



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
on June 21, 2004

Date of Meeting: November 10, 2003

The Mayor and Council of the city of Tucson met in regular session, in the Mayor and Council Chambers in City Hall, 255 West Alameda, Tucson Arizona, at 7:47 p.m. on Monday, November 10, 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
Carol West
Kathleen Dunbar
Shirley C. Scott
Steve Leal
Fred Ronstadt
Robert E. Walkup
Kathleen S. Detrick

Council Member Ward 1
Council Member Ward 2
Council Member Ward 3
Vice Mayor Ward 4
Council Member Ward 5
Council Member Ward 6
Mayor
City Clerk

Absent/Excused:

None

Staff Members Present:

James Keene
Mike Letcher
Ernie Duarte
Bob Martin

City Manager
Deputy City Manager
Development Services Director
Parks & Recreation Director

Michael House
Michael McCrory

City Attorney
Assistant City Attorney

Dana DeLong
Ceci Sotomayor
Kent Miller

City Clerk's Office
Recording Secretary
Recording Secretary

2. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Minister John Sheley, Retired, after which the pledge of allegiance was presented by the entire assembly.

Presentation: Thanks to City of Tucson

Mayor Walkup introduced Tucson Police Officers Steven Lake and Frank Landholm, reservists with the 944th Security Forces Squadron at Luke Air Force Base.

Officer Lake said that he and Officer Landholm were activated in October 2001, after the events of September 11. At that time, he was concerned about his family because of the difference in military pay and the police department. He was greatly relieved when he learned that the mayor and council were going to support the troops and take care of the members of the reserves who were activated. It made going overseas a lot easier. He was activated for about 22 months nine of which were spent in service overseas. When he went overseas the first time, a flag was flown for the United States and the city of Tucson in Afghanistan. The second time, prior to the start of Iraqi Freedom, another flag was flown on the F-15's in support of the city of Tucson. He thought it was a way to show thanks and gratitude to the city and the citizens of Tucson for standing behind the troops and supporting those citizens who were called to serve the country. A lot of officers and other members of the city of Tucson are still deployed and serving. Recently, several others have been called and will be going to serve. He was glad to see that the city is taking care of its employees. He presented two American flags to the mayor and council.

Mayor Walkup expressed pride in what the city had done to be sure that the reservists were compensated for the difference between their normal pay and the military's pay. They are protecting the country's freedom and the city dearly appreciates that.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced that city manager's communication number 577, dated November 10, 2003, would be received into and made a part of the record. He also announced that this was the time for any member of the council to report on current events and asked if there were any reports.

A. National Peanut Butter Lovers Month

Council Member West wanted everyone to know that November is National Peanut Butter Lovers Month, although she had not seen any proclamation.

B. Thanks to Pima County-Tucson Women's Commission

Council Member West thanked the Pima County-Tucson Women's Commission for co-hosting with her office a positive aging conference for women on November 7, 2003.

Over 118 women participated and she thought the conference might become an annual event.

C. "Call City Hall" Show

Council Member West said on November 12, 2003 her office would host the "Call City Hall" show on public ACCESS channel 74, with recycling staff and Jacqueline Dyer, a artist who uses recycled materials for her creations.

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

Mayor Walkup announced that city manager's communication number 578, dated November 10, 2003, would be received into and made a part of the record. He also announced that this was the time for the city manager to report on current events and asked for that report.

James Keene, city manager, congratulated those council members who won the election and were returned to the council.

The city's comprehensive planning task force would cosponsor a community open house with the Growing Smarter Oversight Council and the Arizona Planning Association on Wednesday, November 12, 2003, at Randolph Golf Course Clubhouse. The panel discussion would be about lessons learned from the Growing Smarter mandated plan update. Those people in the community who are especially concerned about how the city will grow were invited to attend.

5. CALL TO THE AUDIENCE

Mayor Walkup announced that this was the time any member of the public was allowed to address the mayor and council on any issue that was not on the agenda and that there would be a second call to the audience at the end of this meeting. He said he had received several written requests from people wishing to speak and called on those people, asking that they limit their presentations to no more than three minutes.

A. Wildcat Dumping on Silverbell

Bill Katzel, thanked his 8 year old granddaughter for helping him put his project together and come up with the subject for his presentation, "Tucson Dump Yourself." He referenced his comments at the mayor and council meeting of October 27, 2003, dealing with the wildcat dump on the street side of the border patrol facility at 3200 N. Silverbell and thanked them for promptly taking care of that problem. At that meeting, he called the council's attention to some maintenance and safety issues that were neglected in the landlord tenant relations between the city and the border patrol and said after two weeks of working with various city departments, the issues were still unresolved. He displayed a three-panel board with pictures taken on November 7, 2003, that depicted the deplorable conditions that currently exist at the city owned facility, which is leased to the US Border Patrol. He said the cleaned up wildcat dump on the Silverbell street side of the facility had been replaced with unauthorized 18-wheel truck and trailer parking. The safety and maintenance issues at the entrance to the facility's main building have yet to be cured. The

cause of the giant trees' deaths had not been determined. The dead trees remain a hazard to people that use the parking lot adjacent to the trees. The unauthorized dump established by the city on the premises is an absolute disgrace and a health hazard. "No dumping" signs under *Tucson City Code*,

Section 15-11, were posted on the street side of the facility, but had been completely ignored by the city through its establishment of a dump on the interior of the facility. The city needs to be a positive role model in its landlord/tenant relationships. The slum-like conditions at this city owned facility need to be rectified immediately. He was sure that no one present would tolerate those conditions in facilities they live or work in.

B. Public Housing Policy Regarding Service Animals

Lisa DeLong said she lives in public housing and she was returning to the council because she was concerned about how a certain policy was implemented illegally. She asked for reasonable accommodation.

Kathleen S. Detrick, city clerk, advised that Ms. DeLong had asked her to read the following items into the record. The first one was on a page called page 12 and listed as "Note". It says, "However, in any development, a person with a disability may keep a certified Handi-Dog, Handi-Animal, that is needed as a reasonable accommodation to his/her disability. An animal needed as a reasonable accommodation is subject to the authority's pet policy, but is exempt from additional deposit." The second item was on a page called page three, and listed as item eight, "Section 3615 of the FHA provides that any law of the state, political subdivision, or other such jurisdiction that purports to require or permit any action that would be discriminatory housing practice under the act shall to that extent be invalid." Ms. Detrick said the third item was listed as number one, on a page called page two, under the heading "Argument". "Fourteenth amendment, all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state where they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." The final item was on that same page, it was number two, "Title 24, housing regulations states if there is a conflict then the rules have to be in accordance with state, local, and federal laws." Ms. Detrick said that completed the reading.

Ms. DeLong said the reason those items were brought up was because on August 21, 2002, a new document was passed around about the housing plan and in it a service animal policy was being implemented. The problem with August 21, 2002, is any of that housing plan could be discussed, could have been implemented, but the only thing that should not have been implemented was the pet policy because it was in court. It is currently in the Ninth Circuit Court of Appeals because misinformation was given to the court by the city and it had to be appealed to the Ninth Circuit. She had the dates, it was done on March 24th, and in September of 2002, there was mediation. There was supposed to be a second mediation in December and when that was held the city did not want to deal with the handicapped group and said they needed an extension to think what they were going to discuss or do. The next thing she knew there was a motion for summary judgement. There were also other pending motions within the court and then they were told, in mediation by the

city attorney's office, even by the mediator, that there would be notification. She said the city said they notified, but there is no longer a "City Page" and even if there were, she is legally blind and cannot go up and ask people to read everything for her. She can ask for reasonable accommodation, but people do not just do that, they expect to be paid. The policy was implemented and there are violations with the law. That is why it is still in the Ninth Circuit Court. The city is making her life a living hell with the policy. As she said when she was before the council couple of weeks ago, her service dog was attacked. She did not know if the city even enforced the pet policy on the owner. Animal control cited the owner for vaccination and license violations and she was yelled at by the manager because she did not notify her in a timely manner. She was afraid the authorities would take her service dog because it seemed from the policy that they are more concerned with what the service dogs are doing than with what the pet people are doing and they are making the policy more restrictive.

Mardi Hadfield, said the city can implement a policy, but it cannot restrict service animals from doing its job and that is what the city's policy had done. It has made it hard for a person to even have a service animal. Anyone could have a pet. That pet can attack a service animal and get away with it and everyone says the service animals are causing the problem. She said the service animals are not the problem. It is the pets that are unvaccinated and unlicensed, and no one seems to care. The policy should never have been implemented while it was in court. They were told in mediation that they would be personally notified, but they were not or they would have been at the hearing. It was sneaked through knowing full well that they would object to it. She said the city cannot have a policy that a service dog must be leashed at all times. That animal, if it is an alerting animal for someone who has seizures must alert, must find help. It has to run to someone, bark, or get his or her attention any way that it can. The animal cannot be on a leash and do that job. The city cannot restrict that animal from doing that. She said it is against the law to restrict a service animal from doing its job. There are a lot of other things in the policy that are also very restrictive and she thought the council should reopen the issue and have another hearing.

She said it is currently being considered by the Ninth Circuit and the city has passed something that is not legal. When laws conflict, the least restrictive law prevails and that is the *Americans With Disabilities Act* and it does not provide any regulations whatsoever. She was not saying that handicapped people want their animals running loose all the time. That is not the way it is, but they must be allowed to do their jobs. They must be allowed to bark in order to alert; they must be able to run and look for help. The service animals do not bite. By law, they cannot be a danger to people or other animals. Service animals are taught not to fight, not to bite and on Sunday, her new dog was attacked by a dog. Her dog stood there and allowed that animal to bite her. Ms. Hadfield said if her animals had been allowed to fight back, fewer animals would be attacking them. As it is, she has to spend money to go to the veterinarian. Animal control has not come by to see the bite wounds, so she has to take pictures of them before they heal. It took a month for them to go to her house the last time. She said it is getting out of hand. There is a big problem in the city. More rabid bats have been found and the dog that bit her dog had no collar and no license, so she did not know if it was vaccinated. Her dog is vaccinated and wears a license, all of her animals do.

Mayor Walkup asked Ms. Hadfield to conclude her remarks.

Ms. Hadfield said the council needs to do something, but they just keep ignoring her and Ms. DeLong. They have both lost their first dogs and had to replace them. She had to take a lien out on her house to get hers and she cannot afford to buy another dog.

Mayor Walkup asked if anyone else wished to address the council. There was no one.

6. CONSENT AGENDA ITEMS A THROUGH D

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 by letter and title only.

A. INTERGOVERNMENTAL AGREEMENT AMENDMENT: WITH SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY FOR CONTRIBUTIONS TO THE ARIZONA STATE MUSEUM

- (1) Report from City Manager NOV10-03-576 CITY-WIDE
- (2) Resolution No. 19715 relating to finance; repealing Resolution No. ~~19715~~ 19675 and authorizing and approving the execution of an Intergovernmental Agreement between the City of Tucson and the Salt River Pima – Maricopa Indian Community for making contributions to the Arizona State Museum; and declaring an emergency.

B. PARKS AND RECREATION: RENAMING EASTMOOR PARK TO BRISTOL PARK

- (1) Report from City Manager NOV10-03-583 W5
- (2) Resolution No. 19716 relating to Parks and Recreation; approving naming Eastmoor Park “Bristol Park”; and declaring an emergency.

C. PUBLIC IMPROVEMENTS: NOGALES HIGHWAY, IRVINGTON ROAD TO DREXEL ROAD DISTRICT STREET LIGHTING IMPROVEMENT

- (1) Report from City Manager NOV10-03-582 W5
- (2) Deputy Superintendent of Streets submits plans, specifications, assessment diagrams and cost estimates.
- (3) Resolution No. 19606. 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 “Nogales

Highway, Irvington Road to Drexel Road District Street Lighting Improvement,” all being within the City of Tucson, Arizona.

- * D. TUCSON CODE: AMENDING (CHAPTER 7B) RELATING TO COMPETITIVE TELECOMMUNICATIONS; CLARIFYING THAT FEES WILL ONLY BE IMPOSED CONSISTENT WITH THE PROVISIONS OF STATE LAW

- (1) Report from City Manager NOV10-03-581 CITY-WIDE
- (2) Ordinance No. 9911 relating to competitive telecommunications; amending the Tucson Code by amending Section 7B-26; and declaring an emergency.

Mayor Walkup asked the council’s pleasure.

Vice Mayor Scott asked that consent agenda item D be considered separately.

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

Upon roll call, the results were:

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

Nay: None

Absent/Excused: None

Consent agenda items A through C, with the exception of item D, were declared passed and adopted by a roll call vote of 7 to 0.

*** 6. CONSENT AGENDA – ITEM D**

- D. TUCSON CODE: AMENDING (CHAPTER 7B) RELATING TO COMPETITIVE TELECOMMUNICATIONS; CLARIFYING THAT FEES WILL ONLY BE IMPOSED CONSISTENT WITH THE PROVISIONS OF STATE LAW

Ordinance No. 9911

Relating to competitive telecommunications; amending the Tucson Code by amending Section 7B-26; and declaring an emergency.

Mayor Walkup asked the council’s pleasure.

Vice Mayor Scott said she had questioned this item during study session regarding what utilities the franchises relate. Is it utilities, or is it the cable people? Who will be affected by the subject amendment?

James Keene, city manager, said the amendment related solely to future telecommunications providers.

It was moved by Vice Mayor Scott, seconded by Council Member West, that ordinance no. 9911 be passed and adopted.

Upon roll call, the results were:

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

Nay: None

Absent/Excused: None

Ordinance no. 9911 was declared passed and adopted by a roll call vote of 7 to 0.

7. LIQUOR LICENSE APPLICATIONS

Mayor Walkup announced that city manager's communication number 575, dated November 10, 2003, would be received into and made a part of the record. He asked the city clerk to read the liquor license agenda.

(b) Person Transfers

(1) FOOD CITY #156 1221 W. Irvington Road Applicant: Michael J. Basha City #079-03, located in Ward 1 Series 9 Action must be taken by: November 22, 2003	<u>Staff Recommendation</u> Police: In Compliance DSD: In Compliance Bus. License: In Compliance
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(c) Special Event(s)

(1) VIETNAM VETERANS OF AMERICA 900 S. Randolph, Reid Park DeMeester Center Applicant: Frank L. Thompson City #T101-03, located in Ward 6 Date of Event: November 16, 2003	<u>Staff Recommendation</u> Police: In Compliance DSD: In Compliance Parks & Rec.: In Compliance
(2) CAMP FIRE USA 288 N. Church Avenue Applicant: Bonnie Demorotski City #T104-03, located in Ward 1 Date of Event: November 13, 2003	<u>Staff Recommendation</u> Police: In Compliance DSD: In Compliance

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Leal, seconded by Vice Mayor Scott, and carried by a voice vote of 7 to 0, to forward liquor license applications 7b(1), Food City #156; 7c(1), Vietnam Veterans of America; and 7c(2), Camp Fire USA, to the state department of liquor licenses and control with a recommendation for approval.

8. ELECTIONS: CANVASS OF THE RETURNS AND DECLARATION OF THE RESULTS OF THE GENERAL AND SPECIAL ELECTIONS HELD NOVEMBER 4, 2003

Mayor Walkup announced that city manager's communication number 585, dated November 10, 2003, would be received into and made a part of the record. He asked the city clerk to read resolutions no. 19722 and 19723 by number and title only.

Resolution No. 19722

Relating to elections; canvassing the returns and declaring the results of the General Election held in the City of Tucson on November 4, 2003; and declaring an emergency.

Resolution No. 19723

Relating to elections; canvassing the returns and declaring the results of the Special Election held in the City of Tucson on November 4, 2003; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

Council Member Ronstadt congratulated his colleagues, Mayor Walkup and Council Member Ibarra, for being reelected to the council. He knew that the ward two race had been close and congratulated Council Member West and Vice Mayor Scott.

It was moved by Council Member Ronstadt, seconded by Council Member Leal, that resolution no. 19722 be passed and adopted.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

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

Nay: None

Absent/Excused: None

Resolution no. 19722 was declared passed and adopted by a roll call vote of 7 to 0.

It was moved by Council Member Ronstadt, seconded by Council Member Leal, that resolution no. 19723 be passed and adopted.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

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

Nay: None

Absent/Excused: None

Resolution no. 19723 was declared passed and adopted by a roll call vote of 7 to 0.

9. PARKS AND RECREATION: NAMING THE BALLFIELD AT AMPHI NEIGHBORHOOD PARK THE GILBERT NAGORE BALLFIELD

Mayor Walkup announced that city manager's communication number 586, dated November 10, 2003, would be received into and made a part of the record. He asked the council's pleasure.

Council Member Dunbar thanked her staff. She said Belinda Fleming, along with Mr. Nagore, had been working on the subject proposal for the past four years. She thanked Mr. Nagore for his vision, dedication, and tenacity. She deeply appreciated all of the work that was done to bring this proposal to the council. The one nice thing is that people like Mr. Nagore, who had a hope and a dream and was not willing to give up until he reached it, keep the community going. She said there were people in the audience who wished to speak.

Robin Nagore thought it was important for the community and the Nagore family to relate a little history of the subject proposal. When Gilbert Nagore was interviewed by the Amphi Neighborhood about the Sacred Heart Amphi Neighborhood Park, he told them it had been his life's work. When he arrived in Tucson with his mother, Eva Nagore, and 11 siblings in 1944 at the age of ten, he probably did not imagine that he would spend the next 69 years of his life pretty much in that square block, dedicating his life to the community. His involvement with Sacred Heart began in September of 1944 when he entered that school as a fifth grader. He has fond memories, but he also remembers that they had no grass; it was all asphalt, so he had many concussions from his time at the school. She thought it was in the late 60s when his own five children attended the school, that he became very dedicated, remembering the times on the asphalt, to transforming the playground. He has so much history on the playground. She was reading a church bulletin that read: "Finally, after eight years of work, improving the property along Navajo Road is progressing with the demolition of the houses and the grading of the land. Plans to complete the recreation area are drawn up and each phase will be completed as money is available. The blood, sweat, and tears of a group of men headed by Gil Nagore are producing welcome changes." She said during those years and through the 70s, Mr. Nagore literally brought families together just by calling and threatening that they had to be there to clear the fields. They cleared all the houses

behind Sacred Heart. Years later, long after his children went to school there and his grandchildren, with great grandchildren being born, he has become recommitted to the playground. He was there at the dedication on June 30, 2001, when he worked with the neighborhood on the new playground. She thought many of the council members had seen it and would agree that it is a phenomenal leisure and recreation area for the community. He has always stressed that the dream would never have been accomplished without the help of other families, the church, the ward three council office, the Pima County Neighborhood Reinvestment money, and the Amphi Neighborhood.

It was moved by Council Member Dunbar, seconded by Council Member Leal, that resolution no. 19717 be passed and adopted.

Mayor Walkup asked the city clerk to read resolution no. 19717 by number and title only.

Resolution No. 19717

Relating to Parks and Recreation; approving naming the Amphi Neighborhood Park Ballfield the "Gilbert Nagore Ballfield"; and declaring an emergency.

Mayor Walkup asked if there was any discussion.

Council Member Ronstadt said the council had been naming parks and other things after members of the community and he wanted to be sure that there would be a marker that identified why the subject park was being named for Mr. Nagore. Ms. Nagore had done a very nice job of relating the history and he wanted to make sure that a marker was part of the package.

Bob Martin, parks and recreation interim director, said staff would be putting up signs to recognize Mr. Nagore.

Council Member Leal asked if they had the history.

Mr. Martin said yes, they would include the history.

Mayor Walkup asked for the roll call on the motion to pass and adopt resolution no. 19717.

Upon roll call, the results were:

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

Nay: None

Absent/Excused: None

Resolution no. 19717 was declared passed and adopted by a roll call vote of 7 to 0.

10. PUBLIC HEARING: ZONING (C9-81-45) HIRAM BANKS – SAN MARCOS BOULEVARD, MH-1 ZONING, CHANGE OF CONDITIONS AND ORDINANCE ADOPTION (Continued from the meeting of October 13, 2003)

Mayor Walkup announced that city manager's communication number 584, dated November 10, 2003, would be received into and made a part of the record. He also announced that this was the time and place legally advertised for a public hearing on a request for a change of conditions to allow increased residential density 8-acres. He asked if the applicant or a representative was present.

Michael John Baker, on behalf of the property owner, JHG Development, said pursuant to the council's wishes on October 13, 2003, a second neighborhood meeting had been held on Wednesday, October 29, in the ward one council office. Sixteen residents attended and he and the developer gave a brief presentation. They agreed on a few more items than previously. They further agreed that lots 6, 7 and 8, 18, 19, 20, and 21, the lots on the west, would be restricted to one story. Those are in addition to the 4 lots on the corner that they previously agreed would be one story. He said a restrictive note had been added to the preliminary plan development tentative plat which states that the family dwellings within the development are restricted to site built detached residences. The uses of mobile home structures, the uses of manufactured housing units, are not permitted. They have also agreed to homes within the development having pitched roofs and those roofs will be tiled. A masonry screen will be constructed adjacent to the development boundary at the lots that abut the boundary. Those are lots 5 through 8, 11 through 13, and 18 through 22. As a further clarification for the residents who attended the meeting, he said the applicant is required through ordinance to have homeowners' association covenants, conditions, and restrictions, put in place. Discussion was held about who was going to be managing the homeowners association CC&Rs and it was brought to everyone's attention that the developer will be the overseer until 75 percent of the lots are completed. At that time, his rights will be turned over to the homeowners association and they will decide how to implement the rules and regulations.

Mr. Baker said there was a lot of discussion about the continuation of paving of San Marcos Boulevard west of the project. As a reminder, he said the developer would be paving San Marcos from Greasewood Road up to their west property line and improving that. It was his understanding that residents are looking to the city to have some type of response to their request to have the rest of the road paved. There was also some discussion about the safety of the El Paso Natural Gas line, which is no closer than 300 feet to any of the units in the proposed development. The residents are looking to the city for a response about the safety of the pipeline. His interaction with the pipeline obviously will be limited to where the San Marcos Road improvements cross the pipeline in the Greasewood Road right-of-way. His limitations will be to make sure that a safe crossing is designed and that it is safe during construction, but he thought the residents' questions went more to when was the last time it was inspected, is it currently safe and if the city even knows. Mr. Baker said he would leave those issues to the city for a response.

Mayor Walkup asked staff to comment.

Ernie Duarte, development services director, said staff did attend the neighborhood meeting on October 29 and as a result of that meeting additional conditions were included in the council's material, which he needed to read into the record. As Mr. Baker pointed out, condition number two had been revised to read, "Lot 6, 7, 8, 19, 20, 30, 31, 32, and 33, as depicted on the preliminary development plan dated January 14, 2003, shall be restricted to one story." In addition, condition number 25 reads, "Adjacent to the perimeter of the rezoning site on lots 5, 6, 7, 8, 9, 11, 12, 13, 18, 19, 20, and 21, a 5 foot 8 inch wall is required. Those portions of the wall shall be painted a desert tan color". Finally, an additional condition, number 26, will read, "Architectural design of the proposed homes shall utilize pitched tile roofs."

Kathleen S. Detrick, city clerk, asked if condition number two was to include lot 18.

Mr. Duarte said lots 6, 7, 8, 18, 19, 20, 30, 31, 32 and 33 were included in condition number two.

Mayor Walkup announced that the public hearing would last for no more than one hour and speakers would be limited to five-minute presentations. He had received one written request to speak and called on that person.

Nancy Urias, said she was a board member of the homeowners association of Starr Pass Shadows, which is directly north of the proposed project. She and Nancy Weiss represented the homeowners association and wished to express appreciation to Mr. Baker, the developer, Council Member Ibarra, and various city employees for organizing the second meeting of October 29. They were at that meeting to assure that all of the residents' concerns and issues were heard and, as Mr. Duarte read into the record, were taken into consideration. As Mr. Baker pointed out, the residents believe it is the responsibility of the city council to ensure that some of the concerns that are separate from the rezoning, but related to the project continue to be considered. First, directly west of the subject project San Marcos Boulevard will not be paved due to financial constraints, as was mentioned at the first meeting. They realized that the city budget had already been allocated for the next 2 years, so they would like the project to be added to the budget beyond 2005. Until then, because of the increased traffic that will occur due to the paving of a portion of the road, she asked the city to approve a more temporary solution for the dust control, such as chip sealing or other possible alternatives that would be left to the city in the interim.

Of a much greater concern, however, the El Paso Gas line that runs parallel to the proposed project along Greasewood Road. Ms. Urias said the residents are not interested in or intending to delay the subject project any further, especially having had their concerns already addressed; but they did want to be sure that the families of their community were considered a high priority. Since the last meeting and even since the neighborhood meeting of October 29, it had been brought to their attention that in August of 2000 a section of the El Paso Gas line in Carlsbad, New Mexico blew up, killing 12 people. Since then, the company was required to inspect all of its line from El Paso, Texas to California, although they had already been requested to inspect the line partially due to Tucson's recent experiences with Kinder Morgan. The residents naturally have even more concern now about the El Paso line, whether the inspection had been completed and if so, to what degree of thoroughness.

Rather than being reactive as in the case of the Kinder Morgan pipeline incident, they thought it was imperative that the city take a more proactive approach by contacting the chief executive officer of the El Paso Gas Company to assure that they were making the health and welfare of the community their highest priority. The line was more than 50 years old, having been installed from 1947 to 1950, and the residents had a lot of questions about its conditions. What type of inspections were conducted, what equipment was used, i.e., sensors or probes, how often was it inspected and the degree of that inspection? Would they be able to detect a serious potential for an incident? Who would receive and interpret such a report and what government agency would monitor the inspection regarding its compliance? What was the longevity, especially considering the amount of activity and stress brought on by the heavy equipment that was needed for a new development? The residents would like those concerns addressed by the city council.

Mayor Walkup asked if anyone else wished to address the council.

Lee Gobbo, said he lives adjacent to the subject property. He was sure that Mr. Greenberg and Mr. Baker had addressed all of his concerns and he appreciated their cooperation. He would like to see the proposed project developed as soon as possible. During the 12 years that he has owned his property, his house has been broken into twice, two all terrain vehicles were taken from a locked shed and there was a hostage situation in an old mobile home that was on the subject property. The police cut his chain link fence and never came back to fix it. A stolen SUV ended up in his yard about a year ago and last Friday night or early Saturday morning, someone brought in a pickup truck and ripped all of the wheels off. He said if houses were there and the property was cleaned up, it would be a great thing for the city of Tucson.

Mayor Walkup asked if anyone else wished to address the council. There was no one. He asked the council's pleasure.

It was moved by Council Member Ronstadt, seconded by Council Member West, and carried by a voice vote of 7 to 0, to close the public hearing.

Mayor Walkup asked the city clerk to read ordinance no. 9905 by number and title only.

Ordinance No. 9905

Relating to zoning: amending Ordinance No. 5653 to amend zoning conditions for approval of the zoning district boundaries in the area located on the south side of San Marcos Boulevard, 200 feet west of Greasewood Boulevard in Case C9-81-45, Hiram Banks – San Marcos Boulevard, MH-1 Zoning; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Ibarra, seconded by Council Member Leal, that ordinance no. 9905, be passed and adopted with revised condition number two, reading, "Lot 6, 7, 8, 18, 19, 20, 30, 31, 32, and 33 as depicted on the preliminary development plan

dated January 14, 2003, shall be restricted to one story;” adding condition number 25 that, “Adjacent to the perimeter of the rezoning site on lots 5, 6, 7, 8, 9, 11, 12, 13, 18, 19, 20, and 21 a 5 foot 8 inch wall is required. Those portions of the wall shall be painted a desert tan color”; and an additional condition, number 26, will read, “Architectural design of the proposed homes shall utilize pitched tile roofs.” Also, committing that the city will look at what the neighborhood’s requests were in terms of the El Paso Natural Gas line, and the street itself and that the developer include a statement of the location of the El Paso Natural Gas pipeline in or along with a public report provided to prospective purchasers in accordance with ARS Section 32-21.83.

Mayor Walkup asked if there was any discussion.

James Keene, city manager, said he understood that the two neighborhood requests dealt with the potential of some sort of paving for the road that does not actually front the subject property. Understanding that the city cannot immediately commit to that, it is within the queue of all of the huge needs the city has. Separate from the notice of the location of the natural gas pipeline, it was his understanding from previous comments of the city attorney, and his own take, that the issues of the city getting back to the council on the natural gas pipeline are not the only issues that would be directly related to the subject rezoning. They had come up in the context of the rezoning, but were not really connected as a condition of the rezoning. Having said that, he said he indicated to the council a couple of weeks ago that staff was going to be meeting with representatives of El Paso Natural Gas next week to start to get some detailed inspection data on the El Paso pipeline. It was his understanding that federal law beginning in April of 2004, required full inspection with probes, all different varieties, to be started by April of 2004. Staff does know that El Paso Gas is proceeding with a faster schedule than that of all the sections in the city. After next week, he would be in a better position to provide the council with more of an update on exactly what that schedule is and the technology. He will be sure that the questions the public asked at this meeting are incorporated into the reports that staff brings back to the council.

Council Member Ibarra said they would forward that information to the neighborhood so that they had all of that information.

Mayor Walkup asked for a roll call on the motion to pass and adopt resolution no. 9905 with amended condition number two and added conditions 25 and 26.

Upon roll call, the results were:

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

Nay: None

Absent/Excused: None

Resolution no. 9905, as amended, was declared passed and adopted by a roll call vote of 7 to 0.

11. PUBLIC HEARING: ZONING (C9-03-18) LA COLONIA SEIS – CAMPBELL AVENUE R-2 AND C-1 TO OCR-1, CITY MANAGER’S REPORT AND ORDINANCE ADOPTION

Mayor Walkup announced that city manager’s communication number 580, dated November 10, 2003, would be received into and made a part of the record. He also announced that this was the time and place legally advertised for a public hearing on a request to rezone approximately 3.4 acres from R-2 and C-1 to OCR-1. The preliminary development plan was for one three-story building and five two-story buildings for offices and retail use. He asked if the applicant or a representative was present.

Frank Bangs, representing La Colonia Seis Apartments, the applicant in this rezoning case, said Jim Horvath, a managing partner of LCS, and the project architect, Raul Reyes, were with him. He said this case was before the mayor and council in July. The council has excellent staff outlining the scope of the project. The preliminary development plan is very close to the concept that the council saw earlier this year. The building elevations are also provided in that report. He said he was not going to make any kind of presentation on the project, however he and his associates were present to answer any questions the council might have or might come up with. He said the conditions that were proposed by staff are acceptable to the applicant. He believed the city clerk had distributed to the council additional conditions and one modification of an existing condition. The Sam Hughes Neighborhood Association, the residents of Rincon Heights to the west of Campbell, and the applicant requested that condition number 16 be modified to provide some additional flexibility for the provision of offsite parking. He was adding conditions number 26 and 27 primarily to answer concerns of residents west of Campbell providing a decorative screen wall and treatment of any covered parking in the project. He asked that the council accept those modifications.

Mr. Bangs said they have had extensive communication and interaction with surrounding residents and the Sam Hughes Neighborhood Association with the latter having culminated this date, he was happy to announce, in the execution of a memorandum of understanding between the applicant and the Sam Hughes Neighborhood Association. They will be implementing that through some additional documents. It was certainly one of the most extensive that he has participated in and the process, although it had hiccups from time to time, was one that had reached a successful conclusion. He said they would be happy to answer any questions.

Mayor Walkup asked the city clerk to read the conditions referenced by Mr. Bangs into the record.

Kathleen S. Detrick, city clerk, said the first was a modification of condition number 16 so that it would read, “All required loading maneuvering and parking shall be located on site except that up to but not exceeding 10 parking spaces may be permitted offsite in accordance with the *LUC*”. No offsite parking shall be located on a residential street.” An added condition, number 26, reads, a solid masonry wall to screen adjacent parking areas shall be constructed between the north and south access driveways on the Campbell Avenue frontage of the development. “The wall shall vary in height from 30 inches to 5 feet and shall

have decorative features and be finished in a manner which compliments the adjacent residential buildings. Any identification signs placed on the wall in the vicinity of the south driveway shall be back-lit or externally illuminated. A wall or walls similar in design creating an entrance to the bike path shall be placed south of the south access driveway". A second and final added condition reads, "Any covered parking structures visible from west of Campbell Avenue shall be painted colors which compliment colors used for the residential buildings".

Ernie Duarte, development services director, reported that his department received removal of some protests earlier in the day, therefore the protest areas were at 5 percent to the east and 15.32 percent to the west. A simple majority vote would be needed to adopt the ordinance.

Mayor Walkup announced that the public hearing would last for no more than one hour and speakers would be limited to five-minute presentations. He had received written requests from people wishing to speak and called on the first.

George Kalil, referencing agenda item number 9, said he was at Sacred Heart when Gilbert Nagore showed up and he was delighted to see the ball field named for him. He lives in the Capistrano Apartment Complex, which is in the Sam Hughes District. He thanked the city staff, the property owner, and the Sam Hughes Neighborhood Association for all of the work they had done on the project. He had been watching it for at least a year and a half. He anticipated that he was going to be the subject project's first tenant. He will be moving, wanting to be a little closer to his favorite university and he hoped to be a tenant. He was delighted that this type of approach was being taken. He has always been a renter; this will be his first purchase. The last place he almost went to was the project Roy Drachman was going to build in the Williams Addition, seven stories of business, and five stories of apartments. He reserved the top unit, but the building was never built. He asked the council not fail him this time. He appreciated the time and effort they have put in on all of development projects.

Melvin Cohen, cattycorner from the project, said as the project evolved the owner and his representatives had done a very good job of adopting a different approach to understanding the needs of the community. He hoped the city would adopt a transportation program that might make the project an urban environment that really works. He had particular concerns, one addressed in modified condition number 16, that the offsite parking is not going to be in a residential area, so if it passed he will have no objection to that. He was interested in the corner of Sixth and Norris, which is right by his house, and asked if there could be a wall surrounding the parking to be the sound barrier. The parking lot will generate a fair amount of noise and he was not sure in looking at the plan how it was being done, but he was concerned about that parking and asked that landscaping be provided around the wall.

Dorothy Daniel, two blocks north of the proposed project, said she has been involved in the project ever since she first heard about it on March 2 in the newspapers. She very much wanted the property to be developed in a way that is not a detriment to the adjacent neighborhoods and to that end, she had three requests regarding the zoning conditions. She asked that the council not amend zoning condition number 16, which requires all parking to

be onsite. One of the selling points of the project was that all of the parking would be interior and on the site. At meetings with the residents, the representative of the developer always stated that there was more than adequate room for parking onsite and there would be no problem with overflow. On June 3, the Sam Hughes residents in a very large meeting voted for a project that had only interior parking. The development plan with its parking calculations, which was submitted to the city on September 15, used only onsite parking. She believed that in the future if the owner of the property, whoever that may be, believed more parking was needed then they would have the option to get a variance at that time. At this late point in the rezoning process, she thought the developer should stick to his development plan. She was at the meeting where the Sam Hughes board approved the parking at the very last minute. The developer came to the meeting on November 5, and requested additional parking and that it be offsite. The purpose of that meeting was simply to approve the memorandum. This was an additional request and she thought it was a substantial one in that it changed somewhat the nature of the project, which was to have interior parking. At that meeting, the board, with no advance notice, approved ten spaces. There was no notification on the agenda that a change of that type was being made and she believed the board erred in making the decision to approve onsite parking at that late time and without notification to people.

Ms. Daniel said the promotion of the project and the types of commercial uses mentioned were very neighborhood friendly. They were bookstores, kitchen equipment stores, neighborhood pharmacies, sandwich shops, clothing stores, all businesses that close well before 1:00 a.m. in the morning. Zoning condition number 10 permits hours of operation of the businesses until one o'clock in the morning, so any number of establishments could remain open until that hour. Without a limit on the number of places in the mixed-use building that can stay open very late at night, the corner at 6th and Campbell, with its proximity to the university, runs the risk of in the future becoming a very crowded, very late night destination for many people. Parking restrictions cannot be depended on because a huge pedestrian population can cross Campbell Avenue to that corner late at night. She thought that would be detrimental to the adjacent long established residential areas and to the traffic safety at that very busy intersection. She believed the property owner could limit to only one the number of business establishments that stay open to until 1:00 a.m., and with that limitation still have what everyone wants for him, which is an economically viable project that would benefit the community. She asked that an amendment be made to condition number ten that would limit the evening hours of operation to 11:30 p.m., with the exception of one, which could remain open to 1:00 a.m., in addition to an exception for a coffee house that could remain open later. A number of residents have called about town to find out how late different restaurant/bar type of establishments stay open and a tremendous number do not stay open until 1:00 a.m., in the morning and they are quite successful. Very good restaurants, popular restaurants that are attended by all different types of people and all ages stay open until 11:30 p.m., or earlier. Therefore she did not think the owner would have any trouble attracting tenants with some limitation on the 1:00 a.m. hour of operation.

John O'Dowd, said he is a board member of the Sam Hughes Neighborhood Association, but he was speaking as a resident. He had from the beginning protested the density and height of the proposed project as being incompatible with the neighborhood. He had tried to get the developer and the city to agree to the two-story commercial on the corner and 30 or 40 condominium units instead of having a three story mammoth development on

the corner, commercial as well as 60 condominium units. That is just too much for a residential neighborhood of Sam Hughes' nature. He thought anyone who spent some time in the neighborhood would know that. The neighborhood is medium density. All around it is medium density residential and the proposed project is high density. Although it is on a corner the impact on the medium density residential will be terrific and unacceptable. It will make that part of the neighborhood a lot different. He knows that the neighborhood association board, with which he has disagreed from the beginning, has been trying to ameliorate the project somewhat and get some assurances. He has observed that from afar and it seemed like it was a moving target. Mr. O'Dowd did not know what the developer intended to do with this last effort to try to get offsite parking in addition to 7th Street, on November 5, and then asking for 60 more off-site parking spaces. The neighborhood zoning committee said they would not go that far. At least they drew a line at seventy offsite spaces in addition to the ones they had. He questioned what was really going to be built. The developer has said he needed flexibility from the beginning and the neighborhood association board and the city have given it to him. Mr. O'Dowd was not sure what they were going to end up with.

Mr. O'Dowd explained that the neighborhood board was terrorized by the prospect of student housing, which was a real threat to a neighborhood like Sam Hughes and continued throughout the entire negotiations. They were told that if they did not give the developer what he wanted he would put in student housing. That was a constant refrain of the developer and Mr. O'Dowd thought it terrorized and traumatized an otherwise fairly good neighborhood association board into going along with things that are totally incompatible with the neighborhood and another problem did not seem to have been mentioned. He said he did not get the city manager's report, which he guessed was filed today and may be part of the council's package, but those people out in the hinterland do not get those kinds of things. However, apparently there is another zoning process going on 7th Street because it is not part of the subject rezoning package. A hearing was set for November 20 on that. He asked how the council could approve a piecemeal zoning at this meeting and then have another zoning on part of the project that is supposed to be before the council at this hearing. He had not heard an explanation of how that is supposed to work, but he understood that the rezoning notice for this meeting was deficient because it did not include 7th Street as part of the OCR-1. He did not think it would be procedurally correct to have a second rezoning case to make this rezoning case complete. He thought it would make it a bad rezoning.

Mr. O'Dowd said he was present the night the council approved the sale of 7th Street without any notice to the neighborhood and without any notice to adjoining property owners. He helped Dave Mackey file a lawsuit because state law says notices have to be given. The case is in a trial court and so far, they have not prevailed, but they will probably be asking for reconsideration because the state law does require notice. The city holds itself above state law because of a decision that was made by the Supreme Court in 1948, regarding previous laws on the sale of streets. He hoped ultimately to prevail, not just in this case, but because of the practice of giving away city property and this was a giveaway.

He knows that when a developer puts in a package that generates additional traffic they have to give the city an additional lane on Campbell and a bus bench. The city should have gotten money for 7th Street and it should have gotten money for the alleys. The developer should have had to give the city that extra lane on Campbell. He said this had

been an unusual package from the beginning. Regarding the transfer of the street, he said the ordinance that the council passed giving the street to the developer said he had to get the consent of the adjoining landowner. The developer does not have that consent as of this date. Mr. O'Dowd did not know how the council could pass a rezoning that is predicated on the developer using 7th Street for parking and obtaining title without fulfilling that condition. He believed that until that is fulfilled the subject rezoning should not be approved.

Liz Green, said she was speaking on behalf of her immediate neighbors, Evelyn Phillips, Robin Riley, George Robinson, and David Richards, as well as herself. She asked that the council deny the OCR-1 zoning because more commercial and more dense residential development will increase traffic, parking problems, vandalism, graffiti, garbage in yards and public areas and crime. Those who live closest

to the subject project will bear the brunt of those negative effects including a reduction in the value of their residential property. Many of the Rincon Heights residents have invested time and money to improve their homes and they would like to continue to do so. This past summer the Rincon Heights Neighborhood Association voted against the rezoning to OCR-1. In addition, some of the residents have met with the developer a couple of times, but her concerns and the concerns of her immediate neighbors were never seriously addressed. At the last minute, the developer has asked for the aforementioned off-site parking, which was specifically not allowed in the agreement. They were given some off-site parking, the location unspecified, by a handful of Sam Hughes residents, but she and her neighbors did not want that extra parking in the Rincon Heights Neighborhood.

Ms. Greene said there appeared to be conflicts of interest with some of the people involved and she would like to see full disclosure to the neighborhood residents of the various interests of the parties pushing the subject development. For example, although she did not have hard facts, she understands that John Hinderacher is an attorney for Lewis and Rocca, and Ted Hinderacher is his brother. Simon Washington and Council Member Ronstadt have been working very closely with the developer. Some of those people are or have been on various Sam Hughes Neighborhood boards and committees; also, some of the residents near the site who support the development have business rather than residential interests in the neighborhood.

She stated the council should have a letter in their materials asking the mayor to abstain from voting due to a conflict of interest having to do with campaign contributions, and the developer and the mayor's wife sit on the board of director's of the Commerce Bank of Arizona. There has also been various city staff support for the project and she did not know if that is proper. She said she would like to see the democratic process at work and have their elected representatives accurately represent them in this matter. All she has heard is how much everybody loves the project, but she has talked to very few who actually do love it. The subject proposal is not so widely supported and there have been a lot of irregularities in the process, such as a lack of notification and conflicts of interest that she would like to see addressed before a vote is taken. At the very least, Rincon Heights should have more time to have input on the project.

Laura Tibili, in Rincon Heights, said she was representing herself and she wanted to convey the sense that the neighbors in Rincon Heights have gotten about this project. They met with the developer, he came to one of their neighborhood meetings in the spring, but he

failed to address their concerns and they voted at that meeting to oppose the subject zoning change. She asked the council to deny the rezoning request. They are very much in favor of neighborhood oriented commercial development at that site. However, seeing as existing zoning allows for 33 feet of frontage on the commercial and 25 feet on the residential, it did not seem that OCR-1, which would allow multistory buildings, is strictly necessary for the site and the developer has never adequately satisfied the residents as to why OCR-1 rezoning is necessary. In fact, the last documentation said that they want to make the residential part 28 feet high. The existing zoning allows for 25 feet. She said she could find three feet and she is not even a developer. That first issue was that OCR-1 zoning seemed disproportional to the building that was being proposed and if that building changed it would allow for multistory buildings that are extremely inappropriate for the neighborhood.

The second issue was that the project keeps changing. Every time the residents attend a meeting, they find out that between one meeting and the next something else has changed, the most recent change being the issue of off-site parking. If this were the first time that the plan had changed between meetings, it would not raise so many concerns. However, it did seem that what the developer was planning was 70 parking spaces. For that reason if the council did not deny the request she urged them to at least postpone it until some of the unresolved issues could be addressed.

Paul Mackey, said his remarks to some degree looked beyond the proposed project. He thought other speakers had touched on some of the issues, but he wanted to propose certain things that go beyond the project in one sense because several issues had been raised. One of the issues that had driven the project from the beginning had to do with student housing in the university area. He has addressed the council on that issue before, so he would not go into a big explanation about it, but the fact of the matter is that some of the concerns that have come out of the proposed project were driven by the potential for student apartments. That is an issue that is not going to go away in the university area and he would like to see the council set something in motion that would begin to address it with the university and other neighborhoods. Some starts have been made. Council Member Dunbar has done something regarding parking and there is an effort underway by the planning task force to deal with the issue of the overlay zone in the university area. What is happening is a situation where there is a zoning category, OCR-1, that is perhaps questionable in relation to the subject project and so options for other types of zoning for mixed use should be looked at that do not convey the same sense of intensity.

Mr. Mackey said that other housing options should be looked at in a positive way so that the area residents are not in the position of always demonizing students. He did not think that that is what they wanted to be doing. There is the prospect of situations like Stone Avenue and things like it that are of serious concern. Things need to be set in motion to do that and he asked that there be an effort by the city to work with the university and take some positive steps. Council Member Ibarra asked for a staff report to address some of the issues. This is something that is not going away, so it needs to be given more attention.

Mr. Mackey thought that specifically in OCR-1 something should be set in motion where some of the mixed-use categories could be looked at. Probably more mixed-use proposals will be seen in the university and other areas. The height limitation in OCR-1 of 140 feet creates tremendous pressure on neighborhoods. That was one of the reasons such extensive discussions were held about the conditions. The zoning category by itself did not

offer enough safeguards so very extensive negotiations and discussions had to take place about the subject development. He thought other zoning categories should be investigated. A *Land Use Code* revision process had been in the works, but it dealt with administrative procedural changes. There really was not anything that addressed some of the zoning issues that come up. There is another OCR-1 proposal for the area west of the university that would probably be before the council in approximately two months, probably the beginning of the year, and there was a possibility of several others, so it was something the community needed to come to grips with. OCR-1 by itself did not address many of the issues. He suggested that the mixed-use categories be reevaluated, that something be set in motion to develop some student housing options, that positive steps be taken and not always restrictions and limitations. The *University Area Plan* badly needed revision. The staff report had what he thought was a really flexible policy. It said that areas around major activity centers should have higher densities. Mr. Mackey said there were many viable residential single family areas around the university and to simply say that these should be higher densities he thought was the wrong way to go. He reiterated that the *University Area Plan* needed to be revised and asked that the council set something in motion to address some of the things he mentioned with either a motion or direction to staff.

Greg Czekaj, noted that Mr. O'Dowd referred to a meeting to be held on November 20, yet the council was voting on the proposal at this meeting when all of the facts and protests have not been heard. He wanted to know what that was all about.

Mayor Walkup said in a public hearing the council listens to the citizens' input and then addresses their issues. They do not answer questions during the public hearing.

Mr. Czekaj noted the council was holding its public hearing on the proposal, but was still going to have a hearing at the zoning examiner's meeting on November 20. The facts, figures, and details were not complete at this point.

Mayor Walkup said the council would address that after Mr. Czekaj's comments.

Mr. Czekaj asked if the council was going to vote on the proposal after the public hearing.

Mayor Walkup said this was not the time for a debate. The council was interested in Mr. Czekaj's input. He had 5 minutes and if he had specific questions they would be noted and answered after the public hearing was closed.

Mr. Czekaj said his specific question was that there was some rescinding of letters of protest, yet with the new proposal that the zoning examiner was going to hear on November 20, there were letters of protest that had been sent out. He had been caucusing with those protesters, trying to get the 20 percent back and he wondered where that left things. Where did it lie in view of the fact that a three-quarters majority was no longer needed, just a simple majority when all of the letters of protest had not been examined by the zoning examiner? He asked what was going on there. He asked if anyone from the city could answer that question.

Mayor Walkup said Mr. Czekaj's questions would be answered at the end of the public hearing. He noted that four other people were interested in being heard and suggested that Mr. Czekaj use his five minutes wisely.

Mr. Czekaj said the letters of protest were about the project, but all of the facts and configurations were not in and there was still a hearing by the zoning examiner on the 20th. He said that because not many people in the Sam Hughes Neighborhood or the Rincon Heights Neighborhood were aware of the plan by the developer to dig a big trench underneath 7th Street and bury a tank to collect runoff water from Sam Hughes Place and then use a meter, which works with gravity, and feed the water into the High School Wash. He asked if there would be any residual water in that tank and how long would it be before residents in that area contract West Nile virus and the city becomes

aware that something went wrong. He said that was why he was asking that very important question. The zoning examiner was holding a hearing on November 20, yet the proposal was being presented to the mayor and council at this meeting. He said the two are incongruent and asked why this was going on. Why couldn't the council postpone its action and wait until the zoning examiner has heard the proposal? That would allow him to caucus with those people who have letters of protest and contact a friend of his that lives directly north of the property who just sent in his letter of protest today. When Mr. Czekaj spoke to him on the telephone earlier in the day, he said there was no deadline on the letter. He did not think he had to get it in. He put the letter in the mail this morning.

Mr. Czekaj said he voted for a pay raise for the council. He thinks the council deserved it, especially since they have to deal with questions like his. He said there was a big inconsistency going on, the council had to deal with it, and they deserved the pay raise. He read the notice and it said medium density, residential, low intensity commercial as opposed to OCR high rise mixed use. He asked what people would rather have.

Mayor Walkup said Mr. Czekaj's five minutes were up and the council would be addressing his question shortly.

Steven McElroy, vice president of the Rincon Heights Neighborhood Association, wanted to reiterate for the record that on May 20, 2003, the association voted to oppose OCR-1 zoning for the entire subject property. He also wanted to reiterate his previous points that he and other of his neighbors had been very disappointed in this entire process. He wanted to contradict Mr. Bang's statement that there had been extensive communication with Rincon Heights. There had not been, nor had there been extensive communication with Council Member Ronstadt. Several weeks ago there was a meeting with some concerned residents in Rincon Heights that live on 7th Street and the developer. At that time, he arranged for the meeting to be held in his neighborhood at the charter high school where the association had all of its meetings. The developer instead insisted that the meeting be held in a hotel on North Oracle Road. He asked why was that the case. Was it to exclude all residents from participating and only include a certain subset that lives on 7th Street? The zoning examiner meeting was supposed to be held on November 20, 2003, to consider the addition of the 7th Street parcel and because of that he asked that the council postpone any vote at this meeting until the zoning examiner's meeting was complete. The agenda for this meeting said the council had a report from the zoning examiner dated October 24, 2003.

Obviously, the council did not have all of the information it needed to make a decision at this meeting. Furthermore, the discussion of offsite parking that occurred within the last week could negatively affect Rincon Heights and that must be considered. The point that Mr. Mackey brought up that the proposed development must not be used as a precedent for further zoning changes within the *University Area Plan*, needed to be considered. That is one of the reasons Rincon Heights opposed OCR-1 in the first place. They see the continual degradation of the residential neighborhoods around the university and they believe that conditions could have been made to use the existing zoning that was in place or even rezone part of the parcel to OCR-1 to accommodate a mixed-use framework. He asked the council to postpone any action on this request.

Ted Hinderaker, approximately two blocks from the subject site, said before making his comments he wanted to address an earlier comment about a conflict of interest. He thought people deserved to know what his role has been, which is one of a concerned neighbor that lives two blocks from the subject site. The project has developed in a manner that is compatible with the neighborhood and it is going to be an amenity to the neighborhood. He has served on the zoning committee although he has not been its chairman. He is not on the board of the Sam Hughes Neighborhood Association. His brother, John Hinderaker, is on the board, but he has not participated in any discussions regarding the project. His brother has recused himself from any discussion regarding the project and Mr. Ted Hinderaker believed he has been walled off at the firm of Lewis and Rocca from participating in the representation of the developer. He said there is no conflict of interest.

Mr. Hinderaker said this process has been ongoing for approximately one year and the original project was overwhelmingly opposed by the neighborhood. There were several public meetings and people were very concerned about the prospect of student housing, four bedroom apartments, in the neighborhood with commercial property that was probably going to be developed for student use. Since that time, the neighborhood has worked very hard to try to come up with a project that is a compromise and he thought they had done that. He was not happy with everything in the memorandum of understanding that was entered into between the neighborhood and the developer. He did not think the developer was happy with everything that was in there. He thought a lot of the neighbors had concerns about some of the things, but it was a compromise and they addressed a lot of the issues that had been raised at this meeting. They addressed concerns regarding OCR-1 zoning. The rezoning conditions put limitations on the height of the project, on the number of residential units in the project, on the amount of commercial space and use of the project, and limitations on noise. On the other hand there are some provisions for off-site parking, which he thought most people in the neighborhood were not real happy about, but it was a compromise that was reached after a tremendous amount of work. He suggested that work should be rewarded and not simply rejected. He respected the concerns of his friends who live in the Rincon Neighborhood about OCR-1 zoning and encouraged them to read the rezoning conditions and the covenants, conditions, and restrictions to see what was done to try to address them. He said they could not guarantee that there would be no problems, but he thought there had been a good faith effort to minimize the problems and come up with a project that will work for the entire neighborhood and for the city.

Mr. Hinderaker said he thought a lot of the opposition that was expressed at this meeting about the proposed project stemmed from the OCR-1 zoning and he thought this was a problem with the *Land Use Code*. There is no provision in the *LUC* that adequately handles those issues. It is not there and so these types of concerns are generated and they are valid concerns. He urged the council to give some consideration to amending the *Land Use Code* to come up with a category that better accommodates this type of development because he thought it was the wave of the future in Tucson and in cities across the country. Secondly, he thought it would be very helpful to have a mediator or someone in the mayor's office, a council office, or the manager's office to help facilitate these types of disputes and help the parties reach a compromise or solution that is in the best interest of the city. He thought both of those would be good objectives.

Mary Zulli, president of the Sam Hughes Neighborhood Association, said she was authorized by the board on behalf of the Sam Hughes Neighborhood to accept a memorandum of understanding signed by herself and the developer to regulate the management, building, security arrangements, and so forth of the development. As many on the council knew, it had been the association's goal from the beginning to make sure that this square block of the neighborhood was not lost in the same way that many other blocks of the neighborhood had been to development that was not consistent with the neighborhood and did not relate to the neighborhood. The board believes that while there is commercial on the property, the preponderance of the project is residential and most of that residential is going to be people just like everyone else in the neighborhood. They hoped that the kind of balance they achieved in the arrangements they made would allow the area to actually become a focus of the neighborhood and that it would help fill the edges of the neighborhood that had become frayed, because those people who live on the edges did not feel the kind of sense of community that those residents in the center felt. She hoped this kind of development, both in her neighborhood and in other places in the city, would allow centers that are pedestrian friendly and bicycle friendly, that allow children of all ages and old people who can no longer drive, to be able to participate fully in the life of the neighborhood. It has been their awareness for a long time that this is groundbreaking and one of the signs of that, unfortunately, is what the council has seen at this meeting in the dissatisfaction with the OCR-1 designation. She believed that the memorandums of understanding and a lot of the incredible work that the staff has done to write very restrictive and very specific conditions of rezoning will help ameliorate the potential problems with OCR-1 and also the kinds of concerns that the neighbors might have over that designation. On the other hand, she hoped the council would resolve as well to change the laws so that these kinds of developments become a much more straightforward and secure way for a neighborhood to approach development. Not every neighborhood has the kinds of resources, either intellectual or financial, that Sam Hughes does.

Some of the neighborhood members had complained about conflicts of interest and Ms. Zulli wanted to assure the council that those people who have real conflicts of interest have in fact recused themselves from the proceedings. However, it was also apparent that there were many people in the neighborhood that had the kind of expertise that is required to get this agreement going and to create the kind of atmosphere of background that allows them to find solutions to a very complex problem. Those people did participate and she believed they did so with open minds and without conflicts. She was completely confident

that the arrangements they had made were based on their best abilities to create a document that will protect the neighborhood and allow its continued growth and vitality. She said they are very happy with the relatively small amount of commercial activity, which they hope will be buffered not by neighbors who are strangers, but by neighbors who are also part of the association, the builders association of that development. She thought they had worked as hard as they could to get the agreement and they would like in return to have the development proceed with due haste. The neighbors that she represents who live immediately adjacent, as well as the rest of the neighborhood, are very anxious to see this empty gash in the neighborhood healed. She urged the council to vote to pass the proposed ordinance. She thanked Council Member Ronstadt's office and all of the other council members, as well as city staff, for their participation and advice on how to proceed. She believed that as a result of that kind of participation they were able to craft the kinds of documents and agreements that they could all be proud of.

Mayor Walkup asked if there was anyone who had not spoken who would like to address the council. There was time for two more people.

Paul Schwam, first congratulated those council members who were returned to the council by the voters, then said the kinds of negotiations that took place with the subject rezoning were really tough. He was trying to imagine all of the legal fees, all of the time and effort of people coming together to make a document that would fill the gaps that are left on a rezoning. There had been a lot of discussion about rezoning. He is for change, the parties had worked really hard and he liked that. Did he like all of the proposal? No, he did not, but that was his vote and he had to go with whatever the neighborhood wanted. Is it the same project? He said it was close, very close, but not the same. More importantly, what it reminded him of was when he was doing some planning along the US Mexico border with the Bush administration. They had a philosophy that they had to remind themselves about, which was the unintended conspiracy. That was a bunch of people making bits of decisions, all trying to get from one decision to another. It involved a lot of people and everybody made their portion of that decision in good faith. The way it is structured they end up at the same place every time and there is no way around that. For example, the fear about OCR-1 in this case is that when property is zoned rights are granted to it that are not necessarily desired by the neighborhood and it does not take into consideration great differences in use and intensity of use like the University of Arizona and a quiet bedroom community. In that case, when a piece of property goes up for sale a landowner gets as much money as he can. He goes to someone who is probably going to do some development because they have the most money. The developer is really trying to make the most money for him and his clients and all of that is fair, but the problem is there is no protection for a neighborhood and the biggest danger in this circumstance is that the pride of the neighborhood is beginning to erode. When a person knows that their neighborhood is eventually going to be taken over by the university or some other entity it is quite depressing. He has heard some grumbling in the neighborhood and that makes him sad because a good strong residential neighborhood is a marker for the city and it needs to be protected.

He said there must be some mechanism for that protection, but he did not know what it was. He would like to see some sort of restrictions so that OCR-1 zoning would provide the guidelines for development, but not necessarily grant all of the other rights that are going to be a problem in 20 years when there is a whole different set of people on the council, but the residents are still in the neighborhood. He thought it would start with some courage.

Someone would have say that it is a problem and there is a better mechanism for zoning that does not start all the fights or all of the difficult communication or negotiations in the neighborhood. That is what he was hoping for, some sort of condition on the OCR-1 zoning that sort of begins to put a crack in the wall and some communication methods that work better between an interest for progress and the interests of a neighborhood.

Mayor Walkup asked if anyone else wished to address the council.

John Schwartz, said many people think of the Sam Hughes Neighborhood as being unwilling to accept change and indeed, when this project was first proposed there was unanimous opposition. There started then a discussion in the neighborhood, which led to another proposal and the neighborhood substantially

opposed that proposal as well. Out of those two proposals, both of which Sam Hughes residents widely opposed, came the proposal that was before the council. In a meeting of the Sam Hughes Neighborhood on June 3, approximately 300 or more neighbors showed up and there was a full and fair discussion of all of the proposals including some that had not been made by the developer, but by the neighbors. The residents voted and a very clear majority approved the outlines of the proposal that was before the council. A clear majority of the neighbors who were at that meeting support the proposal. The proposal before the council obeyed the basic outlines of the proposal that the neighborhood voted for. It also contained many protections that addressed a number of the reservations that had been raised by some of the Sam Hughes residents as well as the residents of Rincon Heights. He thought the process had been healthy. It leads to, depending on the council's decision, a very significant change, a mixed use project on a very important corner not just in the neighborhood but in the city, which he thought would be very healthy for the community.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Ronstadt, seconded by Council Member Dunbar, and carried by a voice vote of 7 to 0, to close the public hearing.

Mayor Walkup asked the city clerk to read ordinance no. 9910 by number and title only.

Ordinance No. 9910

Relating to zoning: amending zoning district boundaries in the area located at the southeast corner of Campbell Avenue and 6th Street in Case C9-03-18, La Colonia Seis – Campbell Avenue, R-2 and C-1 to OCR-1; and setting an effective date.

Mayor Walkup asked the council's pleasure.

Council Member Ronstadt said he was glad Mr. Schwartz was the last speaker. He deserved a lot of credit because he actually facilitated the largest meeting that occurred during the last year and his experience as a college professor having to deal with a lot of freshmen probably helped a lot. He did a really nice job and should be applauded for that as should Ms. Zulli and all of the board members from Sam Hughes, and the individuals who

participated on the zoning subcommittee as well. He saw people from Rincon Heights at all of the meetings that he attended and his staff indicated that Rincon Heights residents were at a lot of the meetings that he missed. They should be thanked for their participation. The people who spoke at this meeting, John O'Dowd, Paul Mackey, and others were very active in their own way in creating the proposal before the council. He always thinks but never says that people come to public hearings and make statements about their ideas, the opinions they expressed during whatever process was put in place, and there is some sense of frustration that their item, their specific issue, was not put into a final document.

His experience during this process was that every person that expressed an opinion was heard and their opinion or their idea might not have made the final document, but in talking to Ms. Zulli and Mr. Hinderaker, and the developers and their legal counsel, he knew that everyone was heard. They discussed all of the items, some were accepted, some rejected, but ultimately the document before the council with the amendments read by the clerk represented a year's worth of work by everyone involved. He thought they ought to be recognized for that. Whether they agreed with the final project or not everyone had a significant hand in the final document.

Regarding the issue of OCR, specifically OCR-1 and people's concern about the scope that it allows someone to have in a project, Council Member Ronstadt said the analogy he came up with was that of a sculptor. A sculptor begins with a large piece of marble and through a process that marble is given definitions, different borders, until finally there is a piece of art or work that is smaller than they started with, but they had to start with that big piece of marble to get to the final product. It is the same with the subject project. OCR was the canvass for that marble. For example, people talked about OCR allowing a structure of 140 feet, well that is the outside of the canvass, but the work, chipping away the final document that says what the project will look like clearly defines the top height as 44 feet. While he appreciated people's sentiment and concern about having a 144-foot monolith in the corner of their neighborhood, the reality is that it has been whittled down to 44 feet, but OCR-1 was necessary to get to that point in the same way the sculptor whittled his piece of marble. That was the analogy he wanted to use. The memorandum of understanding and the conditions of the rezoning define what the final piece looks like and it is not the 800-pound gorilla that OCR-1 allows. It is not what that zone allows, it comes down to what the sculptors in the case and the neighbors in Sam Hughes have worked out. They were not talking about 140 feet; they were talking about 44 feet. They were not talking about the other things that are allowed in OCR-1, they were talking about the final conditions of the rezoning and the memorandum of understanding and ultimately, the conditions, covenants, and restrictions will be forthcoming.

Council Member Ronstadt noted a comment had been made about a second rezoning on the project and asked staff to explain.

Michael McCrory, assistant city attorney, said when the notice went out staff followed the standard practice of notifying based upon the privately owned property. When that rezoning would go through, the normal process would rezone the adjacent city street to the middle of the block and normally, city streets are not included in notice areas. In this particular situation, there is to be the subsequent inclusion of 7th Street in the rezoning parcel. Staff felt that the failure to actually identify the other half of 7th Street as part of the

rezoning area was a technical flaw that should be addressed. That left the decision on how to do that and staff was returning that to the zoning examiner for a subsequent hearing solely on that second half of 7th Street. The hearing will be held and a second procedure will be followed to include that second half in the overall project. What was before the mayor and council at this hearing was the overall project except for the second half of 7th Street.

Council Member Ronstadt said he always appreciates Mr. Czekaj and he appreciated that he voted for the council member's raises. The whole issue of the protests, which were generated by a concern about the 60 spaces of off-site parking, was sort of an eleventh hour thing. Those 60 spaces do not exist anymore. The protesters withdrew their protests based on that fact and the technical addition he did not think would change the status of the protests. He was sure some of his colleagues might have comments.

It was moved by Council Member Ronstadt, seconded by Council Member West, that ordinance no. 9910 be passed and adopted with the following conditions: All required loading, maneuvering, and parking shall be located on site except that up to but not exceeding 10 parking spaces may be permitted offsite in accordance with the *LUC*. No offsite parking shall be located on a residential street." An added condition number 26, which reads, "A solid masonry wall to screen adjacent parking areas shall be constructed between the north and south access driveways on the Campbell Avenue frontage of the development. The wall shall vary in height from 30 inches to 5 feet, shall have decorative features, and be finished in a manner that compliments the adjacent residential buildings. Any identification signs placed on the wall in the vicinity of the south driveway shall be back lit or externally illuminated. A wall or walls similar in design creating an entrance to the bike path shall be placed south of the south access driveway. A second and final added condition reads, "Any covered parking structures visible from west of Campbell Avenue shall be painted colors which compliment colors used for the residential buildings".

Mayor Walkup asked if there was any discussion.

Council Member Leal said he raised concerns about the dedication of the street the last time this issue was before the council, which the city is or will be in court over, because he did not think they had handled that issue appropriately. He thought people had raised important questions and Mr. Schwartz's comments were helpful in terms of defining a fair amount of the resolution that has taken place to this point. Even though the city had handled the street dedication inappropriately, which was something that the courts would soon decide, he was going to vote to support the proposed project.

Upon roll call, the results were:

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

Nay: None

Absent/Excused: None

Ordinance no. 9910 was declared passed and adopted as amended by a voice vote of 7 to 0.

James Keene, city manager, said he thought it would be appropriate to acknowledge that staff would bring to the council some issues and a schedule relating to *Land Use Code* changes that would more immediately address the mixed use items that were brought up by Mr. Mackey and Mr. Hinderaker and others.

Council Member Leal said he thought they were right.

12. APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS

Mayor Walkup announced that city manager's communication number 579, dated November 10, 2003, would be received into and made a part of the record. He asked if there were any personal appointments to be made at this time. There were none.

13. WATER: NOTICE OF INTENTION TO INCREASE THE SANTA RITA BEL AIR ISOLATED WATER SYSTEM FEE, AND SCHEDULING A PUBLIC HEARING FOR JANUARY 12, 2004

Mayor Walkup announced that city manager's communication number 587, dated November 10, 2003, would be received into and made a part of the record. He asked the city clerk to read resolution no. 19718 by number and title only.

Resolution No. 19718

Relating to water; authorizing the adoption of a Notice of Intention to increase the Santa Rita Bel Air Isolated Water System fee; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

Vice Mayor Scott said she called some of the people involved in this issue. They understood that the water department did meet with them, but they had no particular inclination, as of 1:00 p.m. today, that there was any fee or any structure to this. They just asked that the subject resolution be continued until they had a chance to look at it. She asked for that on their behalf.

James Keene, city manager, said his understanding was that meetings had taken place and rather than debating that he wanted to clarify for the council that the subject resolution signaled an intent to do this. It establishes January 12, 2004, as a date for a public hearing, which allows more than enough time for those meetings to take place. Anyone one who does not like it will be free to testify before the mayor and council. The council is by no means compelled to vote for the fees based on what they hear at the public hearing. The fees would at the earliest go into effect on April 26, 2004. He said that was probably information that was not presented to the council and suggested that the council could go ahead and get the schedule underway and it would still allow for the opportunity for public discussion.

Mayor Walkup said he also had a chance to talk to the developer and they understood that the resolution merely scheduled the public hearing. There is sufficient time between now and the hearing for continued discussions, but it is fairly important to at least get the public hearing scheduled, which is January 12, 2004. He thought it was important to do that.

It was moved by Council Member Dunbar, seconded by Council Member West, that resolution no. 19718 be passed and adopted and staff be directed to file the report with the proposed fee changes in the city clerk's office and set January 12, 2004, for the public hearing regarding the fee changes.

Mayor Walkup asked if there was any discussion.

Vice Mayor Scott asked if the mayor had talked with the parties early this morning because she got a different piece of information. They told her they would like a continuance, they told the mayor they would not.

Mayor Walkup said he talked to the people at about the same time Vice Mayor Scott did and after the council's study session he received a second call informing that in discussions with the city manager they recognized that the proposed resolution merely scheduled the public hearing.

Vice Mayor Scott asked that in the future all of the council members be given that kind of information so that there is no confusion.

Mayor Walkup said he was giving them that information.

Vice Mayor Scott said she meant before the council meetings so that there are no conflicting motions.

Upon roll call, the results were:

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

Nay: None

Absent/Excused: None

Resolution no. 19718 was declared passed and adopted by a roll call vote of 7 to 0.

14. CALL TO THE AUDIENCE

Mayor Walkup announced that this was the time any member of the public was allowed to address the mayor and council on any issue. Speakers would be limited to five-minute presentations. He had received one written request to speak and called on that person.

Bill Katzel, said he has addressed the council in the past on the philosophies in a book entitled *Fish*, and he had just finished reading the sequel entitled *Fish Tales*. He wanted to read an exercise titled, *How Fascinating, Be There Now*, from week eight, which reads, "Spend the rest of the week working to be one place at a time and to learn the most powerful lesson in the universe. There is little tension or anxiety in the place we call the present and if you find yourself worrying about things in the future say, 'how fascinating', then take a deep breath and return to the now and if you find yourself working on one project, but thinking of another say, "how fascinating', then take a deep breath and choose the project that will be the sole purpose of your attention and if you find that your anxiety about everything you have to do is keeping you from going to the park with your daughter, sitting and talking with your spouse, or camping in the backyard, take a deep breath and say, 'how fascinating', and return to the now. It is a marvelous place to be. You may decide to work or you may decide to go to the park. Either is just fine as long as you are wholeheartedly present. Just don't sit and be anxious. That has no value at all, how fascinating."

Mayor Walkup asked if anyone else wished to address the council. There was no one.

15. ADJOURNMENT: 9:59 p.m.

Mayor Walkup announced that the council would stand adjourned until its next regularly scheduled meeting to be held on Monday, November 17, 2003, at 2:00 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, held on the 10th day of November, 2003, and do hereby certify that it is an accurate transcription of the magnetic tape record of said meeting.

MANAGEMENT ASSISTANT

KSD:DD:mjv
Pr agnst tp:lr