



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
On June 21, 2004 _____

Date of Meeting: March 22, 2004

The Mayor and Council of the city of Tucson met in regular session in the Mayor and Council Chambers in City Hall, 255 W. Alameda, Tucson, Arizona, at 5:05 p.m., on Monday, March 22, 2004, all members having been notified of the time and place thereof.

1. ROLL CALL

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

Present:

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

Absent/Excused:

Steve Leal	Council Member Ward 5
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Staff Members Present:

James Keene	City Manager
Mike Letcher	Deputy City Manager
Peter Gavin	Zoning Examiner
Michael House	City Attorney
Geoff Gonzales	City Clerk's Office
Debra Counsellor	Recording Secretary
Ruth Melendez	Recording Secretary

2. INVOCATION AND THE PLEDGE OF ALLEGIANCE

The invocation was given by Bishop Thomas W. Nelson, Binghampton Ward of the Church Jesus Christ of Latter-day Saints, after which the pledge of allegiance was presented by the entire assembly.

Presentations

A. Spring Fling Days

Mayor Walkup proclaimed April 8 through 11 to be “Spring Fling Days,” and presented the proclamation to Lindsey Urbank. Tucson’s Spring Fling is the largest student-organized carnival in the nation and 2004 marked the 30th year of the Spring Fling carnival.

B. Excellence in Financial Reporting

Mayor Walkup presented certificates of excellence in financial reporting to the finance department. Silvia Amparano assisted in presenting the certificates to Joe Ladenburg, deputy finance director, Joyce Plouffe, accounting division, and Mike Hermanson, treasury division.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced that city manager’s communication number 134, dated March 22, 2004, 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. Dedication of Baseball Field

Council Member Dunbar invited everyone to attend the dedication of the little league baseball field donated by the Arizona Diamondbacks Charities at Jacobs Park on Tuesday, March 23, 2004, at 10:00 a.m.

B. Ward Three Townhall

Council Member Dunbar also invited everyone to attend a ward three townhall meeting on Wednesday, March 24, 2004, at 6:00 p.m. at the ward three council office. The discussion would focus on “Solutions for our Community: An Original Approach to the City’s Fiscal Crisis.”

C. Clearwater Recharge Site Tour

Council Member Dunbar informed everyone that a tour of the Clearwater Recharge Site would be held on April 24, 2004, from 8:00 a.m. until noon. She requested that anyone interested should call the ward three council office for further information.

D. Ward Two Townhall

Council Member West invited everyone to the ward two townhall meeting on Tuesday, March 23, 2004, at 7:00 p.m. at 7575 East Speedway. The discussion would focus on "Solutions for our Community: Report from the Fiscal Review Committee."

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

Mayor Walkup announced that city manager's communication number 135, dated March 22, 2004, would be received into and made a part of the record. He also announced that this was the time scheduled for the city manager to report on current events and asked for that report.

A. Sun Tran Ridership

James Keene, city manager, stated that on Tuesday, March 2, 2004, Sun Tran exceeded its highest ever one-day ridership total with over 60,000 people riding the bus that day.

B. Reid Park Zoo New Curator

Mr. Keene announced that Reid Park Zoo hired a curator, Scott Barton, and welcomed Mr. Barton to his new position.

C. Board of the National Association of Civilian Oversight for Law Enforcement

Mr. Keene announced that Liana Perez, independent police auditor and director of the city of Tucson equal opportunity office, was named to the Board of the National Association of Civilian Oversight for Law Enforcement.

D. Mercado at Menlo Article

Mr. Keene said the Mercado at Menlo, the Rio Nuevo project along West Congress Street, was featured in the March issue of *New Urban News*.

E. Historic Depot Opening

Mr. Keene said the Historic Depot opening on Saturday, March 20, 2004, was a tremendous success with 700 to 800 people in attendance. In addition, Mr. Keene distributed train whistles and Historic Depot plaques to the mayor and council members.

5. LIQUOR LICENSE APPLICATIONS

Mayor Walkup announced that city manager's communication number 127, dated March 22, 2004, would be received into and made a part of the record. He asked the city clerk to read the liquor license agenda.

(b) New License(s)

(1) TARGET #855

Staff Recommendation

City #T030-04, located in Ward 6
Date of Event: April 3, 2004

Kathleen S. Detrick, city clerk, advised that the applications for Target #1863 on Old Spanish Trail and the Tucson Metropolitan Community Chorus had received protests and should be considered separately.

It was moved by Council Member Ibarra, seconded by Council Member Scott, and carried by a voice vote of 6 to 0 (Council Member Leal absent/excused), that liquor license applications 5b(1), Target #855; 5b(3), El Taco Tote Real Mexican Grill; 5c(1), St Michael's Parish Day School's Friends of Saint Michael's; 5c(2), St. Ambrose School; and 5c(3), Tucson Breakfast Lions Club, be forwarded to the state department of liquor licenses and control with a recommendation for approval.

5. LIQUOR LICENSE APPLICATIONS – (b) (2)

(b) New License(s)

(2)	TARGET #1863 9615 E. Old Spanish Trail Applicant: Robert J. Benton City #010-04, located in Ward 2 Series #10 Action must be taken by: April 1, 2004 Public Opinion: Protests Filed	<u>Staff Recommendation</u> Police: In Compliance DSD: In Compliance Bus. License: In Compliance
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Kathleen S. Detrick, city clerk, announced that Target #1863, 9615 E. Old Spanish Trail, had made a request for a new license and is located in ward two.

Mayor Walkup called on Council Member West.

Council Member West asked first to hear from the applicant. She asked that he introduce himself and give his name and address for the record.

Nicholas Guttilla, from the law firm of Guttilla and Murphy, stated he represents the Target Corporation with regard to the Series 10 Liquor License Application for use at 9615 E. Old Spanish Trail.

Mr. Guttilla asked permission to give a brief presentation as to the qualifications of the applicant and the location.

Target has a number of subsidiaries. Target Corporation and seven of its subsidiaries have over 243 liquor licenses in seven states. They have not had a liquor license violation in over a year. The last liquor license violation was by the Marshall Field and Company, which is a subsidiary of Target, and they have an on-premises license, and they had a violation in February 2003. The corporate policy is to card anyone who appears to be under 40 years of age. You can only check out spirituous liquor purchases, which in this case would be only wine, at the front check out counter. The registers freeze when the item is scanned and a birth date is required to be entered into the cash register, which keeps a record of it. If employees violate a liquor law, they are subject to

termination. The Target stores in Arizona have been requesting Series 10 liquor licenses because of the corporate indication that the customers have made a large number of requests, and statistics show that sales of wine in other Target stores are very successful. The concept is one-stop shopping: you go in and buy your items, especially in July and August, and you don't have to load the car up, put the kids in the car, and then go someplace else across the street or some place else to buy your bottle.

This particular location has, within a half-mile radius, two Series 10 licenses and they are in gas stations. There is one Series 9, which allows the sale of beer, wine, and all types of spirituous liquor, and they are at the Fry's shopping center across the street. The concept is one-stop shopping. The brand new store opened on March 2, 2004. There are 142,000 square feet in the store. Of that area, 5,856 square feet is devoted to food and food products. It's not a grocery store, but it has food and food products. The total square feet that are to be devoted to wine, and wine only, is 58 square feet. It's going to be one side of one aisle. They are not going to sell beer, they are not going to sell fortified wine, and they are not going to sell malt beverages. The area is going to have digital cameras. The quality of wine that is scheduled for this store is mostly in the \$12 to \$14 a bottle range. Some of the wine will be in excess of \$30 a bottle. They do sell wine cubes, and they sell for \$16 to \$20 a cube.

The store is already there, and the sale of wine will have no impact on local traffic. One little aisle in the back of the store should not adversely affect the neighborhood. The neighborhood and the neighbors are well-insulated, across from both a wash and dividing walls. Traffic has been increasing historically in that neighborhood over the last three or four years. The shopping center is in and it is zoned commercial. It is in compliance with all city requirements. Police, revenue, and zoning have all indicated that it is in compliance and should not have any adverse impact on traffic, neither for residences or the businesses in the area. Again, he wanted to emphasize that although Target is asking for a beer and wine license, are only going to be selling wine, and they are only going to be using 58 feet of shelf space out of 142,000 square feet, and they are hoping that it is quality wine. They are hoping that it is the kind of wine that you are going to be having with dinner. It is not the fortified wines or the cheap wines. Target wishes to serve the convenience of their customers and there has been a huge recent demand for wine, as well as the other products. Customers don't want to have to pack their kids and groceries and purchases in the car and drive somewhere else, especially in the summer, so they would like to be able to go by that one shelf and pick up a bottle of wine.

Council Member West called on the protestors in alphabetical order.

Joyce Joosten, Vice President of the Harrison East-South Neighborhood Association, said that she was present to oppose the liquor license that has been requested. It came to her as a big surprise. She said she thought liquor was one of the five basic food groups; apparently not. So what was a big surprise to her was that though they have had oversight committee meetings way before this Target never came up saying that they were selling beer and wine. What concerned her with the oversight committee is that with the numerous public input that was given, she felt that it should have been addressed at that time. She said that she received a letter from the attorney, which she received on Thursday this past week, to meet with her association, and not for the meeting today. Clearly, that was not going happen. She read the note and it was most helpful to say do we need beer and wine in this neighborhood? First of all

they do have other locations that offer beer and wine. As the gentleman said they do have a Fry's, and there are numerous locations all within half a mile. What the gentleman failed to mention was all of those, and she said that she would let Frank Salbego, because he had the big list, so she would let him state that.

Another concern is that, as many of the mayor and council know, she has spent a great amount of time along with Council Member West trying to solicit the community to bring children to this big box, and to bring kids, so that they would go get ice cream, and they will be part of this tile project, and they would do all of this. She said we have Old Spanish Trail and we are bringing kids to this location. They do not need one aisle of wine. That is not a public necessity. This is the first time she has heard the license is for beer and wine, and therefore they get to have beer later. Target never said hey we are going to have liquor later. They never said, they were going to push the envelope. She also said the sale of liquor is a hot topic, and should have been brought up, and it wasn't, and it should have been. As far as public interest goes, these big box oversight committees are created to save the mayor and council time, and if they are just going to be a farce and they are not going to address a major concern, then let's do away with them, because they are hurting the community by not going through the regular process.

Council Member West asked Ms. Joosten to conclude her comments.

Ms. Joosten thanked the mayor and council and said that was the conclusion of her comments.

Council Member West called on Betty Karkosky.

Betty Karkosky, representing the Hidden Vista Home Owners Association, she said that she lived directly behind Target. She said that the lawyer for Target had said that there would be no neighborhood repercussions. She said that she disagreed with him. She said that she has had people walking through the retention basin that is supposed to be closed that was supposed to be protected by Barkley when they were taking care of all the problems. She and her husband went out one morning and they were at Conoco, which is a just stone's throw from her house. There was a gentleman who was totally inebriated. He was hanging on to one of the posts at Conoco. Diamond Shamrock has liquor, and this gentlemen that was so inebriated that he couldn't stand up went into that store. The two sales persons that were in there were on the phone, and she said that she assumed with the police. If he had wandered near the gas pumps, a car would have hit him.

She said she lived in a neighborhood where there are families, children, small children, medium size children, and adults. She said that she could tell the council that she had four kids, and her kids could find out where to get a phony ID for liquor anytime they wanted; and from working in the Tucson area, with all the people she has dealt with as a nurse, they know how to get these phony ID's, and from what she saw on the day she went up there for the grand opening, the people she saw were not capable of telling the difference between twenty-one and fourteen. She said she was sorry, but she was on the receiving end of this liquor license, and she doesn't want to see wine bottles or beer bottles or anything else thrown into that retention basin, because it will be right behind her property and part of her property that she owns behind her wall. She said that it was time as a mother and a grandmother and a great grandmother, that we decide what we

want for the safety of our children. She said her homeowners association was behind her 100 percent. None of her neighbors want any liquor sold in this store. They put up stop signs to protect the children from traffic, and they will have the overflow of traffic, and she thinks it is very unnecessary for Target. As Joyce said, they didn't even see fit to tell them on the oversight committee, or to bring it up ahead of time to let them know that they were applying for a liquor license. There are Fry's, Conoco, Quick-Check, and Diamond Shamrock. In case anyone is interested, there is a school a short distance from Target to the east, and there are two on Old Spanish Trail. On the west there is Gridley which is down on Harrison Road and there is a Quick Check there selling beer and liquor. And then there is Vail School, which is less than a mile from this store. There are many children in this area and she said that she was sorry, a liquor license would be inappropriate.

Council Member West called on the last speaker, Frank Salbego.

Frank Salbego, President of the Eastside Neighborhood Association said he had a letter that he had sent to mayor and council and the State of Arizona, requesting complete denial of this request. Now, it is one thing to say that you are not wanting something, but it is something else to say why don't you want it. You can't just say that you don't want it. He said that he thought that they had mentioned most of the things and he would make this brief because it comes down to the fact that they do have a middle school and something that is very precious to the neighborhood, Case Park. He said he had a vision in his mind that there are going to be \$12 empty bottles of wine in that park. That is something that they don't want to see.

He was disenchanted with Target. By mayor and council mandate a steering committee was developed to ward off problems before they happened, to let Target be a good neighbor and he was sorry because Target did not live up to that oversight committee and be a good neighbor. He named three things: 1) They asked for a variance to the city of Tucson for 600 square foot sign, that was denied, 2) Now they are asking for the beer and wine, as it turns out it is a wine license, but beer will come, 3) They are also putting up some colors in the front of their store that are abstract, and they have nothing to do with desert tone colors, because that is a scenic roadway that goes into the Catalina's. They are trying to let Target come into the neighborhood to be a good neighbor. Every time it is built up where they want it something happens. He had a question. The question was if at the start they didn't ask for it why ask for it now and get everyone all churned up again? This is not the way to do it and the oversight committee has worked with Target they have had 75 meetings. He received two letters from the attorney that are present this evening. He opted not to answer them, he is a volunteer and he does not command the salary that they do, he represents the neighborhood, and he tries to do the best that he can and there was nothing to be said at the meeting that would convince him to be in front of the mayor and council and he urged the council to deny the request. Joyce said that he had the list of people who sell beer, wine, liquor and it is Bashas, Albertson, Circle K, Quick Mart, Fry's, Shamrock and next he said that it will be Walgreens. He thanked the council and asked them to please deny to the request.

Council Member West asked if the applicant wanted to respond to the remarks that the council had heard.

Mr. Guttilla responded that this was an off premise license so that people are not going to be drinking, the quality of wine that they sell is not the type that the kids, homeless, or college students, drink and they are not going to buying a \$12 or \$18 bottle of wine and go into the park and drink it with a paper bag and throw it. Also, there are no schools within 300 feet as the statute stands. It was a corporate decision out of Minnesota to apply for licenses at most of the Target stores in Arizona and he didn't know why the corporate decision was made or why it was made, but it was a corporate discussion, not a local decision here. He thanked the council.

Council Member West said that the neighborhood had made some very compelling arguments against this liquor license.

It was moved by Council Member West, seconded by Council Member Ibarra, to forward liquor license application 5b(2), Target #1863, to the state liquor board with a recommendation for denial.

Mayor Walkup asked if there was further discussion. Mayor Walkup recognized Council Member Ronstadt.

Vice Mayor Ronstadt said that he wanted it to be more specific because he agreed with Council Member West that Mr. Guttilla had made some good arguments. The most compelling to him was the fact that the council through the big box ordinance, through its process, provided an opportunity for Target to expose their intent. He said that he thought Frank was right. Why were they here again with the stick, beating on a hornet's nest? He said that he thought that it was irresponsible, from a corporate perspective, that they were here and this was going on and he thought Council Member West made the right motion.

Mayor Walkup asked if there was further discussion; hearing none, he asked for the vote. The motion was carried by a voice vote of 6 to 0 (Council Member Leal absent/excused).

5. LIQUOR LICENSE APPLICATIONS – (c) (4)

(c) Special Event

(4) TUCSON METROPOLITAN COMMUNITY CHORUS dba DESERT VOICES 516 N. 5 th Avenue Applicant: Rebecca H. Cohen City #T030-04, located in Ward 6 Date of Event: April 3, 2004 Public Opinion: Protests Filed	<u>Staff Recommendation</u> Police: In Compliance DSD: In Compliance
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Kathleen S. Detrick, city clerk, announced that the Tucson Metropolitan Community Chorus had made a request for a special event license and is located in ward six.

Mayor Walkup called on Vice Mayor Ronstadt.

Vice Mayor Ronstadt called for any protestors.

Chris Gans, stated he lived near the location of this special event, referred to as The Muse, and had problems with them in the past. The Muse rented out space for raves which seriously impacted the neighborhood. In addition, the parking lot was suppose to be repaired, and The Muse has failed to do so. The parking lot remains uncompleted and unlandscaped.

Vice Mayor Ronstadt called for any other protesters and for the applicant. The applicant was not present.

Vice Mayor Ronstadt stated that a new group has taken over management of The Muse. The special event is a fundraiser for a chorus and the attendees are expected to be a more mature and responsible group. Therefore, Vice Mayor Ronstadt felt comfortable approving this special event liquor license. He assured Mr. Gans that his office would keep a close eye on the progress at The Muse, especially with the parking lot improvements.

It was moved by Vice Mayor Ronstadt, seconded by Council Member Scott, and carried by a voice vote of 6 to 0 (Council Member Leal absent/excused), to direct staff to forward this application to the state liquor board with a recommendation for approval.

6. CONSENT AGENDA – ITEMS A THROUGH N

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

- A. GRANT APPLICATION: TO ARIZONA STATE PARKS FOR A HISTORIC PRESERVATION PLAN
 - (1) Report from City Manager MARCH22-04-133 CITY-WIDE
 - (2) Resolution No. 19795 relating to historic preservation; authorizing and approving the application to Arizona State Parks for a Historic Preservation Plan including a context study for Post-WW II housing in the City of Tucson; and declaring an emergency.

- B. FINAL PLAT: (S04-007) CONNIE CHAMBERS NORTH LOT 1 TO 9 AND LOT A
 - (1) Report from City Manager MARCH22-04-131 W5
 - (2) The City Manager recommends that the Mayor and Council approve the final plat as presented. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.

- C. ASSURANCE AGREEMENT: (S02-040) DREXEL MANOR SUBDIVISION LOTS 1 TO 137 AND COMMON AREAS "A" AND "B"
 - (1) Report from City Manager MARCH22-04-129 W5

- (2) Resolution No. 19796 relating to planning: authorizing the Mayor to execute an Assurance Agreement securing the completion of improvements required in connection with approval in Case No. S02-040 of a final plat for the Drexel Manor Subdivision, Lots 1 to 137 and Common Areas "A" and "B"; and declaring an emergency.
- D. FINAL PLAT: (S02-040) DREXEL MANOR SUBDIVISION LOTS 1 TO 137 AND COMMON AREAS "A" AND "B"
- (1) Report from City Manager MARCH22-04-130 W5
 - (2) The City Manager recommends that, after the approval of the Assurance Agreement, the Mayor and Council approve the final plat as presented. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.
- E. FINANCE: CONTINGENCY FUND TRANSFER FOR THE FIRST ANNUAL SARA COURTNEY MEMORIAL WALK/RUN
- (1) Report from City Manager MARCH22-04-136 CITY-WIDE
 - (2) Resolution No. 19797 relating to finance; approving and authorizing the transfer of One Thousand Dollars (\$1,000) from the contingency fund to Organization 001-183-1838-268, for the 1st Annual Sara Courtney Memorial Walk/Run; and declaring an emergency.
- F. TUCSON CODE: AMENDING (CHAPTER 10A) ESTABLISHING A POLICY FOR THE CREATION OF BOARDS, COMMITTEES AND COMMISSIONS
- (1) Report from City Manager MARCH22-04-137 CITY WIDE
 - (2) Ordinance No. 9943 relating to Boards, Committees and Commissions; establishing certain requirements for the establishment and continuation of certain Boards, Committees and Commissions; providing for staff assistance to Boards, Committees and Commissions; requiring Mayor and Council approval for outside funding of Boards, Committees and Commissions; and declaring an emergency.
- G. AMENDED FINAL PLAT: (S02-007) COYOTE PASS, LOTS 1 TO 23, COMMON AREAS "A" AND "B" AND BLOCKS "A", "B", "C", "D" AND "E"
- (1) Report from City Manager MARCH22-04-138 W1
 - (2) The City Manager recommends that the Mayor and Council approve the amended final plat as presented. The Development Services Director recommends approval of the amended final plat. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.

- H. AMENDED FINAL PLAT: (S01-034) STARR PASS VISTAS, BLOCKS 1, A, B, C, D, E, F1, F2, F3 AND COMMON PROPERTIES A, B AND C
- (1) Report from City Manager MARCH22-04-139 W1
 - (2) The City Manager recommends that the Mayor and Council approve the amended final plat as presented. The Development Services Director recommends approval of the amended final plat. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.
- I. GRANT APPLICATION: TO ARIZONA STATE PARKS ON BEHALF OF THE DIOCESE OF TUCSON FOR EMERGENCY STABILAZATION OF THE HISTORIC MARIST COLLEGE BUILDING
- (1) Report from City Manager MARCH22-04-140 W6
 - (2) Resolution No. 19798 relating to historic preservation; authorizing and approving the application to Arizona State Parks on behalf of the Diocese of Tucson for emergency stabilization of the Historic Marist College Building; and declaring an emergency.
- J. INTERGOVERNMENTAL AGREEMENT AMENDMENT: WITH PIMA COUNTY FOR THE HOME INVESTMENT PARTNERSHIP SUBRECIPIENT PROGRAM
- (1) Report from City Manager MARCH22-04-143 CITY-WIDE
 - (2) Resolution No. 19799 relating to Intergovernmental Agreements; authorizing and approving the execution of an Amendment to the Home Investment Partnership Subrecipient Program Intergovernmental between the City of Tucson and Pima County; and declaring an emergency.
- K. CITY VEHICLES: ANNUAL APPROVAL – EXEMPTION OF CERTAIN CITY VEHICLES FROM IDENTIFICATION MARKINGS
- (1) Report from City Manager MARCH22-04-144 CITY-WIDE
 - (2) Resolution No. 19800 relating to city motor vehicles; pursuant to A.R.S. § 38-538.03(B), exempting certain city motor vehicles from the requirement of bearing the designation of the City of Tucson; making the exemptions effective on February 27, 2004, to continue through and including February 26, 2005; and declaring an emergency.
- L. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR THE JEFFERSON PARK NEIGHBORHOOD REINVESTMENT PROGRAM
- (1) Report from City Manager MARCH22-04-146 W3
 - (2) Resolution No. 19801 relating to Intergovernmental Agreements; authorizing and approving the execution of an Intergovernmental Agreement with Pima County for the Jefferson Park Neighborhood Reinvestment Program; and declaring an emergency.

M. PROFESSIONAL SERVICES CONTRACT AMENDMENTS: WITH LAW FIRMS FOR GOVERNMENT RELATED LEGAL SERVICES

- (1) Report from City Manager MARCH22-04-149 CITY-WIDE
- (2) Resolution No. 19802 relating to professional legal services; approving and authorizing execution of amendments to contracts No. 0326-86 with Kimble, Nelson, Audilett, McDonough & Molla, P.C.; No. 0329-86 with Slutes, Sakrison & Hill, P.C.; No. 001042 with Gabroy, Rollman & Bosse, P.C.; No. 0353-90 with Mesch, Clark & Rothschild, P.C.; and No. 0330-86 with Hazlett, Wilkes & Bayham, for the provision of government related legal services; and declaring an emergency.

N. MEMORIAL: SUPPORTING TECHNICAL AMENDMENTS TO BROWNFIELDS APPLICATION

- (1) Report from City Manager MARCH22-04-150 CITY-WIDE
- (2) A Memorial relating to the Environmental Protection Agency brownfields grants to cities; urging the Arizona Congressional Delegation and the U.S. House of Representatives' Subcommittee on Environment and Hazardous Materials to support legislation to allow cities to compete for brownfields grants.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member West, seconded by Council Member Scott, that consent agenda items A through N be passed and adopted and the proper action taken.

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

Upon roll call, the results were:

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

Nay: None

Absent/Excused: Council Member Leal

Consent agenda items A through N were declared passed and adopted by a roll call vote of 6 to 0 (Council Member Leal absent/excused).

RECESS: 5:45 p.m.

Mayor Walkup announced that the council would stand at recess and reconvene at 6:00 p.m.

RECONVENE: 6:00 p.m.

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

Present:

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

Absent/Excused:

Steve Leal	Council Member Ward 5
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7. 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 except for any items scheduled for a public hearing. Speakers would be limited to three-minute presentations. He asked if anyone wished to address the council and if so, to state their name and address for the record.

A. Integrated Optics

Michael Toney, presented his research on integrated optics. He stated that the integrated optics approach to signal transmission and processing offers significant advantages in both performance and cost in comparison to conventional methods. Mr. Toney then provided a list of advantages and disadvantages of integrated optics and their current uses.

B. Condom Machines in Park Restrooms

Scott Morgan, stated his opposition to condom vending machines in public park restrooms. He stated that he saw a machine in the Reid Park restroom, which was placed there by Planned Parenthood. Mr. Morgan does not agree with their agenda or the placement of the machine in the park and wanted to know how the mayor and council felt about this issue. Mr. Morgan urged other city residents who oppose the condom vending machines to boycott the city services and let the mayor and council know.

C. Columbus Park

Bill Katzel, provided a summary of the progress on Columbus Park development. Mr. Katzel stated that on March 16, 2004, the Board of Supervisors held a hearing on Columbus Park. All members of the public that wanted to testify had an opportunity to do so. Not only was their testimony favorably received by the chair of the board, but also a dialogue was solicited by the chair from each member of the

public that testified. Mr. Katzel stated that it was one of the most democratic and positive public meeting he had attended in 20 years.

Mr. Katzel stated that at the Mayor and Council Strategic Focus Area Subcommittee meeting on Neighborhoods, held on March 18, 2004, only two members of the public were allowed to speak. The issue of Columbus Park was to be taken back to the neighborhood and then reported on at a later Neighborhoods Subcommittee meeting before being addressed at a mayor and council meeting. Mr. Katzel claimed that Council Member West made a derogatory remark directed toward himself. Mr. Katzel stated that this type of behavior should cease. He asked that Council Member West discuss any problems or differences of opinion with Mr. Katzel in private.

Council Member West stated that each week the mayor and council listen to Mr. Katzel's remarks. She stated that Mr. Katzel was speaking loudly to the people seated behind him during the deliberations of the Neighborhood Subcommittee. Council Member West spoke to him about this issue, and she claimed he did not like it. Council Member West requested the same courtesy the mayor and council provide Mr. Katzel to be given to her and the other members of the subcommittee. Council Member West praised Council Member Ibarra for chairing a timely and well-focused meeting and stated she would support him in these efforts.

D. Painting of "A" Mountain

Laura Burge, stated that on March 30, 2003, the mayor and council passed an ordinance/resolution regarding painting the "A" on Sentinal Peak. She stated that according to the ordinance/resolution the "A" had to be painted within 72 hours or the permit allowing the community group to paint it would be revoked. Parks and recreation is supposed to issue a press release after that permit is revoked to get a new community group to paint the "A." Ms. Burge asked if the 72 hours had passed and if parks and recreation had issued a press release.

Mayor Walkup stated that someone would contact Ms. Burge with the answers to her questions.

Ms. Burge added that she is a community member who agrees with Planned Parenthood and feels that condom machines should stay in the Reid Park restrooms.

E. 4th Avenue Underpass

Jamie Schremmer, stated that she believes the 4th Avenue underpass is too long. The Historic Warehouse Art District Master Plan, which is not an approved plan, calls for the Barraza Aviation Parkway's current alignment being taken off the books. Ms. Schremmer believes the city of Tucson agrees with the plan. If this takes place, Ms. Schremmer stated the 4th Avenue underpass would not have to be built long enough to carry freeway traffic. According to chapter 27 of the Tucson City Charter, the city of Tucson shall not participate in the construction of any freeway, parkway or other controlled access highway until the residents of Tucson vote on the approved design. Ms. Schremmer hoped that before anything is built or changed, that the issue would be opened up to the public.

F. Julian Wash

William Doelle, representing Desert Archaeology Incorporated, said he wanted to address item 14 on the agenda, an intergovernmental agreement with the Arizona Department of Transportation for acquisition of property for the Julian Wash Cultural Resource Park.

Mr. Doelle stated he was in favor of this agreement. Mr. Doelle worked with the department of transportation on the Julian Wash archeological site. Together they helped preserve about twelve and a half acres of the archeological site within the interchange. He also worked with Marty McCune, the city's historic preservation officer, in developing the grant application that went in for transportation enhancement funds. The purpose of the grant was to secure an additional four and a half acres of the Julian Wash archeological site. This would preserve approximately 17 acres of the original 40-acre site. The site contains material from 1200 BC to 150 AD. The main occupation was a large Hohocom village that was occupied from 700 to about 1150. The St. Joseph's Children's Home was on that same location from 1905 through 1950.

Mr. Doelle stated that a March 22, 2004, *Arizona Daily Star* article gave the impression that four and a half acres of the Julian Wash site did not have to be acted on today by the mayor and council. He said that those four acres were in private holding. There was nothing in place to preserve that land without the mayor and council taking action. He urged the mayor and council to take action today to preserve this land.

In addition, in the application that was submitted for transportation enhancement funds there was a goal to remove the outdoor advertising from the Julian Wash site. The financial limitations and the high cost of land are restricting the city's ability to remove the advertising at this point through this grant. Mr. Doelle believes there could be an option to instruct staff to pursue preservation of the archeological site and pursue, through alternative funding sources, the removal of the outdoor advertising.

Mr. Doelle concluded by stating that by approving item 14, the mayor and council could secure the four and a half acres of the archeological site and secure a one million dollar grant of outside funds and create a park that has both neighborhood and broader community support.

G. Arts Programs Funding

Bonnie Dombrowski, representing 3rd Street Kids, stated that she wanted to thank the mayor and council for the funding they have provided and to give a little insight into the type of work the funding achieves. Ms. Dombrowski said she has four boys, the oldest of which is disabled and has Duchenne Muscular Dystrophy. He does not have use of his arms or legs. This year, through funding received by 3rd Street Kids, her son is able to create art through a technique using lasers. Her son is able to paint again using this new technology. Without the funding the program received he would not have been able to create and express himself.

H. Billboards in Julian Wash Park

John Bowers, stated that he wanted to say a few words about item 14, the possible development of the Julian Wash Cultural Resource Park and the billboards that are on the property. Mr. Bowers is an associate professor in the art department of Oregon State University and a visiting researcher in the fine arts college of the University of Arizona.

Mr. Bowers said he is an artist whose work comments on the place and influence of billboard messaging on the landscape. Mr. Bowers stated that outdoor advertising is a big money business. According to the Outdoor Advertising Association (www.oaa.org), over five billion dollars were spent on outdoor advertising last year. In addition, Clear Channel's (www.clearchannel.com) outdoor advertising revenue in 2003 increased 315 million from the previous year, up seventeen percent. According to the *New York Times*, three of the top five billboard advertisers promote the purchase and consumption of alcohol.

Mr. Bowers stated that if the mayor and council vote to create the park, leaving billboards on the site will not support its mission, despite generating revenue. Mr. Bowers asked, if the council allows the billboards to remain until the year 2011, as reported in the newspaper, will the council and Clear Channel pledge to work with the community to ensure the lighting or lack of and the messages the billboards promote are respectful to the immediate surroundings.

Mr. Bowers emphasized that this was not a call for censorship. As an artist, he believes in the freedom of expression. Content is protected by the first amendment and nationally most jurisdictions do not make an effort to filter billboard messages. However, Mr. Bowers added, there is a record of outdoor advertisers, local governing boards and community groups, including Citizen's for a Scenic Wisconsin .Org, working together to regulate billboard placement as well as themes and portrayals of a limited social value. They attempt to keep these billboards away from K through 12 school zones and designated scenic areas or those of historical importance.

Mr. Bowers said that any billboard allowed in the proposed park should not degrade the dignity and history of the grounds. He suggested that Clear Channel might be willing to forgo additional billboards for the positive national publicity, which would be \$300,000 well spent.

8. PUBLIC HEARING: (C09-82-80) CHEYENNE INVESTMENT – NEBRASKA STRAVENUE, I-1 ZONING, CHANGE OF CONDITIONS

Mayor Walkup announced that city manager's communication number 148, dated March 22, 2004, 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 with respect to a request for a change of rezoning conditions and preliminary development plan for the property located on the north side of Nebraska Stravenue between Bantam Road and Madison Stravenue. The public hearing was scheduled to last for no more than one hour and speakers would be limited to five-minute presentations. He asked that speakers give their name and address for the record.

Carl Winters, of Planning Resources representing the applicant Cherry Lake Partners, said that during his discussions with Abe Marques, Council Member Leal's aide, they had agreed to request that this item be continued. Patricia Smith, president of the Mortamer Neighborhood Association, had been notified. However, Mr. Marques requested a continuance for item 12 instead of item 8. Mr. Winters requested that item 8 be continued to have time to work out the issues with staff.

Mr. Winters stated that there were two conditions the board of supervisors adopted, one being access only to Nebraska Stravenue and the other is no access to Nebraska, and there were some other issues. He wanted to meet with staff to try and resolve these issues and come back to the mayor and council with better resolution.

Mayor Walkup stated that since this was noticed as a public hearing and there was at least one person in the audience who wanted to speak, he would allow anyone to speak on this item now, and then continue the public hearing at a later date. Mayor Walkup called Perry Smith to come forward.

Perry Smith, said the rezoning of this area would create more traffic, disturbance in the area, and would change the atmosphere of the neighborhood. He said the community would like the area to remain as it is rather than add more buildings to the area. They would like to see a park there. Mr. Smith said he wished to protest the rezoning and join in the city manager's recommendation to deny the rezoning request.

It was moved by Vice Mayor Ronstadt, seconded by Council Member Ibarra, and carried by a voice vote of 6 to 0 (Council Member Leal absent/excused), to continue this public hearing to the meeting of April 5, 2004.

9. PUBLIC HEARING: ZONING (C9-98-08) WILMOT/INTERSTATE 10 PARTNERSHIP – INTERSTATE 10 C-2/SH TO C-2, TIME EXTENSION AND CHANGE OF PRELIMINARY DEVELOPMENT PLAN (CONTINUED FROM NOV. 24, 2003); ACCEPTANCE OF APPLICANT'S WITHDRAWAL OF REQUEST FOR TIME EXTENSION

Mayor Walkup announced that city manager's communication number 132, dated March 22, 2004, would be received into and made a part of the record. Mayor Walkup then requested that the city clerk explain this item.

Kathleen S. Detrick, city clerk, stated the mayor and council opened the public hearing on November 24, 2003, and then continued it for 90 days. In the meantime, the applicant submitted a letter requesting a withdrawal of request for the time extension. The city clerk explained that to withdraw the request, the public hearing would first have to be opened, members of the audience wishing to speak on this item would be allowed time, then the public hearing would need to be closed. The city clerk asked if there was anyone in the audience who wished to be heard on this item. There was no one.

It was moved by Vice Mayor Ronstadt, seconded by Council Member Ibarra, and carried by a voice vote of 6 to 0 (Council Member Leal absent/excused), to close the public hearing.

It was then moved by Council Member Scott, seconded by Council Member Dunbar, and carried by a voice vote of 6 to 0 (Council Member Leal absent/excused), to accept the applicant's withdrawal for a time extension.

10. PUBLIC HEARING: (SE-03-26) T-MOBILE – SPEEDWAY BOULEVARD, C-1 ZONING, SPECIAL EXCEPTION – APPEAL OF ZONING EXAMINER'S DECISION

Mayor Walkup announced that city manager's communication number 145, dated March 22, 2004, would be received into and made a part of the record. He announced that this was a hearing on an appeal of the decision of the zoning examiner for a special exception land use case. The appellant was Bryan Poth, who would speak on behalf of the property owners, PSAC Development Partners. Mayor Walkup asked the city clerk to read the order for the appeal.

Kathleen S. Detrick, city clerk, stated that the city attorney would first summarize the procedural questions presented in this case.

Michael House, city attorney, said this was an appeal of the zoning examiner's denial of a proposed special exception land use. The applicant proposed the location of a 45-foot cellular tower within a self-storage facility. As a special exception use the proposed development must comply with land use code criteria and the applicable *General Plan* and *Area Plan*. In this case the principle issue was whether the proposed use would negatively impact single family residences to the north so that it would not comply with the *Pantano Area Plan* provision that commercial development be designed in harmony with adjacent residential uses and it would not comply with the *General Plan* provision that telecommunication facilities be located to minimize visual impact and preserve views.

Mr. House continued by stating that in this specific case there was an initial hearing followed by the zoning examiner's decision to approve the special exception use. The notice for that proceeding did not comply with the legal requirements and the hearing and the decision were therefore vacated. Proper legal notice was then provided followed by a continued public hearing. Based on the testimony and evidence produced in the properly noticed hearings, the zoning examiner decided to deny the special exception use.

Mr. House then explained that in reaching a decision, the mayor and council may consider the decision of the zoning examiner, the record of proceedings before the zoning examiner, the testimony and evidence presented to the mayor and council at this hearing on the appeal, and the communication and materials provided by the city manager in reaching their decision. The mayor and council decision shall be consistent with the overall purpose and intent of the *Land Use Code*, the *General Plan*, and the *Pantano Area Plan*. The mayor and council may affirm the denial of the special exception, may reverse that decision to approve the special exception, or may remand the case back to the zoning examiner for further consideration.

Because this case involves a cellular tower it is subject to provisions of the *Federal Telecommunications Act*. Those provisions require that a denial of the application must be in writing and supported by substantial evidence in the record. A motion to affirm the zoning examiner and deny the special exception request must therefore also direct the

city clerk to issue a written letter with the decision and stated findings. The findings for a denial may be based upon the conclusion: that the proposed tower would negatively impact residents to the north in a manner that is contrary to the *General Plan* and the *Pantano East Area Plan*; that the applicant has not demonstrated that the tower could not be located at alternate locations which would not have as great a negative impact; or any other reasons that support denial.

Ms. Detrick announced that next the zoning examiner would present the report and summary of the request.

Peter M. Gavin, zoning examiner, said that the item before the mayor and council was an appeal of his denial of a special exception land use request for a 45-foot tall cellular monopole. The monopole is proposed within an existing self-storage facility on the north side of Speedway, approximately 400 feet west of Pantano Road. He stated that on November 6, 2003, he held a hearing on this request. The applicant, Brian Poth, was the only person who testified at the public hearing in addition to city staff. Approximately a week later on November 14, 2003, Mr. Gavin approved the request. However, shortly after rendering his decision to approve the request, it was discovered that three adjacent neighbors to the north were not notified of the public hearing. Therefore, the public hearing was deemed flawed and consequently the zoning examiner's decision was voided.

Mr. Gavin stated that on December 18, 2003, he held a properly noticed public hearing at which the applicant, Mr. Poth, and three adjacent neighbors, Carla Pothier, Patricia Cranmer and Alfonso Contreras, testified. Mr. Gavin said he continued the case to January 15, 2004, to provide the applicant an opportunity to meet further with the adjacent property owners to see if something could be worked out. On January 23, 2004, Mr. Gavin said he denied the request based on the fact that the proposed monopole will negatively impact the views from the back yards of the adjacent single family homes to the north. The proposed monopole does not comply with the *Pantano East Area Plan* and the *General Plan* which promote harmonious development and require preservation of views.

Mr. Gavin concluded by stating that this was an unusual and unfortunate situation. Unusual in the sense that this is the first time and hopefully the last time he will have to reverse his decision after a flawed public hearing; and unfortunate in the sense that the applicant thought he had conscientiously proceeded through the process only to be originally approved and subsequently denied due to no fault of his own.

Ms. Detrick announced the order of the appeal, first the appellant on the behalf of the property owners, second any response from city staff, third testimony from any member of the public, and fourth rebuttal as permitted by the mayor and council. The mayor and council could direct any questions to the parties appearing before them or any other persons who have relevant information in order to establish their reasons for decision. After the presentation the mayor and council could discuss the case or act on it.

Brian Poth, spoke on behalf of T-Mobile Wireless. Mr. Poth stated that he felt the analysis and recommendations of city planning staff had brought him to this point. He said he originally filed the special exception land use request for the installation of a 50-foot wireless communications

monopole. In July 2003, Mr. Poth held his first meeting with the neighborhood. The result of this meeting was that Mr. Poth agreed to reduce the height of the pole by 10 percent because of one neighbor's concern about the visual impact.

Mr. Poth stated that the final plan went through city planning staff for analysis and was approved. Mr. Gavin rendered his approval subject to two conditions. However, the notification materials provided to Mr. Poth by city staff inadvertently excluded three neighbors to the north; therefore, the decision had to be rescinded.

Mr. Poth then read from the staff report submitted in the analysis for the first case. The report stated that the subject's special exception request complied with the pertinent policies of the *Pantano East Area Plan* and the *General Plan*. The setbacks and screening provided at the existing storage facility minimized the visual impact on adjacent uses. Approval of the requested type five special exception land use request was appropriate subject to compliance of the following two conditions. In addition, in that same staff report, the comprehensive planning task force offered the following opinion: the proposed tower and antennas would be architecturally and environmentally compatible with the surrounding structure and general area; the *General Plan* supported the provision of infrastructure to provide services to areas that were lacking so that all could have access to high-tech telecommunications services; the facility was reasonably designed to blend in with the surroundings and this proposal did not conflict with the *Pantano East Area Plan* policies.

Mr. Poth said that at the second public hearing, the three neighbors from the north did attend and protested the special exception. There was an hour discussion, but no middle ground was reached between Mr. Poth and the neighbors. Mr. Poth decided to submit his application and allow it to run its course. Mr. Poth respected the neighbors' right to protest, and they understood he represented T-Mobile and had an obligation to allow his request to go through the city process.

The second public hearing was noticed, and the city planning staff submitted the identical staff reports which had been submitted to the first hearing. In essence nothing had changed, Mr. Poth noted that the staff recommendations stated that the project was appropriate, compatible, compliant, all the buzz words that he has heard in his dealings with planning staff. Mr. Poth said that when he first meets with city planning staff their reaction is often negative. He said cellular towers have become a necessary part of the urban landscape. He said that city planning staff usually states that compatibility will be the big issue. Mr. Poth claimed that all of the documentation that commercial uses in this area should be integrated with existing commercial uses. The monopole would be located in the center of a three and a half acre commercially-zoned parcel at an intersection that is dominated by commercial activity.

Mr. Poth stated that T-Mobile had looked at alternative locations. One of these alternatives was a piece of city-owned property to the east. The city's representative had some concerns with using that site and recommended Mr. Poth look elsewhere. However, the city representative stated that if it was a last resort, the city might consider allowing the monopole to be located there. Another alternative was the southwest corner of the intersection. The owner of that property did not want to encumber the land with a long-term lease. A third alternative was the high school located to the east on north side Speedway. The elevation at that location drops about 15 -25 feet, which affects the

signal and does not allow T-Mobile to cover the same area. A fourth alternative was the church located adjacent to the self-storage facility. They did not care to have the tower located on their property.

Mr. Poth said they went through the second public hearing and were denied the request. He again quoted from the development services report which stated, the submitted proposal is in compliance with the applicable performance criteria of the land use code and recommends approval of the proposed development based on compliance with the *Pantano East Area Plan*. Mr. Poth claimed that everything he had heard from the city, with the exception of Mr. Gavin's denial, stated that the submittal was compatible, compliant, appropriate, it fit every criteria that was set forth in the *Land Use Code*.

Mr. Poth said he feared what motivation do wireless companies have to continue to develop infrastructure for the city's citizens if they submit requests, are told everything is ok, but then are ultimately denied. In addition, the appeal is not for the original design, but for a modified and more stealth design. Mr. Poth said the pole was cut from 50 to 45 feet and the number of antennas was reduced from six to three. There would be no visual cables or antennas at the top of the tower. They would be concealed in a canister-like design, 28 inches in diameter, and the top of the pole would be about 20 inches in diameter. Mr. Poth stated that this was as clean as a design that they could develop to minimize the visual impact to the neighbors in the north.

Mr. Poth said the two concerns the neighbors had were visual impact and the potential effect on property values. Mr. Poth stated he has done many sites across the country. He claimed that the monopole would not create a negative impact at 45 feet with its stealth design and because it was located almost 100 yards from the neighbors. He noted that from the neighbors' back yard, running along the north property line was existing TEP infrastructure. Multiple lines were visible and two Tucson Electric transmission lines running along the north side of Speedway were visible. Mr. Poth argued that there were enough items visible that he did not believe his monopole would make the view more negative.

Mr. Poth stated that T-Mobile would like to build this infrastructure for the city's citizens and that city plans promote and encourage this. Mr. Poth said they had looked at alternative solutions at this area, and this location was the best possible because it complied with every aspect of the *Land Use Code*. Ultimately, Mr. Poth felt the staff reports and recommendations confirmed this conclusion. T-Mobile was concerned about not having to take this a step further, based on a violation of a 1996 *Federal Telecommunications Act*, especially when it involved a denial of a site that the city's own staff supported and recommended for approval.

Mr. Poth added that this site would serve approximately 500 existing customers living in this area and tens of thousands of others who commute through this area on a daily, weekly, and monthly basis.

Ms. Detrick announced that the next order of business was to hear any response from staff.

Mr. Gavin said he had no response at that time.

Ms. Detrick announced that the next order of business was to hear any testimony from the public.

Carla Pothier, stated that she owns the property north of the proposed tower. She stated that based on the small mock-up that Mr. Poth showed to the neighbors, the tower would be very visible. She agreed that yes, she could see power lines out her window, but everyone has those in their views and they have blended into the environment. Ms. Pothier claimed that the tower was more obvious. She said the bottom line was that this tower affects her backyard and her eight tenths of an acre of property that she bought because it was beautiful.

Ms. Pothier said the *Land Use Code* exists to protect her backyard and to protect everyone's neighborhoods. She said that T-Mobile is just one of many cellular companies in the area. She added that there are various other locations where the monopole could be built. Ms. Pothier said she wanted to do what she could to protect her property, protect her neighborhood and protect her view.

Patricia Cranmer, said the neighborhood has had houses there for 30 years. The neighborhood is a zone C-2, so any changes would require rezoning. Ms. Cranmer stated that this is a custom home area. The people in the neighborhood love their homes and care about the neighbors. She said that all those commercial things were not located there when they first moved in. She asked the mayor and council how they would feel if the tower were located in their front or back yard.

Alfonso Contreras, said he was there to complain about the potential tower to be built. He said he would be able to see the tower from his kitchen window and it would block out the old view. Mr. Contreras stated that if Mr. Poth lived in his neighborhood he would be complaining also. Mr. Contreras asked the mayor and council to care about this neighborhood's lament.

James Keene, city manager, requested time to make a short statement. Mr. Keene wanted to emphasize the importance of the process the city uses in determining whether or not to grant special exceptions. He said there could be a tendency for the staff and the process to seem development or applicant driven. When someone comes in with an application there is a tendency to respond and be as positive as possible. However, one of the reasons for having zoning examiner's hearings and having the ability for anyone to appeal to the mayor and council is that there is a context for land use decisions that the city makes that involved neighbors. Mr. Keene said that this situation was a case in which the involvement of the neighbors expanded the focus and the context of the concerns.

Mr. Keene said that the situation could have been that the zoning examiner could have granted approval and the neighbors could have brought this matter to the mayor and council on appeal. He noted that there have been cases in the past when mayor and council made its own determination. Mr. Keene said that the city's process did not bring them to this point, but the issue was the substance of the arguments.

Mayor Walkup asked the council's pleasure.

Council Member West asked if this proceeding was a public hearing, and if so, did the mayor and council need to close the public hearing?

Mr. House, city attorney, explained that this item is an appeal of a zoning examiner's decision. The term public hearing in this case only indicated that public testimony is permitted.

Council Member West asked if T-Mobile has any towers in California.

Mr. Poth asked the relevance of towers located in California.

Council Member West provided more details by stating that California has cellular tower design standards that camouflage a tower to appear like a tree for example. She asked if Mr. Poth had been involved in projects similar to that.

Mr. Poth stated that he was currently working on three or four sites in Tucson that would involve man-made palm trees. He explained that this type of camouflage was done on a case by case basis. He added that it depended on the jurisdiction that was hearing the case.

Council Member West asked if T-Mobile would be the only user of this tower.

Mr. Poth answered that T-Mobile would be the only initial user of the tower. However, the tower would be designed for co-location and it could accommodate a second carrier. He added that adding additional antennas to a stealth design would defeat the purpose of the original design.

Council Member West noted the location was a busy commercial area. She asked if this would interfere with the cellular signal.

Mr. Poth explained that this area does not have large, concrete, masonry walls that would interfere with a signal. In addition, the buildings are only one to two stories high which would not cause a problem. Mr. Poth stated that the T-Mobile signal is a federally regulated frequency that only T-Mobile is allowed to occupy. It would be separate from any other frequency and they do not interfere with each other. There would be no interference in this area from traffic, traffic lights or Tucson Electric Power.

Council Member West asked if there would be no need for the towers in the future.

Mr. Poth said that about four to five years ago Motorola tried a satellite system to eliminate the need for towers; however, the project was a failure. Cellular tower sites have gone from having one site cover 10 to 15 square miles with a 250 foot tower down to where we are today. He stated that having tall towers covering a large area has become obsolete because of the increasing numbers of cellular phone users. There was too much interference too much cross talk.

Mr. Poth said currently they built smaller coverage cells with shorter towers to cover the number of users better. That is why the tower sites have come down in height to 45 to 65 feet. Mr. Poth stated that technology is always changing and the sizes of the towers could decrease further, but there is no indication of when that will occur. He said that for the time being, this appears to be the infrastructure that will stay. He called the current system a necessary evil.

Council Member West complimented Mr. Poth for holding the meetings with the neighborhood. She said they appeared to work together amicably even though they did not come to agreement. She also thanked the neighborhood for appearing at the hearing.

Council Member West asked how the city staff decides to whom notices are mailed.

Mr. Gavin responded that when the city receives a rezoning special exception application development services creates a map of the surrounding area, in this case it was a 300-foot radius from the property. This includes areas across the right of way. In this case, the notice area clipped three parcels on the north side of Bellevue. Mr. Gavin explained that the maps are automatically generated, but the parcel identification is a manual process. Therefore, missing those three parcels was a human error.

Council Member West asked that the city improve those procedures because this mistake had caused some unfortunate circumstances. Council Member West stated that she believed that the *General Plan* requires telecommunications facilities to be located, installed, and maintained to minimize visual impacts and to preserve views. She added that the *Pantano Area Plan* upholds the fact that this tower would negatively impact residents to the north.

It was moved by Council Member West, seconded by vice Mayor Ronstadt, to uphold the zoning examiner's decision and direct the city clerk to send the applicant a written letter with the decision and stated findings.

Michael House, city attorney, asked Council Member West to restate the findings.

Council Member West restated that her motion was to uphold the zoning examiner's decision that the proposed tower would negatively impact residences to the north in a matter that is contrary to the *Tucson General Plan* and the *Pantano Area Plan*, that the applicant has not demonstrated that the tower could not be located at alternate locations which would not have as great a negative impact, and that the city clerk send the applicant a written letter with the decision and stated findings.

Mayor Walkup asked if there was any discussion.

Council Member Dunbar asked if the city could offer the applicant an alternative such as disguising the tower so that it looked like a palm tree.

Mr. Gavin stated that whether or not one could disguise a cellular tower depended upon location, it is a case by case situation. He added that even by disguising the tower this could create visual blight because it would be the only visual on the horizon. Mr. Gavin provided an example of a disguised tower on Houghton Road.

Council Member Dunbar then asked how many people were affected by this, how many received notification of the public hearing, and how many appeared at the hearing.

Mr. Gavin stated that three people testified at the hearing. Mr. Gavin did not have the specific number of people notified. He estimated that six to the north, two to the west and the commercial developments to the south were notified.

Council Member West asked Mr. Gavin if two people had gone to the first public hearing but not the second.

Mr. Gavin stated that the only person who testified at the original public hearing was Mr. Poth.

Mayor Walkup asked if there was any further discussion.

Council Member Scott asked if the neighborhood plans were as current as the new technology that is appearing in the community, such as cellular towers.

Peter Gavin, zoning examiner, responded that the *Pantano East Area Plan* does not make mention of cellular communication towers. He stated this is because of the age of the plan. It was adopted in 1982. Mr. Gavin added that in the *General Plan* there is mention of telecommunication facilities because it is a newer plan. He noted that in this case both plans are applicable. The *Pantano East Area Plan* discusses the harmonious design of a proposed development and the *General Plan* discusses minimization of the visual impact and the preservation of views.

Mayor Walkup asked if there were any further questions. There were none.

Mayor Walkup called for a voice vote. The motion carried 5 to 0 (Council Member Dunbar and Leal absent/excused). (Council Member Dunbar departed at 7:15 p.m. and returned at 7:20 p.m.)

11. ZONING: (C9-03-25) RINCON BAPTIST CHURCH – GOLF LINKS ROAD, RX-1 TO O-3, CITY MANAGER’S REPORT

Mayor Walkup announced that city manager’s communication number 141, dated March 22, 2004, would be received into and made a part of the record. He also announced that this was a request to rezone property located on the south side of Golf Links Road, east of Prudence Road. The zoning examiner and the city manager recommend approval subject to certain conditions. He asked if the applicant or representative was present and if so, were they aware of and amendable to the proposed conditions.

Gordon Vernon, said they had read and did agree to all of the conditions.

Council Member Scott asked the city attorney if she should recuse herself because the Rincon Baptist Church was located near her home.

Michael House, city attorney, answered that if she believed the proximity of this site to her home could have an impact on her property, either positive or negative, then yes she should recuse herself.

Council Member Scott stated that she lived three blocks from the property and was unsure if it would impact her own property.

Mr. House stated he did not believe this would constitute a conflict of interest.

Council Member Scott moved, seconded by Council Member Ibarra, and carried by a voice vote of 5 to 0 (Council Members Dunbar and Leal absent/excused) to approve the request for rezoning as recommended by the zoning examiner.

12. ZONING: (C9-03-19) JACOME – VALENCIA ROAD AND ALVERNON WAY, I-1 TO C-1, CITY MANAGER’S REPORT

Kathleen S. Detrick, city clerk, stated that Council Member Leal had contacted her office requesting that this item be continued to April 5, 2004, because this property is located in Ward 5.

It was moved by Vice Mayor Ronstadt, seconded by Council Member Ibarra, and carried by a voice vote of 5 to 0 (Council Members Dunbar and Leal absent/excused) to continue this item to April 5, 2004.

13. REAL PROPERTY: VACATION AND SALE OF SURPLUS CITY-OWNED PROPERTY LOCATED NEAR SPEEDWAY BOULEVARD AND ALVERNON WAY TO CENTRES, INC.

Mayor Walkup announced that city manager’s communication number 151, dated March 22, 2004, would be received into and made a part of the record. He asked the city clerk to read ordinance 9944 by number and title only.

Ordinance No. 9944

Relating to Real Property; vacating and declaring certain city-owned property west of the southwest intersection of Speedway Boulevard and Alvernon Way, Tucson, Arizona, to be surplus, and authorizing and approving the sale thereof to Centres, Inc.; and declaring an emergency.

It was moved by Vice Mayor Ronstadt, seconded by Council Member Scott, that ordinance 9944 be passed and adopted.

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

Mayor Walkup asked for a roll call on the motion.

Upon roll call, the results were:

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

Nay: None

Absent/Excused: Council Member Leal

Ordinance 9944 was declared passed and adopted by a roll call vote of 6 to 0.

14. INTERGOVERNMENTAL AGREEMENT: WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR ACQUISITION OF PROPERTY FOR THE JULIAN WASH CULTURAL RESOURCE PARK (CONTINUED FROM THE MEETING OF MARCH 15, 2004)

Mayor Walkup announced that city manager's communication number 147, dated March 22, 2004, would be received into and made a part of the record. He asked the city clerk to read resolution 19758 by number and title only.

Resolution No. 19758

Relating to Transportation; authorizing and approving the execution of an Intergovernmental Agreement between the City of Tucson and the State of Arizona for the Julian Wash Project; and declaring an emergency.

Mayor Walkup called on Council Member Ibarra.

Council Member Ibarra thanked his colleagues, city staff, neighbors and those who have contacted his office. He said this is one of those issues where everyone wants to do the right thing and save the archeological site and bring in a park, knowing that this was a million-dollar grant from the state of Arizona. Everyone has had ideas about the billboards. He stated that he appreciated everyone's input. He also thanked city staff for their flexibility.

Council Member Ibarra said that this was a difficult issue because of the billboards. He said the park would be a great addition to a stressed neighborhood. In addition, it was something that the city could never do on its own. The second factor in his decision was the million-dollar grant from the state. Third, Council Member Ibarra quoted someone who spoke earlier during the call to the audience, by saying that this project would preserve a significant part of archeological property.

Council Member Ibarra said the negative aspect of this intergovernmental agreement was the issue of the billboards. He said he did not want to walk that fine line of hypocrisy. He concluded that he would move to pass this resolution; however, he requested city staff develop a way to deal with the billboards. Council Member Ibarra kept his wording very general so that staff could return to mayor and council with options. He also asked staff to contact Clear Channel and perhaps come up with a compromise. He said the ultimate goal would be that both billboards be removed from the park.

Mayor Walkup asked if Council Member Ibarra wanted to place a time limit on this tasking.

James Keene, city manager, recommended not placing a time limit so that city staff would have the best opportunity for creativity and maneuverability.

Council Member Ibarra agreed with Mr. Keene. However, he emphasized that the mayor and council are not happy with the billboard situation, but they can not pass up this opportunity to preserve a significant archeological property and receive a one million-dollar grant. The city's budget would never allow for that type of expenditure.

It was moved by Council Member Ibarra, seconded by Vice Mayor Ronstadt, that resolution 19578 be passed and adopted.

Mayor Walkup asked if there was any discussion.

Council Member Ronstadt said that he did not want the city to spend money to resolve the billboard issue. He asked that the city pursue friendly courses of action and not engage in activity that would cost more than just buying the billboards to start with.

Mayor Walkup noted that Council Member Ibarra left the wording general enough for staff to come up with a variety of options, but only concerning the two billboards located on this property.

Council Member Ibarra agreed and reemphasized that they were only discussing the two billboards.

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

Mayor Walkup asked for a roll call on the motion to pass and adopt resolution 19578.

Upon roll call, the results were:

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

Nay: None

Absent/Excused: Council Member Leal

Resolution 19578 was declared passed and adopted by a roll call vote of 6 to 0.

15. APPOINTMENTS TO BOARDS, COMMISSIONS AND COMMITTEES

Mayor Walkup announced that city manager's communication number 128 dated March 22, 2004, would be received into and made a part of the record. He asked for a motion to approve the appointments in the report. Kathleen S. Detrick, city clerk, announced that there were no appointments in the report.

Mayor Walkup announced his personal appointment of Ted Hinderaker to the City Attorney Selection Committee.

16. ADJOURNMENT: 7:28 p.m.

Mayor Walkup announced that the council would stand adjourned until its next regularly scheduled meeting to be held on Monday, April 5, 2004, at 5:00 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, Arizona, held on the 22nd day of March, 2004, and do hereby certify that it is an accurate transcription of the magnetic tape record of said meeting.

MANAGEMENT ASSISTANT

KSD:DD:rem
pr agnst tp:sac