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## Minutes of MAYOR AND COUNCIL Meeting

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Approved by Mayor and Council  
on June 14, 2005

Date of Meeting: October 25, 2004

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 Street, Tucson, Arizona, at 5:40 p.m. on Monday, October 25, 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
Steve Leal	Council Member Ward 5
Fred Ronstadt	Vice Mayor, Council Member Ward 6
Robert E. Walkup	Mayor

Absent/Excused: None

Staff Members Present:

James Keene	City Manager
Michael Rankin	City Attorney
Kathleen S. Detrick	City Clerk
Michael D. Letcher	Deputy City Manager

## **2. INVOCATION AND PLEDGE OF ALLEGIANCE**

The invocation was given by Pastor Jim Corley, Crosspoint Community Church, after which the pledge of allegiance was presented by the entire assembly.

Presentations:

- a. Mayor Walkup proclaimed the week of October 18, 2004 to be “Arizona Cities and Towns Week 2004”.
- b. Mayor Walkup presented an “Extraordinary Citizen Award” to Christine Conte in recognition of her work to protect land, water and wildlife.

## **3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS**

Mayor Walkup announced City Manager’s communication number 591, dated October 25, 2004, would be received into and made a part of the record. He also announced this was the time scheduled to allow members of the Mayor and Council to report on current events and asked if there were any reports.

- a. Council Member West invited the public to a townhall on “Prescription Drug Benefits” on Tuesday, October 26, 2004 at 7:00 p.m. at the Eastside City Hall.
- b. Mayor Walkup reported that last week the Mayor of Sulmai, Iraq visited Tucson.

## **4. CITY MANAGER’S REPORT: SUMMARY OF CURRENT EVENTS**

Mayor Walkup announced City Manager’s communication number 592, dated October 25, 2004, would be received into and made a part of the record. He asked for the City Manager’s report.

James Keene, City Manager, reported:

- a. Tucson City Court continues to experience phone problems that resulted after a scheduled power outage performed by Tucson Electric Power. The Court and the Prosecutor’s Offices automated phone systems were both affected.
- b. The City, partnered with the Metropolitan Housing Corporation and the Tucson Urban League, was successful in receiving a Housing Urban Development (HUD) grant to build sixty-nine apartments for low-income seniors next to the Quincie Douglas Neighborhood Center.
- c. At the Southern Arizona Home Builders Association’s Home Show, the Tucson Water Conservation booth won recognition as the “Most Informative Large Booth”.



c. Special Events

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| 1. | League Of Mexican American Women<br>900 S. Randolph Way<br>Applicant: Gloria H. Rodriguez<br>City T087-04, Ward 6<br>Date of Event: 11/14/04   | Staff Recommendation<br><br>Police: In Compliance<br>DSD: In Compliance<br>Parks: In Compliance |
| 2. | Congress Historic Theatres Foundation<br>Congress between 4th & 6th, 5th between Congress & Broadway<br>Applicant: Douglas W. Biggers<br>City T092-04, Ward 6<br>Date of Event: 10/30/04 | Staff Recommendation<br><br>Police: In Compliance<br>DSD: In Compliance                         |
| 3. | Glassman Foundation<br>6503 E. Tanque Verde Road<br>Applicant: Don W. Haskell<br>City T094-04, Ward 2<br>Date of Event: 11/7/04  | Staff Recommendation<br><br>Police: In Compliance<br>DSD: In Compliance                         |

It was moved by Vice Mayor Ronstadt, duly seconded, and carried by a voice vote of 7 to 0, that liquor license applications 5b2 through 5b4 and 5c1 through 5c3 be forwarded to the Arizona State Liquor Board with a recommendation for approval.

**5. LIQUOR LICENSE APPLICATIONS**

b. New Licenses

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| 1. | Super Stop #870<br>3102 E. 22nd Street<br>Applicant: Rodney S. Herbert<br>City 066-04, Ward 5<br>Series 10<br>Action must be taken by: October 30, 2004<br>Public Opinion: Protests Filed | Staff Recommendation<br><br>Police: In Compliance<br>DSD: In Compliance<br>Revenue: In Compliance |
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Ms. Detrick announced that liquor license application 5b1, Super Stop #870, had a staff recommendation for approval. However, protests had been filed. It is located in Ward 5.

Mayor Walkup recognized Council Member Leal.

Council Member Leal said they had received request to speak cards from the applicant, Mr. Herbert, and his representative, Thomas Aguilera, and asked them to come forward and address the Council.

Thomas Aguilera, accompanied by Rodney Herbert of Reay's Ranch Investors, said he was there to take care of preliminary legal questions he had. He directed his questions to Michael Rankin, City Attorney. He was in possession of three protest letters. One was from Julia Keene Neighborhood Association, which encompassed the license location. The second was from Meyers Neighborhood Association, which was outside of the one-mile radius toward Craycroft. The third was from Yolanda Herrera LaFond from the Sunnyside Neighborhood Association, which was filed on October 14.

It was his understanding that the posting date was September 23, 2004, which would be the cut-off date. Julia Keene Neighborhood Association submitted theirs on September 30, 2004. He asked for instruction to be given to the Council that the document not be considered by the Council in its decision, because of its untimeliness.

Michael Rankin, City Attorney, said that what Mr. Aguilera was referring to was a provision in State law regarding the ability of the legislative body to consider protests within the statutory area, which was a one-mile radius vicinity of the application location. The way the statute reads was that it did not preclude any person from personally appearing and testifying at a hearing either in front of the Council or ultimately in front of the Arizona State Liquor Board, if that was where it would end up. However, the statutory provision discussed a timeframe for submitting actual written protests. He said they had it go both ways in front of the Arizona State Liquor Board, in terms of whether the Liquor Board would allow into the record or consider protests which were filed after the statutory period and were part of the Council's decision making. Mr. Rankin said that what Mr. Aguilera was getting at, and he believed Mr. Aguilera was correct, was that protests filed after the statutory deadline date had a deadline date for the Council to take it under consideration for making their decision for recommendation for disapproval or approval.

Mr. Aguilera said those who were protesting the liquor license application should be precluded from speaking against the liquor license application if they did not live within the one-mile area or owned or leased property within that area.

Mr. Rankin replied that the Council had the discretion of allowing people to address the Mayor and Council. However, he noted that again Mr. Aguilera was correct in that standing. To protest was within the one-mile radius, which would include neighborhood associations that had territory within the one-mile radius of the proposed location.

Council Member Leal thanked Mr. Rankin for his comments.

With those legal issues out of the way, Mr. Aguilera said he had not submitted the 160 or more signatures from people who lived within the one-mile radius. He did not submit them because they just finished gathering them and they would be untimely if he submitted them at the meeting, because the cutoff date was September 23, 2004. He said

they would be timely filed if they went to Phoenix and they were in Phoenix, but these were people who lived within the Julia Keene Neighborhood Association. Therefore, clearly the Julia Keene Neighborhood Association could not speak for each and every one of its constituents. They had over 160 signatures that said they lived within the Julia Keene area and they supported the application and supported this Series 10 license.

Mr. Aguilera said he was going to keep his comments strictly legal and brief because his client would articulate his background and his business for the Council. He pointed out to the Council that saturation had always been a big issue. Over the years, he discussed that issue with Council Member Leal and was aware of his stance on the matter. Therefore, when he looked at a case, he looked at the number of liquor licenses within that half-mile. They had a total of seven. One was a restaurant, Las Brasas Mesquite Grill. Two were Series 7, which sold only beer and wine. They had an off premise capability, but management and staff said they did not use it; it was a restaurant. They did not sell beer and wine out the door.

The other liquor license in the area was the Golden Phoenix, which was a Chinese restaurant on Twenty Second Street. The same applied to them. They had a Series 7, which was for beer and wine only. They could not sell hard liquor. They did this as an on premise feature. Although they could take advantage of an off-premise, they did not. He was concerned about off-premise because that was where they would run into underage sales. If beer could be taken off-premise, they would run into an underage interface possibility. That along with saturation seemed to be the Council's considered response to whether or not a license should be issued.

Mr. Aguilera referred to recent comments made by Vice Mayor Ronstadt that the Council finally understood the differences between the series of licenses. Here they had Series 10, beer and wine only. What they had was a gas station, too. He acknowledged that there was a Circle K across the street and said that should be considered. But Twenty Second was a big street. He said that would be a convenience for the public, as they had said for over a decade that they liked this convenience. The records supported the fact from a business sense, that beer and wine should be sold on this property. The public spoke on that issue.

Food City had a Series 9, which could sell hard liquor. They had no violations in their history. The Wooden Nickel had a Series 6 in that area and one violation. The last time they had a violation was in 1998, when they permitted a broken package like a bottle of vodka to go out the door. Circle K had a violation for sale of underage, which was over a decade ago. For one decade that establishment had not seen a violation, nor had Las Brasas or the Golden Phoenix.

Mr. Aguilera noted that the Beverage Store over the protest of the Council was recently issued Series 9 license. It had one violation with the previous management in 2003 for underage sales violation. There were two underage violations within the last decade in that half-mile radius. What they were not seeing was a proliferation of licenses in the area, nor were they seeing evidence of sales to underage or acts of violence, which

was something they would want to consider, especially with a bar like the Wooden Nickel.

He asked the Mayor and Council to consider the fact that this applicant on his personal qualifications had over fifty-three liquor licenses within the State. Fifteen of them were in Pima County. He had every vested interest to follow the regulations and to follow Title 4. He was an operator that knew how to do that. For many decades the company had been doing just that. It would be a good neighbor. It was a neighbor that would benefit the community. The applicant was going to show the Mayor and Council some pictures of their branding that store as a Mobile. They were cleaning it up; they were putting lights out. They changed their hours from 4:30 p.m. to 1:30 p.m. They were not open 24 hours. That had also been a concern that Council Member Leal represented to him over the years. He understood that and restated they had cut their hours down.

Mr. Aguilera acknowledged that they did not seek approval from the Julia Keene Neighborhood Association prior to filing the application. However, he noted that this was the first or second time out of the fifty-three licenses where he was finding some issues associated with them talking to the neighborhood association before submitting an application. Since the license was already there and nobody protested during the posting period, his client felt that his suspicions were confirmed, there were no neighborhood problems. If there were problems, he was willing to meet and talk with the area residents to address their issues.

Before ending his comments, Mr. Aguilera added for the record that he found it difficult sometimes to interface with the neighborhood association. One reason was that Ms. Martin was allowed to speak for the Myers' Neighborhood Association, which was not in that area. She told her constituents not to talk to him and not to give away their arguments. He said that if they were in court, they would have a mandate that they interface lawyer to lawyer, party to party, discovery and interface. They did not have that process at the Mayor and Council meeting. He saw that Council Member West was making a funny face at him, but said that it was definitely a process that required interface between the neighborhood and licensee. It should not just be licensee. It needed to be both and they were willing to do that. He urged the Mayor and Council to recommend approval of issuance of a Series 10 license.

Mr. Aguilera added that if this application was not recommended for approval, clearly they would have to go to Phoenix. If they were unsuccessful in Phoenix, there was a likelihood that it would spring back to the original owner and the Series 10 license would survive at that location. He said it would be better to have an on-hands, on-site manager team like they had now, instead of a management team that was seeking to get out of the business, and not hands on every day like they would have with Mr. Herbert. Mr. Aguilera concluded his comments and said that unless the Mayor and Council had any questions for him, he would turn it over to Mr. Herbert.

Rod Herbert, the applicant, worked with his current company and lived in Tucson for twenty-six years. This was actually the second company they have run in Tucson.

Formerly they had Reay's Ranch Market in Tucson where they had a very good reputation. They learned how to run businesses in Tucson and thought they had done a very good job of that. That business was sold and they operated under Reay's Ranch Investors, which currently owned and operated fifty-four locations throughout the State. He was the Chief Financial Officer and one of the owners of the business and they took great pride in the way they ran their stores. There was no question that they had spent several thousand dollars training their managers and their supervisors. They were going to training on November 10, 2004 for most of their managers. They had no problems sending them for training through the State approved methods, so that they knew they lived by the law.

They currently drew about 100 million dollars worth of sales. That was a lot of money, a lot of sales and a lot of transactions on a daily basis, again across fifty some locations. They kept track of that and they made sure their managers were well trained. Also, they implemented a device called viage (ph) machine, which was a little yellow device that read ages. That was actually in use in the store that was being discussed at the meeting. They had all the legal postings noting "21 years or older" on the front door, on the cooler doors and everywhere. They definitely lived by the rules and regulations that were presented to them. His reason for coming before the Mayor and Council was to let the Council know that this business for the future would continue to operate in Tucson.

Mr. Herbert restated they had fifteen locations in Pima County. He submitted pictures of some of his locations. He was quite sure that the Mayor and Council were familiar with a lot of them: a Shell location at Oracle and Ina; a Mobile location at Broadway and Wilmot; a Mobile location at Broadway and Country Club; Mobile location at Fort Lowell and Country Club; and the Tanque Verde Mobile location. The location he was there to speak about had been given approval to be branded a Mobile site. It would be changed to a Mobile. It would have the blue and white coloring, canopy markings, dispenser markings, etc., which were very similar to what they were looking at.

Mr. Herbert continued that when they leased a location they took care of it. They cleaned it up and they would make it look like new. He was sure that if the neighborhood association would take time to come by and look at some of the other existing locations, they would realize all the changes they were proposing for that location. They had a lease there and said it was very important that they have beer and wine. The sales generated at that location would probably be close to nineteen or twenty percent of the sales on beer and wine. He also stressed to Council not to think those were the only issues. If they did not have the beer and wine, they would lose the tobacco sales, fountain sales and gas sales.

Mr. Herbert proposed that the Mayor and Council look at their merits and what they had done in the past and understand that they would cooperate to the fullest to do what they could to make it a first class operation and make it a proud location for the neighborhood association in that neighborhood. He thanked Mayor and Council for the opportunity to speak.

Council Member Leal thanked Mr. Herbert. He said he had a request to speak card from Cynthia Mills from the Julia Keene Neighborhood Association and asked her to come forward.

Cynthia Mills spoke in opposition to the Super Stop liquor license application. She has lived in the Julia Keene Neighborhood for four years. She belonged to the Twenty Ninth Street Coalition and they worked very hard for over two years in getting the Police Department to work with them on "Driving Under the Influence" (DUI's). They recently received a Weed and Seed Grant and they were issuing the Police Department over \$12,000 just to direct all the manpower they could in their area.

Ms. Mills said to have another liquor license in their area would be defeating the purpose of all the work that had been done every week to make their neighborhood a better place. They worked closely with Lt. Hunt at the mid-town location. He was very helpful with them and said their area was the top one. Not only were they going down Twenty Ninth Street, but if the Council had ever been down in that neighborhood, they would know there was a lot of liquor being sold there. But on the one corner near Reid Park, there were peddlers and vendors.

Ms. Mills said when Food City closed she would see a lot of people standing there drinking. Also, people had to go straight down Country Club to get on Aviation. Why not buy a six-pack and go home? They worked very hard to make the neighborhood a better place. She could not see another liquor establishment just because it would generate twenty percent more business. Food City and Circle K sold liquor and they did not need another liquor store in their neighborhood. The Coalition, in cooperation with the Police Department and the Council, hoped this would make their neighborhood a better place. She said that Mr. Aguilera presented signatures, but those people probably did not even go to the neighborhood association to know what truly evolved from liquor sales.

Ms. Mills said they were also putting grant money toward domestic violence, which often came from drinking. Their area was very bad on that and the problems revolved around that. Ms. Mills said Mr. Aguilera would get to go home and the neighborhood residents had to stay there. They had to listen to gunshots and heard the police come all the time. She said it would be to the neighborhood's benefit and urged the Mayor and Council to consider her comments and vote "no" on the license request. They did not need another liquor establishment.

Council Member Leal said he also had a request to speak card from Marissa De La Guerra and asked if she was present.

Marissa De La Guerra spoke in opposition to the liquor license application. She worked for Luz Southside Coalition and was a program coordinator that concentrated on a CPSA grant that directly impacted liquor licenses and billboards. Many Council members had seen her time and time again. She came before the Council because Ms.

Martin from the Twenty Ninth Street Coalition called her and told her they had this liquor license from Super Stop coming. She wanted to point out that there was a tremendous amount of over-saturation in the area. Being the program coordinator at Luz Southside Coalition, she was aware of that within two Wards, Wards 1 and 5. She also concentrated on the south side of Tucson and assisted other neighborhood associations that called upon her to assist with issues that impacted their neighborhoods.

Ms. De La Guerra had one question for the applicant. Granted, he got all his applications signed. He must have had all the time to do that. However, the point that was mentioned by the Julia Keene Neighborhood representative at the meeting was that many of those residents might not attend those Association meetings. Therefore, how would they know what was going on in their neighborhood. She noted that she and Council Member Leal, along with many representatives in attendance, recently attended the Twenty Ninth Street Health Fair that took place on October 13, 2004. She asked the applicant what kind of representation was he going to have at next year's health fair. The answer was going to be "none," unless he was going to have a nice picture that said he "sold liquor, come buy it."

She said she was not being sarcastic, she was being realistic. She noticed and thought it was a beautiful thing that many neighborhood associations and even some businesses had taken the direction of having a relationship with them, about what was going to happen in their neighborhood. She asked when the applicant was going to take a positive force in the neighborhood or any neighborhoods he wanted to establish a liquor license in. She concentrated on negative impacts that pertained to their neighborhood within their targeted area, which included those outside their targeted areas as well.

Council Member Leal thanked Ms. De La Guerra and recognized Mr. Herbert.

Mr. Herbert addressed Ms. De La Guerra's questions. In regards to the question about what they were going to do about the local health fair, he thought the book he had just given the Council for review showed what they had done. He added that evidently the neighborhood association residents had not been in the store lately to see that they had hundreds of posters put up. Those were each \$1.00 donation to St. Jude's Hospital and did not think they realized they donated several thousand dollars last year. They were the one of the largest contributors in all of Tucson to the St. Jude Association.

Mr. Herbert said the first question kind of threw him for a loop. What was he going to do for the neighborhood associations? They were happy to work with the neighborhood association. He did not think the neighborhood association realized that approximately 1.5 million dollars was spent on that site and over \$200,000 would be spent in the next six weeks. So when they asked about what they were doing for the neighborhood association, he responded that they were taking the stores that needed remodeling and remodeling the entire store.

Council Member Leal thanked the speakers and said he wanted to address a couple of issues. First, when Mr. Herbert initially spoke, most of his comments were to

his character and history and the activities that the corporation he represented had accrued over time. Those were all true and good things. However, those would be germane if they were talking about a person to person transfer and in this case they were not. Other issues raised had to do with the lack of crime statistics in the area compared to some other places. That would be a basis for having concerns on making a decision whether a license should be allowed or not, but certainly not the only criteria.

Council Member Leal added that the third issue that mattered was one of convenience. The State criterion in this case was very simple. The State asked if the convenience of the community would be served by issuing and granting the existence of this license. He noted there was a Circle K on one corner, a Food City on the second corner, and a couple hundred feet down the street was Boatner's, so there were three licenses almost within a stone's throw of each other. Council Member Leal said the issue of convenience was really not satisfied by granting an additional license, which would be on the third of four corners. The convenience already existed in significant terms. It was for that reason that Council Member Leal said he would be recommending denial of this application.

It was moved by Council Member Leal, duly seconded, and carried by a voice vote of 7 to 0, that liquor license application 5b1, Super Stop #870, be forwarded to the Arizona State Liquor Board with a recommendation for denial.

## **6. CONSENT AGENDA ITEMS A THROUGH L**

Mayor Walkup announced 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.

- A. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR THE YOUTH OPPORTUNITY PROGRAM
  - 1. Report from City Manager OCT25-04-589 CITY-WIDE
  - 2. Resolution No. 19958 relating to community services; authorizing and approving the execution of an Intergovernmental Agreement between the City of Tucson and Pima County for the Youth Opportunity Program; and declaring an emergency.
  
- B. PARKS AND RECREATION: NAMING THE LITTLE LEAGUE PRACTICE FIELD IN PURPLE HEART PARK THE "TUCSON CONQUISTADORES BALL FIELD"
  - 1. Report from City Manager OCT25-04-594 W4

2. Resolution No. 19959 relating to parks and recreation; naming the Little League Practice Field in Purple Heart Park the “Tucson Conquistadores Ball Field”; and declaring an emergency.

Item B was considered separately at the request of Council Member Scott.

C. LOAN REPAYMENT AGREEMENT: WITH THE ARIZONA TRANSPORTATION BOARD FOR IMPROVEMENTS TO HARRISON ROAD, SPEEDWAY BOULEVARD TO OLD SPANISH TRAIL

1. Report from City Manager OCT25-04-595 W2
2. Resolution No. 19960 relating to transportation; approving and authorizing execution of a Loan Repayment Agreement between the Arizona Transportation Board and the City of Tucson for improvements to Harrison Road, Speedway Boulevard to Old Spanish Trail; and declaring an emergency

D. REAL PROPERTY: RIGHT-OF-WAY ACQUISITION FOR THE COLUMBUS WASH PHASE II DRAINAGE IMPROVEMENTS

1. Report from City Manager OCT25-04-596 W2, 3, & 6
2. Resolution No. 19961 relating to real property; authorizing the City Manager to acquire by negotiation, and the City Attorney to condemn if necessary, certain real property located along Ralph Avenue, Seneca Street, Belvedere Avenue, Desert Avenue, Catalina Avenue and Fourth Street for the Columbus Wash Phase II Drainage Improvements; and declaring an emergency.

E. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY DEPARTMENT OF TRANSPORTATION FOR A FEDERAL TRANSIT ADMINISTRATION GRANT

1. Report from City Manager OCT25-04-597 CITY-WIDE
2. Resolution No. 19962 relating to transportation; authorizing and approving the Intergovernmental Agreement between the City of Tucson and Pima County Department of Transportation for a Federal Transit Administration (FTA) Grant AZ-37-X005 (Sun Tran) to fund Sun Tran’s Route #61 to the Northwest Medical Center; and declaring an emergency.

F. FINANCE: ADOPTION OF FINANCIAL POLICIES

1. Report from City Manager OCT25-04-586 CITY-WIDE

- G. AGREEMENT: FACILITY USE AND DEVELOPMENT AGREEMENT WITH TUCSON UNIFIED SCHOOL DISTRICT FOR A NEW SWIMMING POOL AT QUINCIE DOUGLAS NEIGHBORHOOD CENTER
1. Report from City Manager OCT25-04-590 W5
  2. Resolution No. 19888 relating to parks and recreation; approving and authorizing the Facility Use and Development Agreement between the City of Tucson and Tucson Unified School District for the construction and use of a new swimming pool at Quincie Douglas Neighborhood Center; and declaring an emergency.
- H. REAL PROPERTY: THIRD AMENDMENT TO LEASE WITH 100 NORTH STONE LIMITED PARTNERSHIP FOR CITY OFFICE SPACE IN THE PIONEER BUILDING
1. Report from City Manager OCT25-04-585 W6
  2. Resolution No. 19964 relating to real property; authorizing and approving acceptance of the Third Amendment to the Lease between 100 North Stone Limited dba 100 North Stone Limited Partnership (Lessor) and Tucson City Government as Lessee for the certain property located at 100 North Stone, Suites 109, 118, 200, and 610, Tucson, Arizona; and declaring an emergency.
- I. REAL PROPERTY: APPROVING LEASE AGREEMENT WITH GREYHOUND LINES, INC. FOR AN INTERIM BUS STATION LOCATED AT CONGRESS STREET AND INTERSTATE 10
1. Report from City Manager OCT25-04-600 W6
  2. Ordinance No. 10069 relating to real property; authorizing and approving the lease of certain city owned real property south and east of the southeast corner of Congress Street and Interstate 10 to Greyhound Lines, Inc.; and declaring an emergency.
- Item I was considered separately at the request of Council Member Leal.
- J. INTERGOVERNMENTAL AGREEMENT: WITH THE TUCSON UNIFIED SCHOOL DISTRICT, AND THE PIMA COUNTY FLOOD CONTROL DISTRICT RELATING TO THE ARROYO CHICO-PARK AVENUE DETENTION BASINS PROJECT
1. Report from City Manager OCT25-04-599 W1, 5, & 6

2. Resolution No. 19963 relating to Intergovernmental Agreements; authorizing and approving execution of an Intergovernmental Agreement between the Tucson Unified School District, the Pima County Flood Control District and the City of Tucson for the construction, maintenance and operation of the Arroyo Chico-Park Avenue Detention Basins Project; and declaring an emergency.

K. MEMORANDUM OF UNDERSTANDING: TO ESTABLISH A COMMUNITY LEARNING CENTER IN THE SANTA ROSA LEARNING CENTER LIBRARY

1. Report from City Manager OCT25-04-588 CITY-WIDE & OUTSIDE CITY
2. Resolution No. 19965 relating to library; approving and authorizing a Memorandum of Understanding between the City of Tucson and the Instituto Tecnológico y de Estudios Superiores de Monterrey (ITESM); and declaring an emergency.

L. MAYOR AND COUNCIL: AMENDING (CHAPTER 2) OF THE TUCSON CODE RELATING TO MAYOR AND COUNCIL MEETINGS

1. Report from City Manager OCT25-04-604 CITY-WIDE
2. Ordinance No. 10072 relating to administration; effective January 1, 2005, changing the Mayor and Council's regular meeting dates from Monday to Tuesday; amending Tucson Code Section 2-26; and declaring an emergency.

It was moved by Council Member Ibarra, duly seconded, that Consent Agenda Items A through L, with the exception of Items B and I, which would be considered separately, be passed and adopted and the proper action taken.

Upon roll call, the results were:

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

Nay: None

Consent agenda Items A through L, with the exception of Items B and I, were declared passed and adopted by a roll call vote of 7 to 0.

B. PARKS AND RECREATION: NAMING THE LITTLE LEAGUE PRACTICE FIELD IN PURPLE HEART PARK THE "TUCSON CONQUISTADORES BALL FIELD"

Kathleen S. Detrick, City Clerk, announced that Council Member Scott asked for this item to be considered separately.

Council Member Scott thanked the Conquistadores for making a dream come true for several hundred children who wanted to play little league baseball. She said the reason why the field was being named the “Tucson Conquistadores Ball Field” was because they were extraordinarily helpful in getting the money and getting it started for the children who lived in the area.

It was moved by Council Member Scott, duly seconded, that Consent Agenda Item B be passed and adopted and the proper action taken.

Upon roll call, the results were:

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

Nay: None

Consent agenda Item B was declared passed and adopted by a roll call vote of 7 to 0.

I. REAL PROPERTY: APPROVING LEASE AGREEMENT WITH GREYHOUND LINES, INC. FOR AN INTERIM BUS STATION LOCATED AT CONGRESS STREET AND INTERSTATE 10

Kathleen S. Detrick, City Clerk, announced that Council Member Leal asked for Item I to be considered separately.

Council Member Leal said he did not need to make a comment, he just wanted to vote on this item separately.

It was moved by Vice Mayor Ronstadt, duly seconded, that Consent Agenda Item I be passed and adopted and the proper action taken.

Upon roll call, the results were:

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

Nay: Council Member Leal

Consent agenda Item I was declared passed and adopted by a roll call vote of 6 to 1.

## 7. CALL TO THE AUDIENCE

Mayor Walkup announced this was the time any member of the public was allowed to address the Mayor and Council on any issue except for items scheduled for a public hearing. Speakers would be limited to three-minute presentations. He said there were a number of speakers.

- a. Michael Toney commented on the language in the intergovernmental agreement with the University of Arizona regarding the Science Center. Mr. Toney felt the University had not followed the time schedule outlined in the agreement.
- b. Winston Watson urged the Mayor and Council to appoint a replacement City Manager that knew Tucson.
- c. Marissa De la Guerra, representing the Luz Southside Coalition, spoke in opposition to Item 11. "Approving Lease Agreement and Billboard Removal with Clear Channel Outdoor, Inc."
- d. Ted Warmbrand, representing Barrio San Antonio, addressed the Mayor and Council with concerns regarding Consent Item J: "Agreement with the Tucson Unified School District and the Pima County Flood Control District Relating to the Arroyo Chico-Park Avenue Detention Basins Project" and requested the Citizens Advisory Committee be reinstated.
- e. Tracy Williams spoke in opposition to Item 11, "Approving Lease Agreement and Billboard Removal with Clear Channel Outdoor, Inc." and urged the Mayor and Council to direct staff to remove all billboards on City property.
- f. Ruth Marblestone, residing in Barrio San Antonio, addressed the Mayor and Council with concerns regarding Consent Agenda Item J: "Agreement with the Tucson Unified School District and the Pima County Flood Control District Relating to the Arroyo Chico-Park Avenue Detention Basins Project" and requested the Citizens Advisory Committee be reinstated.
- g. Jacky Terchik addressed the Mayor and Council with concerns regarding Consent Agenda Item J: "Agreement with the Tucson Unified School District and the Pima County Flood Control District Relating to the Arroyo Chico-Park Avenue Detention Basins Project" and requested the Citizens Advisory Committee be reinstated.

Council Member Leal noted that a couple of speakers raised questions about the existence or continuation of the Citizens Advisory Committee for the Arroyo Chico Project. He assumed the irrespective of whether or not it was in the write up, that because it had always been stated it would be in existence through the end of construction, there would be one. If that were not the case then they would need to bring that item back as a Study Session item. He asked if Mr. Keene knew the answer.

James Keene, City Manager, said he did not know the answer but would have Benny Young, Assistant City Manager, talk with those who spoke and if the situation was as Council Member Leal stated, then they would bring it back.

**8. PUBLIC HEARING: TUCSON CODE (CHAPTER 21) RELATING TO THE TUCSON CITY GOLF BUSINESS PLAN**

Mayor Walkup announced City Manager's communication number 601, dated October 25, 2004, would be received into and made a part of the record. He also announced this was the time and place legally advertised for a public hearing with respect to the *Tucson Code (Chapter 21)*, relating to the Tucson City Golf Business Plan. He said that before beginning the public hearing, staff had a brief power point presentation.

Fred Gray, Parks and Recreation Director, gave a power point presentation and a quick overview of the 1999 Business Plan, as Parks was instructed to stop losing money, control costs and then implement and drop the old style of management to get operating with the golf market. He highlighted the key business points of the plan, which were to maintain cash flow and pay off their long-term dept. That was a significant portion of the plan, as about five hundred thousand dollars went to long term. They had just been paying on the principal and interest in the last five years. Incremental fee increases over the next five years, Parks would continue to offer special discounts and group rates. They would also be using technology through the web and Internet to promote discounts and specials creating additional revenue streams. Mr. Gray mentioned the increase with the club specials, tournaments, group pricing and the affinity program to reward individuals who spent money and played golf with the city more frequently to add an opportunity for greater discounts.

Mayor Walkup announced the public hearing was scheduled to last for no more than one hour and speakers would be limited to five-minute presentations. He asked speakers give their name and address for the record. He added that since there was such a large crowd he wanted to go over a few rules. He said it was okay to express an opinion, but it was not okay to give a negative expression toward someone that disagreed. That would not be tolerated.

Bill Ismay, a member of the Greens Committee, said he was not on the Greens Committee five years ago, but he understood that the Greens Committee at that time recommended another plan, other than the one that the Council voted on. He wanted to commend the Council on their wisdom because he thought the last five-year plan had gone very well. He noted that the Greens Committee had been looking at various business plans and formats of cities throughout the United States over the years. When the proposal for the new business plan came out a few months ago they spent a lot of time studying it and working with City staff, who had been most cooperative. He was there to say that this time the Greens Committee endorsed by a two-to-one majority the proposed plan for the next five years. On behalf of the Committee, he recommended that the Mayor and Council adopt the plan.

Jim Benjamin, a member of the Greens Committee, said he was past chairman for two terms and was on the original committee when the original plan was set in 1999. He knew there was dissension on the Greens Committee at that time, but he thought the plan worked very well over the past five years and the new plan would work very well. He also represented the Spruce Goose Golf Club, which had about a hundred and twenty members. It was an employees club at Raytheon. He knew most of those members supported the plan as well. He thought that over the next five years they would be able to do a lot with City golf.

Ray Deppa, representing himself, as an avid golfer, was opposed to the business plan. He did not see a business plan; he saw a plan to raise rates. He said they talked about trying to get more clubs, more events to play at City courses and yet they had done more in the last two years to drive the clubs away. He was a member of the Board of Directors of the Old Pueblo Golf Association and that for one year they avoided City courses. There were many other clubs currently avoiding City courses or were just now getting back to playing them. He did not mind paying more to play golf and although the conditions at the golf courses improved considerably over the last couple of years, they left a lot to be desired. He mentioned trying to get a drink of water at Dell Urich. The water fountains did not work. He reported the problem last July and was told it would be taken care of. He added that on that July day, in one hundred-degree heat, there was not even a water canister out.

He asked what was spent to redo Dell Urich and the water fountains do not work. He invited everyone to visit the men's clubhouse at Randolph, which he said was pathetic and disgraceful. The City had not shown it could effectively and efficiently manage what ought to be a very precious asset and resource in the golf mecca of Tucson. Perhaps they ought to consider looking at privatizing the golf courses and going after a private management company, as did Pima County. He said that it would be nice to hit a ball out of a sand trap where they could get a club under it. There was a nice thin layer of sand in those traps. He understood El Rio was going to be a tremendous golf course with lots of bunkers, he just hoped they could find enough sand in the desert environment to put in those bunkers. He restated that he was there to oppose the business plan and asked what the capital improvements would be. He asked what the City was going to spend, outside of marketing, in the next five years, to improve the conditions of the courses.

David Copac, member of the Greens Committee said he served at the discretion and pleasure of the director. He would be speaking on behalf of the current business plan that was provided. He said that the plan would most likely work in the continuation of keeping Tucson golf in the control of the citizens of Tucson. He strongly urged the Mayor and Council not to privatize Tucson City golf. He urged them to keep as many City employees as they could on the pay roster. Tucson City golf played a very important role to the people of Tucson. It benefited groups such as Youth Play, youth organizations, seniors and other sporting events, which would be hard pressed to maintain if Tucson City golf was privatized. He thought that the price structure that was proposed over the next five years including a two dollar increase in fees and then a dollar a year after that would be manageable and he thought that as a public citizen it was a realistic fee

to play. He thought it was below reasonable and customary rates. He urged the Council not to privatize City golf, but to keep it in the City's hands.

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

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

Council Member West said that before she made the motion to approve the plan, she wanted Michael Rankin, City Attorney, or Fred Gray, Parks Director, to address the capital improvement costs. She recalled that the Randolph Clubhouse was mentioned when she met with staff previously. She thought that seeing the program in the black was a significant progress point. In 1999 that was not the case, but now it was and they had been very successful. However, it would be helpful if staff could address the capital improvement costs.

James Keene, City Manager, replied that the Council had the full business plan and it was also available on the City's website so that anyone could look at all of the details.

Fred Gray, Parks and Recreation Director, said there was a capital improvement program listed on page thirty-seven of the business plan. Specifically, at Randolph Golf Course, there were some recommendations for bunker renovations and also for fairway turf. In addition to that, they discussed at the meeting held last week that they would need to do some renovations to the clubhouse at Randolph as one of the priorities. Those things were being dealt with. He thought the capital improvement program would generate two hundred thousand dollars per year for capital improvements. They had five million dollars listed in needs for the five golf courses. It was a drop in the bucket but they would be pursuing it.

Council Member West asked that the Dell Ulrich water fountain be put down on their list too. She wanted to make sure that anybody who went out there could get a drink of water. She was also particularly excited about the marketing plan. Statewide and nation-wide, golf playing was down somewhat. She suspected people did not have as much discretionary income as they had a few years ago to work with their hobbies. She asked staff to talk for a few minutes about the marketing plan because she thought that it was very innovative.

Mike Hayes, Golf Course Administration Assistant Director, replied that the basic plan was to turn the resident card into a resident rewards card. The more frequently a person played, their dollar values would be counted. After a certain point of spending they would be getting discounts thereafter. They would also be discounting clubs and groups based on their participation as well.

Council Member Dunbar asked how many cards had been issued at the current time.

Mr. Hayes said there were roughly eleven thousand resident cardholders.

Council Member Dunbar asked how many golfers he thought they had in the community and asked him to explain why they only had eleven thousand cards.

Mr. Hayes replied he could only venture a guess on how many golfers there were. The national average was about twenty percent. He believed Parks and Recreation had a masterplan that stated eleven percent. Initially it used to be a lifetime card and that was changed several years ago to a yearly renewal of ten dollars. Secondly, he thought that with the discounting done in the business plan, the rate they would approve was just a maximum they were allowed to discount. He thought that with all the discounting they devalued the resident card. Therefore, with the affinity program they felt they would be putting value back into the resident card and it would increase the numbers again.

Council Member Ibarra said he and the Mayor played in a golf tournament last weekend at Randolph and he thought it looked beautiful. He noted that he did not spend much time in the sand, but said the Mayor got first place with his group and he came in third. He did not think that reflected anything on whether or not the Mayor was a better golfer, it was just that the Mayor had a semi-pro partner with him. Although he had a lot of misgivings about raising fees, he was going to vote for the plan. When they talked about what the golf business plan was, especially this particular plan, they needed to vote for it for one basic reason. They should not subsidize golf. They had his vote on this because he thought it was a great plan, a great future and he congratulated them on their hard work and on moving forward.

It was moved by Council Member West, duly seconded, to pass and adopt Ordinance 10070 and approve the Golf Business Plan for 2005-2009.

Vice Mayor Ronstadt asked that an update on the plan come back to the Mayor and Council in a year. He said he knew it was a multiple year plan but wanted a public update in twelve months.

Mayor Walkup echoed Council Member Ibarra's comments. He enjoyed Dell Ulrich and Randolph. He thought they had done a wonderful job and he could hardly wait until El Rio opened. It was his understanding that they had done a great job. However, he played at Silverbell and noticed they needed to do some work there. He talked about getting out on the municipal courses so that everyone could get out and enjoy a great game of golf on a great municipal golf course. Mayor Walkup addressed Council Member Dunbar's concerns and said that one of the reasons was that there were about fifty courses around this region. There were a lot of people who played in private clubs, but he thought the City had some of the finest courses he had ever seen from a municipal standpoint. He agreed they needed to do something about water fountains on the golf courses, either take them out or fix them.

Kathleen S. Detrick, City Clerk, asked if the motion to adopt the Ordinance 10070 included approving the Golf Business Plan for Fiscal Years 2005 through 2009.

Council Member West replied that it did.

Mayor Walkup asked the City Clerk to read Ordinance 10070 by number and title only.

Ordinance No. 10070 relating to parks & recreation; amending fees for play and equipment rental at municipal golf courses by amending the Tucson Code Chapter 21 Parks and Recreation, Article II City Municipal Golf Courses, Sections 21-22 Rates for City Carts; Rental Agreement Required, 21-23 Rates for Use of Private Carts, Subsections 21-23.1 Driving Range Golf Ball Rental Fees, 21-25.1 Regular Greens Fees, 21-25.2 Retired City Employees, 21-25.3 Resident Golfer, 21-25.4 Resident Senior Citizen Golfer, and 21-25.6 Resident Greens Fees; providing effective dates for Subsections 21-25.1 Regular Greens Fees and 21-25.6 Resident Greens Fees; adding new Subsection 21-25.11 authorizing the establishment of frequent user discount policy; deleting and reserving Subsection 21-29 Locker Rental Fees; and declaring an emergency.

Council Member Dunbar asked for permission to explain her vote. Her vote was for Mr. Gray because everyone deserved a honeymoon period and this was his. She said that every bone in her body wanted to vote no. A few years ago when the golf plan came forward they had many people in the audience. She thought it was nice that they only had Mr. Deppa who complained. In the past there had been a lot more. She had seen lots of problems and they talked about them. She was glad they were going to come back and look at this in a year, because Mr. Gray had a one-year honeymoon period.

Upon roll call, the results were:

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

Nay: None

Ordinance 10070 was declared passed and adopted by a roll call vote of 7 to 0.

RECESS: 7:08 p.m.

Mayor Walkup announced that the Council would stand at recess.

RECONVENE: 7:20 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
Steve Leal	Council Member Ward 5
Fred Ronstadt	Vice Mayor, Council Member Ward 6
Robert E. Walkup	Mayor

Absent/Excused: None

**9. PUBLIC HEARING: TUCSON CODE – AMENDING (CHAPTER 23), THE LAND USE CODE (LUC); REGARDING AIRPORT ENVIRONS ZONE (AEZ)**

Mayor Walkup announced City Manager's communication number 602, dated October 25, 2004 would be received into and made a part of the record. He also announced this was the time and place legally advertised for a public hearing on proposed amendments to the *Tucson Land Use Code* regarding the *Airport Environs Zone*. He asked staff to make a brief presentation prior to beginning the hearing.

Albert Elias, Urban Planning and Design Director, gave a slide presentation. He said this was a public hearing on an amendment to the *Land Use Code* regarding the *Airport Environs Zone*. Earlier this year the State Legislature approved changes to the *Arizona Revised Statutes* that required certain changes to local municipalities, zoning, land use, and planning policies related to military operations. He believed this action was taken in recognition of the fact that Davis-Monthan and other military operations had a considerable economic impact in the state of Arizona. Locally, a study showed that Davis-Monthan had a 1.1 billion-dollar economic impact. The provisions in the *Arizona Revised Statutes* were intended to preserve the long-term viability of Davis-Monthan. There was a *Joint Land Use Study* that provided specific recommendations that were also included in the code amendment. He pointed out that the code amendment was intended to replace some interim regulations that the Mayor and Council adopted about eighteen months ago related to Davis-Monthan, and land use compatibility and zoning around the base.

Mr. Elias pointed out to the Council that imbedded in the efforts was the fact that Congress would be going through a base realignment and closure process that would be starting up again in the spring of 2005. The intention of the *Joint Land Use Study (JLUS)* and the intention of the Arizona Legislature were to try to position Davis-Monthan other

military operations in the State of Arizona as strongly as possible during the BRAC process in Congress.

Mr. Elias said there were state law mandates that they were required to deal with. They were included for reference purposes. The graphics presented illustrated some of the required elements in the *Airport Environs Zone*, including the proposed noise contours, the 65 LDN and the 70 LDN noise contours. He pointed out that the airport approach departure corridors were on both ends of the runway. He also pointed out the vicinity boundary where the public notice disclosure was required. He emphasized that State law provided little flexibility with regard to those specific items. The intent was that the State Legislature wanted to make sure local jurisdictions adopted the approach departure corridors, the noise contours, and also the land use restrictions that came out of the *Joint Land Use Study* process.

Mr. Elias pointed out there were some critical steps that would happen in the short term and in the long term. In the short term, if the *Airport Environs Zone* was adopted, the City would have to pursue an amendment to the *Tucson General Plan*, which outlined plan policies with regard to military operations in the area. Also, in the short term there would be an opportunity for the City to play a role in recommendations for the purchase of land in the approach departure corridors funded through bonds approved by Pima County voters earlier this year.

Lastly, Mr. Elias pointed out that after the Base realignment and closure process concluded in the spring, he believed the appropriate direction from Mayor and Council would be for staff to work with the Congressional delegation to secure funding for mitigation programs that could address some of the noise concerns and other types of impacts associated with the flight operations at Davis-Monthan. He thought the City should also pursue State and Federal funding for land use and other development rights, acquisitions in the vicinity of Davis-Monthan Air Force Base. He reiterated that the City Manager's recommendation was that the *Airport Environs Zone* Amendment be adopted and there were also some related recommendations to pursuing mitigation of some issues that they heard at the Planning Commission public hearing.

Mayor Walkup asked for one clarification, which had come up a number of times, and was only an issue when an individual wanted to expand their personal property. He asked Mr. Elias to cover what the current feeling was when an individual wanted to expand their personal property in regards to the *Joint Land Use Study* recommendations.

Mr. Elias stated in terms of expansion of an existing residence in the noise area, only the new addition part of the residence would be required to have sound mitigation. An existing home that was not modified in any way would not be required; so retrofitting of the existing structure was not required. With respect to expanding an existing business in the noise contour district, sound mitigation would apply for new construction if the business was a noise sensitive type use. This included kinds of businesses that had members of the public going into them. A land use that was not noise sensitive would be something like a warehouse, where there would not be members of the public attending.

He pointed out that if there was a change of use to an existing building, if the change of use was to a noise sensitive use, then the sound mitigation would apply. He hoped that clarified the difference between business and residential use.

Council Member Dunbar asked for clarification on the commercial aspect, with regard to expanding on the noise sensitivity. She asked why they were requiring a business to upgrade because they thought it was going to be customer sensitive and why they were not letting the free market determine whether or not a person wanted to go to that business. She asked Mr. Elias to explain that in a little better detail.

Mr. Elias responded that the sound mitigation applied to new construction and expansion of existing buildings only if it was a noise sensitive use, for example if members of the public were going there. In the event that it was not a noise sensitive business, like a warehouse, there was no requirement.

James Keene, City Manager, added that as Mr. Elias pointed out, the whole process had been guided by the legislation that created the *Joint Land Use Study (JLUS)*. Those kinds of recommendations in response to Council Member Dunbar's question about letting the market decide came about because those were the kind of directives included within the original *Joint Land Use Study* legislation itself. They were confined by some of the parameters that were established in the legislation.

Council Member Dunbar said she had a copy of House Bill 2140 and wanted someone from staff to highlight for her where exactly it stated that the State was directing the City to do this.

Mayor Walkup announced the public hearing was scheduled to last for no more than one hour. Speakers would be limited to five-minute presentations.

Michael Toney (inaudible)

Michael Harris said he did not currently live in the city, but had been a Tucson resident for over 60 years and was currently the president of the Davis-Monthan 50. He pointed out that Davis-Monthan Air Force Base had co-existed with the community for longer than most of the people present here had been alive. For most of that part the community embraced Davis-Monthan by growing toward it and around it. The parameter of the Base has been the same for sixty years, about 10,600 acres. The community, on the other hand, was now close to surrounding Davis-Monthan. This co-existence now had different challenges because of this growth. But the good will of the community and the military and the political leadership of the community must continue to work together to see that both prosper and grow within each other. Under the Federal law, any major mission changes at Davis-Monthan must be accompanied by Environmental Protection Agency and environmental studies.

Mr. Harris pointed out that Davis-Monthan was a strategic and essential component in the nations national defense and homeland security mission. It was unique in many ways and the diversity of the mission. The missions housed on the Base were like no other in the country. From the four thousand plus planes that were warehoused at the boneyard, to the 563<sup>rd</sup> Rescue Squadron, to the headquarters operations of the Twelfth Air Force, to the singular training site of all A-10 pilots in the United States Air Force, the full component of the 355<sup>th</sup> Wing would be and was a source of great and pride to many. While some would argue that the passage of the *Joint Land Use Study* would place a greater burden on those within the identified flight path, he suggested that most sacrifices had been made by the tens of thousands of men and women who served at Davis-Monthan over the last sixty years.

Mr. Harris continued that it had been estimated there were thirty to forty thousand people living in Tucson today, who were retired military, who chose to come back to the community after having served on the Base. Sacrifice was rarely a quality that was equally distributed. From time to time those who thought they were sacrificing too much when a plane flew over, and felt they should not be singled out on a map, advising to the public the presence of a military air base, should think about that again. Few have been asked to put themselves in harms way in fighting this nation's war. However, there were thousands of people who lived and worked on Davis-Monthan and those planes were a lot louder to them working and living on the Base than they were to most of the people living in the community. They were also deployed to Iraq and Afghanistan and other frightful places, leaving families behind in a community they often hardly knew. He told the Council that was a sacrifice of an equal risk and sharing. The men and women of Davis-Monthan did that job everyday, for every one in the community. Mr. Harris said they had a right to enjoy the quality of life in Tucson as much as anyone. The quality of life enjoyed resulted from having a great university; an exceptional community college system; excellent schools of private and charter; as well as wonderful health care and plenty of opportunities for recreation in a diverse citizenry and cultural; coupled with the prettiest mountains, desert and weather.

Mr. Harris concluded by saying those who enjoyed liberty did so because others voluntarily sacrificed, spending their lives ensuring that we could do so in Tucson. Tucson and Southern Arizona contributed to this nation's welfare and safety, because few other areas or Bases in the country had the ability to do so. The Goldwater Range, the vast area of open air space, the runways and taxi ways, to accommodate snowbirds, guard units from other states and other countries were only a few of those unique elements that were present. There were other communities that had Bases in them, that also contributed to this nation's defense. Some communities in the country did not, and they could not, but they were grateful for what those here in Tucson did, both as citizens and by serving the nation by wearing a uniform at Davis-Monthan. He said the community paid a small price for what they received in return.

The second point that Mr. Harris made was that the quality of life in Southern Arizona was also a function of the very existence and presence of Davis-Monthan. He continued that obviously the economic impact on this region could be measured by

pointing to the fact that there were over six thousand, five hundred military men and women stationed here, and they had ten thousand dependents living on the Base or in the community of Oro Valley, Marana, Sahuarita, the City of Tucson and the County. They also knew that there were two thousand civilian employees who earned a living on Base, just as they knew that in the last two years, nearly one hundred and forty million dollars was spent on infrastructure and other capital improvements on the Base, nearly all done by local contractors and their employees. The fact that Davis-Monthan was Southern Arizona's fifth largest employer was important to know.

Mr. Harris told the Council he wanted to use his remaining time to tell them there were a lot of things less obvious to a lot of people in the community, but it was clearly well known to a lot of others, dozens of social service agencies, not for profit organizations, and community based organizations throughout the region that for many years had seen the presence of Davis-Monthan in their own volunteer force. The men and women of the Base, even if they were only here for a couple of years, left their marks on Habitat for Humanity, the Boys and Girls Clubs, the YMCA and YWCA, the Boy Scouts and Girl Scouts, public school mentors, Mobile Meals, the San Xavier Mission School improvements, reforestation thousands of trees on Mount Lemon after the devastating forest fires, working as volunteers in the community of food banks, boys and girls clubs, and running in charity walks like the "Conan Walk for Breast Cancer." Mr. Harris said they were all on a volunteer basis and the list was a lot longer than what he noted. He added that they also gave money to this community's favorite charities through the United Federal Appeal on base. Last year they gave nearly four hundred thousand dollars.

Roy Thatcher presented petitions to Mayor and Council for the twenty-percent protests from the one hundred fifty-foot boundary region and said that it would require the majority of the Council to pass the amendment. He was there to address the Council about an issue he felt sometimes had the subtlety to lead the Council to make the wrong decision, which would potentially be a disaster. Mr. Thatcher said he had a PHD in Physics, so he was not saying that lightly. He felt it was important for the Council to know that was something he understood. He was concerned about sound levels of aircraft flying above Tucson. It was clear to him that the City needed good measurements that were accurate representations of what was really happening. The airport's method of averaging dead time, with the peak noise of the loud aircraft, was clearly wrong. To demonstrate this, he gave the example of an aircraft producing 150 decibels of sound levels and said that a few seconds of exposure to this would produce hearing loss. Yet the aircraft method of averaging would not show this to be a significant problem.

Mr. Thatcher continued that it was not so bad when they were using (inaudible) points, but now that they were using fancy jets with very high levels of output, it was a real problem. He said they had children and adults to protect. The methods that the Airforce used were totally wrong. Good techniques existed and needed to be investigated and used in Tucson. He added that the attorneys who advised the Planning Commission told them they did not have to pass on the issue before the Council. The Council had

until the end of 2005. The Council was safe from the pressure of having to make a decision that ran a real risk with disastrous consequences for the men, women and particularly the children of the community. They did not need money to fix up their houses to make them quieter inside, because children could not be kept inside. Children could not be kept from going outside to play and keep their hearing protectors on, so it was not the solution. This problem could not be solved that way.

Mr. Thatcher advised the Council that the Air Force was in violation of regulations that required them to do proper studies of sound problems. The Air Force had not done any studies, not even their biased studies. Their method of evaluating sound levels was totally inaccurate. He said the Council had a great opportunity at the meeting. They were free to defer consideration of the ordinance being considered. The lawyers were asked by the Planning Commission and found the answer that they could defer until December 31, 2005. They were free to allow the time to find the real answers, to find out a safe and sensible way to protect the community and the children's hearing. If the Council did anything else, they would put the community at risk. Mr. Thatcher thought the City could do better than that. He had confidence that if the Council could come to understand the issue clearly, they would defer the item and give them a chance to do the sensible thing, to protect the hearing of the community. He added that giving people money to soundproof their houses would not work. Even if they were rich enough to make the houses a safe haven for hearing, children would still go deaf. Children could not be made to wear hearing protectors. He urged the Council to defer the passage of the ordinance that would allow the Air Force to be sloppy about the hearing of the community. The Air Force would be as good as the Council required them to be.

Mr. Thatcher concluded by saying the Air Force was not going to close Davis-Monthan. There was no other place that was clear of airline flights. The Air Force would keep Davis-Monthan there and they would make it as clean as they were required to. He urged the Council to protect the community and the children. If the flood of airplanes were not controlled, the City of Tucson would lose visitors whether or not they were golfers.

Glen Kerslake, a resident of the city, said that like the Pastor who gave the invocation, he also prayed for the City Council. He said it was going to be a long night and appreciated everything they did. For the past two years citizens from the public and private sector studied all the issues surrounding the future of Davis-Monthan Air Force Base, which had been an important part of this community for over fifty years. He said that everyone had made a massive effort to meet the State Legislature's mandate. Thousands of volunteer hours had been donated by concerned citizens like Priscilla Storm, Mike Harris, Bill Carroll, Dorothy Finley, Dan Stringham, Bruce Wright from the University and many others that were not mentioned. Untold hours and money was spent by City staff, especially Sarah More, Planning Administrator, and they had engaged top professionals to study land use around the Base, noise abatement, and the economic impact of Davis-Monthan to the community.

In addition, Mr. Kerslake said dedicated members of the Air Force from the 355<sup>th</sup> Wing and from the Twelfth Air Force, spent time in seemingly endless meetings over the past several months to help shape a plan which was workable and safe for everyone living in the valley. He reminded the Council that the families of the people at Davis-Monthan Air Force Base were part of this community also. They lived in Tucson as well. Therefore, after two years of hard fought negotiations and input from all sides of the community, a comprehensive plan was before the Council for their approval. He urged the Council to vote for the plan and not delay.

Lisa McFarlane thanked the Mayor and Council for the chance to speak. She presented a petition containing enough signatures for twenty-percent protests in one of the one hundred fifty-foot boundary regions, thus the super majority of the Council was required to pass the amendment. They were fighting for a change in Davis-Monthan operations as driving a zoning overlay change. They were told to expect more flights, louder jets and more night flights. Her neighborhood, which was several miles northwest of the Base, was being adversely affected, for the alleged betterment for the rest of Tucson. She said it might be that such sacrifice of the few for the better of all was politically allowable and even legally allowable. However, they contended it to be morally wrong. The *Joint Land Use Study (JLUS)* upon which the law was based stated they now lived in an area considered incompatible with residential use, both in terms of noise levels and safety. She referred to pages 5-9 and 3-5 of the *Joint Land Use Study*. She noted that a legal change was being made that would clearly devalue their property. Whereas in the past, there was essentially a quaint country road flying above their heads, was fast becoming the Los Angeles freeway with semis blasting through at all hours of the day and night. Even now, neighbors complained about being unable to sleep or being awakened from sleep, as was pointed out during the hearing on September 1, 2004. Their goal was to save their neighborhood to the northwest of the Davis-Monthan runway. They did not live near the runway. They could not see the Davis-Monthan runway from their neighborhood, as it was miles away. Most of the affected people lived closer to the University of Arizona than Davis-Monthan.

Ms. McFarlane told the Council that if they felt it was important to keep Davis-Monthan in Tucson, they would encourage the Council to prevent future development, especially to the south. She also encouraged the Council to prevent future development in her area and asked that they not grant variances to the northwest of the Base. She urged the Council to follow the unanimous recommendation of the Planning Commission and postpone any changes to the northwest of the Base, pending further study. She requested the delay of a full year to allow for any Environmental Impact Studies so they could more effectively work with their elected representatives.

Regarding the notifications sent to owners, Ms. McFarlane said they contained inadequate notice and lacked of full disclosure. The notification did not mention notification of the high noise zone or expansion of the *Airport Environs Zone*, or increased building requirements or that disclosure would be required upon resale. An overwhelming majority of affected people remained unaware of the changes mentioned. A significant number had recently bought their house and never received any notification.

She continued that there was no community involvement of people to the northwest of the Base. During the September 1, 2004 hearing, the City acknowledged that the initial notification was unclear, yet chose not to do another notification to all affected parties.

Ms. McFarlane said justice would not be served if thousands of property owners sat helplessly unaware that these actions were devaluing their home and property. Increasing noise has an adverse affect on property values. Thus, a property owner in the new high noise zone should be compensated. They understood that the Constitution of the State of Arizona, Article 2, Section 17, was very strongly worded to protect property owners. If private land was even damaged for the public good, then a compensation fund should be set up to compensate people in advance of the damage. Ms. McFarlane requested that an Environmental Impact Study be done in advance of this zoning overlay change to better understand the effects northwest of the Base.

It was their belief that before any new plane came to the Base, and an environmental impact study must be completed based on flights of A-10's and C-130's, which were currently defined as missions of the Base. They wished to avoid planes flying low over their houses and advocated the recommendations made by a University study in 1979 to avoid impact to central Tucson. She said it made no sense to have those planes flying over the City every day. Such an environmental impact study should avoid using the average method as explained earlier by Mr. Thatcher. They were inadequate. Damage was done by peaks, not averages. OSHA had strict requirements for noise exposure, and they wondered if all the businesses in the area had been notified.

Ms. McFarlane concluded that outside noise was unfixable. Many lived in Tucson specifically to enjoy being outdoors and as mentioned earlier, children played outdoors and that could not be fixed. They had the utmost respect for the U.S. Air Force. They knew fellow Americans were being killed in a foreign country engaged in upholding American's freedom and democracy. They were being asked to deal with more jets, louder jets, more night flights, less safety and less clear health consequences, all without compensation. They did not feel their fellow Americans would feel that was right. They urged the Council to represent them also and not just the interests of Davis-Monthan. She implored the Council with the words of Abraham Lincoln, from one of the finest speeches ever written, that "*Government of the people, by the people, for the people shall not perish from the earth.*"

Levi Jackson, Tucson Metropolitan Chamber of Commerce, urged the Mayor and Council to support the expansion of the restrictions of development near Davis-Monthan Air Force Base, according to the proposed *JLUS Amendments*. Property owners would not have to change the building compositions of their existing homes or businesses to meet the noise standards of the *JLUS Amendments*. The amendments would not force homeowners in the proposed high noise districts to pay for adjustments for noise reduction and the amendment would not affect those who expanded their buildings unless deemed noise sensitive. Only the buildings on vacant lots would need to meet the proposed standards.

Mr. Jackson said that on the economic front, Davis-Monthan Airforce Base provided the Tucson community with countless well paying jobs. According to a recent study released by the Eller School of Business at the University of Arizona, average wages in Tucson were not keeping pace with Phoenix or other communities the same size as Tucson. To jeopardize those well paying positions provided by the Base would be unwise. Davis-Monthan Airforce Base was the fifth largest employer in Southern Arizona and brought in 1.2 billion dollars a year in revenue to the Tucson community. In an article written by Jonathan Aguirre, of the *Arizona Daily Star*, he stated "Davis-Monthan supplied about ninety-five hundred jobs; had a basic payroll of about three hundred and sixteen million dollars; paid about twenty-seven and one-half million dollars in direct taxes to State and local governments and spent about two hundred and fifteen million dollars on operating expenses, infrastructure and supplies." What was not included in the figures were the multiple contracts that Davis-Monthan also had with local businesses and merchants.

Mr. Jackson continued that supporting the proposed *JLUS Amendments* would help to ensure the future of Davis-Monthan Air Force Base. The City as a community needed to take all measures necessary in order to protect one of Tucson's largest economic forces. For those reasons and the fact that Davis-Monthan and the training performed at the Base were critical to the national defense, the Metropolitan Tucson Chamber of Commerce urged the Council to vote in support of the proposed *JLUS Amendments*.

Karen Falkenstrom, representing the Arroyo Chico Neighborhood Association, said she had several questions left over from the last Study Session. She said she would read them for the record and said they did not have to be answered immediately.

First, they believed the current mission of Davis-Monthan specified A-10's and C-130's, both of which were relatively quiet aircraft. She noted that Colonel Sherwood, who gave a presentation at the last Study Session, said that before any new planes would come to Davis-Monthan Airforce Base, an environmental impact study would be done. She said Colonel Sherwood also stated that there were three F-16's and three AG-60's currently at Davis-Monthan. She asked if the Council could point them to a copy of the environmental impact study that was done for those. She also said there were significant numbers of visiting jets at Davis-Monthan during the year and asked if there was an environmental impact study required for those planes.

Secondly, she said the Colonel said a person in the ground might hear ninety-five to a hundred decibels for an A-10 for fifteen to twenty seconds. Since the zoning overlay change was allowing planes four times louder, that would bring them to about 120 decibels. Pain would occur at about 125 decibels and irreparable hearing loss would occur at 130 decibels. That would bring it very close to the limit.

Thirdly, according to the Colonel, Ms. Falkenstrom said fifteen to twenty miles out, planes were at three to four thousand feet and dropped three degrees towards the Base. Via simple geometry, this would translate to about 500 feet over the houses that

were two miles from the Base. Yet in answering questions of how loud planes were at typical landing heights over houses northwest of the Base, the Colonel quoted 85 decibels for an A-10 at fifteen hundred feet. Instead, they asked that he answer the question of how loud was an A-15, F-16, or an F-18 at 500 feet.

Ms. Falkenstrom said the Colonel mentioned airplanes that flew after 10:00 p.m., flew only to and from the southeast. However, on October 20, 2004, between 10:14 p.m. and 11:15 p.m., it was documented that twenty-two planes flew overhead, two of which were ear splitting loud. She said it was also a matter of public record as to when the planes arrived at Davis-Monthan. She asked how that discrepancy came about.

Ms. Falkenstrom said zoning overlay changes were good planning tools to prevent future development, but it did not make sense once land had already been built upon. Their houses could not be moved. It would be a small consolation to be told they would be allowed to stay, when the report upon which the law was based would state that the house would be incompatible with residential use and incompatible in terms of safety. They wondered what the Colonel meant by the fact that the Department Of Defense considered houses in this new noise range as conditionally compatible with residential use. She asked what the conditions were.

Ms. Falkenstrom continued that the Colonel also mentioned that eighty percent of flights were to the southeast and implied that few planes flew over the heart of the City. The Colonel stated that two hundred and eighty flights flew during a certain week. That meant twenty-percent or fifty-six flights flew over the heart of the City or about one per hour Monday through Friday from 9:00 a.m. to 9:00 p.m. It seemed a lot more often than that and they had documentation to prove it. She asked if the two hundred eighty flights that the Colonel cited were typical or was that a low value.

In conclusion, Ms. Falkenstrom asked if it was true that if a dual engine jet loses an engine, most pilots could maneuver and often land, while if a single engine jet failed, the jet would likely fall along the flight path. If so, and if a single engine jet would replace the A-10, which was one of the plans, would the flight path be inherently less safe than it was now. She reminded that it was the Council's living constituency that lived down there.

Dorothy Finley said she was a native and resided in Tucson for eighty-four years. She certainly knew all different kinds of planes that had flown before and even now. She thanked the Council for their planning and for looking ahead to the future. If they had done that when she was a child, they would not be in the quandary they were in now. Davis-Monthan was there before any of the houses were there. She remembered it was quite a trip out to Davis-Monthan when she was a child. She told the Council the men and women in the Air Force were here and had volunteered to be on the front lines. Many had their own lives taken. She thought it was important for them to be able to come here to train at Davis-Monthan. It was the ideal place.

She thanked Sarah More for her good work and said she had been to all her meetings. She knew Ms. More had taken in a lot of detail. Ms. Finley knew there had been some good modifications. She appreciated what the City was doing in planning for what they were going to do in the future. Ms. Finley distributed materials, which would answer many of the questions about the noise and the altitude. Again, she thanked the Council and urged them to support the plan.

Edward O'Hanlon resided right in the middle of the accident potential zone number two. He could see the futility in appearing before the Council to help those affected by the Davis-Monthan noise. He suggested that the only way to resolve the condition would be to set up a committee to hire an engineer for a day when the planes were the noisiest to record the decibel level in the area. He knew the results of that test would show that Davis-Monthan noise would far exceed those noise conditions as laid out in the *United States Department of Health and Human Services Publication*. Also, to retain a lawyer to start a class action suit against the Council for (inaudible) and issuing building permits within the area, knowing that by doing so they were creating conditions detrimental to the health of those persons to whom the permits were given.

Mr. O'Hanlon continued that the money they should sue them for, ten million dollars, to be used to sound proof their homes, so that at least they would not hear the plane that would inevitably land on top of them. Finally, he said that if they did not stop this now, an area of blight and desolation would grow around Davis-Monthan Air Force Base, because people would not be able to sell their houses. This area would grow with time, and the latest move by Davis-Monthan was only the thin edge of the wedge. He urged the community not to sit around asking that their homes be saved. They were Americans. They should not accept such conditions that were being forced upon them. He urged the community to fight those impositions.

Peter Gallo, representing Monterey Water Company, said the welfare of Davis-Monthan was critical for the City of Tucson, critical for the Nation, and he implored the Mayor and Council to do the right thing and accept the amendments.

Kala Peoples, a resident of the affected neighborhood, said her home was less than one-quarter mile away from El Encanto, where the homes were currently valued at approximately one million dollars. Her home was near the center of Tucson at Broadway and Country Club and was within two blocks of Reid Park and the Tucson Zoo, where thousands of Tucson residents visited every day. She said that if the City Council passed this rezoning, it would be four to five times more likely that an Air Force jet would crash into her home or a home of her neighbors in El Encanto, Reid Park, or the Zoo.

Some have said that was the price of freedom and that she should be willing to sacrifice her safety, her family and her neighbors so that the pilots in training at Davis-Monthan could learn how to fly over their homes. She had little doubt that the American military would be willing to protect her, an American citizen, from a terrorist. However, she thought it was clear to any well informed person that she was in much more danger of being killed by an American military jet crashing into her home than she was in danger of

being killed by a terrorist. She asked why the Mayor and Council were not willing to protect her, a Tucson citizen, her family, her neighbors, the kids playing at Reid Park, or the animals at the Zoo, from the United States Air Force. With increased flights, it was just a matter of time before one of the pilots in training crashed one of the jets into the City.

Ms. Peoples agreed the Base was here first. She had in her hand a vintage brochure from the 1960's, published by the Tucson Chamber of Commerce, encouraging people to vacation in and/or move to Tucson by extolling the virtues of the City. It talked about the climate, the year round golf, the historic areas, the beauty of the surrounding land, the reasonable property values, et cetera. It did not warn people that there was a military base nearby that would eventually make their home incompatible with residential use. She told everyone to remember when they were in their twenty's and planning on building a home in Tucson in the 1960's. They did not realize that by the time they were ready to retire in 2005, their property value would drop dramatically and they would be in danger of a military jet crashing into their home. She noted that the Base was indeed in the community first. Davis-Monthan landing field was dedicated in 1927 by Charles Lindburg. It was named for Tucson residents, Samuel Davis and Oscar Monthan. It was dedicated to them because they died in plane crashes while serving in the United States Army. She could not help but notice that when the Air Force jet crashed just outside of the University of Arizona and killed two students, Leticia Humphrey and Clarissa Felix, nothing was named after them. Ms. Peoples concluded, by asking if something would be named after them, if they were to die after an Air Force jet, flown by a pilot in training, crashed into their home.

Mike Farley spoke about some of the changes made to the *Joint Land Use Study* document. In December 2003, the Mayor attended a meeting of the *Joint Land Use Study* Committee of which he was a member for over three years. At that meeting, the Deputy Commander of the Base, who was now the Commander of the Base, was in attendance, as were people from the Department of Commerce from the State of Arizona, people from the *Joint Land Use Study*, and stakeholders. With the Mayor leading the meeting, they made an agreement at that time that the property in the paddle, three thousand feet in the end, would have fifty-percent coverage ratio on the land and twenty-five people per acre. He noted that the Mayor was nodding his head, as he too remembered it very well. Two months later when the *Joint Land Use Study* came out, it suddenly had been changed by all the stakeholders and everybody at the meeting, to thirty-percent coverage and twenty-people per acre.

He told the Council that if they wanted to do the calculation at some point, he would show them how much that would cost the landowners. They were already bearing the brunt of the reduction in property values, because properties inside the paddle, in the 30,000 foot level were selling between ten and twelve thousand dollars an acre and properties just on the other side of the paddle line were selling for three times that amount. This was going to further reduce the value of those properties inside.

Mr. Farley said the Mayor then called him and a number of other people at that meeting several months later and agreed that something had been changed, but did not know by whom. He referred to a document from the Arizona Department of Commerce to the Mayor, where a number of changes were mentioned, where they agreed to go back to the fifty percent / twenty five percent coverage. A month ago, Mr. Farley said he went to the Planning and Zoning Commission meeting and discovered that the City Attorney had suddenly decided that they could not make those changes because the Arizona Legislature passed some law regarding the *Joint Land Use Study*. His question was why, if the people that wrote the letter made the following statement based on all of the corrections that were in there, which said “All *Joint Land Use Study* corrections, modifications, identified herein shall be undertaken and new documents provided to the City in the next few weeks.”

Mr. Farley told the Council that what they were about to approve did not include those corrections. He urged one member of the Council to be kind enough to make an amendment to include all the corrections that were in the letter to whatever it was that they would pass so they would be fairly treated and the word of the Mayor and the head of the Base and all the other people involved, and all the time that was spent in going to meetings and having public hearings and reaching an agreement were honored. He thought it was important. He noted he had been to an attorney, other than the City Attorney, and was told that based on the letter he had, there was absolutely no reason they could not make those corrections. He was sure it was no surprise that the two attorneys had different opinions. Again, he urged the Council to make the corrections before passing the item.

Diana Seal complained about the excessive noise of the aircraft from Davis-Monthan in the recent weeks. She lived in the area for thirty-four years and was not a newcomer to the area. She raised two children during that time. Over the years there were times when the aircraft noise from the jets of Davis-Monthan had been annoying, waking up sleeping children and interrupting conversations or television programs. There were many times when they could hear the jets approaching. They would all run outside and look at the jets and try to guess what they were. Sometimes the jets were so low or so large that her children thought they could actually reach up and touch them.

Ms. Seal said she was not at the meeting to complain about those times. She wished to bring two specific things to the Council’s attention that happened recently. On Monday, October 18, 2004, at approximately 6:32 p.m., she was in her home with the doors and windows closed and the cooler on high. She heard a jet in the distance approaching for a landing. The noise became so loud that she and her husband had to physically put their fingers in their ears to try to block the noise. The noise got louder and louder. It did not calm down. Their four dogs did not bark at the jets or the sirens; however, they were running around the house yelping and crying because their ears were hurting them. She could not even try to accommodate them, because if she took her fingers out of her ears, it hurt. After the plane handed, she had a headache and ringing in her ears for several minutes. Her dogs were literally afraid of the noise and were trying to get onto her lap. She could only imagine how the noise also affected all the animals in

the Zoo, which was only two blocks from her house. If this was the type of aircraft that Davis-Monthan planned to bring in and to fly more frequently, it would not be acceptable. On Wednesday, October 20, 2004, between the hours of 10:30 p.m. and midnight, there were groups of jets landing. In previous years there would be groups of two, three, or four jets landing, sometimes after ten o'clock. Never had it been to the extent that it was on October 20, 2004. That particular night, the jets continued landing until almost midnight. Again, she said that was not acceptable.

Ms. Seal concluded saying she had been a supporter of Davis-Monthan for many years. She was not a newcomer to the area or to Davis-Monthan. In fact, she was a fifth generation Tucsonan. Her children were sixth generation Tucsonans and her grandchildren were seventh generation Tucsonans. This was not a complaint that she made lightly. She could not afford approximately twenty one thousand dollars that was mentioned in a newscast earlier in the week to soundproof her home to protect her hearing and that of her children and grandchildren. She also could not afford to move. She restated that she was not opposed to Davis-Monthan. She was not trying to get them closed and she was not opposed to their flight pattern. What she was opposed to was the increased level of noise that the new jets coming in were going to be causing. This was becoming more than just an inconvenience. It was now a health issue. She did not feel it was in Tucson's best interest to bring in aircraft that could cause damage to a person's hearing. She urged the Council not to expand the noise levels of the zones and not to permit an increase to the loudness of the aircraft.

Brook Hardy spoke against the proposed amendments. She was at the Planning Commission hearing on October 6, 2004, where it was evident that there were strong concerns from the community, a lack of overall education and many unanswered questions. There was also a recommendation passed by the Commission to extend the interim airport environs guidelines and postpone a vote on this amendment until December 2005. She did not see that in the City Manager's recommendations on the sheet that was handed out and wondered what happened to that recommendation, to give more time until the community could really understand the implications and more public education could be done. She felt very strongly that if the Council represented its constituents, it must consider and address the numerous concerns that had been brought up before taking up any actions.

Ms. Hardy said that she was highly skeptical of the idea that if this did not pass, Davis-Monthan would leave. At the last Commission meeting she attended, a Davis-Monthan representative spoke of several compelling reasons why Davis-Monthan would stay in the area. One of the reasons was that ninety-five percent of all F-16 pilots were trained at the nearby Barry Goldwater Flight Range. She was not sure where else they would go, as this was a very unique area. There was no other such area in the Country and Tucson was close to it. That made a very compelling reason for Davis-Monthan to stay in the area.

Ms. Hardy brought up another point about the environmental impact study. If a new study were to be conducted, she thought that before the Council voted on the issue,

they must know that this would be conducted in a manner that would take into account the noise spikes and it would not be based on averages. She was not sure they had that guarantee or they knew how, or when, that would be conducted.

Ms. Hardy also pointed out what a critical public health issue this was. Increased missions and larger planes meant more pollution. Burnt jet fuel was seriously toxic. It was carcinogenic. This was a high-density populated area in the heart of the City. The environmental connection to cancer and respiratory problems was very real and was difficult to calculate or follow. This was a critical public health issue and she asked the Council to take that into account as well. Ms. Hardy said that sound mitigation in existing homes apparently would not be required, enabling everyone to save a little money. While that would be great, she said that would not protect their hearing or account for a diminished quality of life. She urged the Mayor and Council not to support the amendments. They elected the Council. They placed not only their trust in them, but also their health and their quality of life. She urged the Council to represent them.

Cyd Gann said the City's concern was the possible closure of Davis-Monthan Air Force Base and the City would do what it could to retain its major tax break, even at the cost of the citizens' health and growth of the economy. To the best of his knowledge, the City owned the land the Air Force Base was on and it would cost millions of dollars for the military base to move itself into the boneyard. They invested too much there to just leave. He urged the Council to reject the measure and stand up for the taxpayers. They were not asking the Council to approve the measure and at a later date request money as compensation. The Council could not put a dollar figure on what was actually lost, from property values to students waiting on overhead planes to continue class, or by the individual who lost sleep due to extreme air noise and could not work efficiently. This could occur from the loss of quality of life, which could not be degraded without compensation, as stated in the Arizona Constitution for taxpayers, which was supposed to protect them from that sort of event.

Mr. Gann asked if the Council could guarantee that they be compensated. He thought not. He also asked if the Mayor and Council Members were aware of the amount of increased plane activity within the last few years, or what impact it would have in the future, with the increase of jets Davis-Monthan was predicting. He asked what happened to the City's noise ordinance and if the military was exempt from that law. Were they allowed to diminish the taxpayer's quality of life?

Mr. Gann said they were not asking for the closure of the Base. They were there for years and could be for many more. The City needed to explain to the State and Federal Government that this was bad for the economy and the citizens, and there must be some type of medium to be reached. If the amendments went into effect and his quality of life was fairly diminished, he said he would sue the City for diminishing his quality of life and he would win. He would also be a strong advocate for homeowners standing up for their rights. He believed he was speaking for most every taxpayer there in saying some of the planes and flight times were diminishing his quality of life. That could not continue to happen. If it did continue to happen, they might have repercussions

for years to come. He mentioned crowds for spring training baseball games, number of families that visited the Zoo, along with all the festivities at local parks. There would be no new schools, churches or major businesses that would attract large crowds due to possible plane crashes. These assurances would severely limit the economy's growth potential. This would include the Rio Nuevo project, which would be severely affected. They did not know and would not know for years to come. He asked for an environmental land study before this measure was passed.

Mr. Gann asked about the new golf course and the two-dollar raise for a game. If the Council thought people would want to pay two dollars more and hear more airplanes that hurt their ears. He urged the Council to help them, for the future of Tucson and all its children

Leslie Pierce said many people spoke in praise of Davis-Monthan Air Force for the volunteer work they did for the community and the sacrifices they made for their country. She wanted to make it absolutely clear that no one protesting the zoning overlay was calling into question the value of those sacrifices. They did not want the Air Force to leave. They wanted the Air Force to be a good neighbor. For many years the Air Force and the City had apparently been able to work well together and kept the noise down to a dull roar. But lately, it had become unbearable. It appeared the Air Force had been given a reasonably good size sandbox to play with, yet they wanted to bring in bigger toys. She did not think it was fair to bring them in, without having done a full environmental impact study to accurately determine what the effects were going to be.

Ms. Pierce said there was an article in the *Arizona Daily Star*, which said the noise contours were based on five squadrons of F-16's. As she understood it, the Davis-Monthan mission had three squadrons of A-10's. If what they were hearing were three squadrons of A-10's, they were going to hear at least two-thirds more noise from having two-thirds more squadrons. The F-16's were anywhere between four and eight times as loud as A-10's. She did not know how many planes were in a squadron, whether there were three or five and how that multiplied out. They had too much noise over their houses as it was. As people pointed out, on October 20, 2004, twenty planes flew over between ten and eleven o'clock at night, not way up in the air, but right down over their heads. That was unacceptable. If that was just with A-10's, she shuttered to think what was going to come next. The A-10's were going to be phased out, because they were nearing obsolescence. Whatever replaced them would be louder. The Air Force said they would not know until they knew what planes they were getting. She assured the Council they would be louder. That was unacceptable. She said that golf courses, the Zoo, the festivals, the University, the gentleman applying for a liquor license at Country Club and 22<sup>nd</sup> Street, could all be kissed goodbye.

Elizabeth Salper thanked the Mayor and Council for hearing them speak and said they were all extremely concerned about the possible increase of jet noise over their neighborhoods. She opposed the noise ordinance overlay zone and supported the unanimous recommendation of the Planning Commission to continue the current noise policy until December 2005. She lived in the Broadmoor Neighborhood where she and

her husband were raising their two and a half year old son. They loved their neighborhood. However, she was there with her son as her gauge for what was right and what was fair. The current noise level was already so high that when they were outside, her son covered his ears and said the planes were too loud, they hurt his ears. She asked what could she tell her son if the current noise level was increased by four times the current level. She lost about fifteen minutes a day of reading to her son because he could not hear over the jet noise. She asked the Council to imagine how the increased noise level would affect ten schools and countless pre-schools and day care centers located within the proposed high noise zone. She asked how many children would get a double dose of jet noise, one at home and one at school. To illustrate this point further, she quoted what the Federal Interagency Committee on Aviation Noise (FICAN) acknowledged in their 2000 report. She read "Research on the affects of aircraft noise on children's learning suggests that aircraft noise could interfere with learning in the following areas: reading, motivation, language and speech acquisition and memory. The strongest findings to date were in the area of reading, where more than twenty studies had shown children in noise impact zones were negatively affected by aircraft."

Ms. Salper continued that the increase in noise would affect all of their neighborhoods in the high noise zone. She strongly urged the Mayor and Council to head its own Planning Commission and to call for an environmental impact study that included accurate monitoring of decibel levels over the affected neighborhoods. That was harmful noise and those were their children.

Dr. John Birdsell apologized for not preparing a formal presentation. He said he just wanted to make a few comments. He lived right in the heart of the impacted region. What everyone was pretty much trying to say was that they all would like Davis-Monthan to stay in Tucson, but for it to stay as a reasonable neighbor, meaning no loud parties, no excessive noise. In that case, the loud parties were aircraft with decibel readings in the 140's. He did some amateur sound measurements from his house, which was just north of Robison Elementary School over the past week. The average for the A-10's in decibels was about eighty-two. Some of the other planes were in the ninety-five region and there were several A-6's, which had been flying in recently, which was an obsolete intruder. He did not know why they were bringing them in, but those were one hundred decibels. If the proposed noise overlay would increase noise decibels by four hundred percent, it would increase up to one hundred forty decibels. He pointed out that the damage point for hearing was one hundred thirty. He did not see how it was compatible with people actually living, working, walking and playing outdoors. He thought the issue was that they needed to get some sort of innovative ideas going. There needed to be more time for people to think about this, to learn more about the facts. Just because the State had mandated under ARS § 28.82 or .83, that the Council was required to do this, it did not remove the Council's obligation which was also to be representatives of the people and was also an obligation to protect the people in individual rights under the Arizona Constitution, in particular Article 17, Section 2, which explicitly states that no property should be damaged or taken without just compensation first being made. As far as he could tell, no one had been talking about any compensation, however, that was clearly an issue of defacto taking and damaging of property. He thought that what

everyone was asking was a delay in voting “yea” or “nay” until more information could be gained.

Another potential problem he noticed was that the City of Tucson’s official web had been printing out misinformation about the noise overlay zones. He was not sure if anyone was aware of that. In the power point presentation, the Tucson City website had been putting out information that the current decibels 65-69 noise contours extended well into Township 14, Range 14, Section 17. That was actually incorrect. The current decibel 65 to 69 noise contours extended only to the extreme northwest corner of section 21. It did not extent hardly at all. That meant the City was misrepresenting the proposed noise contour to the public for an unknown amount of months and the difference was by over a mile. He noted that if people went to the website in order to get information on this proposal, they would see the current 65 decibel sound contour as the City had it, deep into Section 17, where as the actual current 65 decibel sound contour barely even touched the southeast corner of Section 16. That was a discrepancy of a mile. People relying on the site to provide this information accurately to them had been accidentally deceived. He thought it was very important that the City take the time to correct the misinformation that was on the City’s website. He documented it and had backup documents. He said he could send the Mayor and Council either copies of the power point presentation or of the images that showed the major flaw. He thought it was only fair that the citizens whose lives would be impacted by this be given the correct information.

Dr. Birdsell thought it was important to place a hold on this until the people were given the correct information on how this would affect their lives. If a hold was not given, he thought it would reflect poorly on the City, since they were the ones responsible for this, making the noise contours look like there would be no change, particularly in Section 17. He commented that many people in the audience were from Section 17 and were very concerned over it. He thanked the Council for taking the time to look into the issue and get the information on health affects. He said he was a biologist. He had a PHD in biology and knew there were serious health affects, including hypertension and coronary problems that could result from excessive exposure to noise. He did not think anyone seriously expected the children to put on aviation style headphones when they played outside, because that would be ridiculous. Again, he thanked the Council.

Colonel Michael Isherwood, Vice Commander of the 355<sup>th</sup> Wing at Davis-Monthan Air Force Base, said it was a privilege to join the Council and share their perspective on the *Tucson Code* under consideration. In looking at the discussion of the evening meeting, part of him wanted to put this in its historical perspective. For almost seven decades, since the City leaders went to the War Department in 1941 and asked for military flight operations to come to Tucson, they have had a positive and cooperative relationship with the city and the civic leaders in Tucson. From that first B-17 arriving in April 1941, the Base grew and became an important cornerstone of their operations in the Second World War. Throughout the Cold War, the readiness and ability of airmen to operate at Davis-Monthan was part of how they won the Cold War.

Colonel Isherwood said in the past two decades, the training gained by the men and women at Davis-Monthan have proved instrumental in liberating Kuwait, bringing peace to Kocovo, to Bosnia, and most recently liberating Afghanistan. In the past two years, the training they received at the Base has enabled them to be effective in Afghanistan, as well as liberating approximately twenty-two million people in Iraq. What the Council was looking at was not about the past and it was not about a couple of other facts. It was not about the F-35 or the joint strike fighter, as it was known. There had been no decisions about whether that plane would be procured or where it would be based. If it was to be based at Davis-Monthan, that action would be preceded by a separate environmental impact survey, which would address many of the concerns the citizens brought before the Council.

Colonel Isherwood also said that what the Council was considering was not about allowing the increase in flight operations. In the last two years the number of takeoffs and landings at the Base actually decreased from approximately seventy thousand takeoffs and landings in 2001 to just a little over fifty thousand this past year. Instead, what the Council was considering was the future. The issue they asked the Air Force for help on was if there could be a shared vision of the future that would allow for municipal growth, compatible with the existing military operations they had at the Base. The fact of the matter was that roughly eighty percent of their flight operations were focused to the southeast of the Base. They did that for two very important reasons; to safeguard the residential areas, because to the southeast there were very few residential areas and to minimize the noise footprints from operating their aircraft.

Colonel Isherwood said the question he would suggest to the Council would be how they wanted to go forward. The voices of concern they heard spoke to having a common vision and providing guidelines for how they wanted to develop the southeast corridor. From the military perspective, as an airman, the recommendations on the panel to the southeast allowed for a balanced community development and would allow for them to continue in the safest manner possible, and operate the aircraft, which were so important for the nation at home and overseas. Colonel Isherwood concluded by thanking the Mayor and Council for their time, patience, and for their consideration.

It was moved by Vice Mayor Ronstadt, duly seconded, and carried by a voice vote of 7 to 0 to close the public hearing.

Mayor Walkup asked the City Clerk to read Ordinance 10073 by number and title only.

Ordinance No. 10073 relating to planning and zoning; amending certain portions of the Tucson Code, Chapter 23, Land Use Code, Article II, Zones, Division 8, Overlay Zones, Section 2.8.5, Airport Environs Zone (AEZ); Article VI, Definitions, Division 2, Listing of Words and Terms, Sections 6.2.1 and 6.2.14; and setting an effective date.

Kathleen S. Detrick, City Clerk, announced that the City Attorney had a few announcements to make regarding the proposed ordinance.

Michael Rankin, City Attorney, said he wanted to respond to a couple of things, which were brought up during the public hearing, in particular one that Council Member Ibarra was asking about, the requirement for the super-majority vote. He said the Council was well aware of the provision that if there were a protest level of twenty percent or more in any of the quadrants, that would trigger the three-quarter-vote requirement.

Mr. Rankin said the additional materials submitted at the meeting appeared to him to be one hundred to one hundred twenty signatures, but he did not count the exact number and had no way of knowing which quadrant they belonged to. Prior to the meeting, six hundred nineteen protests that had been received, which produced a maximum level in all of the quadrants of eight percent in any particular quadrant, which was in the north quadrant. He said he was not a mathematician, but said it did not appear to be mathematically possible that the additional signatures would raise the protest level in any of the quadrants, even if they were all within one quadrant, to the twenty percent level that would require a super majority vote.

Mr. Rankin added that with respect to comments made by Mr. Farley regarding the floor area ratio and employee densities as reflected in the *Joint Land Use Study (JLUS)* and the flexibility of the Council either to adopt the thirty percent or go to a less restrictive fifty percent in terms of the floor area ratio, the legislation adopted in the House Bill specifically referenced that the ordinance adopted by the municipality had to be determined for compliance in accordance with the compatible land use plan and the *Joint Land Use Study (JLUS)*, which was completed in February 2004. The study that was completed in February 2004 and submitted for consideration by the legislature specifically referenced the floor area ratio of .30, not .50 with respect to the district closest to the runway, the zero to thirty thousand feet. It was after the legislation was adopted, approved and went into effect that it came to the attention of some of those who had participated in the process that they thought there had been an agreement that the F.A.R. was going to be fifty percent rather than thirty percent. However that change was never made in the study and it was not reflected in the study provided to the legislature, which clearly referred to an F.A.R. of thirty percent. Due to the way the legislation was written, determination of compliance with the Joint Land Use Study was made not by the City Attorney but by the Attorney General. If the Attorney General reviewed the City's ordinances or the amendments ultimately to the *Tucson General Plan* and determined that the City was out of compliance with the *Joint Land Use Study*, including F.A.R. requirement, then the Attorney General had enforcement authority. This included bringing an action to void the City's ordinance, recovering attorneys' fees and getting other sanctions, including monetary sanctions.

Given that provision of the legislation, Mr. Rankin said he spoke to the Attorney General's office. He spoke with Patty Bolen who worked through this process, and told her the issue, and asked if she would weigh in. She advised him that the City could not go up to the .50 because the legislation specifically referred to the study as completed in February 2004. That meant it had to be the thirty-percent that was reflected in the study.

A City Attorney could not officially request a written Attorney General's opinion. However, the County Attorney could. Given the questions about this F.A.R. requirement, Mr. Rankin had conversations with the County Attorney's office. They were going to request an Attorney General opinion on the issue and he offered to sign off on the request. Mr. Rankin said he could not advise his client, the City Council, to adopt something which he believed was in violation of the legislation and which the Attorney General's Office, in their preliminary opinion, had agreed.

Mayor Walkup wanted to authenticate Mike Farley's comments where the change was discussed. For reasons the Council was unsure of, it went into the legislature at a different level. He thought the appropriate thing to do was to ask the County Attorney to file a request and do it the legal way, because he thought in that meeting everyone agreed. He recognized Vice Mayor Ronstadt.

It was moved by Vice Mayor Ronstadt, and duly seconded, to pass and adopt Ordinance 10073 and direct staff to further implement the *Joint Land Use Study*.

Council Member Dunbar had several amendments, which she said were long and copies had been made and could be distributed. She added that one of them had to be changed to make sure it was in compliance. She had some direction from the City Attorney. The Council had heard a lot at the meeting and she was extremely concerned about public disclosure, especially the term "impact existing residences and occupied homes".

Council Member Dunbar read from a list of amendments.

1. Nothing in the ordinance was intended to require public disclosure beyond that already required by State law.
2. The *Airport Environs Zone* should include the following language: "Non-contiguous parcels may be included within a single plat or development plan for the purpose of determining employee limits, floor area ratios and other performance criteria provided there are recorded covenants requiring conformance with the approved plat or development plan in the form approved by the Development Services Department Director. Non-contiguous parcels that do not meet the above criteria may be considered through Special Exception process".

Council Member Dunbar said the reason for this was that it would create an opportunity for private investment to acquire and retire land as open space in the paddle, while insuring that the site coverage was retained at the levels set forth in the *Joint Land Use Study (JLUS)* and the *Airport Environs Zone (AEZ)*.

3. The submittal dates for a development plan and protected development rights plan should be the following:
  - a. Letter of Intent should be submitted December 30, 2004 (instead of November 24, 2004).
  - b. Completion and Submittal of Site Plan should be March 30, 2005 (instead of December 30, 2004).
  - c. Development Right Plan approved by Mayor and Council by June 30, 2005 (instead of March 30, 2005).
4. Council should direct staff to work with the construction community to further refine the draft sound attenuation development standards for warehouse, industrial, and commercial development specifically related to Section E, roofs, and Section G, ventilation.

Council Member Dunbar said regarding number one of the amendments there were some problems and the City Attorney told her she could not state it that way. Nothing in the ordinance was intended to require public disclosure. What they were doing was keeping it exactly the way it was right now until they had a chance to go back and look at it in about six months, working with the neighborhoods and the *Joint Land Use Study (JLUS)* Committee, to define what that area was going to be that would impact the existing residences and require public disclosure. She thought the City Attorney was going to explain further.

Mr. Rankin said the appropriate place to insert the language into the ordinance would be under Section 1 of the ordinance, the text was Section 2.8.5.7-F, regarding public disclosures upon sale or transfer of property or lease of property. To accomplish the ends of the motion, a new sentence would be inserted at the end of the paragraph reading "Nothing herein shall require any notice be provided by property owners that would be in addition to the requirements provided by State law."

Council Member Leal said he hoped that in the discussions and deliberations the Council did not fall unnecessarily into a false either/or. Clearly the people who had spoken cared about Davis-Monthan and did not want it closed or moved. They simply wanted a better way of understanding how the relationship was defined. He heard that very clear. It was his hope that everyone would come together, thoughtfully, as a community and not fearfully as interest groups. The Council had a challenge before them now and for the months to come. They were all trying to craft and carry forward a relationship between the Base and the rest of the community that was a win-win situation, that would protect and enhance the quality of life and the future of the Base. The Council spent a great deal of time dealing with the southern end of the runway. Probably eighty-five percent of the time had been focused on understanding real estate and not people. There might be 30,000 people and some 8,000 or 9,000 children in the area at the north end of the Base. They now found some extremely significant issues that many did not anticipate, not the city, and as he expected, also not the State. Now that these issues had been seen, they could not be ignored.

The Planning and Zoning Commission went through development of their own understanding which resulted in their recommendation to extend the existing policy through December 2005, giving the City time to address these large issues now that the Council was aware of them. Clearly, as had been stated by many, and an environmental impact study under NEPA must be done. Executive Order 1289A from February 11, 1994, whose goal was to achieve environmental protection for all communities and direct Federal agencies to develop an environmental justice strategy in order to identify and address disproportionately high and adverse human health or environmental effects of Federal programs, policies or activities on minority and/or low-income populations. Council Member Leal said the Council must assure the Federal Noise Control Act of 1972 was followed along with any further requirements brought about by changes made by the Quiet Communities Act of 1978.

Council Member Leal continued that the issue of noise had to be better understood. The methodology had been called into question because it used averages. This seemed to misunderstand the problem when averages were used. He asked how many had seen the news reports about smog reports or ozone in Los Angeles. They said do not jog, do not let your kids play. They did not say the yearly average was okay so go out and jog.

Council Member Leal said the Council had come to understand some environmental issues and that it was the spiking that was the problem and that using averages was confusing. The other issue that had been discussed before was what happened to the employees in existing businesses. The Council was told that OSHA requirements did not allow that any employee in an existing business be subjected to 130 decibels of sound for more than one second in every twenty-four hours. He said they talked about notification of homeowners but did not know if there had been notification of businesses to ask them how many people worked there.

Council Member Leal said the issue of devaluation of property was raised and Statutes in the State Constitution were mentioned. Questions of compensation were also raised and needed to be understood. The issue of saving some from having to follow sound mitigation would be a hollow victory. He asked about the residents and their children that had to follow sound mitigation. He asked if money would be available for those who might have to use sound mitigation. That would also be a hollow victory. He asked how good would insulation of one's house be when their children could not play outside or residents could not garden or have a barbecue except from midnight until 7:00 a.m. in the morning.

It had been stated that an environmental impact study would have to be done when and if the mission were changed. Council Member Leal thought it also was understood that one should be done now so there was a base line to measure against any proposals for the future. He thought the City had the time to not run over each other; the time to protect the Base they cared about and take the time to make sure they were protecting this large section of the community.

Council Member Leal made a substitute motion that the Mayor and Council follow the Planning and Zoning Commission's recommendation and pursue the applicability of Federal policies and *Acts* that pertained to and addressed the City's circumstances.

Mayor Walkup asked if there was a second for the substitute motion. There was none.

Council Member Scott asked what the residents would have if this were to pass. She was not sure it was clear whose lives would be affected by this, exactly what would they walk away with in their hands that they could feel good about if this happened. She continued that in the motion that was ready for the meeting, some of the Council Members received at the table just prior to the meeting, but some members of the Council might have seen it sooner. She did not know, but she just wanted to know what these folks would have to look to for clarification. She thought it was not clear and they thought they were being shafted.

Mayor Walkup said there was a motion to delay the item per the recommendation of the Planning Commission to December 2005. There was not a second so far, but the question was, if there was a second, what would that mean.

Council Member Scott said that was not her question, but rather if the original motion were to pass, what did those people have that they could walk away with. She thought in the original motion there was language that said if they owned a home and wished to make an addition to it, they could. If they wished to sell their home, according to the motion, if she understood the amendment, they did not have to disclose, yet. There was no time set that she was aware of in the motion that said, as of a particular moment they must disclose. Those were the two things she understood.

Mayor Walkup asked if there was a second for the substitute motion. There was none.

Council Member West said she was going to support the motion and said she was going to address the citizens who had a right to expect they could live in their homes safely. This was the way she understood it and she said that maybe she did not understand it correctly, but she had read the fine print. On page two of six, it said "this process," and she was referring to the implementation process, "would provide an opportunity for extensive public input." She did not want that just to be the Davis-Monthan Fifty, she wanted the neighborhoods involved.

Council Member West said she was not supporting the substitute motion, she was supporting the original motion. The process of implementation would provide an opportunity for extensive public input and continued discussions regarding mitigation programs, potential land exchanges and community education as recommended by the Planning Commission.

Council Member West said if the Council did not pass this, the City could kiss any funding for any mitigation good-bye. She said it was the only way that the City could assist them, and she was still trying to get something from the American Academy of Pediatrics on Hearing.

Council Member West said what she was trying to say was that if the Council did not go forward with this, the City would not have the funding to assist with mitigation and the other kinds of things that the City needed to do. This would put that in place, as she understood it. Council Member West said the Council needed to act now.

Council Member Scott asked if mitigation was included, not just sound attenuation. She referred to what was done in Phoenix, which was to purchase two thousand one hundred acres at fair market value. That was the kind of money that the Congressional delegation brought back, enough to buy not just the sound mitigation but to compensate those residents who had property at a fair market rate. She said the ten million dollars that was currently in the County bond might be leveraged to get that and more because when the Congressional delegation brought back twenty-seven million dollars to Maricopa County, the State Legislature also kicked in another ten million dollars of their own volition, which gave them thirty-seven million or so to mitigate. That did not necessarily mean sound attenuation, it meant buying up actual properties and ended up with twenty one hundred acres. She was just asking if that was what the Council was looking at trying to go for that kind of money in order to use it in that way or would these people simply be looking at sound attenuation, which obviously was not enough because of the other health factors involved.

Albert Elias, Urban Planning and Design Director, said he believed that was exactly the intent. In order to further implement the recommendations in the *Joint Land Use Study (JLUS)*, staff would be pursuing purchases including full utilization of the ten million dollars in Pima County bond funds as well as assertively lobbying the Congressional delegation to pursue an appropriation for other types of mitigation that could include a variety of things that could include the ones that Council Member Scott had mentioned.

Mayor Walkup asked if Council Member Scott was clear on that.

Council Member Scott thanked Mr. Elias and said she wished there was more that the Council could do to assure these people because she felt that they were really upset and felt that the Council was not representing them at this point.

Mayor Walkup asked Vice Mayor Ronstadt if he accepted the amendments to the motion.

Vice Mayor Ronstadt said he accepted the amendments.

Mayor Walkup said he understood Mr. Rankin had some additions to the motion.

Mr. Rankin said in order to assist the City Clerk and to make sure the intentions of the motion were inserted into the proper places in the ordinance, he wanted to go through and describe where they belonged in the ordinance so that everyone knew what was being adopted, if it was voted to be adopted.

Mr. Rankin said with respect to the non-contiguous parcel language, to add the provision made in the motion, it would require three amendments in Section 1 of the ordinance. The Sections in question would be Section 2.8.5.8.A3 to add a new Sub-Section G; Section 2.8.5.8.B.3 to add a new Sub-Section G; and Sub-Section 2.8.5.8.C.3 to add a new Sub-Section E. This was the same language that was in the strikeout version that was read by Council Member Dunbar earlier and he would read it now.

Non-contiguous parcels located within the (blank for the relevant zone,) because it was in three separate places, may be included within a single plat or development plan for the purpose of determining employee limits, floor area ratios and other performance criteria provided there are recorded covenants requiring conformance with the approved plat or development plan in the form approved by the Development Services Department Director. Non-contiguous parcels that did not meet the above criteria might be considered through Special Exception process as specified in Section 2.8.5.10.A.

Mr. Rankin said those were the three changes for the consideration of non-contiguous parcels in a single plan.

With respect to the changing of the dates referenced in the motion, which would require several amendments to Section 3 of the ordinance that was in front of the Council. First in Sub-Section A.1 regarding the submittal of a Letter of Intent and/or a Concept Plan, the relevant dates would be changed from November 24, 2004 to December 30, 2004. With respect to Sub-Section A.2 of Section 3 of the ordinance regarding completion of a Site Plan, the relevant dates would change from December 30, 2004 to March 30, 2005. With respect to Approval and Issuance of Permits, Sub-Section A.3 of Section 3 of the ordinance, the relevant dates would change from December 30, 2004 to March 30, 2005. Finally, with respect to approval of Development Rights Plan by the Mayor and Council in Sub-Section A.4 in Section 3 of the ordinance, the relevant dates would be changed from March 1, 2005 to June 30, 2005.

Mr. Rankin said an additional change that would be required if those changes were adopted would be changing the effective date of the ordinance itself because the effective date of the ordinance itself had to be for a time after the letters of intent would be filed, which now would be changed. So that Section 5 of the ordinance would now be changed to read, "this ordinance becomes effective on January 1, 2005."

Mr. Rankin said if that change was in fact adopted what the Council would want to do would be, because as the Council knew, and as had been publicly noticed, the City was right now under the provisions of the interim *Airport Environs Zone Ordinance*. The provisions of that ordinance expired at the end of November. If the Council was to make an effective date for this ordinance as January 1, 2005, there should not be a lag time

between the two ordinances. There should be a new Section 6 that would read as follows: “Sections 1 and 2 of Ordinance 9781 (which was the interim ordinance), providing for a Special Exception procedure or development within the Davis-Monahan Airport Environs Zone remains in effect until the effective date of this Ordinance.”

Council Member Dunbar asked if the phrase she had in her amendment that said commercial uses should move forward was still included.

Mr. Rankin said that was correct.

Council Member Dunbar said she appreciated Council Member Scott. Last week she had a meeting in her office and the one thing she heard loud and clear was that a lot of people were concerned about the value of their property, the fact that they were having to do disclosure statements. She said what the Council had done was make it so they did not have to do that now and they were taking a look at that.

Mayor Walkup asked if Council Member Dunbar and Vice Mayor Ronstadt accepted the modifications made by Mr. Rankin.

Both acknowledged they did.

Mayor Walkup asked for a roll call vote.

Upon roll call, the results were.

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

Nay: Council Member Leal

Ordinance 10073 with amendments was passed and adopted by a roll call vote of 6 to 1.

RECESS: 9:15 p.m.

Mayor Walkup announced that the Council would stand in recess.

RECONVENE: 9:30 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
Steve Leal	Council Member Ward 5
Fred Ronstadt	Vice Mayor, Council Member Ward 6
Robert E. Walkup	Mayor

Absent/Excused: None

**10. PUBLIC HEARING: ZONING (C9-96-01) TACK ROOM – SABINO CANYON ROAD, C-1 ZONING, CHANGE OF CONDITIONS AND ORDINANCE ADOPTION**

Mayor Walkup announced City Manager's communication number 598, dated October 25, 2004, would be received into and made a part of the record. He also announced this was the time and place legally advertised for a public hearing with respect to a change of conditions for property located between Placita Rancho La Cholla and Vuelta Rancho Mesquite. He asked if the applicant was present and agreeable to the conditions.

Ronald Peetz, President of AmericaBuilt, said he accepted the conditions. He stated that last Thursday he received a call from Council Member West's office and they voiced some concerns about historic registry of the property. He said that his staff had researched quite a bit to get some information regarding the National Register of Historic Places. They had spoken with Kathleen Leonard of the Phoenix office of the National Register to get some insight as to exactly what the situation would be as it concerned the Tack Room Restaurant. Their response was that they could register either a structure or a site in the National Register of Historic Places if it met certain criteria. Those criterion include that the structure or site be fifty years or older, which this project qualified for as the building was erected in 1940. The second criteria is that it must be associated with a person of historic significance, which this property did not, or associated with an important historic event. There was one important historic event, which would be somewhat related to the site. That was that the very first quarterhorse race in the United States was held at the old racetrack which was on the property actually occupied by the Via Del Rio subdivision immediately north of the Tack Room Restaurant. So the site itself, of that horserace, had long since been built on.

Mr. Peetz said the last criterion was to maintain the integrity and architectural value of a historic building. In this case the building was completely gutted and reconfigured to upgrade the Tack Room Restaurant in 2000. So it was questionable as to

whether or not there was any great architectural value in the building to begin with, whether or not that was true, in 2000 it was completely revamped. He recapped the situation stating it did qualify under the fifty year old qualification, but there was no historic person associated and the historic event was associated with property other than the restaurant, obviously the race was not held in the restaurant and then the architectural issues had certainly been radically changed from its original conception.

Mr. Peetz said that the other thing that he wanted to put in the table was that there were a large number of people present from the neighborhood who wanted this to go forward and who supported what they were trying to accomplish. He showed a map that was a tentative layout of the way they proposed the property be developed. He showed where the restaurant currently was located and where they proposed building twenty more lots in that area. Many of the lots that were in existence were smaller than the lots they are proposing. Their objective was to build very similar homes in a very similar style. He said that for those who did not know, they picked up the last twenty-one lots when the other company went out of business. AmericaBuilt purchased those lots and was currently completing all twenty-one of those homes in a very similar fashion to the homes that were already there before them. It was their objective to continue the same flair, the same flavor, the same design criterion and the same lot sizes. He said that under C-1 zoning much, much higher density could be requested. In fact, multiple story units could be allowed, but they were not asking for anything like that. They wanted single story homes that would match the makeup of the existing community and as such the homeowners were here to physically show their support. They sat through a rather grueling session, as the Council just did and were concerned that they might not receive the opportunity to voice their opinions. He stated that there might be people who would say something against them and of course, they were certainly welcome to do so. He believed they would find that they absolutely had the consensus of the Vector Ranch community and those were the people who would be directly impacted by this. They were for their plan as it stood and they wanted to see AmericaBuilt put in houses that met the same design criterion.

Mr. Peetz said it was a gated community, with a restaurant in the middle. Time had proven that the restaurant could not survive. One of the finest restaurateurs in the City tried to make it survive but he would submit that the kiss of death for this restaurant occurred back in the late nineties when a sub-division was platted around it. It took this long for it to go by the wayside. The current owners tried for over a year to find another occupant to rent it as a restaurant or to sell it to someone else for commercial use but the neighbors were here to say they would like to see more home of the same design criterion and he was going to ask those neighbors who were there that felt that way to stand up. He thanked them very much. He said they also had the unanimous support of the Board of Directors of the homeowners association and certainly the consensus of the neighborhood. One last issue that continued to come to the forefront was the infamous boot. There were questions about whether the boot could have signage alteration under the existing sign code. It was not something that could be addressed that evening. The public hearing was just for the change of use. But he did want to plant the seed that they, as a corporation, would like to take the signage off that currently talks about a restaurant

and cocktails and hours of operation. They wanted to take those off and put back the ranch on the boot. The boot was somewhat of a monument in the neighborhood and nobody wanted to see it go. At least everyone whom he had spoken with wanted to see it stay but it did not make sense for it to continue to say anything about a restaurant that was non-existent. He believed that it would be for the betterment of the Vactor Ranch community if it identified the community itself. He thought that pretty much covered the points that he wanted to bring up.

Mayor Walkup announced that the public hearing would last no longer than one hour and that speakers would be limited to five minute presentations. He also announced he had received a number of cards and asked the speakers to state their name and address and whether or not they lived in the City.

John Kirk stated that he had some concerns about the construction, not about the plan. The first concern was regarding dust control. (inaudible) He was also concerned about noise abatement. He said that he was not prepared, that he just had a few things written down. He did not want to see trees having to be cut or lost that were currently there. He was concerned about the times of labor in relation to noise and dust. He was concerned about surface water control. He stated that he hesitated to say this, but he had heard it said that there were too many houses to be built on small lots. He said that he would agree with that. He mentioned that he had a figure there that he thought was accurate, but he was not sure. Each house on average would be on less than one fifth of an acre.

Mayor Walkup clarified that they were recording the concerns and the developer would make notes. He told Mr. Kirk that he should just continue to proceed through his list.

Mr. Kirk stated that he was through.

Tom Fern, a resident and member of the Board of the Homeowners Association at Vactor Ranch, said he believed there was a consensus of the homeowners in favor of this project. He stated that in speaking for the Board, they unanimously approved the AmericaBuilt project.

Lisa Larkin stated that she had filed a protest to this rezoning only because she thought it should be postponed until there could be a real consensus of the homeowners. She said that Mr. Peetz said there was a homeowners consensus and she did not know where he was getting that from except from the book. There had not been a homeowner's meeting and the first she had heard of it was when she received the notice from the City and that was why she was there that evening. She believed residential was the highest and best use for that property, but she had a lot of concerns just like the gentleman who spoke before her. She wanted to know about the dust control and the noise abatement. She said one would not believe how rude and noisy the construction workers were when they did the infill of the twenty-one lots that Mr. Peetz spoke of. You could not even walk around the block without listening to blasting music at seven in

the morning. She said at least she was not trying to sleep and it probably helped her walk a little faster.

Ms. Larkin stated that there were some beautiful trees on the property and she was not saying that he needed to keep every single tree. That would probably not be a good idea. However, she did want to know if he had a plan for the trees or was he just going to grade the entire thing and make a big naked bald spot to build his houses on. She said they all knew that was a big gated community. She did not know about the rest of the people in the room but her home was the biggest and best that she had ever had in her entire life. She would like to maintain her property value and thought that everyone in the room believed that plan would maintain the property value.

Ms. Larkin said the first time she saw the plan was when he brought the board in that evening. He did not reach out to the neighbors, just maybe to the Board. Also, the Board told a few people and they all came to the meeting, but there was no consensus.

Ms. Larkin said there was a much bigger issue than the concrete boot in front of the subdivision, which was pretty and she liked it and would like to keep it because it marked it easy for people to find her home. The bigger issue was a strip of property that was next to her lot that had an old well, a pump and a water tank on it. She could not get a consensus from the City versus the people who were there that evening as to who owned that property. She was told by Glenn Moyer, Development Services Department, that the property belonged to the homeowners association. She was told by Mr. Peetz that the property belonged to Drew Vactor and he did not know what was to become of it, that it might get donated to the City; but she did not know. Every time that water pump came on it made a loud noise. It would make a loud noise in her house and for the people who lived across the street from her and it was a nuisance right now. She knew about it when she bought the property, that it would come on occasionally. She wanted to know what was going to happen to it after the development took place. Would it continue or would it stop?

Ms. Larkin said there was also the issue of the weird piece of property right next to the house that bordered her house and the neighborhood behind her. She believed it was Rancho Escondito or Espero and Colonio Deraday. The back chain link fence of the old water pump tank was in front of this piece of property and they could only get to it from her garage and she wanted to know what was going to happen to that. She wanted to know the answers to some of those questions and then once they knew and they had a chance to get a real consensus of the homeowners, then they could proceed. She urged the Council to postpone their decision.

Barbara Segers thanked the Mayor and Council for hearing her and stated that she had been a Vactor Ranch resident since 2000. She said they worked through the semi-completion of the Vactor Ranch Subdivision under another builder and it was horrendous. She could not tell them how this other builder treated the property that they were building on and how they treated the residents. They then sat and looked at vacant lots, derelict lots, with weeds almost as high as she was. She said that Ron Peetz came in

and in less than a year he build out those lots. If you went through that community today you could not tell the difference between her home which was built in 2000 and the home directly across the street which was built five months ago. Not only that but they had three homes built diagonally across the street from her and the inconvenience was practically nothing. It was noisy and dirty at times but they got up early in the morning so that the noise did not bother them. The bottom line was that those lots were built on and the community was almost built out.

Ms. Seger said now they must look at the Tack Room. She said that the Tack Room was a beautiful old building, but it was also falling apart. The trees were beautiful old trees, nobody was going to come in and use the Tack Room for something that it should be used for. It is important to the people of Vactor Ranch that they have a builder, like AmericaBuilt, that would come in and develop that property and once and for all finish out their community. She stated that they had waited along time for it to happen.

Richard Tyler stated that he had been happily associated with the Tack Room Restaurant since 1979 and was the co-owner of the property. He was also partners with Bob McMahan, who took over the property a few years ago. He stated that they had made a valiant effort to resurrect the Tack Room and they failed and now they had a plan on the table to rezone the property and actually use it to the benefit of the community. He said that he would make it short, that he hoped that the Mayor and Council would approve the rezoning of that piece of property and help AmericaBuilt with those homes. He thought the plan Mr. Peetz laid out was a viable plan. He said to answer the question again, Drew Vactor did own (inaudible) and if the City wanted to buy it he was sure they could make plans for that also, because they tried to sell it to the City many times.

Mayor Walkup asked if anyone else wanted to address the Mayor and Council.

Michael Toney (inaudible).

Glenn Maloney stated that he had been there since 2000. He liked the plan to have the Tack Room redone with some homes. He would like to see all the homeowners get together to talk about it. He would agree with the other person, that he saw a plan about some homes the other day. It just happened all of a sudden. He said that he would like to see everybody just say that was what the plan looked like and maybe come to a meeting to see a picture. He was not against the plan; he loved the trees over there, they were beautiful trees. He said he would like to have the homeowners say "let's save this one and let's save this one", because they could say they were not going to remove any of them or that they would remove some. But that was the reason he moved there. He said it was so pretty and there were a lot of ground squirrels that ran around. He reiterated that he has nothing against the homes being there, maybe there are just two or three too many. He does not know, he had not really looked at it except for the one picture there that evening.

Andrea Witney, a resident of Vactor Ranch since 1998, said she has been a member of the Board since it started four years ago. She was the secretary. She wanted

to say that when people said there was a consensus, she listened to the homeowners and knew that on the board there was definitely a consensus. She had been approached by homeowners while walking her dog every evening and that for the last couple of years, since the last guy's failing, not only have homeowners supported this residential idea of completing out the community, but they encouraged it. She said they have told her to keep talking to Ron Peetz so that they could get this finished out because those that had lived there for a long time knew it would not be an option of keeping that a wildlife preserve once the Metro Restaurant lease expired in March.

It would be a matter of what commercial property would it be next, would it be law offices, a nursing home, or would it be sold as apartments. It was zoned as commercial. She thought a lot of the homeowners who had not lived there as long did not get that it was a commercially zoned property, privately owned, over which the Board and the homeowners had little control. She said that the best thing that could happen would be that it just be completed and the community finished. She witnessed the whole bankruptcy and those blocks that they referred to as war zones and a lot of homeowners had approached them as the Board telling them to fill those lots in and they investigated and found they were not only eyesores, they were safety hazards and found out that if they even forked over the money to do it, they would be trespassing.

She said that they went to the bank and told them they were safety hazards and to do something about it because they received complaints all day long and there was really nothing they could do about it. So when Ron Peetz came in and less than a year finished out twenty lots, he had done an exemplary job and he came to their Board meetings. She said that any small or large issues, and they did not even have any large issues, but anything they needed he was just right there. She said that for the dust problem, he would water things down. They had one building at the end of her street to be completed and it was a small street and if she had to leave quickly and there were construction vehicles they would always work quick to move their cars so she could get out. She looked at this as an opportunity for him to finish out the community because she knew that he if took it on he would build it. She went on to say that everything he promised the Board, the houses he had done, were beautiful and he finished them quickly. Granted it was construction but he did the best job of keeping the noise down. That was why she fully supported it, and why, while maybe not every homeowner, definitely the majority, supported it.

Mayor Walkup asked Ron Peetz to come forward and respond.

Mr. Peetz said he wanted to respond to a couple of things he heard that evening. They had not yet designed the subdivision. They had put together a tentative lot layout and that was all they had done so far. They had not submitted a tentative plat or anything yet. He had attended a number of Board meetings. He attended homeowner association meetings and this was something that had been spoken about. He said that perhaps some people had not been at some of those meetings but he certainly attended and had certainly spoken. The board members again, and several of them had been up there that evening and talked on his behalf, strongly supported the idea of houses as opposed to commercial.

The issue that evening was not how many houses, what size houses, what would be the criteria of how they designed the houses; it was not a rezoning. They planned to use the C-1 zoning and do a residential cluster project under the C-1 zoning criteria. All they were there for were the zoning conditions. The previous zoning required a public meeting before the Mayor and Council. They were asking for Mayor and Council's support to change the zoning to residential. Once they had the support they fully intended to design the subdivision according to the *Land Use Code's* design criteria and they intended to do land development in complete accordance with DET requirements. Every component of the construction was going to be according to the *Tucson Code*. They did not own or have any control whatsoever over the well site and it had not even been a discussion point. He said Drew Vactor had ownership and control of the well site and they had no involvement in it whatsoever. He stated he just wanted to address a few of those issues. He thought they had heard from some of the people there that they did their work in a workman-like fashion. They truly did try to take the concerns of the neighborhood into consideration and they would continue to do so when they finish out Vactor Ranch.

It was moved by Vice Mayor Ronstadt, duly seconded, and carried by a voice vote of 7 to 0, to close the public hearing.

Mayor Walkup asked the City Clerk to read Ordinance 10068 by number and title only.

Ordinance No. 10068 relating to zoning: amending Ordinance No. 8991 to amend conditions in the area located approximately 1,300 feet east of Sabino Canyon Road in case C9-96-01, Tack Room – Sabino Canyon Road, C-1; and declaring an emergency.

Council Member West stated that she had received calls at her office in the last week or so, particularly some that day about the development. She heard some people there that evening mentioning they would like to have a homeowner's meeting. She wondered if they could not get that done in the next couple of weeks so that it could come back on the eighth. She said she would like it set at a time when, if she could not be there, someone from her office could be. In addition, she told Mr. Peetz there were three conditions added about the historic issue to the case. She wanted to let him know that even though she was very much into historic preservation, that was a surprise to her and she was also surprised to hear someone from her office had called him. She relayed that the three conditions said that if the sign was ever proposed to be taken down, the applicant would have to contact the Arizona Historical Society and other interested parties regarding the sign. She said the applicant should do an eligibility determination for the National Historic Register regarding the existing structures on the property and she believed he had informally done that, but she thought they should have something in writing on that.

Council Member West said she was aware that the building had been altered several times, but nonetheless someone did need to give them some information on the

eligibility. She went on to say that if the structures were eligible for the National Register, the applicant should provide official National Register documentation prior to demolition. She wanted to make everyone aware that there were conditions added to this case. She also said she knew he wanted to change the wording on the boot and thought that would be something those on the dais would like to help him with. She knew Development Services Department was sometime a bit restrictive, but perhaps Ernie Duarte, Development Services Director, could advise them on what they could do to get that deed done without moving the boot.

Ernie Duarte, Director of Development Services, said they would work with Mr. Peetz to see if he could change the copy on the boot sign as allowed by the *Tucson Code*.

Council Member West stated that otherwise it would be false advertising. He would not be running a restaurant, he was trying to do a housing development. She said that one other point made by one of the callers was that the redevelopment should blend with the existing character of the adjacent residential neighborhoods, utilize compatible building materials, architectural style and ornamentation and wherever feasible incorporate neighborhood amenities such as open space, and that included trees, recreational facilities and public art in the new development. She said those last two things he probably would not be doing, but she thought it was important. She asked that he listen to the homeowner's input at the meeting where everybody could see the plans and urged him to save the trees.

It was moved by Council Member West, duly seconded, and carried by a voice vote of 7 to 0, to continue action on the Ordinance adoption until the meeting of November 8, 2004 to allow the homeowners time to have a meeting.

**11. REAL PROPERTY: APPROVING LEASE AGREEMENT AND BILLBOARD REMOVAL WITH CLEAR CHANNEL OUTDOOR, INC.**

Mayor Walkup announced City Manager's communicated number 603, dated October 25, 2004, would be received into and made a part of the record. He asked the City Clerk to read Ordinance 10071 by number and title only.

Ordinance No. 10071 relating to real property; authorizing and approving the extension of a lease of certain city owned real property south of the southeast corner of Stone Avenue and Sixth Street to Clear Channel Outdoor, Inc. and declaring an emergency.

It was moved by Vice Mayor Ronstadt, duly seconded, to pass and adopt Ordinance 10071.

Council Member Leal made a substitute motion, duly seconded, that they acquire the remaining lease interest in the billboard at Speedway and Alvernon using funds acquired from the sale of the City property of the location or through a comparable lease agreement with a twelve by twenty-four or smaller billboards which was partially on City

property without permission, and to direct staff to promptly implement the longstanding Mayor and Council policy of not allowing billboards on City property and remove the six billboards on City controlled land at I-10 and Kino, at the Fourth Avenue Underpass, and Sixth Street and Stone Avenue and he had the particular address for those that he could give to staff.

Council Member Dunbar stated that she would like some kind of information from staff about what the motion would do. She also heard someone had already removed the billboard in question and wondered what the City's liability would be since it was already done before Mayor and Council even passed the motion.

James Keene, City Manager, said he had two points to make. First, regarding the substitute motion, it was his understanding that one of the first actions taken was to try to acquire the leasehold interest in the existing billboard and they were unsuccessful at being able to negotiate that. That was because one of the terms of sale of the property at that site to the developer, Eckerd, was that the billboard be removed. They did make that attempt. The second point was about what Council Member Dunbar brought up, which was that not at the City's direction, or Clear Channel, or anybody but the contractor who was under contract by the developer, Eckerd Drugs, did take the billboard down on Friday night as part of the construction.

Mr. Keene's third point was that as it related to the additional direction in the substitute motion about looking at the other sites, unless he was mistaken, it seemed to him that those could be directions to the City even on the initial motion.

Vice Mayor Ronstadt stated he was not opposed to the substitute motion but he thought it was fairly irresponsible to commit them to a course of action without understanding what the financial implications were. It was his understanding that the agreements were in the millions, or somewhere in that ballpark, and if he recalled correctly, that sale price was in the hundred thousands of that property. So unless they identified the resources to purchase the lease and the other things that motion contemplated, they would be writing a blank check and there was no cash in the drawer to pay for it. He thought the motion was fairly irresponsible given the fact that they did not have that financial information.

Mayor Walkup asked the City Manager if they had the financial information.

James Keene, City Manager, said they were shooting in the dark and did not know. He said that they could estimate what the value was of the billboard on the site. He said that he did not mean to be facetious, but that he thought they sold the property for about four hundred thousand dollars and he would not want to go out and spend four hundred thousand dollars on a billboard that had already been torn down in one sense. He thought the question about limitation was important.

Council Member Leal said he thought that part of what seemed like a bad deal was that they had a small billboard on Speedway that had annual revenues of probably

half of what the billboard they wanted to transfer the remaining eight years to and so it was not an apples and apples comparison. If anything they would trade eight years of half the money for four years at twice the revenue. So the deal that they had before them was not a good deal at all. He said that given that they have the six other billboards that were on their property without their permission, it seemed that they had not seized the opportunity to better address the large issue of billboards in general. He went on to say that given that there was a disparity between the value of the billboard that was being proposed to have the lease shifted to and the value of the one where the existing lease was, it seemed to him to beg the question of why it made sense to factor in the other six billboards and do it all at once.

John Updike, Real Estate Administrator, stated that maybe he could clear the issue. He said that with respect to the value of the billboard, there was more to consider than what was called the card rate or the advertiser payment to Clear Channel who offered the panel for advertisement. He said that the Council Member Leal was correct in that there was a discrepancy between the total income that the advertiser would receive on one board versus the other. However, that had to be balanced with the value of the land and the location that they were at. He stated that the Stone Avenue Board proposed for its rights to be exchanged for the Speedway board, had a thirty percent higher land value, so that had to mitigate the overall value of the Board rights that were being transferred. It was not just the card rate but it would also be the value of the land. In essence, it was a land lease they were talking about, not necessarily just the revenue stream.

Mr. Updike said that with respect to the other billboards that the City had on City property, of the six boards that had been noted in the last week, and some discussions between the private individual and the Council, five of those billboard were valid legal month to month leases, assigned to the City of Tucson as the result of purchasing property in the path, in most cases, of roadway projects. Typically, removal would occur at the time the roadway project required the removal and in the interim, in this case, Clear Channel, the tenant, continued to pay rent, which they did. He said there was one billboard without benefit of a lease and that was the board on Kino or Campbell, Campbell was the address near I-10. That was the one billboard that did not have the benefit of a lease. The others did, just for clarification.

Council Member Leal asked what the time left on those was.

Mr. Updike replied that they were month to month leases that could be terminated at anytime.

Council Member Leal stated that they should consider their policies and that it was important not to sell them out for short term gain. He said that they could continue this for one week so that they could look at what the value was on those and bring it back as a package.

Mr. Updike said he wanted to offer one additional piece of information and that was that the board on East Speedway did not lie within the path of a roadway project. Removal of that board could not be done through the exercise of eminent domain to substitute one tenant for another. That was not an activity they could move forward, so that it would have to be a negotiated transaction. He said the proposal before the Council that evening moved those lease rights on the Speedway board to a board on Stone Avenue, which was in the path of a roadway project. That would allow the City in its negotiations with Clear Channel, should it desire to reduce the term of the lease at some point if a funding source was identified, to have a leverage of eminent domain. His suggestion was that the lease rights they were proposing be transferred, were lease rights put into the path of a public project and they believed that benefited their negotiation position with Clear Channel on an overall basis.

Mayor Walkup stated they were out of maneuvering room. If they wanted to delay for a week, they would have to withdraw the substitute motion.

Council Member Leal said he would be willing to change his substitute motion to delay it for one week and come back with a map and factoring in the other six billboard into the mix and explaining a carry forward on them, because doing them one for one under the circumstance he did not think that was acceptable. He reiterated that he was willing to modify his motion to do that if the second was satisfied.

Council Member West agreed to the amendment to the substitute motion.

Mayor Walkup asked if there were any further discussions.

There was none.

The substitute motion as amended passed by a voice vote of 6 to 1 (Council Member Dunbar dissenting).

## **12. APPOINTMENTS TO BOARDS, COMMISSIONS AND COMMITTEES**

Mayor Walkup announced City Manager's communication number 593, dated October 25, 2004, would be received into and made a part of the record. He asked if there were any personal appointments by any member of the Council.

Council Member Leal announced his personal appointment of Beki Quintero to the Citizen Sign Code Committee.

**13. ADJOURNMENT** 10:17 p.m.

Mayor Walkup announced the Council would stand adjourned until the next regularly scheduled meeting to be held on Monday, November 1, 2004, at 5:30 p.m. in the Mayor and Council Chambers in City Hall, 255 W. Alameda, Tucson, Arizona.

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MAYOR

ATTEST:

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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 25<sup>th</sup> day of October, 2004 and do hereby certify that it was an accurate transcription.

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DEPUTY CITY CLERK

KSD:cf:sac