



COUNCIL MINUTES

May 5, 2014

The City Council of the City of Mesa met in a Regular Council Meeting in the Council Chambers, 57 East 1st Street, on May 5, 2014 at 5:45 p.m.

COUNCIL PRESENT

Alex Finter
Terry Benelli
Christopher Glover
Dennis Kavanaugh
David Luna
Dave Richins
Scott Somers

COUNCIL ABSENT

None

OFFICERS PRESENT

Christopher Brady
Debbie Spinner
Dee Ann Mickelsen

Invocation by Todd Carling.

Pledge of Allegiance was led by Boy Scout Cedric Beckford.

Swearing-In of District 2 Councilmember Terry Benelli.

Councilmember Benelli was sworn in by Mayor Finter.

Councilmember Benelli thanked the Mayor and the Council for allowing her to be “part of the team.” She stated that she was pleased they selected her from the list of candidates. She also recognized her family and friends, many of whom were present in the audience, for their love and support.

Mayor’s Welcome.

Awards, Recognitions and Announcements.

Vice Mayor Glover stated that in February, he had the opportunity to work with the i.d.e.a. Museum to create Mesa’s Big i.d.e.a. Drawing Contest. He explained that the contest, which was sponsored by the City, Mesa Public Schools (MPS) and local charter schools, was open to children ages 6 to 12. He noted that the youths were asked to submit drawings depicting their favorite place or thing in Mesa. He further advised that the City received approximately 500 entries, from which 11 honorable mentions and four grand prize winners were selected. He thanked Youth Museum Administrator Sunnee O’Rork and Youth Museum Curator Jeffory Morris for their efforts and dedication in this regard.

Vice Mayor Glover recognized the four grand prize winners, who came forward to receive their awards.

Development and Sustainability Department Director Christine Zielonka recognized Ben Carling, a student at Heritage Academy and an Eagle Scout. She explained that Ben, as part of an Eagle Scout project, took it upon himself to meet with various City departments and outside contractors, all of whom volunteered their time and talent to build a sports practice field at Heritage Academy. She noted that Ben is a fine example of the younger generation and added that he enjoys volunteering his free time to the community.

Mayor Finter and Vice Mayor Glover presented a plaque to Ben Carling in recognition of his achievements.

Fire Chief Harry Beck recognized Mesa resident John Smith and asked him to come forward. He reported that on March 23rd of this year, Mr. Smith provided immediate patient care to Michael Poenzia, who suffered severe injuries as a result of being struck by a car. He said that Mr. Smith applied pressure to Michael's femoral artery and used a belt as a tourniquet until Mesa Fire and Medical Department firefighters and paramedics arrived on the scene. He expressed his deep appreciation to Mr. Smith for his courageous and selfless act and presented him with a Certificate of Appreciation.

Mayor Finter and Vice Mayor Glover congratulated Mr. Smith for his lifesaving act.

Councilmember Somers remarked that in the past 60 to 70 years, Falcon Field Airport and Phoenix-Mesa Gateway Airport have played important roles not only in the community, but also in the nation's defense during World War II and beyond. He explained that both airports have generated significant economic development and job growth opportunities in Mesa. He cited, for example, that Falcon Field Airport has produced \$1.2 billion in economic opportunity for the community, while Phoenix-Mesa Gateway Airport recently topped \$1.3 billion in economic activity. He pointed out that more than 77 aviation-related companies are located in Arizona, many of which are based in Mesa. He added that in that regard, he believed it was appropriate for the Council to make a statement regarding the importance of aviation to the City, the residents of Mesa and the State of Arizona.

Mayor Finter stated that he has issued a proclamation declaring June 2014 as General Aviation Appreciation Month.

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 Councilmember Kavanaugh, 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 February 12, March 27, April 10, 21 and 24, 2014 Council meetings.

3. Take action on the following liquor license applications:

*3-a. Arizona Knights of Columbus Charity, Inc.

This is a two-day fraternal event to be held on Friday, July 11, 2014 from 6:00 p.m. to 10:00 p.m., and on Saturday, July 12, 2014 from 6:00 p.m. to 10:00 p.m., at 1730 West Guadalupe Road. **(District 3)**

*3-b. Broadway Liquors

A Liquor Store is requesting a person-to-person transfer for KKR Assets, LLC, 405 East Broadway Road – Kundavaram Reddy, agent. The existing Liquor Store License held by EBJJ Enterprises will revert back to the State for modification. **(District 4)**

*3-c. Circle K 3476

A convenience store with a fueling station is requesting a new Beer and Wine Store License for Circle K Stores, Inc., 415 North Stapley Drive – Kim Kwiatkowski, agent. The existing Beer and Wine Store License held by Asse Gas LLC will revert back to the State. **(District 4)**

*3-d. Mi Lindo Mexico

A new Beer and Wine Store License for Malika LLC, 103 West 8th Avenue – Shahbano Sheikh, agent. The existing Beer and Wine Store License held by Badshah, LLC, will revert back to the State. **(District 4)**

*3-e. O'Neill's Place

A restaurant that serves lunch and dinner is requesting a new Restaurant License for EGA LLC, 2855 North Power Road, Suite 101 – Michael Win Aiton, agent. The existing Restaurant License held by O'Neill Five, Inc., will revert back to the State. **(District 5)**

4. Take action on the following contracts:

*4-a. Three-Year Term Contract for Heavy-Duty OEM Cab/Chassis Parts for the Fleet Services Department. **(Citywide)**

This contract will provide heavy-duty OEM cab/chassis parts to maintain the City's assorted fleet of approximately 175 medium and heavy-duty vehicles.

Fleet Services and Purchasing recommend awarding the contract to the lowest priced, responsive and responsible bidders: Freightliner, Sterling, Western Star of Arizona; Inland Kenworth, Inc.; Cummins Rocky Mountain LLC; Rush Truck Centers of Arizona, dba Rush Truck Center of Phoenix; Vanguard Truck Center; and RWC International Ltd.; at \$805,000 annually, based on estimated requirements.

*4-b. One-Year Renewal of the Term Contract for Graffiti Abatement Services for the Transportation Department. **(Citywide)**

In the summer of 2010, the City initiated a contract for graffiti abatement services to enhance the City's program and to continue aggressively abating all graffiti within 24 hours. The additional services provided by the contractor include true color-matching and graffiti removal using water or soda blasting methods.

Transportation and Purchasing recommend authorizing a one-year renewal with Graffiti Protective Coatings, Inc. (a Mesa business), at \$270,450, based on estimated requirements.

- *4-c. One-Year Renewal of the Term Contract for Reflectorized Sign Sheeting for the Transportation Department. **(Citywide)**

Transportation, Field Operations personnel fabricate and maintain Mesa's traffic control and street name signs that are installed throughout the City for public safety. This contract provides reflectorized sign sheeting materials for the fabrication of signs for City streets and general usage.

Transportation and Purchasing recommend authorizing a one-year renewal using the Arizona Department of Transportation cooperative contract with 3M Company, at \$30,000 annually, based on estimated requirements.

- *4-d. Purchase of Replacement Uninterruptable Power Supply Devices and Related Web Management Cards for the Information Technology Department. **(Citywide)**

This purchase will provide for the replacement of an aging and poor performing fleet of Uninterruptable Power Supply (UPS) devices. Approximately two-thirds of the City's devices are at least five years old and many are even older. UPS devices act as transitional power for telephone and computing services when primary utility power is temporarily interrupted. UPS devices are located in building equipment rooms across the City. The web management cards are for remote proactive performance monitoring of these UPS devices in the field.

Information Technology and Purchasing recommend authorizing the purchase using the State of Arizona cooperative contract with Insight Public Sector, at \$57,581.14.

- *4-e. One-Year Renewal of the Term Contract for Emergency Pump Rental for the Transportation Department. **(Citywide)**

Transportation maintains 39 storm water pump stations with 51 of the pumps that convey storm water, irrigation tail water, and water from storm events. During these events, the storm water system can be overwhelmed creating flooded streets, overflowing retention basins, flooded property, along with the possibility of pump failure. Therefore, the department requires the ability to rent trailer-mounted portable pumps on an immediate response, as-needed basis, to prevent flooding and property damage.

Transportation and Purchasing recommend authorizing a one-year renewal with Water Movers, Inc., at \$50,000 annually, based on estimated requirements.

- *4-f. Purchase of TASER Training Cartridges and Two Replacement Simulation Suits for the Police Department. **(Citywide)**

This purchase will provide TASER brand x26 training cartridges and x26 simulation suits for the Police Department. The Police Training Division will be conducting an annual recertification of all TASER operators. The training cartridges are needed to complete the recertification. Additionally, Training has two unserviceable simulation suits that need to be replaced.

In October 2013, PD purchased TASER supplies (duty cartridges and batteries) for \$21,816.76. Because the combined amount of these TASER purchases will exceed the procurement and Council threshold of \$25,000 on yearly basis, Council approval is required.

Police and Purchasing recommend authorizing the purchase using the Arizona Department of Public Safety cooperative contract with Proforce Law Enforcement, at \$18,264.66.

*4-g. Purchase of 300 On-Officer Cameras and Data Storage Plan (Five-Year Purchase) (Sole Source). **(Citywide)**

After a one-year pilot program and extensive research, the Police Department has determined the Taser International Axon Flex systems fully meet the operational needs of the department. The on-officer camera systems accurately address complaints of misconduct and drastically reduce false complaints and civil liability. This multi-year purchase will allow the department to deploy the on-officer camera systems to all patrol and motorcycle officers by FY 2016/17. The deployments will include docking stations to facilitate the use of the new camera systems and five-years of secure cloud data storage through Evidence.com.

Police and Purchasing recommend awarding the contract to the sole source vendor, Taser International, Inc., for the five-year purchase total of \$1,489,479.18.

*4-h. Purchase to Refurbish and Upgrade One Bomb Robot for the Police Department (Sole Source). **(Citywide)**

In 2003, the Police Department purchased two Andros F6A robots used during SWAT calls to open doors, break windows, deploy explosive breaching charges and allow bomb technicians to work remotely. The robots are now frequently failing and require refurbishment and upgrades (a complete overhaul), which can only be completed by the manufacturer to bring the robot to the same specifications of the newer robots manufactured by REMOTEC. The upgrades will include real-time on screen position graphics, improved software, and position presets giving the operator the robot's orientation.

Police and Purchasing recommend awarding the contract to the sole source vendor, REMOTEC (a subsidiary of Northrop Grumman), at \$91,443.63. This purchase is funded by Asset Forfeiture RICO funds.

*4-i. Purchase of Replacement Modular Furniture for the Information Technology Building for the Information Technology Department. **(District 4)**

The Information Technology Building located at 59 East 1st Street is the primary worksite for 60 Information Technology employees. The modular furniture in the building is approximately 31 years old, is not compatible with other City modular furniture, is in disrepair and needs to be replaced. This building has never been fully upgraded to the current City facilities standard. Reuse of components from other facilities has only completed 18% of the building. This project will be split into phases and installation will be done after office hours to minimize any disruptions to operations.

Information Technology and Purchasing recommend authorizing the purchase using the State of Arizona contract with Goodmans Interior Structures, at \$89,222.31.

***4-j. Broadway Road Wastewater Line Replacement, Horne to Williams. (District 4)**

This project will install a new sewer main to replace the existing vitrified clay pipe (VCP) sewer main, which was installed on Broadway Road between Horne and Williams (1.1 miles) between 1950 and 1960. Video inspections conducted by the Utilities Department show pipe defects and conditions have deteriorated that require the sewer line to be replaced. Additionally, the pipe is experiencing flow restrictions and backs up due to inadequate slope. These conditions in the sewer main have resulted in higher than normal maintenance costs. The new sewer main alignment will tie into a lower connection point and allow for the pipe to be installed at slopes that meet current City Design Standards.

Recommend award to the lowest responsible bidder, The Fishel Company, in the amount of \$1,603,384.70, plus an additional \$160,338.47 (10% allowance for change orders) for a total award of \$1,763,723.17. Funding is available in the 2006 Wastewater bond funds.

5. Take action on the following resolutions:

- *5-a.** Approving and authorizing the City Manager to enter into an Amended and Restated Intergovernmental Agreement with the Regional Public Transportation Authority for fixed bus, Dial-A-Ride and Ridechoice transit services. The estimated cost of transit services for FY 13/14 is \$14,587,899. Regional funds provide \$9,840,721 for the services and the City funds the remaining \$4,747,178 **(Citywide)** – Resolution No. 10429.
- *5-b.** Approving and authorizing the City Manager to enter into an Intergovernmental Agreement with the Regional Public Transportation Authority for operations and maintenance of certain elements of the Arizona Avenue/Country Club and Main Street LINK bus route stations. The City's share of the operations and maintenance costs will be \$26,000 annually **(Citywide)** – Resolution No. 10430.
- *5-c.** Ordering the sale of \$37,550,000 principal amount of City of Mesa General Obligation Bonds, Series 2014; and authorizing the reimbursement with bond proceeds of certain advances on construction projects – Resolution No. 10431.
- *5-d.** Ordering the sale of \$36,385,000 principal amount of City of Mesa Utility Systems Revenue Bonds, Series 2014; and authorizing the reimbursement with bond proceeds of certain advances on construction projects – Resolution No. 10432.

6. Introduction of the following ordinances and setting May 19, 2014 as the date of the public hearing on these ordinances:

- *6-a. Modifying rates for electric utility services.
- *6-b. Modifying rates for natural gas utility services.
- *6-c. Modifying rates for water utility services. (As amended at the May 5, 2014 Study Session.)
- *6-d. Modifying the City Code Title 5, Chapter 13 regarding the Residential Solid Waste Development Tax.
- *6-e. Modifying rates for wastewater utility services.
- *6-f. Modifying rates for solid waste utility services.
- *6-g. Modifying rates/fees/charges for utility service fees.
- *6-h. Modifying the Terms and Conditions for the Sale of Utilities related to customer account maintenance, credit and refund policies, certain clerical corrections, and clarifying verbiage. **(Citywide)**
- *6-i. **A14-04 (District 1)** Annexing 5.8± acres of land located east of the northeast corner of Alma School and McLellan Roads. This annexation is initiated by the property owners.
- *6-j. **Z14-005 (District 2)** 5656 East Albany Street (north side). Located north and east of North 56th Street and East Main Street (32± acres). Rezone from Maricopa County R1-8 SC to City of Mesa RS-9 AS. This request will establish City of Mesa zoning on previously annexed property.

Staff Recommendation: Approval with Conditions

P&Z Recommendation: Approval with Conditions (Vote: 6-0-1, Vice Chair Coons, abstained.)

- *6-k. **Z14-006 (District 2)** 5656 East Albany Street (north side). Located north and east of North 56th Street and East Main Street (32± acres). Rezone from RS-9 AS to RSL2.5 PAD. This request will allow the development of a single-residence subdivision.

Staff Recommendation: Approval with Conditions

P&Z Recommendation: Approval with Conditions (Vote: 3-1-1, Boardmember Di Bella, nay; Vice Chair Coons, abstained; Boardmembers Hudson and Johnson, absent.)

7. 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 City 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 City Clerk before Council votes on the Consent Agenda.

- *7-a. **Z14-020 (District 6)** 1010 South Crismon Road (west side). Located north of Southern Avenue on the west side of Crismon Road (1± acres). Rezone from RS-43 to OC BIZ and Site Plan Review. This request will allow the development of a medical office building – Ordinance No. 5213.

Staff Recommendation: Approval with Conditions

P&Z Recommendation: Approval with Conditions (Vote: 6-0-1, Chair Carter abstained.)

- *7-b. **Z14-014 (District 6)** The 3600 to 5200 blocks of South Ellsworth Road (east side), the 9200 to 10800 blocks of East Elliot Road (south side), and the 3600 to 6000 blocks of the South Signal Butte Road alignment (west side) (472± acres). Located south of Elliot Road between Ellsworth Road and Signal Butte Road. This request will allow the Campus/Regional Center Land Use Group in Development Unit 5 – Ordinance No. 5214.

Staff Recommendation: Approval with Conditions

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

- *7-c. **Z14-018 (District 6)** 7515 South Atwood. Located west of Ellsworth Road and north of Germann Road (1.22± acres). Site Plan Review. This request will allow the development of an industrial warehouse – Ordinance No. 5215.

Staff Recommendation: Approval with Conditions

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

- *7-d. **Z14-019 (District 4)** 824 West Broadway Road (NWC of Broadway Road and Extension Road). Located east of Alma School Road on the north side of Broadway Road (2.2± acres). Site Plan Review and Council Use Permit for a Large Collection Facility in the LI district. This request will allow the development of a contractor's yard for the storage of building materials and recycling materials – Ordinance No. 5216.

Staff Recommendation: Approval with Conditions

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

- *7-e. **Z14-021 (District 6)** The 8200 to 8600 blocks of East Baseline Road (north side). Located on the north side of Baseline Road and the west side of the Loop 202 San Tan Freeway (52.4± acres). Rezone from LC PAD and RM-4 PAD to LC PAD, RSL-2.5 PAD and RM-4 PAD. This request will allow the development of a mixed-use community – Ordinance No. 5217.

Staff Recommendation: Approval with Conditions

P&Z Recommendation: Approval with Conditions (Vote: 6-0-1, Chair Carter abstained.)

- *7-f. **Z14-022 (District 5)** 602 South Edgewater Drive. Located north of Southern Avenue and east of Power Road (0.5± acres). Rezone from RS-6 PAD to RS-6 PAD HL. This request will establish a Historic Landmark Overlay – Ordinance No. 5218.

Staff Recommendation: Approval with Conditions

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

- *7-g. Modifying City utility rates, fees and charges by adopting an incentive program for Mesa utility electronic bill delivery and SurePay automatic bank draft payments. **(Citywide)** – Ordinance No. 5219.

8. Take action on the following subdivision plats:

- *8-a. “Sunland Springs Village Unit 7 Phase 4” **(District 6)** The 11500 block of East Guadalupe Road. Located north of Guadalupe Road and east of South Signal Butte Road. 11 RS-6 Lots (3.95± acres). Lawyers Title of Arizona, Inc., owner; Jeff Giles, Clouse Engineering, engineer.
- *8-b. “Sunland Springs Village Unit 8” **(District 6)** The 2800 block of South Springwood Boulevard. Located south and east of East Guadalupe and South Signal Butte Roads. 137 RS-6 lots (66.29± acres). Farnsworth Development Company, owner; Jeff Giles, Clouse Engineering, engineer.

9. Take action on the following tentative proposed Fiscal Year 2014-15 Budget Plan:

- *9-a. Take action on the adoption of the tentative proposed Fiscal Year 2014-15 Budget Plan.

Items not on the Consent Agenda

10. Conduct a public hearing and take action on the following resolution regarding Minor General Plan Amendment GPMInor14-005 and ordinance that was introduced at a prior Council meeting:

- 10-a. Conduct a public hearing.

Mayor Finter announced that this was the time and place to conduct a public hearing regarding Minor General Plan Amendment GPMInor14-005.

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

- 10-b. **GPMInor14-005 (District 5)** The 5000 to 5200 blocks of East Brown Road (north side). Located at the northwest corner of Brown Road and Higley Road (5± acres). Minor General Plan Amendment to adjust the boundaries of the existing Mesa 2025 General Plan Land Use Designation from NC to MDR 4-6. This request will allow the development of a single-residential subdivision – Resolution No. 10433.

Staff Recommendation: Adoption

P&Z Recommendation: Adoption (Vote: 7-0)

It was moved by Councilmember Kavanaugh, seconded by Councilmember Benelli, that Resolution No. 10433 be adopted.

Carried unanimously.

- 10-c. **Z14-016 (District 5)** The 5000 to 5200 blocks of East Brown Road (north side). Located at the northwest corner of Brown Road and Higley Road (76.6± acres). Rezone from AG to RSL4.5-PAD on 43.65 acres and rezone from AG to RSL2.5 on 33 acres. This request will allow the development of a single-residential subdivision – Ordinance No. 5220.

Staff Recommendation: Approval with Conditions

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

Karen Broughton, a Mesa resident, urged the Council to delay the project until such time as the City of Mesa conducts its Primary/General Elections and a new Mayor and Councilmembers are elected. She noted that she has spoken with many of the surrounding neighbors, many of whom were surprised to hear about the project and opposed to the concept. She also expressed concern regarding the density and the design of the project which, in her opinion, “do not fit the Brown Road neighborhoods.”

Shara Monik, a Mesa resident, voiced opposition to the proposed west side street connection at McLellan Road. She stated that such a route will greatly impact the traffic through her neighborhood, with only one street connection at McLellan Road for motorists to access Greenfield Road. She acknowledged the importance for having a vehicular connection to Barbara Bush Elementary School, but pointed out that the new residents in the development will be able to access the front of the school from East Ingram Street off of Higley Road. She added that if McLellan Road must remain a through connection to the new development, she requested that Princess Drive and Gary Street also become through streets into the new neighborhood in order to alleviate traffic on McLellan Road.

Robbie Hopwood, a Mesa resident, spoke with respect to a number of safety concerns along McLellan Road. She noted that her residence is located on McLellan Road in close proximity to the elementary school and said that from the inside of her home, she can hear cars racing down the street trying to find a way to access Higley Road. She commented that in an effort to address such safety concerns, she suggested that KB Homes create an access to Higley Road in the northwest corner of the development. She stressed the importance of the developer providing a shortcut for the new residents to access Higley Road in order to ensure the safety of the children walking along McLellan Road to the elementary school.

In response to a question from Councilmember Richins, Ms. Hopwood verified that on many occasions, she and her late husband called the Mesa Police Department (MPD) to complain about the cars speeding along McLellan Road. She said that they asked the MPD to install speed bumps or a sign at the end of the street indicating that it was not a through street, none of which have occurred.

Councilmember Richins requested that City Manager Christopher Brady follow up with the MPD and the Transportation Department concerning Ms. Hopwood's requests and the manner in which they were handled.

Planning Director John Wesley reported that staff expressed similar concerns relative to the manner in which traffic would circulate through the area. He said that such concerns led to an adjustment of the site plan as previously proposed by the developer. He explained that the revisions create a less direct route from Higley Road to McLellan Road, including several turns, which are intended to slow down the flow of traffic.

Sean Lake, an attorney representing KB Homes, offered a series of comments as follows: the applicant conducted extensive neighborhood outreach efforts with respect to the proposed project; that as a result of citizen comments solicited at the Planning & Zoning (P&Z) Board meeting, a number of modifications were made to the site plan; that subsequent to the P&Z meeting, he met with various City departments in order to address the neighbors' concerns relative to the street connection; that as a result, an adjustment has been made in the street alignment, thereby creating a much more circuitous route through the neighborhood to travel from Higley Road to McLellan Road; that such a route is designed to discourage cut-through traffic and yet maintain access to Barbara Bush Elementary School; and that the neighbors also opposed access at Princess Drive and Gary Street.

Mr. Lake further remarked that the proposed density for the project (5.3 to 5.4 units to the acre) is consistent and compatible with what has been developed in the surrounding area in the past. He thanked the Council for approving the Minor General Plan Amendment and requested their support on this zoning case as well.

Responding to a question from Councilmember Luna, Mr. Lake clarified that the project has approximately 430 units. He noted that a parking analysis was performed and said that there are approximately 515 off-street parking spaces, which does not include the two-car garages.

In response to a question from Councilmember Somers, Mr. Lake explained that parents who drop off and pick up their children at Barbara Bush Elementary School can access the site from the north side and the south side of the property.

It was moved by Vice Mayor Glover, seconded by Councilmember Richins, that Ordinance No. 5220 be adopted.

Carried unanimously.

11. Conduct a public hearing and take action on the following resolution regarding Minor General Plan Amendment GPMInor14-006 and ordinance that was introduced at a prior Council meeting:

11-a. Conduct a public hearing.

Mayor Finter announced that this was the time and place to conduct a public hearing regarding Minor General Plan Amendment GPMInor14-006.

Planning Director John Wesley stated that this project had previously been planned for a small commercial tract in front and townhomes in the back. He stated that the request would allow the redevelopment of single-family, detached homes on the same property.

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

- 11-b. **GPMInor14-006 (District 6)** 3143 South Power Road. Located south of Guadalupe Road on the east side of Power Road (16.3± acres). Minor General Plan Amendment to adjust the boundaries of the existing Mesa 2025 General Plan Land Use Designation from NC and HDR 15+ to MDR 6-10. This request will allow the redevelopment of a single-residential subdivision – Resolution No. 10434.

Staff Recommendation: Adoption

P&Z Recommendation: Adoption (Vote: 7-0)

Mayor Finter stated that pending no objection from the Council, items 11-b and 11-c would be voted on in one motion.

It was moved by Councilmember Somers, seconded by Councilmember Richins, that Resolution No. 10434 and Ordinance No. 5221 be adopted.

Carried unanimously.

- 11-c. **Z14-017 (District 6)** 3143 South Power Road. Located south of Guadalupe Road on the east side of Power Road (16.3± acres). Rezone from LC and RM-4 to RSL-2.0 PAD. This request will allow the development of a single-residential subdivision – Ordinance No. 5221.

Staff Recommendation: Approval with Conditions

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

(See Council action under agenda item 11-b.)

12. Conduct a public hearing and take action on the following resolution regarding Minor General Plan Amendment GPMInor14-004, an ordinance that was introduced at a prior Council meeting and a resolution regarding the development agreement relating to the property located at 6350 East Main Street:

- 12-a. Conduct a public hearing.

Mayor Finter announced that this was the time and place to conduct a public hearing regarding Minor General Plan Amendment GPMInor14-04.

Planning Director John Wesley stated that the subject property is currently designated for commercial uses and advised that in recent years, the area has struggled with respect to occupancy and use of the properties. He explained that the proposed change to the Mixed-Use Residential land use designation would provide additional development options in the area from the current commercial zoning district to light industrial and

residential uses. He added that such a modification would offer greater flexibility for the property and its continued use.

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

- 12-b. **GPMInor 14-004 (District 2)** 6350 East Main Street. Located east of Recker Road on the north side of Main Street (0.63± acres). Minor General Plan Amendment to adjust the boundaries of the existing Mesa 2025 General Plan Land Use Designation from CC to MUR. This request will allow the redevelopment of a commercial building, Judith M. Gaede, owner; Lindsay Schube, Withey Morris, PLC, applicant – Resolution No. 10435.

Staff Recommendation: Adoption

P&Z Recommendation: Adoption (Vote: 4-0, Boardmembers Clement, Hudson and Johnson, absent.)

It was moved by Councilmember Kavanaugh, seconded by Vice Mayor Glover, that Resolution No. 10435 be adopted.

In response to comments from Councilmember Richins, City Attorney Debbie Spinner clarified that the General Plan Amendment is not contingent on the zoning. She stated that the Council can change the General Plan designation and deny the zoning. She suggested that the Council first take a vote on the General Plan Amendment and if it passes, move on to the rezoning. She said that if the rezoning does not pass, the Council could reconsider its vote on the General Plan Amendment at that time.

Ms. Spinner pointed out that this item is the Resolution for the General Plan Amendment, which requires four votes to pass.

Mayor Finter called for the vote.

Upon tabulation of votes, it showed:

AYES – Finter-Benelli-Glover-Kavanaugh-Luna
NAYS – Richins-Somers

Mayor Finter declared the motion carried by majority vote and Resolution No. 10435 adopted.

- 12-c. **Z14-012 (District 2)** 6350 East Main Street. Located east of Recker Road on the north side of Main Street (0.63± acres). Rezone from LC to LI-BIZ. This request will allow the redevelopment of a commercial building, Judith M. Gaede, owner; Lindsay Schube, Withey Morris, PLC, applicant. **(Legal Protest: ¾ votes required.)**

Staff Recommendation: Approval with Conditions

P&Z Recommendation: Approval with Conditions (Vote: 4-0, Boardmembers Clement, Hudson and Johnson, absent.)

Mr. Wesley stated that this item is a request to rezone the property from the Limited Commercial (LC) zoning district to the Limited Industrial (LI) zoning district, including a Planned Area Development (PAD) overlay. He stated that the rezoning would allow the expansion of uses on the property from retail/commercial to light industrial. He added that the PAD addresses certain modifications related to existing site conditions that do not meet current standards (i.e., building placement and parking).

Mr. Wesley further commented that since the site is located adjacent to residential neighborhoods, staff determined that certain uses within the LI zoning district may not be appropriate for this project. He stated that a Development Agreement (item 12-d) would limit some of the industrial uses that could take place on the property.

Councilmember Somers indicated that he would prefer to hear the merits of this case from a zoning perspective, as opposed to a defense of medical marijuana. He noted that everyone has an opinion with respect to this issue, but pointed out that medical marijuana is, in fact, legal in Arizona.

A number of citizens submitted speaker cards expressing support for this case as follows:

Donald Tucker	Phoenix resident
Kent Mackinlay	Mesa resident
J.P. Holyoak	Paradise Valley resident
Jennifer Welton	(A statement was submitted to the Council)
Mike Richards	Glendale resident

The citizens offered a series of comments including, but not limited to, the following:

- The medical marijuana dispensary would be a secured site that would be conducive to the City, the surrounding neighbors and the customers.
- The property is currently “a wasteland” with an abundance of empty commercial businesses in the immediate area.
- The only way in which this property can change and prosper is if it is rezoned.
- People oftentimes use zoning issues that they philosophically disagree with.
- Without the proposed zoning at this site, citizens will not have access to the medical marijuana they so desperately need.

Judy Gaede, the owner of the property, concurred with the comments of the previous speakers who noted that the neighborhood was “in need of some help.” She expressed confidence that the proposed medical marijuana dispensary would be a safe and well monitored facility. She added that the rezoning “might start a little different trend up and down the whole street.”

A number of citizens submitted speaker cards expressing opposition to this case as follows:

Kevin Johnson	Mesa resident
Donald Jackson	Mesa resident
Steve Gettler	Mesa resident
Dennis Callison	Mesa resident
Beth Hall	Mesa resident

David Gallagher Mesa resident

The citizens offered a series of comments including, but not limited to, the following:

- The pastor of New Testament Christian Church, which is located adjacent to the property, recently learned that a Certificate of Occupancy was never issued for the building. He is now in the process of obtaining such a document.
- The proposed development cannot be located within 1,200 feet of an existing church or 500 feet of a residential area.
- Many property owners in the neighborhood have not been made aware of this case.
- The specific use for the rezoned property should have been disclosed in the letter that the applicant distributed to the residents in the surrounding area.
- The property is close to a County island, which is patrolled by the Maricopa County Sheriff's Office and not the Mesa Police Department.
- The surrounding neighborhood is unsafe and "in desperate shape," especially with respect to commercial development.

Lindsay Schube, an attorney with Withey Morris, PLC, addressed the Council and stated that she was prepared to address the land use elements of this case. She reported that the property is in one of the oldest parts of Mesa and noted that most of the buildings were developed in the 1970s and 1980s. She explained that the barriers to support and help maintain office, retail and other service-oriented uses vary considerably as compared to other areas of the community. She added that a majority of the properties are under-utilized, vacant, dilapidated or neglected.

Ms. Schube, in addition, remarked that the Mesa General Plan identifies these older developments as being prime sites for redevelopment. She advised that developers are hesitant to invest in the properties along Main Street, resulting in limited services and employment opportunities. She pointed out that within two miles of the property, there are 63 vacant commercial spaces and one vacant light industrial space.

Ms. Schube further displayed a series of photographs illustrating the subject property and the adjacent neighborhood. She reiterated that the rezoning request would expand on the current retail uses, while restricting industrial uses to light industrial. She pointed out that the Bonus Intensity Zone (BIZ) overlay, used in conjunction with the light industrial uses, will create orderly and aesthetic land use planning in a mature part of Mesa which, in turn, will encourage the redevelopment of the area. She added that such efforts would result in "a jumpstart to that part of Main Street."

Ms. Schube also highlighted a number of schematic drawings of the building that is proposed for the medical marijuana dispensary and pointed out the exterior improvements, enhanced landscaping, trees and green screening. She also displayed a rendering of the proposed building and noted that the interior of the structure would be brought up to code. She respectfully requested Council approval of this case and noted that in her opinion, it is a land use decision that "makes sense" for this part of Mesa.

Mel McDonald, a resident of Gilbert, Arizona, stated that as the former U.S. Attorney for Arizona and a Maricopa County Superior Court Judge, most people would think he would oppose medical marijuana. He noted, however, that was not the case. He explained that

his son, who was injured in a car accident and suffered brain damage and epilepsy, was unable to eat for many years until he was able to obtain a prescription for medical marijuana. He assured the Council that the security at the proposed medical marijuana dispensary, including cameras inside and outside, would be "second to none" and would be advantageous to the neighborhood that has had its challenges over the years. He added that the facility would be a safe and inviting place for patients with cancer and other forms of illness that would benefit from its use.

Councilmember Benelli stated that she was inclined to vote against this request due to the fact that when the Council initially determined that medical marijuana dispensaries would be located in the LI zoning district, that they would not be adjacent to residential neighborhoods. She noted that it was her understanding that the other dispensaries in Mesa do adhere to those restrictions. She further remarked that the proposed site would not comply with such restrictions and added that it would have an unfair advantage over the other dispensaries by being located on a major street.

Councilmember Richins concurred with Councilmember Benelli's remarks. He stated that his northwest Mesa neighborhood is 50 years old and commented that he and his neighbors have been dealing with redevelopment issues for a long time. He pointed out that he has seen businesses come into blighted commercial centers claiming that they would revitalize the area and said that they have no positive effect on the local economy. He added that the applicant claiming that one business will go into the subject property and turn it around, in his opinion, is questionable.

Councilmember Richins stated that the medical marijuana dispensary is not the issue and noted that he has friends who have medical conditions that have been helped by using the drug. He stated that if the perceived solution is light industrial for the redevelopment of the property, he has a hard time making an exception for one business, particularly with the residential neighborhood next door.

Councilmember Richins further remarked that a few years ago when the Council drafted the medical marijuana dispensary ordinance, in his opinion, "they got it right." He pointed out that the state "drew lines" that made it difficult for a dispensary to locate in this particular Community Health Analysis Area (CHAA). He emphasized that was not the City's problem and noted that Mesa's ordinance was carefully crafted to provide opportunities across the City. He added that he did not think it was fair to the other dispensary operators for the Council to make exceptions for one dispensary. He reiterated that he would not support the City changing its zoning for a particular business, especially when it affects a residential neighborhood adjacent to it.

Responding to a series of questions from Councilmember Somers, Zoning/Civil Hearing Administrator Gordon Sheffield clarified that when the church was first brought to his attention, he considered some of the more technical issues regarding it. He explained that there was no doubt in his mind that the church was operating as a place of worship. He advised those places of worship that are in compliance with the City's ordinances are protected by the 1,200 foot buffering mechanism. He advised that if and when this church meets those requirements, it would be afforded the same protection. He added that if the Council were to approve the rezoning request, it would become "a race" with respect to whether the church can complete the Certificate of Occupancy process before the applicant can complete and submit its registration.

In response to a question from Councilmember Somers, Mr. Sheffield explained that LI zoning would include uses such as indoor manufacturing, warehousing, distribution facilities and a contractor's yard.

Extensive discussion ensued relative to the fact that the CHAAs were established after the Council's determination that the industrial zoning district should be the primary site for medical marijuana dispensaries in Mesa; that the boundary for the Mesa Central CHAA is between Power Road and Country Club and Brown Road and Broadway Road; that there is currently no designation for industrial uses within that area; that the CHAA was an existing statistical model used by the State of Arizona for the analysis of various illnesses, such as cancer clusters, in order to track/monitor those types of cases; that the map used for the analysis divided Arizona into approximately 100 to 110 different districts, which equates to roughly the number of dispensaries that were required under the Proposition; and that five CHAAs were assigned to Mesa, four of which are operating at this time.

Responding to a question from Mayor Finter, Mr. Sheffield recounted that when staff and the Council became aware of the Proposition, they began to work on an ordinance, with the idea that the Proposition may or may not be approved by the voters in November. He stated that in December, it was confirmed that the Proposition had passed and noted that the law went into effect in March of the following year.

In response to a question from Mayor Finter, Mr. Sheffield verified that if "a bad actor" operated a dispensary in Mesa, the City could bring it to the attention of the Arizona Department of Health Services, which serves as the licensing agency. He added that various criminal sanctions might also be available under the law.

Councilmember Kavanaugh expressed support for the application in this case and stated that the applicant has submitted a fair and compelling argument for the proposed zoning changes. He noted that the reality is that the Council does "pick winners and losers in P&Z cases for single businesses," which is part and parcel of the process.

Councilmember Kavanaugh remarked that the accompanying Development Agreement provides an asset in terms of defining what kind of industrial uses would be prohibited in the area. He further indicated that the change in zoning does create an opportunity for reinvestment in the area and acknowledged that an over-abundance of retail does, in fact, have an impact on the surrounding businesses and neighborhoods. He noted that if a developer can encourage more jobs in an area with such a proposed zoning change, that is a positive step forward for the community.

Councilmember Kavanaugh, in addition, commented that there are no legal barriers that would prevent the Council from approving the rezoning. He also said that from a public safety perspective, the City has received few, if any, reported problems with the four medical marijuana dispensaries that are operating in Mesa. He pointed out that the facilities are "overboard" in terms of being good neighbors, wanting their employees and customers to be safe, and thereby ensuring a safer environment for the nearby residents.

Responding to a question from Councilmember Somers, Mr. Sheffield clarified that to the best of his knowledge, the Proposition required that the City make reasonable accommodations for such businesses in Mesa's zoning rules. He also said that the state generally assigns one dispensary certificate per CHAA. He explained that staff attempted

to confer with the state regarding the possibility of transferring a dispensary certificate to a neighboring CHAA, but noted that to date, the state has not been willing to make those kind of changes to the rules.

Councilmember Somers inquired whether there were locations in the County, based on County zoning, where such businesses would be permitted.

Mr. Sheffield responded that it was his understanding that there were eligible sites. He noted, however, that in order for there to be an eligible site, a property owner must be willing to enter into a lease with the medical marijuana dispensary business.

Councilmember Somers commented that it sounds as though there were eligible sites within the CHAA, but no one was willing to lease them to a dispensary owner. He questioned whether the City would be legally responsible for such a scenario.

Ms. Spinner responded that she did not believe that would be the case and reiterated that the Council made what they believed to be reasonable zoning laws to allow medical marijuana dispensaries in the LI district. She stated that unfortunately, the state drew the lines and noted that with the CHAAs it established, there is no Mesa zoning property within this CHAA. She noted, however, that there is County property available as alluded to by Mr. Sheffield.

Ms. Schube further spoke regarding the applicant's ongoing efforts and difficulties in attempting to find an alternative location for the dispensary.

Assistant Police Chief Lee White addressed the Council and provided a brief statistical overview of the legitimate medical marijuana dispensaries currently located within the City of Mesa. He stated that from 2010 to date, the Mesa Police Department (MPD) has received 36 calls for service, the majority of which were alarm calls and suspicious activities. He added that the calls did not include officer-initiated activities, such as traffic stops at the business locations.

Responding to a question from Mayor Finter, Ms. Spinner clarified that under state law, if approximately 20% of the property owners within a certain area of the facility protest the zoning case, it creates a super majority requirement for the vote. She advised that with respect to this case, a legal protest has been filed, which requires a three-quarters vote of the Council (six votes in support) for the item to pass.

Mayor Finter remarked that having served as District 2 Councilmember, he was well aware of the fact that the area in question "has challenges." He stated that he has worked with staff to consider possible zoning opportunities that would allow other uses in the area.

Mayor Finter also commented that he has visited the property and met with the surrounding residents to hear their concerns with respect to a possible increase in crime if a medical marijuana dispensary was established at this location. He stated that after his research, he does not see that as happening and reiterated that the City would have options available to it, as previously outlined by Mr. Sheffield, if "a bad actor" operated such a business. He noted that he was supportive of the proposal and remarked that he

was open minded with respect to people who use medical marijuana to treat illnesses or diseases such as cancer.

Councilmember Somers suggested that it would behoove the Council to take a look at this entire area of Main Street as a whole and determine what types of zoning uses would or would not work with the surrounding neighborhoods rather than taking it on a piecemeal basis.

Councilmember Somers advised that with respect to the issue of medical marijuana, if someone has a significant, debilitating disease, he has no objection to someone using the drug if it is of benefit to the person. He also remarked that he cannot dismiss the church from this discussion, which is in the process of obtaining a Certificate of Occupancy for the building. He stated that if this item were approved tonight, the church and the medical marijuana dispensary would be in a race to determine which entity can complete its paperwork first which, in his opinion, is not good governance.

Councilmember Somers further stated that if a different CHAA or a site could be found that is not located close to a residential area, then perhaps the proposed business "could work in Mesa." He remarked that he would rather have the dispensary in Mesa as opposed to the County, since the MPD would monitor the business and respond to calls for service. He added that for all of the above-stated reasons, he would vote against this item.

It was moved by Councilmember Kavanaugh, seconded by Vice Mayor Glover, that Zoning Case **Z14-012** be approved.

Upon tabulation of votes, it showed:

AYES - Finter-Glover-Luna-Kavanaugh

NAYS - Benelli-Richins-Somers

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

Mayor Finter stated that with respect to the Minor General Plan Amendment (12-b), none of the Councilmembers who voted in the majority would like to make a motion for reconsideration.

Ms. Spinner clarified that the change to the General Plan would remain in effect, but said that the current zoning would remain as is.

Councilmember Somers restated that under the General Plan, the three parcels would be suitable for light industrial use even though the Council just denied the LI zoning.

Mr. Wesley clarified that there is a significant amount of the Mixed-Use Residential land designation along Main Street, including the north side from Lindsay to Higley and on the south side from Val Vista Drive to Gilbert Road. He said that the zoning category allows a variety of uses, such as commercial, residential and industrial.

- 12-d. A resolution approving and authorizing the City Manager to enter into a Development Agreement with Judith M. Gaede relating to Zoning Case **Z14-012** for the property located at 6350 East Main Street. **(District 2)**

Ms. Spinner stated that since 12-c did not pass, staff would recommend that the Council not move forward with the Development Agreement.

Mayor Finter noted that the Council concurred with Ms. Spinner's recommendation.

13. Items from citizens present.

There were no items from citizens present.

14. Adjournment.

Without objection, the Regular Council Meeting adjourned at 7:56 p.m.

ALEX FINTER, MAYOR

ATTEST:

DEE ANN MICKELSEN, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Council Meeting of the City Council of Mesa, Arizona, held on the 5th day of May 2014. I further certify that the meeting was duly called and held and that a quorum was present.

DEE ANN MICKELSEN, CITY CLERK