

## COUNCIL MINUTES

October 16, 2006

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on October 16, 2006 at 5:45 p.m.

### COUNCIL PRESENT

Mayor Keno Hawker  
Rex Griswold  
Kyle Jones  
Tom Rawles  
Scott Somers  
Claudia Walters  
Mike Whalen

### COUNCIL ABSENT

None

### OFFICERS PRESENT

Christopher Brady  
Debbie Spinner  
Barbara Jones

Invocation by Pastor Ottley Homes, Shiloh Missionary Baptist Church.

Pledge of Allegiance was led by Councilmember Griswold.

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. Take action on all consent agenda items.

All items listed with an asterisk (\*) will be considered as a group by the City Council and will be enacted with one motion. There will be no separate discussion of these items unless a Councilmember or citizen requests, in which event the item will be removed from the consent agenda and considered as a separate item. If a citizen wants an item removed from the consent agenda, a blue card must be completed and given to the City Clerk prior to the Council's vote on the consent agenda.

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

Carried unanimously.

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

Minutes from the August 31, September 7, 14 and October 3, 2006 Council meetings.

3. Take action on the following liquor license applications:

\*3a. Brambley Hedge Rabbit Rescue

This is a one-day charitable event to be held on Saturday, October 21, 2006 from 8:00 p.m. to 12:00 Midnight at Mesa Skateland, 7 East Southern Avenue. District #4.

\*3b. Chandler Compadres

This is a two-day charitable event to be held on Friday, November 3, 2006 from 5:00 p.m. to 12:00 Midnight and Saturday, November 4, 2006 from 5:00 p.m. to 12:00 Midnight at 1855 South Macdonald. District #4.

\*3c. Villa Del Sol Mexican Food

Person to Person Transfer Beer & Wine Bar License for Villa Del Sol Mexican Food, 1340 South Country Club Drive, Villa Del Sol Mexican Food LLC, Applicant, Consuelo Rodriguez De Ibarra, Agent. The Beer & Wine Bar License previously held at this location by Villa Del Sol Mexican Food LLC, issued 04/29/2004, will transfer to the applicant. District #3.

\*3d. Native New Yorker

New Restaurant License for Native New Yorker, 318 East Brown Road, Suite 112, Hot Toys LLC, Applicant, Amy S. Nations, Agent. The Restaurant License previously held at this location by Brown & Mesa Drive Inc., issued 08/13/1992, will revert back to the State. District #1.

4. Take action on the following contracts:

\*4a. High-Speed Communications Ring Equipment for the Transportation Management Center Intelligent Transportation System as requested by the Transportation Division – Development Services Department. (FHWA Funding through ADOT (\$278,185.00) and HURF Contingencies (\$14,041.61).

The Purchasing Division recommends authorizing purchase from the ADOT Contract with Darcomm Network Solutions at \$292,226.61, including applicable sales tax.

\*4b. Radio Communications/Field Equipment for the Transportation Management Center Intelligent Transportation Systems as requested by the Transportation Division – Development Services Department. (FHWA Funding through ADOT (\$366,695.00) and HURF Contingencies (\$50,244.36).

The Purchasing Division recommends authorizing purchase off the ADOT contract with Access Technologies, Inc. at \$416,919.36, including applicable use tax.

\*4c. Three-year Contract for Landscape Maintenance Services for Parks and Retention Basins, in an area designated as Zone 6, as requested by the Community Services Department.

The Purchasing Division recommends award to the lowest responsive bidder, Artistic Land Management, Inc., at \$296,166.98 annually, based on estimated requirements.

- \*4d. Capnography Field Upgrade for 34 Medtronic Lifepak Cardiac Monitors/Defibrillators as requested by the Mesa Fire Department.

The Purchasing Division recommends accepting the Sole Source bid from Medtronic Emergency Response Systems for \$115,103.92, including use tax.

- \*4e. One Dynex DSX™ Automated Enzyme Linked Immunoassay (ELISA) Processing System for DUI drug cases as requested by the Mesa Police Department. (Fully ACJC Grant Funded.)

The Purchasing Division recommends award to the lowest responsive bidder, Diagnostix of California, dba Immunalysis Corp., at \$54,912.00, including use tax.

- \*4f. Computer Infrastructure Hardware and Software as requested by the Information Services Division.

The Purchasing Division recommends authorizing purchase from the State of Arizona contract with CompuCom at \$114,932.03, award to the Sole Source bidder, AppWorx Corp., in the amount of \$38,118.43, project contingencies in the amount of \$15,305.05, for a total of \$168,355.51, including use tax.

- \*4g. 50 Police Squad Cars and Emergency Equipment as requested by the Police Department. (44 Replacement Vehicles / 6 Additions) (Quality of Life Funding)

The Purchasing Division recommends authorizing purchase off the State of Arizona Contract with Five Star Ford and the City of Tempe contract with Arizona Emergency Products, Inc. at \$1,507,887.13, including sales tax.

- \*4h. 543 TASER Model X26 Devices and Accessories as requested by the Mesa Police Department. (Quality of Life Funding)

The Purchasing Division recommends accepting the sole source bid from Davidson's, Inc. for \$512,902.08, including sales tax.

- \*4i. Six Month Extension of Supply Contract for Tires for Warehouse Inventory as requested by the Fleet Support Services Division.

The Purchasing Division recommends authorizing purchase from the State of Arizona contract with Goodyear Tire & Rubber Company, through Wingfoot Commercial Tire, at \$108,000 and Purcell's Western States Tire at \$72,000, for a total amount of \$180,000.00.

- \*4j. Sewer Line Video Inspection, City of Mesa Project No. 04-919-002.

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

Recommend award to the low bidder, Valley Hydrovac, Inc., in the amount of \$64,100.00 plus an additional \$6,410.00 (10% allowance for change orders) for a total award of \$70,510.00. Funding is available from the FY 06/07 Engineering Operating Budget, Engineering Inspection Services – Sewer.

5. Introduction of the following ordinances and setting November 6, 2006 as the date of the public hearing on these ordinances.

- \*5a. Amending Sections 11-17-2 and 11-17-3 of the Mesa City Code with regard to allowing Accessory Retail Activities (aka Country Stores) in RV and manufactured home parks.

The draft amendment would revise the Manufactured Home and RV Chapter of the Zoning Ordinance by adding a definition of “accessory retail events” in Section 11-17-2. The effect of passing this amendment would be to expressly allow country store activities on a once a week, four hour per event basis without the need for any additional reviews by City staff, outside of applications for sales tax licenses. The number of events would also be limited, based on the stated frequency requirements. Other restrictions would also be added to assure that such activities are primarily for the benefit of park residents and are not intended to attract residents from outside the park.

- \*5b. Amending Title 4 of the Mesa City Code to allow some building permit applications to be submitted prior to finalization of the public review processes on an “at risk” basis. **(Related to Item 5c)**

- \*5c. Amending Title 11 of the Mesa City Code to allow some building permit applications to be submitted prior to finalization of the public review processes on an “at risk” basis. **(Related to Item 5b)**

P&Z Recommendation: No action to be taken at this time. (Vote: 6-0 with Boardmember Adams absent)

DDC Recommendation: Approval. (Vote 6-0)

- \*5d. Amending Section 9-6-7 and 9-8-4 of Title 9 of the Mesa City Code authorizing the Development Services Manager to allow modified or reduced off-site improvements to encourage redevelopment of properties if off-site improvement costs have been previously paid, as recommended by the General Development Committee.

- \*5e. **A06-16 (District 5)** Annexing land located on the southwest corner of Thomas Road and Val Vista Drive (202.18 ± ac.). Initiated by Susan Demmitt representing the property owners. **CONTINUED FROM THE OCTOBER 3, 2006 COUNCIL MEETING. THE APPLICANT HAS REQUESTED THIS CASE BE CONTINUED TO THE NOVEMBER 6, 2006 CITY COUNCIL MEETING.**

- \*5f. **Z06-70 (District 6)** 7932 East Broadway Road. Located east of Sossaman Road and north of Broadway Road (0.17± ac.). Rezone from Maricopa County R1-6 to City of Mesa R1-6. For the establishment of City of Mesa zoning on recently annexed property. Spencer Vanderpool, owner; City of Mesa, applicant.

PHO Recommendation: Approval with conditions.

- \*5g. **Z06-71 (District 6)** The 8222-8230 block of East Broadway Road (north side). Located on Broadway Road west of Hawes Road (0.39± ac.). Rezone from Maricopa County R1-6 to City of Mesa R1-6. For the establishment of City of Mesa zoning on recently annexed property. Spencer Vanderpool and James Vanderpool, owners; City of Mesa, applicant.

PHO Recommendation: Approval with conditions.

- \*5h. **Z06-72 (District 5) Deleted.**

- \*5i. **Z06-73 (District 5)** The 3400-3600 block of North Val Vista Drive and the 3000-3600 block of East Lehi Road. Located west of Val Vista Drive, south of Thomas Road (202.18± ac.). Rezone from Maricopa County Rural-43 to City of Mesa R1-43. For the establishment of City of Mesa zoning on recently annexed property. Robert Engel, owner; City of Mesa, applicant. **THE APPLICANT HAS REQUESTED THIS CASE BE CONTINUED TO THE NOVEMBER 6, 2006 CITY COUNCIL MEETING.**

PHO Recommendation: Approval with conditions.

- \*5j. **Z06-74 (District 6)** The 8200 block of East Germann Road (north side). Located west of Hawes Road and north of Germann Road (8.7± ac.). Site Plan Review. This case will allow the development of an RV/mini-storage facility. Gregg Sherwood, owner/applicant. **(Notified property owners, registered neighborhoods and homeowners' associations.)**

PHO Recommendation: Approval with conditions.

- \*5k. Amending Title 1, Chapter 6 of the Mesa City Code to change the name of the Council Finance Committee to Audit and Finance Committee and adding the City Manager as a nonvoting, ex-officio member, as recommended by the Finance Committee.

- \*5l. Creating a new Chapter 31 in Title 1 of the Mesa City Code establishing the Council Appointed City Auditor position and designating the duties and responsibilities, as recommended by the Finance Committee.

6. Take action on the following resolutions:

- 6a. Approving and authorizing the City Manager to execute an amendment to the Transit Service Agreement between the City of Mesa and the Regional Public Transportation Authority (RPTA). This amendment will extend Sunday and holiday service for Americans with Disabilities Act (ADA) eligible customers from November 7, 2006 to June

30, 2007. Mesa's estimated cost share to extend this service is estimated to be \$100,384.00 (LTAF II funds) – Resolution No. 8835.

It was moved by Vice Mayor Walters, seconded by Councilmember Whalen, that Resolution No. 8835 be adopted.

Councilmember Rawles commented that during the FY 2006/07 budget process, the Council identified Senior Dial-a-Ride as a program that would be eliminated in its entirety if Mesa voters opposed the implementation of a primary property tax. He stated that subsequent to the measure's defeat, the Council discussed possible changes to the budget and noted that there was "vigorous resistance" to modifying the list of programs and services that had previously been identified for elimination. Councilmember Rawles noted that by approving this item, the Council would be adding \$100,000 back into the budget and not abiding by its previous decisions. He added that the U.S. Constitution prohibits the government from interfering with an individual's right to exercise his or her freedom of religion and also does not require the government to provide the necessary funds for individuals to travel to and from their house of worship.

Mayor Hawker expressed support for the motion and stated that the Local Transportation Assistance Fund (LTAF) II monies were identified after the Council's budget was established. He added that the funds are restricted to be used for transportation purposes.

Vice Mayor Walters voiced support for the motion because Mesa received a greater amount of LTAF II funds than anticipated. She clarified that the monies are, in fact, designated for transit purposes.

Councilmember Somers expressed support for the continuation of Dial-a-Ride service for ADA eligible customers. He also disagreed with Councilmember Rawles' comments regarding the Council "going back on its word." He explained that Senior Dial-a-Ride service had been eliminated from the budget and said that this item "wipes clean" an unintended consequence of that action, which resulted in limited transportation options available to ADA customers.

Mayor Hawker called for the vote.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried by majority vote and Resolution No. 8835 adopted.

6b. Approving and authorizing the City Manager to execute the Airport Development Grant Agreement #E7S26 between the Arizona Department of Transportation (ADOT) Aeronautics Division and the City of Mesa for the design and construction of a Taxilane to the East Side Aeronautical Use Area at Falcon Field – Resolution No. 8836.

The State has agreed to fund up to \$270,000.00 for the project. The remaining local match will be funded with City funds. The total amount of the City's contribution will not

exceed \$30,000.00. The City's local match for the project will be funded with Falcon Field Airport capital improvement program funds that are currently budgeted.

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 Somers, seconded by Councilmember Whalen, that Resolution No. 8836 be adopted.

Upon tabulation of votes, it showed:

AYES - Hawker-Jones-Rawles-Somers-Walters-Whalen  
ABSTAIN - Griswold

Mayor Hawker declared the motion carried unanimously by those voting and Resolution No. 8836 adopted.

\*6c. Amending the Mesa 2025 Transportation Plan to adopt an alignment for the planned Williams Gateway Freeway – Resolution No. 8834.

\*6d. **Deleted.**

7. Project Contract for Construction of 50 Bus Stop Mini-Shelters.

This contract would authorize the construction of 50 bus stop mini-shelters in an effort to increase the number of passenger shelters in Mesa. These mini-shelters are smaller and less expensive than standard shelters and can be used in locations where right-of-way space is limited. Staff recommends approval to exercise a cooperative clause in a contract created by the City of Tempe, authorizing the City Manager to execute a contract with Lacor Streetscape Transit, Urban & Landscape Furnishings and a contractor selected from an open bid process to install 50 mini-shelters.

Funding is programmed in the FY 06/07 Transportation capital program. The total cost of this project is estimated at \$450,000.00 and will be funded from the Local Transportation Assistance Fund (LTAF) II (\$225,000.00) and the required 50% local match (Quality of Life) (\$225,000.00).

Councilmember Rawles stated that he has voted against other transit issues in the past and would continue to do so with this item.

It was moved by Councilmember Jones, seconded by Vice Mayor Walters, that the project contract for the construction of 50 bus stop mini-shelters be approved.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion carried by majority vote.

8. Discuss, receive public comment, and take action on the ordinances introduced at a prior Council meeting. Any citizen who wants to provide comment should submit a blue card to the Clerk before the item is voted on. If a citizen wants to comment on an item listed with an asterisk (\*), a blue card must be given to the Clerk before Council votes on the consent agenda.

8a. Amending Sections 11-1-6 and 11-6-2 of the Mesa City Code regarding Non-chartered Financial Institutions (Payday Lenders).

The following citizens spoke in support of the proposed amendment and urged the Council to eliminate the proliferation of payday loan stores in the City of Mesa:

Mitzi Pearce	1062 West 5 <sup>th</sup> Street
Nate Caine	1325 West Keats Avenue
Judy Link	445 North Yucca Circle
Tammie Pursley	1544 West 1 <sup>st</sup> Place

Bob DeFabrizio, 221 West Main, addressed the Council and stated the opinion that if the proposed Code amendment is adopted, the action would only make the payday lender stores more valuable and do nothing to deter their presence in the community.

It was moved by Vice Mayor Walters, seconded by Councilmember Jones, to amend Sections 11-1-6 and 11-6-2 of the Mesa City Code regarding Non-chartered Financial Institutions (Payday Lenders).

Councilmember Griswold stated that he has always been an outspoken critic of payday loan stores and their questionable lending practices. He commented that the State Legislature enacted laws to allow the operation of such businesses in Arizona and said that it is imperative that they readdress the issue in their upcoming legislative session. Councilmember Griswold stated that he would be willing to make a motion that this item be continued until such time as the State Legislature addresses payday lenders and Non-chartered financial institutions and added that if the matter is not resolved, the issue should be brought back to the Council for further discussion and consideration.

Mayor Hawker advised that a motion and second have already been made for approval of the ordinance.

Councilmember Griswold withdrew his motion.

Vice Mayor Walters said that although the proposed amendment does not solve the issue of payday lenders, it is "a step in the right direction" with regards to creating healthier neighborhoods and promoting a better business climate within the community. She also expressed concern that west Mesa in particular, as well as other parts of the community, has become the "dumping grounds" for payday loan stores. Vice Mayor Walters noted that the matter must be resolved by the State Legislature and added that she is unwilling to postpone this issue as suggested by Councilmember Griswold.

Councilmember Rawles noted that it is important to understand that payday lenders are legal businesses in Arizona and said that until the State Legislature outlaws them, the Council is limited to land use regulations of such businesses. He further expressed opposition to the

ordinance for the following reasons: 1.) The government is attempting to “micromanage” and regulate the number of businesses of a certain variety that should or should not exist in a particular location of the community; 2.) There is no empirical evidence to show that payday lenders lower property values in neighborhoods and that “more legitimate businesses” flee the area because of the number of payday loan stores in the vicinity; 3.) That the government should not make decisions based upon “smoke and mirrors” and unsubstantiated speculation and perception; and 4.) That because the nature of the person who uses the service primarily includes the poor and minorities, he particularly objects to any government form of policy or regulation that has as its justification regarding the type of individuals who can use such businesses.

In response to a question from Councilmember Rawles, Zoning Administrator Gordon Sheffield clarified that it is staff’s recommendation that the 1200-foot distance separation be measured in a straight line, from the closest outside edge of the building wall of the existing use to the closest outside edge of the building wall of the proposed use, without regard to intervening buildings, street alignments or property lines.

Councilmember Somers concurred with his fellow Councilmembers that payday lenders should be outlawed in Arizona. He noted, however, that although he does not like the industry and its business practices, in his opinion, poor business practices are not resolved by the spacing of such entities within the community. Councilmember Somers also stated that if an individual needs “quick money,” it is better to borrow from a payday loan store as opposed to bouncing a check. He added that the businesses fill a market niche that traditional lending institutions do not.

Mayor Hawker called for the vote.

Upon tabulation of votes, it showed:

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

Mayor Hawker declared the motion failed for lack of a majority vote.

- \*8b. **A06-10 (District 6)** Annexing land located on Broadway Road east of Crismon Road. (2.3 ± ac.) Initiated by John Brauchler, the property owner. **CONTINUED FROM THE OCTOBER 3, 2006 CITY COUNCIL MEETING. CONTINUED TO THE NOVEMBER 6, 2006 CITY COUNCIL MEETING.**
- \*8c. **Z06-63 (District 3)** The 310 to 320 block of North Alma School Road (east side). Located south of University Drive and east of Alma School Road. (0.99 ac.) Rezone from C-2 and R1-6 to O-S and Site Plan Review. This request will allow for the development of a daycare center. Towanda Carrigan, owner; William H. Hunse, Architectural Team Three, applicant. ***(Held a neighborhood meeting, notified property owners, registered neighborhoods and homeowners’ associations.)*** **CONTINUED FROM THE SEPTEMBER 18, 2006 CITY COUNCIL MEETING. LEGAL PROTEST FILED. <sup>3</sup>/<sub>4</sub> VOTE REQUIRED. CONTINUED TO THE NOVEMBER 6, 2006 CITY COUNCIL MEETING.**

P&Z Recommendation: Approval with conditions. (Vote: 4-1-1 with Boardmember Adams Nay, Finter abstaining due to a potential conflict of interest and Mizner absent.)

- \*8d. **Z06-64 (District 6)** The 7000-7200 block of East Baseline Road (south side). Located south and east of Baseline Road and Power Road. (10± ac.). Rezone from AG, C-2 and C-2 PAD to C-2 PAD, Site Plan Review and Site Plan Modification. This request will allow for the development of two new retail/office buildings and will also allow for the integration of three commercial projects into a group commercial development. Ryan McMahon, 7115 E. Baseline LLC; Grant A. Jayrien, GSS Partners, owners, Randolph L. Carter, Dream Catchers Planning and Design LLC, applicant – Ordinance No. 4600. **(Notified property owners, registered neighborhoods and homeowners' associations.)**

PHO Recommendation: Approval with conditions.

- \*8e. **Z06-65 (District 6)** The 6900 to 7100 blocks of South 89<sup>th</sup> Place (west side). Located south of Pecos Road and west of Ellsworth Road (6.03± ac.). Site Plan Review. This request will allow for the development of office/warehouse buildings. Brent Payne, owner; Andrew Schuh, Cawley Architects, applicant – Ordinance No. 4601. **(Notified property owners, registered neighborhoods and homeowners' associations.)**

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

- \*8f. **Z06-66 (District 6)** The 7000 to 7600 blocks of East Guadalupe Road (south side) and the 2800 to 3100 blocks of South Sossaman Road (west side). Located south of Guadalupe Road and west of Sossaman Road (213± ac.). Rezone from AG to R1-6 PAD DMP, R1-7 PAD DMP, R1-9 PAD DMP and C-1 DMP and the establishment of the Desert Place at Morrison Ranch (Residential) Development Master Plan. This case will allow for the development of a residential master planned community with a neighborhood commercial element. Scott C. Morrison, Morrison Ranch, Inc., owner/applicant – Ordinance No. 4602. **(Held a neighborhood meeting, notified property owners, registered neighborhood associations.)**

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

- \*8g. **Z06-67 (District 3)** 231 North Alma School Road. Located south of University Drive and east of Alma School Road (1.8± ac.). Rezone from R-4 to O-S. This request will allow for the development of office uses. John N. Wright, owner; Robert D. Fronske, applicant – Ordinance No. 4603. **(Notified property owners and registered neighborhood associations.)**

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

- 8h. **Z06-69 (District 6)** The 8200 block to 9200 block of East Pecos Road (north side) and the 9200 block to 10000 block of East Pecos Road (south side). Located north of Pecos Road, east and west of Ellsworth Road (604.8± ac.). Rezone from AG to M-1 and C-2.

This request will change the zoning to allow light industrial and commercial uses. Michael Blenis, Paragon Properties, owner; Paul Gilbert, Beus Gilbert, PLLC, applicant. ***(Held a neighborhood meeting, notified property owners, registered neighborhoods and homeowners' associations.)***

P&Z Recommendation: Approval with conditions and recommendation that a Development Agreement be considered. (Vote: 6-0 with Boardmember Adams absent.)

Paul Gilbert, 4800 North Scottsdale Road, an attorney representing the applicant, addressed the Council and provided an extensive overview of this case. He reported that the proposal is complementary to Williams Gateway Airport and enhances the City's goal to create employment opportunities in the area. He acknowledged that a site plan has not yet been finalized, but noted that other properties immediately adjacent to the applicant's have been rezoned without a site plan.

Mr. Gilbert advised that during the Planning and Zoning (P&Z) meeting when this case was presented, he agreed that if the Board wanted to recommend to the Council that a Development Agreement be entered into between the applicant and the City, that he would be willing to do so. He commented that he foresees a problem this evening in doing that if the Council agrees to a stipulation that requires the applicant to enter into a Development Agreement. He said that according to his understanding of the ordinance, they would be unable to approve that document tonight.

Mr. Gilbert further commented that during the P&Z hearing, concerns were expressed by the Boardmembers regarding C-2 zoning and the possible uses that would not be compatible in this zoning classification by the airport. He referred to a diagram depicting the C-2 portions of the application at the intersection of the proposed realignment of Ellsworth Road and Pecos Road. Mr. Gilbert stated that Planning Director John Wesley has indicated that staff and the applicant are "in basic conceptual agreement" relative to what should be included in the Development Agreement. He said those issues include the following: 1.) No hospitals; 2.) No congregate care or overnight care; 3.) The location of Hawes Road; and 4.) Incorporating stipulations 5, 6, 9 and 10 into the Development Agreement. He added that per stipulation 4, the applicant would dedicate the roadway system that the City needs for the airport either at the time of development or at the time of the City's request for dedication, whichever comes first.

In response to a question from Councilmember Rawles, Planning Director John Wesley confirmed that staff has met with the applicant, reviewed the stipulations, and created a list containing the key items that staff believes should be included in the Development Agreement. He noted, however, that staff has not yet reviewed a draft of the Development Agreement.

In response to a question from Councilmember Rawles, Mr. Gilbert clarified that he has discussed the "conceptual development agreement" with his client. He stated that the applicant is prepared to make the same commitments as previously outlined and would execute the Development Agreement once it is in written form and prepared for signature.

City Attorney Debbie Spinner voiced a series of concerns regarding this case, including the fact that the Development Agreement would be with Mr. Gilbert's client, who does not yet own the property, but noted that it is currently in escrow. She acknowledged that staff has discussed the concept of a Development Agreement and its terms, but stated that there has been no detailed

discussions with Mr. Gilbert regarding this matter. Ms. Spinner recommended that the zoning case be continued in order to provide staff with an opportunity to pursue a Development Agreement with the applicant. She added that staff has been waiting for Mr. Gilbert to provide them with a draft of the Development Agreement for their review.

Mayor Hawker commented that with regard to Ms. Spinner's statement that the applicant does not own the property, he would assume that with the property in escrow, the applicant is "somewhat authorized" to move forward on the zoning and that the current landowner does not object to such action.

Mr. Gilbert avowed that the applicant is authorized to enter into a Development Agreement. He explained that the applicant already owns outright over half of the property and that the current sales transaction would result in the purchase of the remaining parcel. Mr. Gilbert added that the current landowners, who were represented at the P&Z hearing, are fully aware of the representations being made to the Council this evening. He further acknowledged that this is a difficult case, in that the applicant has not entered into a Development Agreement and does not have the authority to do so until the zoning has been granted, and added that without the zoning being granted, he cannot enter into the Development Agreement.

City Manager Christopher Brady stated that staff has no reason to suggest that Mr. Gilbert's representations will not be fulfilled, but commented that it has put staff in a difficult position. He explained that once zoning is approved, it would be more difficult for staff to ensure that the Development Agreement reflects the terms being discussed tonight.

An extensive discussion ensued relative to a scenario in which the Council approves the zoning request tonight, but a Development Agreement is not provided to staff by the applicant; the procedure under which the Council would take action regarding a motion for reconsideration of the zoning case; the timeframe within which an ordinance becomes effective; the fact that Mr. Gilbert's office has drafted a Development Agreement, and pending zoning approval this evening, the document would be promptly transmitted to the City Attorney's Office for their review; the fact that it is essential that the applicant close on the property prior to the November 6, 2006 Regular Council meeting; and that the applicant would agree to a two-week continuation of the zoning case until October 30, 2006, at which time a Special Council meeting could be held to discuss and consider the rezoning request and the Development Agreement concurrently.

Mayor Hawker advised that he would be out of town on October 30<sup>th</sup>.

It was moved by Councilmember Rawles, seconded by Vice Mayor Walters, that Zoning Case Z06-69 be continued to an October 30, 2006 Special Council meeting.

Councilmember Somers expressed appreciation to Mr. Gilbert and the property owners for their cooperation with the City concerning this zoning case. He stated that the property in question is not only important to his district, but also to the entire City as a whole.

Mayor Hawker called for the vote.

Carried unanimously.

9. Take action on the following subdivision plats:

- \*9a. "AMBERWOOD PLAZA CONDOMINIUMS" (**District 5**) 4200-4400 blocks of East Brown Road (north side) located west and north of Greenfield Road and Brown Road. 4 O-S PAD condominium units (1.17 ac) Ferguson Holdings, LLC, Billy Johnson, manager, owner.
- \*9b. "WALDO ESTATES" (**District 1**) 1026 West 8<sup>th</sup> Street (north side) located north and east of Alma School Road and University Drive. 5 R1-6 single residence lots (1.08 ac) Mark and Candace Reed, owners.

10. Items from citizens present.

Williams Gateway AREA Project Manager Wayne Balmer stated that after a 33-year career with the City of Mesa, he would be retiring at the end of the week. He expressed appreciation to the Council for the time, attention and support that they have given to various projects he has been associated with over the years, and in particular, Williams Gateway Airport.

Mayor Hawker, on behalf of the entire Council, thanked Mr. Balmer for his many years of service to the City of Mesa.

11. Adjournment.

Without objection, the Regular Council Meeting adjourned at 7:10 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 16<sup>th</sup> day of October 2006. I further certify that the meeting was duly called and held and that a quorum was present.

\_\_\_\_\_  
BARBARA JONES, CITY CLERK