped Street Assessment laws.

- 6c. Approving and authorizing the City Manager to execute an Intergovernmental Agreement between the Regional Public Transportation Authority and the City of Mesa for fixed-route transit services – Resolution No. 8588.

It was moved by Vice Mayor Walters, seconded by Councilmember Jones, that Resolution No. 8588 be adopted.

Councilmember Rawles commented that this item is the subsidization of the bus system by the City for an estimated cost of \$5.3 million for just Mesa's portion of the route. He stated the opinion that it is not an appropriate use of taxpayer funds and would vote against the motion. Councilmember Rawles added that he would also oppose agenda item 6d for similar reasons.

Mayor Hawker called for the vote.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried by majority vote and Resolution No. 8588 adopted.

6d. Approving and authorizing the City Manager to execute an Intergovernmental Agreement between the Regional Public Transportation Authority and the City of Mesa for East Valley Dial-A-Ride services – Resolution No. 8589.

It was moved by Vice Mayor Walters, seconded by Councilmember Jones, that Resolution No. 8589 be adopted.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried by majority vote and Resolution No. 8589 adopted.

\*6e. Extinguish a Public Utility Easement in the Red Mountain Freeway right-of-way near 56<sup>th</sup> Street Alignment – Resolution No. 8585.

The easement is no longer needed and ADOT has requested it be extinguished.

\*6f. Extinguish a temporary drainage easement at the northeast corner of Crismon Road and Hampton Avenue in Crismon Business Park – Resolution No. 8586.

This easement will be replaced by new reconfigured easements.

\*6g. Approving and authorizing the City Manager to execute documents to transfer title of a reservoir site to East Mesa Investment Company IX Limited Partnership, its successors or assigns – Resolution No. 8587.

6h. Approving and authorizing the City Manager to execute an agreement for Fiscal Year 2005-2006 for the Downtown Banner System Management, Downtown Holiday Decorative Program Coordination, and Downtown Sculpture Program (Agreement) with Ultimate Imaginations Inc. (UII) – Resolution No. 8590.

It was moved by Vice Mayor Walters, seconded by Councilmember Whalen, that Resolution No. 8590 be adopted.

Mayor Hawker commented that the Council discussed this item at today's Study Session and voted to approve a holiday lighting project alternative that was suggested by Tom Verploegen, Executive Director of the Downtown Mesa Association. (See the September 6, 2005 Study Session minutes.)

In response to a question from Councilmember Rawles, Mayor Hawker clarified that the \$6500 contract for the banner program (which was an unfunded BAR in the 2005/06 Town Center budget) is included as a component of the motion.

Councilmember Rawles commented that although during the earlier Study Session he voted in support of a motion to expand the holiday lighting project from one block to one mile in the downtown area, he is opposed to the current motion. He stated the opinion that the City of Mesa should not be spending \$50,000 on such a project and noted that it is an inappropriate function of government. Councilmember Rawles added that he would prefer not to vote on this item because the holiday lighting project began before he became a Councilmember.

Mayor Hawker expressed opposition to the motion because of the holiday lighting component of the contract. He indicated that if holiday lights are displayed in the downtown area, the Town Center merchants should incur those costs and not the City of Mesa. Mayor Hawker added that if the City was going to participate in this process, he would support the display of holiday lights at the Mesa City Plaza Building, which would complement the lights in the downtown area.

Vice Mayor Walters explained that if the Council cancelled the holiday lighting contract (for which \$50,000 has been budgeted), the City would have to pay a \$39,000 penalty and would not have any display of lights. She stated that the Council could fund the \$50,000 for the alternative holiday lighting project suggested by Mr. Verploegen since the vendor has already purchased the lights. Vice Mayor Walters commented that she was supportive of some type of display on a more limited basis this year and noted that other cities have more extensive displays than what is currently being proposed by Mesa. She cautioned, however, that although she would support the pending motion, because of Mesa's future budget concerns, she would probably be disinclined to do so next year.

Councilmember Thom commented that in previous years, the City has provided greater funding for the holiday lighting project and stated that two years ago when the City did not allocate any monies, many Mesa residents expressed their displeasure in that regard. She stated that if the local businesses, at their own expense, were permitted to decorate their establishments along Main Street, it would be a worthwhile endeavor. Councilmember Thom added that at the Study Session, Mr. Verploegen indicated that such an idea could be considered and promoted.

Vice Mayor Walters clarified that the City's primary concern with regard to the merchants decorating their establishments was more a liability issue associated with decorating the trees that are on public property. She added that City Attorney Debbie Spinner is currently investigating this matter.

Mayor Hawker called for the vote.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried by majority vote and Resolution No. 8590 adopted.

7. Consider the following ordinances:

- \*7a. Amending sections of the Mesa City Code pertaining to the National Flood Insurance program, adopting the revised Flood Insurance Study and Flood Insurance Rate Maps, and Flood Plain Management Regulations – Ordinance No. 4455.
- \*7b. Amending various sections of the Mesa City Code regarding the following traffic modifications – Ordinance No. 4456:

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

On the west side of Hobson from McKellips Road to a point 330 feet south of McKellips Road. (east of Mesa Drive and south of McKellips Road, Council District 1)

On Inverness Avenue from Stapley Drive to Solomon. (west of Stapley Drive and south of the Superstition Freeway (US 60), Council District 4)

On Eighth Avenue from Daley to Sierra. (east of Stapley Drive and north of Southern Avenue, Council District 4)

No Parking: 10-3-24 (F 9) (No Parking between 10:00 p.m. and 4:00 a.m.)

On Inverness Avenue from Stapley Drive to Solomon. (west of Stapley Drive and south of the Superstition Freeway (US 60), Council District 4) (Remove Prohibition)

No Parking: 10-3-24 (F 10) (No Parking between 11:00 a.m. and 5:00 p.m.)

On the north side of Fraser Drive East from Fraser Drive to a point 195 feet east of Fraser Drive, on the west side of Fraser Drive East from a point 405 feet south of 2<sup>nd</sup> Street to a point 835 feet south of 2<sup>nd</sup> Street, and on the south/east side of Fraser Drive East from Fraser Drive to a point 280 feet south of 2<sup>nd</sup> Street. (west of Stapley Drive and north of Main Street, Council District 1) (Remove Prohibition)

Speed Limits: 10-4-3 (45 mph) and 10-4-4 (40 mph)

Reduce the speed limit from 45 mph to 40 mph on Recker Road from a point 1,000 feet south of Thomas Road to the Red Mountain Freeway (Loop 202). (Recker Road south of Thomas Road, Council District 5)

7.1 Consider the following items regarding the Mesa Arts Center:

- \*a. Approval of an increase of \$220,000 to the change order allowance from budgeted project funds.
- \*b. Approval of settlement payment to Layton Southwest in the amount of \$3,400,000 for construction claims.
- \*c. Approval of a project contingency increase up to \$125,000 for Priority 1 project costs.
- d. Approval of a project contingency increase up to \$275,000 for Priority 2 project costs.

Councilmember Rawles stated that the Council has approved items a, b and c for more than \$3.7 million. He explained that with regard to item d, private organizations are being asked to participate in funding a portion of these expenses. Councilmember Rawles commented that he would prefer not to commit any more public funds to the Mesa Arts Center until such time as it is determined that such costs are not being assumed by the private organizations.

Councilmember Thom concurred with Councilmember Rawles' comments and expressed opposition to this item.

Vice Mayor Walters noted that there were members of the Mesa Arts and Entertainment Alliance in the audience and invited them to address the Council. She commented that it was her recollection from previous discussions regarding this matter that because of the change in the City's contract, even if the Mesa Arts and Entertainment Alliance funded some of the Priority 2 projects, the City would still be required to approve the change in the contract in order to allow the expenditure.

In response to a question from Vice Mayor Walters, City Manager Mike Hutchinson clarified that the first action the Council took on these items ended the original contracts. He advised that with regard to the Priority 2 projects, staff would bring back the separate items for Council discussion and consideration.

Joanie Flatt, past President of the Mesa Arts and Entertainment Alliance, stated that no vote has been taken on this issue and she is not authorized to speak on the Alliance's behalf. She advised that she is currently President of the Mesa Arts Center Foundation, which is working in partnership with the City. She informed the Council that the private sector, through the Mesa Arts Center Foundation, is faced with the task of raising between \$400,000 and \$500,000 this fiscal year to support programming at the Mesa Arts Center. She also discussed other capital needs at the Art Center that have yet to be funded. She urged the Council to approve agenda item d and stressed that the private sector is not "shying away" from their responsibilities.

It was moved by Vice Mayor Walters, that the Priority 2 project costs be brought back, item by item, to the Council for discussion and consideration, at which time the funding source for each project would be identified.

Mayor Hawker clarified that even though the projects would be funded with private dollars, each item would come back to the Council for approval because the City would be instrumental in

doing the contract work. He expressed support for the motion as stated, but stressed that he would be opposed to providing additional City funding for the Mesa Arts Center.

Councilmember Rawles voiced a series of concerns regarding the purpose of voting to make a contingency allocation and yet requiring each item to come back to the Council for consideration in the future. He stated the opinion that it is a meaningless vote and suggested that the Council deal with the items as they come forward and decide whether there is City or private dollars to fund the projects.

In response to Councilmember Rawles' comments, City Attorney Debbie Spinner clarified that when the Council first approved the construction of the Mesa Arts Center, it established a budget for the entire project. She advised that as different contracts became necessary, staff brought back the projects and contracts to the Council. Ms. Spinner added that in this instance, staff is simply asking to expand the budget for the project and bring back the separate projects individually for consideration.

Councilmember Rawles stated that he would be happy to support a contract to be funded by private dollars, but would vote no on the motion as presently crafted.

Vice Mayor Walters withdrew her original motion and moved that the Council discuss and consider the scope of additional (Priority 2) projects that would be brought forward for potential funding either privately or publicly.

Councilmember Jones seconded the motion.

Mayor Hawker called for the vote.

Carried unanimously.

7.2 Consider the following recommendations from the Police Committee:

- \*a. Authorizing the Purchasing Department to proceed with publishing a Request for Bids for City Vehicle Towing for Fleet Support Services.
- \*b. **Deleted.**

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

- a. **Z04-105 (District 6)** The 1600 block of South Signal Butte Road (west side). Located south of US 60 and west of Signal Butte Road (66.7 ac.). Requesting a Council Use Permit to allow the development of a Freeway Landmark Monument sign in conjunction with the construction of group commercial center – Ordinance No. 4457. (**Contacted registered neighborhoods.**)

P&Z Recommendation: Approval with conditions. (Vote: Passed 5-1-1 with Finter nay and Carpenter absent)

DRB Recommendation: Approval with conditions. (Vote: Passed 5-0-1 with DiBella abstaining)

It was moved by Councilmember Whalen, seconded by Councilmember Thom, that Zoning Case Z04-105 be approved and Ordinance No. 4457 adopted.

In response to a question from Councilmember Rawles, Planning Director John Wesley clarified that the applicant's request meets the Freeway Landmark Monument Guidelines adopted by the Council.

William Lally, an attorney representing the applicant, Diversified Partners, referred to a site plan displayed on the Elmo and provided a brief overview of the case.

Councilmember Jones stated that he remembers that one of the criteria in the Freeway Landmark Monument Guidelines was that a sign was to provide visibility to traveling motorists. He questioned why, on a flat, recessed piece of land adjacent to the freeway, motorists would have difficulty viewing a commercial development.

In response to Councilmember Jones' comments, Councilmember Thom advised that the freeway adjacent to the development is elevated, as opposed to ground level, and would pose visibility issues for the businesses located at the commercial power center. She added that the commercial development, which is located in her district, is an excellent project and said that the residents in the area are looking forward to more retail establishments.

Discussion ensued relative to the configuration of the sign; the fact that the applicant performed a balloon test and staff is supportive of the proposed height and location of the sign; that the development is over 700,000 square feet of retail and commercial space and would be a major economic engine for the east side of the community; that many of the tenants signed leases with the understanding that they would have visibility onto freeway frontage; that the cost of the sign is \$300,000; and that the sign was presented to the Design Review Board on three separate occasions in order to achieve the necessary architectural refinements.

Vice Mayor Walters commented that although she is not a proponent of Freeway Landmark Monument signs, she acknowledged that the applicant's sign went through several revisions to enhance its appearance. She stated that her primary concern is that the sign would partially block the view of the Superstition Mountains as motorists are traveling along the freeway and added that it was her understanding when the ordinance was written that the signs could not block natural views.

In response to Vice Mayor Walters' comments, Mr. Lally stated that he was unaware of any language in the ordinance that referred to blocking mountain views. He noted, however, that with normal highway speeds of 65 to 70 miles an hour, there would be, at most, a "short-term blocking" of the view.

Mayor Hawker expressed opposition to the motion and stated that he "fought" for the elimination of billboards and large signs in Mesa. He stated the opinion that the ordinance would "open up" a series of potential sign locations around the US 60 and the 101/202 Loops and commented that he may not like how the City looks if that occurs.

Further discussion ensued relative to the fact that there are 8-12 potential sites that meet the stringent criteria of the new Freeway Landmark Monument Guidelines; that the proposed sign itself is only six-foot wide; and that the long-term view corridor blockage is minimal.

Councilmember Rawles stated that the Council has adopted an ordinance which contains certain criteria, that such criteria has been met, and therefore, it would be arbitrary and capricious for the Council to deny the applicant's request.

City Attorney Debbie Spinner responded to a question from Mayor Hawker and commented that staff believes the applicant's request is within conformance of City policy, but noted that the Council is the ultimate decision maker in this regard.

Councilmember Whalen reminded his fellow Councilmembers that the reason they decided to proceed with Freeway Landmark Monument signs is because Mesa faced the "potential shrinkage of major businesses within the community" and that the signs were necessary in order to remain competitive in today's market. He emphasized the fact that the Council spent many months crafting the Guidelines and, in fact, have adopted one of the most stringent ordinances of any city in the Valley.

Mayor Hawker called for the vote.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried by majority vote and Ordinance No. 4457 adopted.

- b. **Z05-73 (District 5)** The 4600 to 4800 block of East McKellips Road (south side). Located south and east of McKellips Road and Greenfield Road (33± ac.). Council Use Permit and Site Plan Review. This request is to allow for the development of a Sam's Club anchored retail center. Marsha G. Greene, owner; Sean Lake, Pew & Lake PLC, applicant – Ordinance No. 4458. ***(Held neighborhood meeting and contacted registered neighborhoods and homeowners' associations.)***

P&Z Recommendation: Approval with conditions. (Vote: Passed 5-0 with Adams and Salas absent)

John Giles, 238 W. 2<sup>nd</sup> Street, an attorney representing Mesa Commerce Center, the industrial park surrounding the proposed Sam's Club development, stated that he is not opposed to the case, but is merely requesting a continuance to the September 19<sup>th</sup> Regular Council meeting. He reported that the matter was considered by the Planning & Zoning Board a few weeks ago and subsequently expedited and placed on tonight's Council agenda, which prevented him from memorializing certain agreements made with the applicant and also resolving one issue dealing with traffic flow.

Sean Lake, 10 West Main Street, an attorney representing Wal-Mart Stores, Inc., and Sam's Club, provided a brief overview of the case. He stated that with regards to why the Mesa Commerce Center would like the case continued pertains to drive access, an issue that was discussed by the parties prior to the Planning & Zoning meeting. He commented that in an effort to reach a compromise with the Mesa Commerce Center, the applicant agreed to make the access point (at 48<sup>th</sup> Street) a right-in only, meaning that a driver could only enter the property at that curb cut, thereby removing the ability to exit at that location. He questioned the viability of a

continuance and stressed that it is critical that some type of drive access be maintained at that point for the future development of the pad at this location and added that removing that access point would significantly diminish the marketability and value of those areas for future restaurant developments.

In response to a question from Councilmember Rawles, Mr. Giles clarified that there were four or five issues memorialized in an e-mail that he received from Mr. Lake today, but commented that the Mesa Commerce Center Board has not had adequate time to look at the language of the proposal and authorize the Chairman to sign the agreement.

Mr. Lake identified the following issues agreed to between himself and Mr. Giles at the Planning & Zoning meeting:

- All truck access into the project would come in and out of 46<sup>th</sup> Street and would not access the property from 48<sup>th</sup> Street.
- Right-in only at the above-referenced drive access.
- The applicant would work with the Mesa Commerce Center and the applicant's landscape architect to ensure that a consistent landscape theme is maintained along 48<sup>th</sup> Street.

Councilmember Rawles commented that at a recent Study Session, Planning Director John Wesley announced that staff has been able to "speed up" the process between the time a case is heard by the Planning & Zoning Board and considered by the Council.

In response to a series of questions from Vice Mayor Walters, Mr. Giles stated, among other things, that he concurred with the three proposals outlined by Mr. Lake; that such proposals have not yet been presented and scrutinized by the Mesa Commerce Center Board, which is scheduled to meet later this week; and that the remaining issue that was not fully agreed upon was the first curb cut off the corner of McKellips Road and 48<sup>th</sup> Street.

Vice Mayor Walters commented that although the Mesa Commerce Center may want the elimination of the curb cut off of McKellips Road and 48<sup>th</sup> Street, from the City's perspective, that would tend to make the property less useful and questioned whether, in fact, the Council would support the elimination of that item. She added that in her opinion, the applicant has proposed a compromise that the Mesa Commerce Center may agree with.

It was moved by Councilmember Rawles, seconded by Councilmember Thom, that Zoning Case Z05-73 be approved and Ordinance No. 4458 adopted.

In response to a series of questions from Mayor Hawker, Mr. Wesley confirmed that staff and the Planning & Zoning Board recommend approval of the case. He explained that the compromise proposed by the developer regarding the curb cut is a matter that could be handled administratively as an amendment to the site plan and/or they could note that the four lots adjacent to McKellips Road and 48<sup>th</sup> Street would come back through the review process for greater detail. Mr. Wesley added that the other agreements between the parties are private matters and not enforceable by the City as part of the zoning of the property.

Mayor Hawker called for the vote.

Carried unanimously.

9. Items from citizens present.

There were no items from citizens present.

10. Adjournment.

Without objection, the Regular Council Meeting adjourned at 6:55 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 September 2005. 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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