



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
On September 8, 2003 _____

Date of Meeting: February 3, 2003

The Mayor and Council of the city of Tucson met in regular session in the Mayor and Council Chambers, City Hall, 255 West Alameda, Tucson, Arizona, at 2:27 p.m., on Monday, February 3, 2003, all members having been notified of the time and place thereof.

1. ROLL CALL

The meeting was called to order by Mayor Walkup and upon roll call, those present and absent were:

Present:

José J. Ibarra	Council Member Ward 1
Carol West	Council Member Ward 2
Kathleen Dunbar	Council Member Ward 3
Shirley C. Scott	Vice Mayor Ward 4
Fred Ronstadt	Council Member Ward 6
Robert E. Walkup	Mayor
Kathleen S. Detrick	City Clerk

Absent/Excused:

Steve Leal	Council Member Ward 5
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Staff Members Present:

James Keene	City Manager
Mike Letcher	Deputy City Manager
Paul Swift	Development Services Director
Ernie Duarte	Development Services
Debbie Capple	Sign Code Administrator
Dennis Rule	Tucson Water Administrator

Michael House	City Attorney
Frank Cassidy	Principal Assistant City Attorney

Roger Randolph	City Clerk's Office
Sandra Slate	Recording Secretary
Dana DeLong	Recording Secretary

2. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Pastor David Ferrari, Flowing Wells Assembly of God Church, after which the pledge of allegiance was presented by the entire assembly.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced that city manager's communication number 58, dated February 3, 2003, would be received into and made a part of the record. He also announced that this was the time scheduled to allow members of the council to report on current events.

A. Landfill Tour

Council Member West invited the public to the landfill tour on Saturday, at 8:30 a.m. Her office at 7575 E. Speedway is the gathering place for those who are interested. They will then go look at the landfill and the recycling plant as well. People can call 791-4687 for more information.

Mayor Walkup asked if there were further announcements. There were none.

4. CITY MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced that city manager's communication number 73, dated February 3, 2003, would be received into and made a part of the record. He also announced that this was the time scheduled by the council to allow the city manager to report on current events.

A. Public Technology Inc.

James Keene, city manager, said the Public Technology, Inc., (PTI) is a national nonprofit technology research and development organization for local governments, and they have announced their winning entries for 2002 Technology Solutions Award Program. This is a program that recognizes local governments that use technology to increase revenues, improve services to the community, save tax dollars, and improve management. They were entries judged with jurisdictions of similar size in the following areas: energy, environment, public safety, telecommunications, information technology, and transportation. In the midsize cities, which include Portland and Tucson, Tucson won two of the five national recognitions in the area of public safety, for the Coplink Program, and in the area of transportation, the Regional Transportation Center.

B. Remembering the Challenger Crew

Mayor Walkup announced that he and the city manager had passed a notification lowering the city flags to half-staff to honor those who lost their lives in the Challenger accident. Many people in the community had connections with some of the crew, going back many years. Before proceeding with the agenda, he asked for a moment of silence for those families who lost their loved ones and to remember what the space program means to the nation and free country, the whole world.

5. CALL TO THE AUDIENCE, for persons desiring to speak

Mayor Walkup announced that this was the time when the mayor and council invited any member of the audience to come forward with any matter of importance for the attention of the council, that was not scheduled on the agenda. Speakers would be limited to three-minute presentations. The item would be limited to 15 minutes. He called on those who submitted requests to speak.

A. Budget Process

Linda Bohlke, representing AFSCME and the blue-collar workers, urged the council to reconsider entering into an expedited budget process. She thought any cramping of an ability for either the public or the employees of the city to respond to budget recommendations, is very dangerous, particularly considering the serious crisis the entire community and the state are facing.

B. Privatization

Ms. Bohlke asked the council to look long and hard at the issue of privatization, as rumors of privatization fly around the city and the specter of privatization is raised once again as a solution to balancing the budget. She asked that the council recognize what it has cost other communities to learn valuable lessons as the fact that in the long run, privatization has not paid off. It has cost taxpayers, citizens, employees, and municipalities a whole lot more in terms of accountability and getting the job done. Oftentimes, when services are contracted out, they have to be redone with city employees. So, the city is paying for the same services two and three times over.

Ms. Bohlke also urged the council to see how much it was costing the city to perform work, via contracts, that could be done in-house. She asked that the Groundskeeper contract be reviewed, along with Empire contract and Blanfill (ph). She asked that the council look long and hard and see if those jobs could be done in-house and save money. Part of consolidation is bringing out services back in-house. She reminded the council that the city saved over eight million dollars last year when it brought recycling back in-house, which she was grateful for.

C. Mayor's Fitness Challenge

Bill Katzel, said on Friday, January 24, 2003, he accepted the Mayor's Fitness Challenge and weighed in at 185.4 pounds. On Monday, January 27, 2003, he pledged at the first of twelve meetings to loose 20 pounds by April 4, 2003, giving up chocolate, and get back to riding his bicycle 100 miles a week. This week he lost three pounds, gave up 95% of his chocolate intake and rode his bicycle 16 miles. He wanted to add to the mayor's challenge. He challenged mayor and council and city staff to join him at Christopher Columbus Park each Saturday morning at 10:00 a.m. for an easy paced bicycle ride along the Rillito River Multi-Use Path. He said with the mayor and council's leadership this component can be added to the Mayor's Fitness Challenge. If the former mayor of Los Angeles could do it, he knew that Tucson's Mayor and Council could establish a regularly lead bicycle ride as a component of the Mayor's Fitness Challenge.

Mr. Katzel said he would reiterate the bicycle challenge at the second fitness challenge meeting at 5:30 p.m., and again at the Greater Arizona Bicycle Association's monthly meeting at 7:30 p.m. With the acceptance of the additional component the community can stop being divisive about bicycling and regain its national number two spot as a bicycle friendly community. Who knows, with this kind of unity, Tucson might even take Portland, Oregon as the number one bicycle friendly community in the United States of America.

D. Outside Contracts

Richard Cook, said the city has a lot of contractors that do work within the city, that city employees have to redo. This does not save the city any money. He has tried to get this work put on a separate account in order to have a real idea of what it costs, instead it gets charged against building maintenance, or something else. If the mayor and council were really interested in saving money and finding out how to do it, he suggested that an account number be established for each job where city staff has to redo work, get it fixed and have it meet code, so that whenever they look at the job, that information would come up along with the contractors' costs.

Mayor Walkup asked if anyone else wished to speak. There was no one.

6. CONSENT AGENDA – ITEM A THROUGH M

Mayor Walkup announced that the reports and recommendations from the city manager on the consent agenda items would be received into and made a part of the record. He asked the city clerk to read the consent agenda items.

A. INTERGOVERNMENTAL AGREEMENT AMENDMENT: WITH PIMA COUNTY FOR FISCAL YEAR 2003 JOINT FUNDING OF THE TUCSON-PIMA COUNTY HISTORICAL COMMISSION

- (1) Report from City Manager FEB3-03-60 CITY-WIDE AND OUTSIDE THE CITY
- (2) Resolution No. 19487 relating to intergovernmental agreements; approving and authorizing execution of Amendment No. One to the Intergovernmental Agreement with Pima County for Fiscal Year 2003 Joint Funding of the Tucson-Pima County Historical Commission; and declaring an emergency.

B. INTERGOVERNMENTAL AGREEMENT AMENDMENT: WITH PIMA COUNTY FOR FISCAL YEAR 2003 JOINT FUNDING OF THE METROPOLITAN TUCSON COMMISSION ON URBAN NATIVE AMERICAN AFFAIRS

- (1) Report from City Manager FEB3-03-61 CITY-WIDE AND OUTSIDE THE CITY
- (2) Resolution No. 19488 relating to intergovernmental agreements; approving and authorizing execution of Amendment No. One to the Intergovernmental Agreement with Pima County for Fiscal Year 2003 Joint Funding of the

Metropolitan Tucson Commission on Urban Native American Affairs; and declaring an emergency.

C. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR THE IN-SCHOOL TRAINING AND EMPLOYMENT PROJECT

- (1) Report from City Manager FEB3-03-62 WIII
- (2) Resolution No. 19489 relating to intergovernmental agreements; authorizing and approving the execution of an Intergovernmental Agreement with Pima County for the In-School Training and Employment Project; and declaring an emergency.

D. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR THE SUMMER MIDDLE SCHOOL ENRICHMENT PROJECT

- (1) Report from City Manager FEB3-03-63 WII
- (2) Resolution No. 19495 relating to intergovernmental agreements; authorizing and approving the execution of an Intergovernmental Agreement with Pima County for the Summer Middle School Enrichment Project; and declaring an emergency.

E. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR THE SCHOOL PLUS JOBS PROJECT

- (1) Report from City Manager FEB3-03-64 WI AND WV
- (2) Resolution No. 19490 relating to intergovernmental agreements; authorizing and approving the execution of an Intergovernmental Agreement with Pima County for the School Plus Jobs Project; and declaring an emergency.

F. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR EVICTION PREVENTION

- (1) Report from City Manager FEB3-03-65 CITY-WIDE
- (2) Resolution No. 19491 relating to intergovernmental agreements; authorizing and approving the execution of an Intergovernmental Agreement with Pima County for Eviction Prevention; and declaring an emergency.

G. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR THE SUMMER YOUTH PROJECT

- (1) Report from City Manager FEB3-03-66 CITY-WIDE
- (2) Resolution No. 19492 relating to intergovernmental agreements; authorizing and approving the execution of an Intergovernmental Agreement with Pima County for Pima County's Summer Youth Project; and declaring an emergency.

H. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR THE JOBS FOR TODAY'S STUDENTS PROJECT

- (1) Report from City Manager FEB3-03-67 WI AND WIII
- (2) Resolution No. 19493 relating to intergovernmental agreements; authorizing and approving the execution of an Intergovernmental Agreement with Pima County for the Jobs for Today's Students Project; and declaring an emergency.

* I. PUBLIC IMPROVEMENTS: COUNTRY CLUB ROAD, BROADWAY BOULEVARD TO 22ND STREET DISTRICT LIGHTING IMPROVEMENT

- (1) Report from City Manager FEB3-03-68 WV AND WVI
- (2) City Engineer submits plans, specifications, assessment diagram and cost estimate.
- (3) Resolution No. 19470. A resolution of the Mayor and Council of the City of Tucson, declaring its intention to improve by the construction of street lighting, approving assessment district diagram, determining that the proposed work or improvement is of more than local or ordinary public benefit, and determining that improvement bonds be issued by the City of Tucson to represent the costs and expenses thereof, under the provisions of Title 48, Chapter 4, Article 2, Arizona Revised Statutes and amendments and supplements thereto, said improvement to be known as the "Country Club Road, Broadway Boulevard to 22nd Street District Lighting Improvement," all being within the City of Tucson, Arizona.

J. ASSURANCE AGREEMENT: (S01-045) HACIENDA DEL SOL OFFICE COMPLEX, LOTS 1 TO 16 AND COMMON AREAS "A", "B" AND "C"

- (1) Report from City Manager FEB3-03-70 WIII
- (2) Resolution No. 19494 relating to planning: authorizing the Mayor to execute an Assurance Agreement securing the completion of improvements required in connection with the approval of a final plat for the Hacienda Del Sol Office Complex Subdivision, Lots 1 to 16 and Common Areas "A", "B" and "C"; and declaring an emergency.

K. FINAL PLAT: (S01-045) HACIENDA DEL SOL OFFICE COMPLEX, LOTS 1 TO 16 AND COMMON AREAS "A", "B" AND "C"

- (1) Report from City Manager FEB3-03-71 WIII
- (2) The City Manager recommends that after the approval of the assurance agreement, the Mayor and Council approve the final plat as presented. The

applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.

- * L. FINANCE: SALE OF JUNIOR LIEN HIGHWAY USER REVENUE REFUNDING BONDS, SERIES 2003A (CONTINUED FROM MEETING OF JANUARY 27, 2003)
 - (1) Report from City Manager FEB3-03-72 CITY-WIDE
- M. FINANCE: CONTINGENCY FUND TRANSFER FOR CITY MEDIAN BEAUTIFICATION
 - (1) Report from City Manager FEB3-03-74 WII
 - (2) Resolution No. 19496 relating to finance; approving and authorizing the transfer of Two Hundred Fifty Dollars (\$250.00) from the contingency fund to organization 001-183-1838-268, for city median beautification; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

It was moved by Vice Mayor Scott, seconded by Council Member West, that consent agenda items A through M, with the exception of items I and item L, be passed and adopted and the proper action taken.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, and Ronstadt; Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: Council Member Leal.

Consent agenda items A through M, with the exception of items I and L, were declared passed and adopted by a roll call vote of 6 to 0.

6. **CONSENT AGENDA – ITEM I**

- I. PUBLIC IMPROVEMENTS: COUNTRY CLUB ROAD, BROADWAY BOULEVARD TO 22ND STREET DISTRICT LIGHTING IMPROVEMENT

Council Member West noted that Council Member Leal, who had become ill, had asked that the council continue item I. However, she saw some neighborhood representatives in the audience, who wanted to address the council.

* Continued to February 10, 2003 at the request of staff

James Keene, city manager, asked as part of the removal of the item from the consent agenda, and its continuance, would it not be placed on the regular agenda? At that point in time, there would be time to address the issue.

Mayor Walkup said he would allow two people to speak on the item, even though the item would be placed on a future agenda.

Council Member West said it might be constructive to let the people who are present know that the item that has been continued is to adopt a resolution of intention, which describes the project and initiates a 15-day protest.

Ed Hubert, said the neighborhood is aware that there is a 15-day protest period, after the passage of the resolution. The reason they are before the council is to encourage them not to pass the resolution, for a number of different reasons. The project to install lighting and sidewalks on Country Club, between Broadway and 22nd, is the subject of the public improvement. This was on a list of proposed projects, ranking number 49. It was done a few years ago. Country Club is not a major arterial street, although in the city's *Major Streets and Routes Plan*, adopted in 1982, it is. The city calls it an arterial street, the residents call it their home. The plan, as the city engineer has prepared it, is to build, for example on the eastside of the street, a six-foot wide sidewalk from the curb, extending away from the curb. On the other side of the street, the sidewalk would be setback three feet. Major lighting is also going to be installed. It has been described to the residents as the type of lighting that the city has built on Broadway, just east of Kolb.

Mr. Hubert said the neighborhood residents do not want the kind of lighting that is on Broadway. It benefits them not one whit. Their neighborhood is an historic neighborhood and the last thing they want is lighting of that magnitude. The reason the city engineer told the residents they wanted lighting was to improve vehicular visibility, which in his mind improves the ability to speed. The neighborhood already has a problem with people speeding on its streets. The speed limit is 35, traffic travels an average of 51 miles an hour, according to Tucson Police. The neighborhood does not want those people speeding at night, anymore than they do during the daytime. Also, he and his neighbors do not want a sidewalk in front of their homes, that is immediately adjacent to the curb. If he is going to use a sidewalk for his grandchildren or other people, he really didn't want them playing on a sidewalk that is right up against the curb.

Another issue the city is including on this stretch of one-mile road, on Country Club, one-quarter mile, is Reid Park. The city has already built a sidewalk there, setback from the curb. The way the protests work, is that the owners of 51% of the lineal footage along Country Club must object or else the improvement goes through. The residents don't feel it's correct or proper, that the city, having a quarter of the votes, would vote for something, when the rest are going to vote against the residents. More than 90% of the landowners are in opposition to the proposed improvement. He said they tried to talk to the city engineer, but they won't say what the cost is going to be. That information would not be available until the mail out was done.

Anna Bentley, said she has been at this address for 20 years. During an open meeting, engineering staff told the residents that the issue along Country Club Road, between Broadway and 22nd Street, is one of safety. She was

present to say that the residents report that the serious motor vehicle accidents, between Broadway and 22nd Street, are primarily the result of pole hits, which occur regardless of the time of day. The distance from the pavement to the utility poles along Country Club Road, does not meet ASHTO safety standards, which she understood the county complies with, but not the city. The utility poles in this area are located adjacent to the curb due to an earlier road widening, while the city's own street light setback requirement is a minimum of nine feet. She pointed out where the curb was and where the pole is butted up to the curb, along Country Club.

Ms. Bentley feels that the engineering plan, as presented, failed to recognize some of the environmental factors. The residents have been told that the existing utility poles are tall enough to accommodate street lighting on the west side of Country Club Road. That is correct. She said she works for Tucson Electric Power Company and she has spoken internally to half a dozen individuals who are responsible for public improvement projects and the transmission and distribution system in general. She has been told, without exception, that if the city goes through with the proposed plan, that the existing wood poles would be replaced with 65 to 70 foot steel poles, three feet in diameter. Those poles will sit next to the curb. She said if hitting a wood pole was bad, a steel pole would be worse. The failure to increase the pole setback will exacerbate the safety issue, due to the replacement of the woods poles with a more dangerous and wider profile steel poles. A change in the engineering design to increase the pole setback, would require the city to purchase additional right-of-way.

Ms. Bentley said the residents were told there was bond money for this project and that the cost to replace or relocate the utility poles, is a TEP expense. That is a very shortsighted view of the expense. There are as many as 48 poles that will be affected by the engineering plan, at a cost to replace or relocate of a quarter of a million dollars. Initially, that cost will be borne by TEP shareholders, but in the long-term, TEP will building that cost into its next rate case. That cost will go to the ratepayers in the city of Tucson. It is estimated that it will take 22 crews, 24 man-days to relocate that many poles. During that time a closure of all or part of the west land of Country Club Road will be required. Additional delays will occur while other utilities move their lines on those joint use poles.

Ms. Bentley asked the council for due diligence, that they ask the engineering department if their plan incorporates comments by the utility planning and coordination committee established under the terms of TEP's electric distribution and transmission franchise. The purpose of this committee is to ensure that utility systems are expanded and modified in the public interest, avoiding undue cost burdens on customers and taxpayers.

George Stokes, said the other speakers were Bill Dupont and Anne Patterson of the Broadway Village and Colonia Solona Association. There were people from the Church of Christ and other residents who will be adversely impacted. He said he has personally contacted 37 properties on Country Club and 52% are against the proposed project. Ten percent are in favor, the city having 31% with Reid Park, one house on 21st Street, a little bit of frontage on Arroyo Chico, and 8% are undecided. If the city's vote is 31%, then the neighborhood is pretty close to 52% against and 48% in favor. He understands it's city policy not to vote and allow the residents to

decide. If that is the case, and the neighborhood's numbers hold, then they are 75% against the proposal.

Mr. Stokes noted that the power pole issue is as discussed by Ms. Bentley, the other issue other than the fact that people do not want the proposed development, and it is in an historic natural area, is that the city has an *MS&R* plan, which was adopted by ordinance in 1982, and has been amended 12 times. That plan calls for Country Club to be 100 feet wide. It is at present 70 feet wide, 40 feet from the centerline to the east, and 30 feet to the west. If Country Club is widened to 100 feet, as described in the *MS&R* plan, the new sidewalks will have to be taken out as well as the street poles. In the meantime, the *MS&R* plan limits the residents. They have to build to a projected or future setback. They cannot use their front door yards.

Mr. Stokes said the neighborhood residents wanted the city to either table or decline this proposal and address the issue of what its intentions are for Country Club. If it is not going to be a 100 foot driveway, then that requirement should be taken out of the *MS&R* plan and then be returned to the neighborhood along with a proposal for sidewalks and street lights. The city has from time to time required additional frontage and there are laws where the access is actually 100 feet wide.

Mayor Walkup noted that the council had been enlightened on the issue.

Council Member Ronstadt thought the plan would be ultimately rejected and noted that the chairman of the citizens bond oversight committee was present to give a report. He explained that this was a voter approved bond project, and there is a process and he knew his staff had explained that process to a number of neighbors several times. Out of respect to the voters, he thought that when the item was brought back, they had to go through the protest period. That is the process that the voters are given and out of respect for the voters, that was the appropriate thing to do. In terms of the city's vote and power of the vote, the city does not vote. The numbers that will be presented to the mayor and council, when the protest period is over, will represent the neighbors, and not the city.

Council Member Ronstadt understood the concerns, and ultimately believed the council would deny the project, but this was a voter approved bond project, and they all had to go through the process.

Mayor Walkup noted everyone had made a very good point. He said he would call item ten, prior to item seven.

10. WATER: APPROVAL OF SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT ACT AMENDMENT AND SETTLEMENT AGREEMENT (taken out of order)

Mayor Walkup announced that city manager's communication number 76, dated February 3, 2003, would be received into and made a part of the record. He asked the city clerk to read resolution no. 19499 by number and title only.

Resolution No. 19499

Relating to water: approving and authorizing the execution of two settlement agreements with the Tohono O'odham Nation, three classes of San Xavier allottees, the United States and others to settle pending Indian water rights claims litigation; approving and endorsing the draft Arizona Water Settlements Act of 2003; and declaring an emergency.

Kathleen S. Detrick, city clerk, reported that she had two technical amendments to make to the wording of the resolution. The first is in section two of the resolution. The section currently reads, ". . . the mayor is hereby authorized and directed to execute said Tohono O'odham settlement agreement and said Tucson agreement, for and on behalf of the city of Tucson and the city clerk is directed to attest the same . . ." The additional phrase will be after referring to the Tucson agreement and then say, ". . . in substantially the same form." There is also a similar correction being made to section three of the ordinance. It presently reads, ". . . the draft Arizona Water Settlements Act of 2003 attached as exhibit two, is approved . . ." and a phrase will be inserted that will not read after the year 2003, ". . . in substantially the same form."

Mayor Walkup asked the council's pleasure.

It was moved by Council Member West, seconded by Vice Mayor Scott, that resolution no. 19499 be passed and adopted with the technical amendment read into the record by the city clerk.

Mayor Walkup asked if there was any discussion and hearing none, called for the vote.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, and Ronstadt; Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: Council Member Leal.

Resolution no. 19499 was declared passed and adopted by a roll call vote of 6 to 0.

7. LIQUOR LICENSE APPLICATIONS

Mayor Walkup announced that city manager's communication number 69, dated February 3, 2003, would be received into and made a part of the record. He asked the city clerk to read the liquor license agenda.

(b) New License(s)

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| (1) | KOKOBANA MEXICAN GRILL
3022 E. Broadway Blvd.
Applicant: Daniel E. Lopez, Jr.
City #110-02, located in Ward 6
Series #12
Action must be taken by: February 14, 2003 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |
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Person Transfer(s)

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| (2) | PHO 88
2746 N. Campbell Avenue
Applicant: Jason Lam
City #109-02, located in Ward 3
Series #7
Action must be taken by: February 17, 2003 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |
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(c) Special Event(s)

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| (1) | DESERT VOICES
6245 E. Bellevue
Applicant: John M. Kissler
City #T004-03, located in Ward 6
Date of Event: February 22, 2003 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |
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(d) Extension of Premises

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| * | (1) | R & D MARKET
7280 S. 12 th Avenue
Applicant: Patel V. Sanjay
City #EP58-02, located in Ward 1
Type: Permanent | <u>Staff Recommendation</u>

Police: In Compliance
DSD: *DENIED
Bus. License: In Compliance |
| | (2) | VILLA CAMPANA RETIREMENT RESIDENCE
6653 E. Carondelet Drive
Applicant: Frances P. Donnellan
City #EP59-02, located in Ward 2
Type: Permanent | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |

It was moved by Council Member Ronstadt, seconded by Vice Mayor Scott, and carried by a voice vote of 6 to 0, (Council Member Leal absent/excused), that liquor license city application numbers 110-02, 109-02, T004-03, and EP59-02 be forwarded to the state department of liquor licenses and control with a recommendation for approval.

7. LIQUOR LICENSE APPLICATIONS – (d) (1)

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| (1) | R & D MARKET
7280 S. 12 th Avenue | <u>Staff Recommendation</u> |
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Applicant: Patel V. Sanjay
City #EP58-02, located in Ward 1
Type: Permanent

Police: In Compliance
DSD: *DENIED
Bus. License: In Compliance

Kathleen S. Detrick, city clerk, announced that item no. 7 (d) (1) R & D Market, city no. EP58-02, carried a recommendation of denial from development services. There was a protest filed. The protestor was present, but she did not believe the applicant was. She asked if the applicant was present and hearing no one, said the application was located in ward one.

Council Ibarra noted that he would make his motion, seeing that the applicant was not present and knowing that development services had a problem with the license because it was not permitted under the current C-1 zoning.

It was moved by Council Member Ibarra, seconded by Council Member West, and carried by a roll call vote of 6 to 0, (Council Member Leal absent/excused), that liquor license application city no. EP58-02 be forwarded to the state department of liquor licenses and control with a recommendation for denial.

Council Member Ronstadt requested that as the men's NCAA championship is held, any special event or extension of premises be red flagged. He said he had already committed to Fourth Avenue and the surrounding neighborhoods that the council would protest any applications for special events or extension of premises during the championship games.

Ms. Detrick said staff would do that.

8. APPEAL: (S-02-23) APPEAL OF THE SIGN CODE ADVISORY AND APPEALS BOARD DECISION – 3215-3315 N. SWAN ROAD, SWAN PARTNERS (CITY APPEAL NO. S-02-002)

Mayor Walkup announced that city manager's communication number 59, dated February 3, 2003, would be received into and made a part of the record. He also announced that this was an appeal of a decision made by the sign code advisory and appeals board. He asked the city clerk to read the order for the appeal.

Kathleen S. Detrick, city clerk, noted that first the city attorney would summarize the procedural question presented in this case and the nature of the action.

Frank Cassidy, principal assistant city attorney, said basically this was both an appeal and a variance request, an appeal from the determination from the sign code staff, as affirmed by the sign code advisory and appeals board, that this is not a separately owned premise entitled to its own sign. Also, in the event that the council upholds the appeal, it is a request for a variance asking for their own separate freestanding sign.

Ms. Detrick said next development services would present a summary of the appeal.

Paul Swift, development services director, said this was a request by the McDonald's Corporation to allow a separate freestanding sign at the Basha's Shopping Center at Camp Lowell and Swan. The sign code allows one freestanding sign at this location and the proposed development is for a sign at Camp Lowell and Swan. In order for McDonald's to have its own 32-square-foot sign at this location, they would have to meet the following criteria: One, the property must be separately owned; and two, the property must provide its own parking facilities on its own premise. While McDonald's meets criteria number two, it does not meet criteria number one in that the property is owned by Swan Partners. They have a 40-year lease.

The applicant appealed staff's interpretation to the sign code advisory and appeals board. The appellant requested that McDonald's pad be treated as a separate premise and, therefore, be entitled to its own 32-square-foot freestanding sign. The sign code advisory and appeals board upheld staff's determination that the McDonald's pad is not a separately owned premise and not entitled to its own sign. The sign code advisory and appeals board also denied the applicant's request for a variance to allow it to have its own freestanding sign at this location.

Ms. Detrick explained that the order of the appeal was as follows. First, the applicant, Park West Development Company on behalf of Swan Partners. Next, opposition to the appeal presented by an affected neighbor or one designated representative of the affected neighbor, speaking in support of the sign code advisory and appeals board decision. Third, other rebuttal as permitted by the mayor and council. Then the mayor and council may question the party filing the appeal, or direct questions to staff in order to establish reasons for granting or denying the appeal. After the presentation, the mayor and council may discuss the case, or act upon it. The time limit for argument is ten minutes for each side. The parties may use that ten minutes either in direct address to the council, or in rebuttal and can divide it any way they choose. However, the limit is ten minutes.

The evidence to be considered is a verbatim transcript of the sign code advisory and appeals board hearing. No new evidence or testimony will be allowed. Mayor and council may also consider the argument of the parties in reaching a decision. First, the applicant, Park West Development Company, on behalf of Swan Partners, would address the council.

Charlie Boyd, Park West Development, said they developed the Swan Shopping Center some time ago. He was sure the council remembered the hearings they held. He noted that the applicant has three parcels, McDonald's and two other pads. If deeds had passed on the three pads, the applicant would have the right to have the signs as requested. They have the corner pad in escrow, so there isn't a problem with that sign and the applicant would probably do the same thing with the third pad. McDonald's is really the issue. The *Sign Code* states that the applicant is allowed to have one sign per arterial to identify the shopping center or the tenants. They have one of each; a tenant sign that has Basha's on it, but it's designed to have two more tenants on each sign. So they qualify for that.

The code goes on to say that the applicant is entitled to have one freestanding sign for each premise not to exceed 32-square feet. So they would be entitled to three other signs. Then there is the definition of premise. The code talks about a piece of land,

with definite boundaries, which include the property and the buildings. So on this particular case it's true that Swan Partners has a ground lease. They do own the land beneath the building; however, McDonald's owns the building. There is a separate legal description and a separate tax parcel. They pay their own utilities and they have their own parking requirement, which meets the city's designation.

Mr. Boyd said the issue came down to the words, "separately owned from any other property." He has talked to the city attorney some time ago and his feeling was that a ground lease of 50 years qualified as a separate parcel. He said they have one parcel, with a 20-year lease. They have 20 years worth of options. So McDonald's has 40 years of control. At the end of 20 years or 40 years, they have the right to remove the building. They have as much control as anybody who would own that property.

Mr. Boyd submitted and asked the council to consider the fact that with that long-term ground lease, and the fact that others have been deemed to be the premises, if it's 50 years, then is it 45 years, or is it 20 years? When this lease is up, McDonald's loses control and he won't be around anymore. It seemed to him that that was an awfully long time and he can't figure out what the code was trying to accomplish by this definition. All that has to take place is deed the property to McDonald's, or sell it to a third party, and the property qualified for signs. They are not asking for more than they are entitled to. He never got an explanation from the city as to why that requirement exists. Going up and down on Campbell, he noticed every single pad user had a sign. He thought all of the properties should be entitled to the same thing, and he couldn't understand otherwise.

Mr. Boyd asked if he could also address the variance issue.

Ms. Detrick replied that the issue was being considered as one.

Mr. Boyd continued that they hoped they wouldn't have to go the variance route. In the alternative, however, they think they would be entitled to a variance. Again, because of this code situation, the fact that if the deed passes, they have the right to what they're asking for. They built the center and spent nine million dollars. They worked with the neighbors on all of the designs. He thought they had built a beautiful shopping center and they are very concerned about the signage. Their signs are low profile monument signs. What the city has recommended is of a smaller scale. They have 700 feet of frontage along Swan, which is a lot. If they don't get some type of relief they are going to end up having two small low profile monument signs to identify the tenants.

Mr. Boyd said it was extremely important for a business like McDonald's to have a sign to help the business. He thought everyone could say that it was easy to tell the business was McDonald's or Bashas, but to a business that has been operating for 20 years it wasn't that simple. There were some access problems presently. It's easy to drive by the access to the property without even knowing. He said that was a hardship. Also, across the street, Venture West, requested an additional sign which they weren't entitled to and a variance was granted to them, on a similar situation as McDonald's. McDonald's on the other hand, because it owns the property, has to ask for a variance. Otherwise, it wouldn't need one.

Ms. Detrick said next to speak would be any affected neighbor. She asked if anyone wished to speak. Hearing no one, Ms. Detrick said that concluded this portion of

the appeal. She noted that Mr. Boyd still had four minutes and thirty seconds left to speak.

Mr. Boyd said he would be glad to answer any questions.

Ms. Detrick it was time for the council to consider the matter.

Council Member Dunbar read from the verbatim transcript of the sign code and appeals board, “. . . we rejected an identical variance for another McDonald’s within the last year on Speedway, and we were overruled by the city council . . .” The chairman went on to say that he thinks the sign should be granted and that it was not a gray area. The sign code and appeals board was supposed to interpret the law, but the law definitely needs to be changed. Her question was if the council denied this proposal, was it not leaving itself open for a lawsuit, since the signage has been allowed to increase across the street from the subject location? She asked what needed to be done to change the law, because as the verbatim transcript indicated, the board members were all saying that this is a very gray area and it definitely needs to be changed.

If McDonald’s owned that pad, they would be entitled to their own sign. However, they currently have a 40-year lease, which she thought was almost like owning it. As also pointed out in the materials, there is nothing like this in any other development in the community. She asked why the city was doing this.

Michael House, city attorney, said the first issue is whether the proposed user separately owns the subject premises. The interpretation that was given by the sign code and appeals board is that a lease does not qualify as ownership. The council has to decide whether to overturn that determination. If the council upholds the ruling that a variance should be granted, there are some tests that have to be satisfied in order to grant a variance. Regarding a couple of other variances; one, for McDonald’s on Speedway; and a variance that was granted directly across the street from the subject parcel, Mr. House said he was not familiar with the circumstances on those cases. He pointed out that in each case when someone comes before the council for a variance, has to be judged on its own merits. It is not precedence for granting a variance someplace else.

Mayor Walkup asked the council’s pleasure.

Ernie Duarte, development services, said he was not too familiar with the other McDonald’s on Speedway, but he does know of a case closer to the subject location, across the street, which is The Venture West Development medical offices development.

Debbie Capple, sign code administrator, said the case that Swan Partners is referring to is called the Village Offices at 3144 N. Swan. That development is a medical office development, not a retail shopping center. What they requested was to have project identity signs and not individual premise signs. The sign for McDonald’s that is referred to in the transcript, was for the McDonald’s at Speedway and Craycroft. She believed the mayor and council had heard that appeal request about two years ago. That was a change of use issue when they tore down the Tucson Marine and built the new Walgreen’s and McDonald’s to the west of there.

Council Member Ronstadt noted that the Speedway and Craycroft McDonald’s situation was a preexisting sign with two cabinets. The reason the determination was

overturned was because city staff would not allow McDonald's sign go in because it was a restaurant use and not a retail use.

Ms. Capple said that was correct.

Council Member Ronstadt said the council had felt that since the sign was there it should remain there. That was significant different than creating a new sign.

Council Member West said she remembered how hard everyone worked to make this an aesthetic center. The neighborhood didn't have to go along with what the council decided, but they did. She thought this was a very attractive center. Some of the neighbors did attend the sign code advisory hearing, but most of them work. So they couldn't be present today. She said the Fort Lowell Historic worked with the Park West people. She and the mayor took an interest in this project, as well as architects from the neighborhood. They put together something that she feels is very attractive. She knows that part of the issue is that the neighbors do see this as precedent setting and yet she thought they've just learned that this is not the case at all.

Council Member West asked the city attorney to define what a strip development is and how it relates to the *Sign Code*.

Mr. Cassidy said for purposes of the *Sign Code*, a strip development is a shopping center. The subject development is a strip development.

Council Member West noted that Camp Lowell is a collector street and asked if the ordinance said anything regarding collector streets, as far as signage is concerned.

Ms. Capple said in a strip development district the *Sign Code* allowed one freestanding sign per major arterial collector street, to identify the name of the shopping center or for use as a tenant directory.

Council Member West said she read all of the testimony and she would make the following motion.

It was moved by Council Member West, seconded by Vice Mayor Scott, to affirm the decision of the sign code advisory and appeals board, denying the request for a variance.

Council Member West added that this property was owned by Swan Partners and it was not a separately owned premise.

Mayor Walkup asked if there was any discussion.

A substitute motion was made by Council Member Ibarra, seconded by Council Member Dunbar, to reverse the decision of the sign code advisory and appeals board, thereby, granting the applicant's request.

Mr. House asked if the substitute motion dealt with the first issue, or the variance issue?

Council Member Ibarra replied it dealt with the first issue.

Mr. House asked if the motion was to reverse the sign code advisory and appeals board, what was the ruling? Was it that a lease is separate ownership, or that a 40-year lease is separate ownership, or what is the rule that is being imposed?

Council Member Ibarra said it was that a 40-year lease is separate ownership.

Mayor Walkup noted that the substitute motion was a valid motion.

Mr. House said the council did have the ability to reverse the interpretation of the board.

Ms. Detrick noted two motions would be required, if the substitute motion passed.

Mr. House said if the substitute motion passed, then the request for a variance would be moot.

Ms. Detrick clarified that the motion was that pad five is a separately owned premise. She asked if that was correct.

Mr. House replied affirmatively.

Council Member Ronstadt asked if there was any standard definition of ownership having to do with leases. Is there anything that the council can hang its hat on, or are they arbitrarily making a decision?

Mr. House said ownership generally involved the title of the property. As to whether some form of lease constitutes ownership, some say that a 99-year lease is tantamount to ownership. As to whether some lesser lease would also, would simply be a matter of opinion, for the council to resolve.

Mayor Walkup asked if there was further discussion and hearing none, called for the vote.

Upon roll call, the results were:

Aye: Council Members Ibarra and Dunbar.

Nay: Council Members West, Ronstadt; Vice Mayor Scott and Mayor Walkup.

Absent/Excused: Council Member Leal.

The substitute motion failed by roll call vote of 2 to 4.

Mayor Walkup asked for a roll call vote on the main motion.

Ms. Detrick noted that that motion was to affirm the decision of the sign code advisory and appeals board, denying the applicant's request.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, and Ronstadt, Vice Mayor Scott and Mayor Walkup

Nay: Council Members Dunbar.

Absent/Excused: Council Member Leal.

The motion carried by a roll call vote of 5 to 1.

Mr. House asked for clarification as to whether that disposes of the variance as well, or is it just simply upholding the board in its entirety?

Mayor Walkup noted that was the motion.

Council Member West concurred.

Ms. Detrick asked if that was sufficient.

Mr. House believed that was sufficient as long as it's clear that it's on both issues.

Council Member Ronstadt was curious about the council having on the variance. He thought the variances were generally granted by the board of adjustment, then they were appealed through Superior Court. He didn't understand how the issue got to the mayor and council.

Mr. House said that would be true for provisions of the *Land Use Code*, however, this is provision of the *Sign Code*. The council may recall that at one time appeals from the board of adjustment did go to mayor and council. That was changed so that only appeals on sign issues would go to mayor and council.

9. **WATER: ACQUISITION OF MIDVALE FARMS WATER COMPANY**

Mayor Walkup announced that city manager's communication number 57, dated February 3, 2003, would be received into and made a part of the record. He asked the city clerk to read resolution no. 19498 by number and title only.

Resolution No. 19498

Relating to water; approving and authorizing the acquisition of Midvale Farms Water Company; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Ibarra, seconded by Council Member West, that resolution no. 19498 be passed and adopted,

Mayor Walkup asked if there was any discussion.

Council Member West said she just wanted to make sure that there aren't any impacts to the ratepayers. In the mayor and council water policies, that is one of the requirements for an acquisition. She asked if anyone could answer that.

Dennis Rule, water administrator, said the acquisition costs are extremely low, again, from the assets of the utility. That main benefit is that the city acquires an additional 1,500 acre-feet of CAP water, which it will need in the future. Substantially the cost of that will be offset. The CAWCD is projecting to lowering the cost of that water to the city. The city should actually see substantial savings. The city doesn't anticipate that this would have any impact at all on the ratepayers.

Council Member West said she just wanted to make sure that this would be a benefit to existing ratepayers.

Mayor Walkup asked if there was further discussion and hearing none, called for the vote.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, and Ronstadt; Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: Council Member Leal.

Resolution no. 19498 was declared passed and adopted by a roll call vote of 6 to 0.

11. BOARDS, COMMISSIONS & COMMITTEES

Kathleen S. Detrick, city clerk, advised the council of the necessary appointments.

Mayor Walkup announced that city manager's communication number 75, dated February 3, 2003, would be received into and made a part of the record. He asked the council's pleasure.

It was moved by Council Member West, seconded by Vice Mayor Scott, and carried by a voice vote of 6 to 0 (Council Member Leal absent/excused), to appoint Allison Duncan and reappoint Peter Wilke to the west university historic zone advisory board.

Mayor Walkup asked if there were any personal appointments to be made at this time.

Council Member Dunbar announced her personal appointment of Ramon Andrews to the citizens' transportation advisory committee.

Mayor Walkup asked if there were further appointments. There were none.

12. RECONSIDERATION OF RESOLUTION 19485

Mayor Walkup announced that city manager's communication number 77, dated February 3, 2003, would be received into and made a part of the record. He asked the city clerk to read resolution no. 19485 by number and title only.

Resolution No. 19485

Relating to intergovernmental agreements; approving and authorizing execution of an intergovernmental agreement with Pima County for the incarceration of City prisoners in the Pima County Jail; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Dunbar, seconded by Vice Mayor Scott, and carried by a voice vote of 6 to 0, (Council Member Leal absent/excused), that resolution no. 19485 be reconsidered.

It was moved by Council Member Dunbar, seconded by Vice Mayor Scott, that resolution no. 19485 be passed and adopted.

Mayor Walkup asked if there was any discussion and hearing none, called for the vote.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, and Ronstadt; Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: Council Member Leal.

Resolution no. 19485 was declared passed and adopted by a roll call vote of 6 to 0.

13. CALL TO THE AUDIENCE, for persons desiring to speak

Mayor Walkup announced that this was the time when the mayor and council invited any member of the audience to come forward with any matter of importance for the attention of the council on any issue. Speakers would be limited to three-minute presentations and this item would be twenty minutes in duration. He asked if anyone wished to address the council. There was no one.

14. ADJOURNMENT: 3:29 p.m.

Mayor Walkup announced that the council would stand adjourned until its next regularly scheduled meeting to be held on Monday, February 10, 2003, at 7:30 p.m., in the Mayor and Council Chambers in City Hall, 255 W. Alameda, Tucson, Arizona.

MAYOR

ATTEST:

CITY CLERK

CERTIFICATE OF AUTHENTICITY

I, the undersigned, have read the foregoing transcript of the meeting of the Mayor and Council of the city of Tucson, Arizona, held on the 3rd day of February, 2003, and do hereby certify that it is an accurate transcription of the magnetic tape record of said meeting.

MANAGEMENT ASSISTANT

KSD:DA:ss
pr agnst tp:ss