



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
on January 9, 2018.

Date of Meeting: May 9, 2017

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 5:36 p.m., on Tuesday, May 9, 2017, all members having been notified of the time and place thereof.

Roger W. Randolph, City Clerk, announced Council Member Uhlich was unable to be present for the evening's meeting, but would be participating by telephone. This was allowable under the Mayor and Council Rules and Regulations. He stated Council Member Uhlich could vote on all matters in the same way as those members physically present as long as she participated in the discussions. On the evening's agenda, all votes would be done by roll call rather than voice vote.

1. ROLL CALL

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

Present:

Regina Romero
Paul Cunningham
Karin Uhlich

Shirley C. Scott
Richard G. Fimbres
Steve Kozachik
Jonathan Rothschild

Vice Mayor, Council Member Ward 1
Council Member Ward 2
Council Member Ward 3, Electronic Attendance
(arrived @ 6:38 p.m.)
Council Member Ward 4
Council Member Ward 5
Council Member Ward 6
Mayor

Absent/Excused:

None

Staff Members Present:

Michael J. Ortega
Michael Rankin
Roger W. Randolph

City Manager
City Attorney
City Clerk

2. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Reverend David Benedict Hedges, BSG, St. Michael and All Angels Episcopal Church, after which the Pledge of Allegiance was presented by the entire assembly.

Presentations:

- a. Mayor Rothschild proclaimed May to be “Better Hearing Month.” Janis Wolfe Gasch, Au.D., Arizona Hearing Specialists, accepted the proclamation.
- b. Mayor Rothschild proclaimed April 28, 2017, to be “Arbor Day.” Nick Shipley, Landscape Advisory Committee member accepted the proclamation.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

Mayor Rothschild announced City Manager’s communication number 134, dated May 9, 2017, was received into and made 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.

Current event reports were provided by Vice Mayor Romero, Council Members Cunningham and Fimbres. A recording of this item is available from the City Clerk’s Office for ten years from the date of this meeting.

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

Mayor Rothschild announced City Manager’s communication number 135, dated May 9, 2017, was received into and made part of the record. He also announced this was the time scheduled to allow the City Manager to report on current events, and asked for that report.

No report was given.

5. LIQUOR LICENSE APPLICATIONS

Mayor Rothschild announced City Manager’s communication number 136, dated May 9, 2017, was received into and made part of the record. He asked the City Clerk to read the Liquor License Agenda.

- b. Liquor License Application(s)

New License(s)

1. Blaze Pizza #1165, Ward 6
5615 E. Broadway Blvd.
Applicant: Amy S. Nations
Series 12, City 97-16
Action must be taken by: February 18, 2017

Staff has indicated the applicant is in compliance with city requirements.

2. PokeZone, Ward 1
54 W. Congress St.
Applicant: Mobeen Moslem
Series 12, City 19-17
Action must be taken by: May 6, 2017

Staff has indicated the applicant is in compliance with city requirements.

3. IOU Sushi IV, Ward 3
4280 N. Oracle Rd. #180
Applicant: Teri Ann Poll
Series 12, City 21-17
Action must be taken by: May 7, 2017

Staff has indicated the applicant is in compliance with city requirements.

4. Curry Leaf Indian Restaurant, Ward 6
2510 E. Grant Rd. #100
Applicant: Nisheeth Kakarala
Series 12, City 22-17
Action must be taken by: May 13, 2017

Staff has indicated the applicant is in compliance with city requirements.

Public Opinion: Written Argument in Support Filed

5. Pastiche Modern Eatery, Ward 3
3025 N. Campbell Ave. #121
Applicant: Kevin Arnold Kramber
Series 12, City 24-17
Action must be taken by: May 20, 2017

Staff has indicated the applicant is in compliance with city requirements.

NOTE: State law provides that for a new license application “In all proceedings before the governing body of a city the applicant bears the burden of showing that the public convenience requires and that the best interest of the community will be substantially served by the issuance of a license”. (A.R.S. Section 4-201)

Person/Location Transfer(s)

6. AC Hotel Tucson, Ward 6
151 E. Broadway Blvd.
Applicant: Andrea Dahlman Lewkowitz
Series 6, City 23-17
Action must be taken by: May 21, 2017

Staff has indicated the applicant is in compliance with city requirements.

NOTE: State law provides that for a person and location transfer Mayor and Council may consider both the applicant's capability qualifications reliability and location issues. (A.R.S. Section 4-203; R19-1-102)

Location Transfer(s)

7. Safeway #2060, Ward 3
1767 E. Prince Rd.
Applicant: Nicholas Carl Guttilla
Series 9, City 20-17
Action must be taken by: May 7, 2017

Staff has indicated the applicant is in compliance with city requirements.

NOTE: State law provides that for a location transfer Mayor and Council may consider whether the public convenience requires and that the best interest of the community will be substantially served by the issuance of a license at that location. (A.R.S. Section 4-203; Rule R19-1-102)

c. Special Event(s)

1. Southern Arizona Roadrunners, Ward 6
220 S. 5th Ave.
Applicant: Randy Accetta
City T45-17
Date of Event: May 26, 2017 - May 27, 2017
(Running Race)

Staff has indicated the applicant is in compliance with city requirements.

2. Zuzi Dance, Ward 6
738 N 5th Ave.
Applicant: Scott H. Bird
City T46-17
Date of Event: May 13, 2017
(Fundraiser)

Staff has indicated the applicant is in compliance with city requirements.

3. Los Changuitos Feos de Tucson, Inc., Ward 1
12th Ave. between Veteran's Blvd. & Ajo Way
Applicant: Alex V. Garcia
City T47-17
Date of Event: May 20, 2017 - May 21, 2017
(2017 12th Avenue Street Fair)

Staff has indicated the applicant is in compliance with city requirements.

4. Poverello House of Tucson, Ward 3
3201 E. Presidio Rd.
Applicant: Conrad L. Wall
City T48-17
Date of Event: October 4, 2017
(Fundraiser)

Staff has indicated the applicant is in compliance with city requirements.

Public Opinion: Written Arguments Opposed Filed

This item was considered separately.

5. University of Arizona Foundation, Ward 6
213 N. 4th Ave.
Applicant: John-Paul Rocznik
City T50-17
Date of Event: May 20, 2017
(BBQ Event-Fundraiser for Pediatric Cancer)

Staff has indicated the applicant is in compliance with city requirements.

This item was withdrawn by the Applicant.

6. TEDxTucson, Ward 5
610 S. Park Ave.
Applicant: Mary Celeste Reed
City T51-17
Date of Event: May 19, 2017
(Education Event)

Staff has indicated the applicant is in compliance with city requirements.

d. Agent Change/Acquisition of Control

1. Hideout Saloon East, Ward 2
1110 S. Sherwood Village Dr.
Applicant: Dorothea Catherine Warner
Series 6, City AC5-17
Action must be taken by: May 8, 2017

Staff has indicated the applicant is in compliance with city requirements.

NOTE: The local governing body of the city town or county may protest the acquisition of control within sixty days based on the capability reliability and qualification of the person acquiring control. (A.R.S. Section 4-203.F)

It was moved by Council Member Fimbres, duly seconded, and carried by a voice vote of 6 to 0, (Council Member Uhlich absent/excused), to forward liquor license applications 5b1 through 5b7, 5c1 through 5c3, 5c6, and 5d1 to the Arizona State Liquor Board with a recommendation for approval.

5. LIQUOR LICENSE APPLICATIONS

c. Liquor License Application(s)

Special Event(s)

4. Poverello House of Tucson, Ward 3
3201 E. Presidio Rd.
Applicant: Conrad L. Wall
City T48-17
Date of Event: October 4, 2017
(Fundraiser)

Staff has indicated the applicant is in compliance with city requirements.

Public Opinion: Written Arguments Opposed Filed

Vice Mayor Romero stated she would be shepherding the item at the request of Council Member Uhlich. She asked anyone who filed a written argument against the application or if the applicant was present and wanted to speak.

There was no one.

It was moved by Vice Mayor Romero, duly seconded, and carried by a voice vote of 6 to 0 (Council Member Uhlich absent), to forward liquor license application 5c4 to the Arizona State Liquor Board with a recommendation for approval.

6. CALL TO THE AUDIENCE

Mayor Rothschild 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 were limited to three-minute presentations.

Mayor Rothschild also announced that pursuant to the Arizona Open Meeting Law, individual Council Members may ask the City Manager to review the matter, ask that the matter be placed on a future agenda, or respond to criticism made by speakers. However, the Mayor and Council may not discuss or take legal action on matters raised during “call to the audience.”

Comments were made by:

Ken Scoville	Dan Linhart	Ruth Beeker
Robert Reus	Beryl Baker	Edna San Miguel
Suzanne Schafer	David Rodriguez	Juan Guanacuatro
Elena Castro Contreras	Vanessa Castellanos	Keith Van Heyningen
Edward Cizek		

A recording of this item is available from the City Clerk’s Office for ten years from the date of this meeting.

7. CONSENT AGENDA – ITEMS A THROUGH I

Mayor Rothschild announced the reports and recommendations from the City Manager on the Consent Agenda were received into and made part of the record. He asked the City Clerk to read the Consent Agenda.

a. APPROVAL OF MINUTES

1. Report from City Manager MAY09-17-138 CITY WIDE
2. Mayor and Council Regular Meeting Minutes of August 9, 2016
3. Mayor and Council Study Session Legal Action Report and Minutes of August 9, 2016

b. ECONOMIC INITIATIVES: CONTRACT AMENDMENT WITH OB SPORTS GOLF MANAGEMENT FOR TUCSON GOLF COURSES

1. Report from City Manager MAY09-17-140 CITY WIDE
2. Resolution No. 22742 relating to Economic Incentives; approving Amendment No. 2 to the contract between the City of Tucson (City) and OB Sports Golf Management (OB SPORTS) for management of Tucson Golf Courses; and declaring an emergency.

- c. PRE-ANNEXATION AND DEVELOPMENT AGREEMENT: WITH RICHARD HILLSMAN JOHNSON JR. AND SARAH JEFFRIES JOHNSON REVOCABLE TRUST, OWNER OF PARCEL NO. 205-54-002E, FOR WATER SERVICE
 - 1. Report from City Manager MAY09-17-139 WARD 2 AND OUTSIDE CITY
 - 2. Resolution No. 22740 relating to Pre-Annexation and Development Agreements; authorizing and approving the execution of a Pre-Annexation and Development Agreement between the City of Tucson and the Richard Hillsman Johnson, Jr. and Sarah Jeffries Johnson Revocable Trust, Initial Trustees Richard Hillsman Johnson Jr. and Sarah Jeffries Johnson, husband and wife, or the survivor of them upon the death or disability of either initial Trustee, and with the express authority to act independently of one another, owners of Parcel No. 205-54-002E.

- d. PRE-ANNEXATION AND DEVELOPMENT AGREEMENT: WITH BRIAN AND CYNTHIA WEBB, OWNERS OF PARCEL NO. 109-04-244B, FOR WATER SERVICE
 - 1. Report from City Manager MAY09-17-142 WARD 3 AND OUTSIDE CITY
 - 2. Resolution No. 22739 relating to Pre-Annexation and Development Agreements; authorizing and approving the execution of a Pre-Annexation and Development Agreement between the City of Tucson and Brian N. Webb and Cynthia A. Webb, owners of Parcel No. 109-04-244B.

- e. INTERGOVERNMENTAL AGREEMENT AMENDMENT: WITH PIMA COUNTY FOR ANIMAL CARE AND ENFORCEMENT SERVICES
 - 1. Report from City Manager MAY09-17-144 CITY WIDE
 - 2. Resolution No. 22745 relating to Outside Agency Activities; authorizing and approving Amendment No. 1 to the Intergovernmental Agreement (IGA) between the City of Tucson and Pima County for Animal Care and Enforcement Services for Fiscal Year 2018; and declaring an emergency.

- f. FINANCE: PROPOSED SALE OF WATER SYSTEM REVENUE OBLIGATIONS, SERIES 2017; REFUNDING OF WATER SYSTEM REVENUE BONDS, SERIES 2017 (CONTINUED FROM THE MEETING OF APRIL 19, 2017)
 - 1. Report from City Manager MAY09-17-145 CITY WIDE

2. Ordinance No. 11450 An Ordinance relating to Finance: authorizing the Finance Director or Chief Financial Officer of City of Tucson, Arizona, to cause the sale and execution and delivery pursuant to an obligation indenture of Water System Revenue and/or Revenue Refunding Obligations, in one or more series, evidencing proportionate interests of the holders thereof in installment payments of the purchase price to be paid by the City of Tucson, Arizona, pursuant to a Series 2017 City Purchase Agreement; authorizing the completion, execution and delivery with respect thereto of all agreements necessary or appropriate for the refinancing or financing of costs of acquiring improvements to the storage, treatment and distribution facilities of the water system of the City and related financing costs including the delegation to the Finance Director or Chief Financial Officer of certain authority with respect thereto and including with respect to such refinancing authorization of the execution and delivery of a depository Trust Agreement with respect to certain obligations to be refunded; authorizing the preparation and delivery of an official statement with respect to such Series 2017 Obligations; ordering the sale of such Series 2017 Obligations; authorizing the execution and delivery of a continuing disclosure undertaking with respect to such obligations; authorizing the Finance Director or Chief Financial Officer to expend all necessary funds therefor and declaring an emergency.
- g. INTERGOVERNMENTAL AGREEMENT AMENDMENT: WITH PIMA COUNTY ONE STOP FOR THE WORKFORCE INNOVATIONS OPPORTUNITIES ACT PROGRAM
1. Report from City Manager MAY09-17-146 CITY WIDE
 2. Resolution No. 22746 relating to Intergovernmental Agreements (IGA) and Housing and Community Development; approving and authorizing execution of Amendment #1 to IGA between Pima County One Stop and the City of Tucson (City) for operation of the Workforce Innovations Opportunities Act (WIOA) Program; and declaring an emergency.
- h. REAL PROPERTY: VACATION AND SALE OF SURPLUS PROPERTY AND PORTIONS OF 7TH AVENUE AND 6TH STREET RIGHTS OF WAY
1. Report from City Manager MAY09-17-150 WARD 6
 2. Ordinance No. 11459 relating to real property; vacating and declaring portions of 7th Avenue and 6th Street rights of way adjacent to Benjamin Supply to be surplus City-owned property; authorizing the sale thereof along with a remnant of RP #3328 to 100 East 6th Street, L.L.C. ("Buyer"); and declaring an emergency.

- i. FINAL PLAT: (S16-089) PARK MODERN, LOTS 38 THROUGH 91, COMMON AREAS "A", "B", "D", AND "E"
 1. Report from City Manager MAY09-17-152 WARD 3
 2. Staff recommends that the Mayor and Council approve the plat as presented. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.

(Council Member Uhlich arrived at 6:30 p.m. and is participating electronically.)

It was moved by Council Member Scott, duly seconded, and passed by a roll call vote of 7 to 0, that Consent Agenda Items a – i be passed and adopted and the proper action taken.

8. PUBLIC HEARING: (SE-16-147) VERITAS ACADEMY - PALO VERDE BOULEVARD, R-2 ZONE, SPECIAL EXCEPTION- APPEAL OF ZONING EXAMINER'S DECISION

(NOTE: This item was taken out of order and considered after item 12.)

9. ZONING: (C15-16-04) ESTABLISHING ORIGINAL CITY ZONING FOR THE CHILDREN'S MEMORIAL PARK ANNEXATION DISTRICT, COUNTY SH TO CITY SH, ORDINANCE ADOPTION

(NOTE: This item was taken out of order.)

Mayor Rothschild announced City Manager's communication number 149, dated May 9, 2017, was received into and made part of the record. He asked the City Clerk to read Ordinance 11458 by number and title only.

Ordinance No. 11458 relating to Zoning: establishing original City zoning in the area located adjacent to and within the Rillito Creek channel, approximately 1/4 mile southwest of the intersection of Oracle Road and River Road in Case C15-16-04, Children's Memorial Park Annexation District, County SH to City of Tucson SH; and setting an effective date.

It was moved by Council Member Fimbres, duly seconded, and passed by a roll call vote of 7 to 0, to pass and adopt Ordinance 11458.

10. ZONING: (C9-16-15) DESERT POINT 2 - ALVERNON WAY, I-1 TO R-2, CITY MANAGER'S REPORT

(NOTE: This item was taken out of order.)

Mayor Rothschild announced City Manager's communication number 148, dated May 9, 2017, was received into and made part of the record. He also announced this was a request to rezone approximately 8.4 acres from I-1 to R-2 zoning located southeast of Alvernon and Benson Highway. He said the Zoning Examiner and staff recommend approval of R-2 zoning, subject to certain conditions.

Mayor Rothschild asked if the applicant or representative was present and agreeable to the proposed requirements.

Paul Nzomo, Coronado Structural Engineering, LLC on behalf of the property owners, Cornerstone Homes of Arizona, stated they were in agreement with the proposed requirements.

It was moved by Council Member Fimbres, duly seconded, and carried by a voice vote of 7 to 0, to authorize the request for rezoning as recommended by the Zoning Examiner.

11. ECONOMIC DEVELOPMENT INCENTIVES AND REAL PROPERTY: AUTHORIZING GOVERNMENT PROPERTY LEASE EXCISE TAX LEASE AGREEMENT FOR STONE AVENUE HOMES, LLC

(NOTE: This item was taken out of order.)

Mayor Rothschild announced City Manager's communication number 143, dated May 9, 2017, was received into and made part of the record. He asked the City Clerk to read Resolution 22741 by number and title only.

Resolution No. 22741 relating to Economic Development Incentives and Real Property; authorizing and approving the Government Property Lease Excise Tax (GPLET) Lease Agreement between the City of Tucson (City) and Stone Avenue Homes, LLC, for residential development of property located at 201 South Stone Avenue (Project).

It was moved by Council Member Kozachik, duly seconded, and passed by a roll call vote of 7 to 0, to pass and adopt Resolution 22741.

12. TUCSON CODE: AMENDING (CHAPTER 11) PROHIBITING THE SALE OF SYNTHETIC CANNABINOIDS, aka "SPICE" AND RELATED PRODUCTS; PROVIDING PENALTIES AND REMEDIES

(NOTE: This item was continued at the request of staff.)

8. PUBLIC HEARING: (SE-16-147) VERITAS ACADEMY - PALO VERDE BOULEVARD, R-2 ZONE, SPECIAL EXCEPTION- APPEAL OF ZONING EXAMINER'S DECISION

(NOTE: This item was taken out of order.)

Mayor Rothschild announced City Manager's communication number 147, dated May 9, 2017, was received into and made part of the record. He also announced this was the time and place legally advertised for a public hearing on an appeal of the Zoning Examiner's decision in a Special Exception Land Use Case. The Appellants are the president and vice-president of the Palo Verde Neighborhood Association.

(NOTE: Council Member Uhlich arrived in person at 6:38 p.m.)

Mayor Rothschild asked the City Clerk to read the order of the appeal.

Roger W. Randolph, City Clerk, explained that the order of the appeal would be as follows:

1. The Appellants, Ronnie Kotwica, President and Candace Phillapec, Vice President of the Palo Verde Neighborhood Association, would present their case.
2. The Applicant, Christopher Barnes of Veritas Academy of Tucson would present.
3. The public hearing will begin for other persons desiring to address the Mayor and Council (five minutes each).
4. At the close of the public hearing, the Mayor and Council may allow rebuttal by either the appellants and/or the applicant.
5. The governing body may question each party to establish reasons for granting or denying the appeal.
6. After the presentation, the Mayor and Council may discuss the case or act on it.
7. The time limit for arguments for the Appellant and Appellee was ten minutes for each side in direct address or rebuttal, but the total time limit was ten minutes.
8. The Mayor and Council could then decide the case based on the application, testimony, evidence and other materials considered in the prior proceeding in front of the Zoning Examiner, together with the City

Manager's communication and the testimony and evidence presented in the public hearing.

Mayor Rothschild inquired if the public hearing was an additional time limit allowed for others to speak.

Mr. Randolph replied it was an additional time limit.

Mayor Rothschild announced the public hearing was scheduled to last for no more than one hour and speakers were limited to five-minute presentations.

Richard Bacal, Attorney on behalf of Appellants and the Palo Verde Neighborhood Association (PVNA) Board. He said it was the decision of the Board to appeal the Zoning Examiner's (ZE) decision of February 9, 2017, that granted Veritas Academy a Special Exception Land Use request. He said the Board believes there were errors in the Zoning Examiner's report and the decision should be overturned. Specifically, he said, the Zoning Examiner cites the Future Growth Scenario Map, from Plan Tucson, as one of the justifications for approving the Special Exception. However, the map contained a disclaimer specifically stating the map did not reflect official city policy. Therefore, it should not have been used as one for the reasons for justifying the decision.

Mr. Bacal stated assuming *arguendo*, the map had some persuasive value, the fact that the ZE utilized provisions pertaining to perimeter schools, and the clear fact that Veritas was not so located, it rendered this basis wholly inappropriate and the decision a nullity. He continued by asking the Mayor and Council to rely on the *Unified Development Code (UDC)* requirements for schools which were clear as to acreage and square footage required per student for educational use.

Mr. Bacal said this decision weakened those requirements. It had the effect of financially benefitting Veritas at the expense of neighborhood needs and protection. He stated the case was, and always had been, about Tucson's zoning code requirements. He said the primary issue was whether those requirements would be enforced. He continued saying that the PVNA Board understood schools were permitted to exist, by right, in residentially-zoned neighborhoods. However, they also understand that healthy, stable neighborhoods were dependent on city codes and their enforcement. Adherence to these codes, and reliable enforcement, provide residents with the confidence that their investments would be protected. He said residents were investors, and their homes constituted the single largest investment in their portfolio.

Mr. Bacal stated that the property where the Book of Life Church was located had been a church since 1967. The school was utilized students in grades K-8. He said with attendance declining, the church was closed in 2005, but the school continued to operate. Traffic increased as the school took on older students and bused them from this site to another school. He commented that because of the increase in traffic the neighborhood requested nearly half a million dollars in grant money to implement traffic calming

measures. He said during that time, the City was an active partner and benefactor for the traffic mitigation planning and implementations of various, now completed projects. He indicated that eventually, the school failed and closed in 2007.

Mr. Bacal stated that in 2008 their neighborhood concerns reoccurred when another school, La Paloma, attempted to purchase the property with the intention of running it as a school. He said they exaggerated the size of the lot and insisted they would bring in three hundred students. At this time, the Development Services Director became involved in the La Paloma case, and informed everyone that there was a limit of one hundred thirty-five students for this site which was based on zoning code requirements that stipulate a school site shall provide a minimum of five acres or meet a ratio of one thousand four hundred fifty-two square feet of site area per student, whichever was greater.

Mr. Bacal said since the site was less than five acres, the number of students it could serve was capped at one hundred thirty five based upon the mandated ratio. He commented that according to the current Assessor's records, the church property totaled one hundred ninety-six thousand, and ninety-seven square feet. Therefore, one hundred ninety six thousand, and ninety-seven square feet square feet divided by the one thousand four hundred fifty-two square feet square feet ratio requirement equaled one hundred thirty-five students. He said eventually La Paloma withdrew their request.

Mr. Bacal stated the PVNA, once again, found itself facing a similar situation that centered around the number of students and the *Code* provisions. He said, from the very beginning, the PVNA had maintained the student daily population maximum was one hundred thirty-five students. He stated that as the student numbers increased, so did the level of noise and traffic and the negative impacts on their neighborhood. Veritas was well aware of *Code* requirements their school had to meet.

Mr. Bacal continued with his presentation to support their position regarding this issue. He stated, on behalf of the PVNA Board, he was asking the Mayor and Council to protect the investments the residents had made and overturn the Zoning Examiner's decision in the Veritas Special Exception request and adhere to the *Unified Development Code (UDC)* as set forth.

Christopher Barnes, Head of Veritas Academy of Tucson, said he received a letter with regards to their request. He spoke about how he came into the process for the special exception request and how the City was such a great teacher every step of the way. He said it was a long process, about four or five months later, only to find out, as he stood before the Zoning Examiner that he received an incomplete for his efforts because he had not met with the PVNA Boards Members and Richard Bacal, to hash out an agreement of traffic management and to get a solid figure of the maximum student population for his campus.

Mr. Barnes stated that since then, they had met with and had interactions with the neighbors and the PVNA on fourteen occasions to resolve any complaints and remedy

disturbances. As result, the Zoning Examiner issued a fair ruling on February 9th. He said, although, they did not get the five days of school they wished to have received, they chose to accept all conditions and work with them. He commented that the PVNA Board chose to appeal and when notified by the City Clerk's Office that there was an Intent to Appeal, Veritas sought once again to resolve the issues.

Mr. Barnes said that at the meeting, it was stated that the only issue that stood in the way of the appeal being dropped was be the maximum student population number of one hundred ninety-eight. He stated PVNA's president and vice president confessed they were stunned that was going to be the student population number. He commented that after much discussion, the PVNA offered that the number be one hundred sixty students as the maximum and Veritas Academy agreed to take it to their Board. He expressed there were some inaccuracies and mischaracterizations. He said they never agreed to the number of 160 students because after working the numbers, they realized it would cap their student enrollment to 12.3 students per class, which was too low to be financially viable.

Mr. Barnes explained that Veritas accepted a cap on the number of students to one hundred ninety-eight, one third less that had been on the campus prior to this. He said they accepted that figure because they wanted to be good neighbors and they accepted a 15.2 student class size. He asked if any Council member knew what schools in Tucson had a class size of 15.2 students. He said they were not looking for an overloaded, overcrowded campus.

Mr. Barnes requested the Mayor and Council reject the appeal and accept the Zoning Examiner's ruling with one exception, to allow our students to attend five days per week, like all other schools in Tucson.

Mayor Rothschild stated the Zoning Examiner, in his recommendation, had some land use compatibility measures. He said he wanted to make sure with Mr. Barnes that they were agreeable to the conditions.

Mr. Barnes responded they were with the exception of the five days.

Mayor Rothschild confirmed they were willing to relocate the playground equipment, come up with a communication action plan to included limiting traffic flow and how to deal with student drop off/pick up and extend the masonry block wall by twenty-six feet.

Mr. Barnes stated they were. He said they had the community action plan immediately following their meeting with the neighbors back in August. He mentioned they had also extended the wall as asked by the neighbors.

Mayor Rothschild asked what the school's current model was in terms of school days.

Mr. Barnes commented they were a university model school; K-6 students attended two days a week and grades 7-12 attended three days a week. He said currently, those days were stacked on top of each other because their enrollment allowed for all students to attend at the same time. He said, looking ahead, many of the university model schools for grades 7-12 attended school on Mondays, Wednesdays and Fridays and K-6 attended on Tuesdays and Thursdays. So the campus was used five days a week, but the enrollment never exceed their cap.

Mayor Rothschild confirmed that the school was in agreement to not exceed the enrollment cap set by the Zoning Examiner. He said he also understood the school was willing to settle at one hundred sixty-nine if the neighborhood decided to dismiss the appeal.

Mr. Barnes stated that both the PVNA and the Zoning Examiner had asked what they thought their maximum enrollment would be. He said they responded they would be happy if they got to one hundred fifty. He said he never said that was their final number, or never requested that from the PVNA. In prior discussions with the Manjeet Ranu, Planning and Development Services Director, it was suggested they have an average student attendance of one hundred sixty-nine students which allowed the school to go up and down between grade levels and also limited the total number of people on campus. He said that was where the number came from and commented they would be happy if the school could have five days at one hundred sixty nine students.

Richard Bacal said it appeared there was an example of the lack of due diligence. All of the things in question should have been done ahead of time and also exemplified the lack of good faith. He said the February 9th initial meeting; they were expecting a maximum student enrollment of one hundred fifty, which was part of the record. He said no where was it discussed that the *Code* requirement was one hundred thirty-five. He stated it was inappropriate to talk about the former school that was grandfathered in prior to the *Code*.

Mr. Bacal pointed out of some of the concessions that had already been made. He said they did not object to there being a school; although the *Code* required there be a minimum of five acres and the site was 4.5 acres. He said they did want the square footage requirement upheld as well as the hours of operation as set forth in the *Code*. He stated they did not object to outdoor activities being located less than fifty feet from the adjoining residential, but did ask that the playground equipment be relocated and residential street access be provided. He continued saying that they did not object to the building not meeting the twenty foot setback even though they were only located at twelve feet.

Mr. Bacal reiterated that they were not against the school being there. What they were saying was that the *Code* stated, under such circumstances, if there was an exception based on a ratio, it should be one hundred thirty-five students. He pointed out that if the maximum number of attendants was one hundred fifty students, that was thirteen hundred and seven square feet per student and if the attendance went up to one hundred sixty-nine students, it was one thousand one hundred and sixty square feet per

student. He said they were asking that it be a daily maximum that was set not an average daily which was very difficult to calculate and enforce and if there was an average it be based on the four days the school would be operation.

Mr. Bacal said they were also objecting to any lack of notice the Mayor and Council may be considering staff's recommendation. He said they had been made aware that was a possibility and were prepared to address that. He said they felt the one hundred sixty nine number was too much and asked the Mayor and Council to limit it to one hundred and fifty with the other recommendations and pointed out there needed to be more specificity as to what a full-school special event was as oppose to a partial-school special event.

Mr. Barnes responded he neglected to read something in his notes with regards to the square footage issue. He said it was not accurate to say it was never addressed. His understanding from the City was that if you could meet all of the codes, there was no need to come in for a special exception, but if not, then you needed to come in and argue your case for each and every variance which was what they did before the Zoning Examiner. He referred to a chart that was submitted with their materials that showed Veritas, at one hundred ninety-eight, had the second best square footage of any campus. He said the number given in the *Code* should not necessarily be taken as the law, it should be taken as a guideline. He said when compared to other schools in the area, Veritas had the second best square footage per student.

Mr. Barnes said Veritas had a building that was within twenty feet. He said he did not know if anyone had read through the appeal carefully, but it said that if a building was within twenty feet, then there could not be any openings within twenty feet of the property line. He said Veritas was almost exactly like the diagram in the *UDC* that there were no openings within twenty feet of the perimeter. He stated he did not know why that was put in there except for as a red herring to make things look worse.

RECESS: 7:10 P.M.

RECONVENE: 7:27 P.M.

MAYOR & COUNCIL: All present

STAFF: All present

Mayor Rothschild announced the public hearing was scheduled to last for one hour and speakers were limited to five-minute presentations.

Comments were made by:

Jerome Bowen
Ann Woods
Leanna Newman
Nathanail Bucs
Renee Maxfield
Jack Christie
Layla Hull

Candice Filipek
Ethan Orr
Connie Ann Wareing
Michael Robinson
Martha Palmer
Amy Grace
Deanna Hull

Steve Shermett
Steve Poe
Sara Falconer
Sarah Lewis
Tom Christie
Ciara Hull

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

Mayor Rothschild said he had understood the reason the special exception hearing was being held was because the school property was less than five acres, 4.5 acres. He stated what he had heard was that the reason for the hearing was that anything over one hundred thirty-five students, was outside the *Code* exception. He asked staff why the Mayor and Council was present to hear the special exception.

Albert Elias, Assistant City Manager, explained the reason the special exception was applied for by the Veritas Academy was because the site was 4.46 acres instead of 5.0 acres which was the basis for the request. He explained the process they had been through and the Zoning Examiner process, as well as, the conditions related to the application and specifics of the proposal.

Mayor Rothschild asked if the one hundred thirty-five students were from a historic use or different use.

Mr. Elias expressed there were previous special exceptions approved on the site for different uses at different points in time. He said what was relevant that evening was the current application and the sets of conditions that were from this particular process.

Council Member Kozachik commented that if there were previous special exceptions granted for the property, where the one hundred thirty-five number came up, that number ran with the land. He stated that was the reason for the meeting because the conditions which were attached to the special exception, ran with the land subsequently. He stated it would be the status of the school, not the acreage that drove them there.

Michael Rankin, City Attorney, agreed everyone was right in answering the question. He explained the meeting was being held because of an educational use in the zone. He expressed it could be permitted right if all requirements were met, or it needed a special exception if it did not meet all requirements. He said in this instance, whether by virtue of prior conditions approved as an earlier special exception, or the inadequacy of the site area, either of those two things triggered the requirement for a special exception.

Council Member Uhlich asked if any documents had been secured that were associated with the gifting or sale of the land to the City for the well purpose.

Mr. Elias explained he did not have documentation of the manner in which the City acquired the property. He stated it was correct the City owned the property and had been used as a Tucson Water asset which was a production well that was integral to the City's water service delivery system.

Council Member Uhlich stated it was a lesson for all in the future that that type of generosity it did not hurt to cover your own back by writing in there that the City did not

relinquish any land use rights associated with the transfer of the acreage. She said that was one of the troubling elements for her that really there were five acres there and the water well, in a sense, was sort of a buffering affect. She asked for clarification in regards to the R-2 zoning and how many units of housing at what heights could go in if site was converted to residential development under current entitlements without any rezoning.

Jim Mazzocco, Zoning Examiner, explained the density was a five thousand square foot lot, or multi-family would allow fifteen units per acre.

Council Member Uhlich said there could be sixty units at twenty-five feet high that was allowed in R-2 and there would be some set back requirements for that. She said this was a lesson, hard learned, in Ward 3 from time to time and it was a question of, “if not this, then what.” She said it was hard to know and given that, she would hate for the Mayor and Council in three years, for the site to be abandoned, a developer purchased it and build sixty units at twenty-five feet adjacent to the property owners living next door. She said that was the reality of this issue and there was rarely a clear, simple choice.

Council Member Uhlich said for her, she suspected that was possibly more egregious in terms of the impacts in the neighborhood given her experience with infill in Ward 3. She said she was inclined to respect the advice of the Zoning Examiner. She said the only other thing she did not understand was the restriction to four days of instruction and felt it could violate the ability of the school moving forward. She said she was considering revisiting that question and did not know if it was within the parameters of the item, but it made sense to her that the school be allowed to operate as other schools five days a week. She said to impose that particular restriction in addition to enrollment cap and other things, troubled and concerned her. She stated she did not have a motion but wanted to see it potentially addressed in a motion.

Mayor Rothschild asked if at some point there was a motion to support the Zoning Examiner’s decision was it within the Mayor and Council’s authority to amend the decision to allow for five days of instruction.

Mr. Rankin replied it was within the Mayor and Council’s authority.

Council Member Cunningham expressed his thoughts on public education versus private education. He said as a parent, sending your kids to school was a really sensitive thing and not allowing people to exercise that choice was hard. He said there were a couple things that did not come up that he was looking into. He said Catalina High School’s enrollment, at one point in time, was about twenty five hundred students as opposed to their current enrollment of eight hundred fifty students. He stated it was hard for him to believe that all of a sudden the extra hundred and fifty students would totally discombobulate the traffic patterns of the PVNA.

Council Member Cunningham stated he did not feel Veritas personnel were trying to “sneak” one by based on all of the testimony presented. He said sometimes you had to

take a look at a neighborhood and make sure the neighbors were working together. He said he too was inclined to agree with Council Member Uhlich, based on comments heard; some of the issues would naturally work themselves out if acting in good faith. He said if things were done right, as far as traffic, there was a twenty minute window of inconvenience.

Council Member Kozachik agreed that Veritas had not been acting in bad faith. He asked staff what the guiding rules were as to size, capacity and student enrollment allowed under the *Code*.

Mr. Rankin responded that under Section 4.9.3 (D)(2) of the *Unified Development Code (UDC)*, provided that educational uses were subject to certain specific standards, and variances were not permitted; however, if the standards cannot be met, the applicant can request approval through a special exception procedure if permitted within the zone. He said this was one of the zones where it was permitted.

Mr. Rankin stated the *Code* also dealt specifically with site areas, "Except as provided for Charter Schools, the minimum required site area for educational uses in residential zones is five acres., unless a greater site area is required in Dimensional Standards or the ratio of 1,452 square feet of site area for each student proposed for the school, whichever is greater." He said it was either a minimum of five acres or 1,452 times however many students which could be above five acres.

Council Member Kozachik asked what number of students that would allow Veritas. He said he attended multiple meetings regarding this issue and the number of students was a moving target which was frustrating. He said the most recent dialogue he heard was one hundred fifty, which became Mr. Ranu's number of one hundred and sixty-nine over four days.

Council Member Kozachik stated the most everything on the list of conditions had been agreed upon with the exception of the student enrollment of one hundred ninety eight.

It was moved by Council Member Kozachik, to affirm the Zoning Examiner's recommendations, with the exception of #10, the maximum on-site student population shall not exceed one hundred and fifty students. He said he felt that reflected the multiple dialogues held.

The motion died due to lack of a second.

Vice Mayor Romero stated that listening to the concerns of the neighborhood, students, parents and Veritas, it was an important choice for parents to choose between public education and private education. She spoke about having to talk to parents and neighborhoods regarding the closure of public schools as well as liquor license requests, bar requests, etc. She said there was no comparison to the current request. She stated she would be supporting the Zoning Examiner's recommendation.

It was moved by Council Member Uhlich, duly seconded, to affirm the Zoning Examiner's decision with the exception of allowing the school to operate five days a week rather than four and include the student population of one hundred ninety-eight students.

Discussion was held about changing the conditions at the table and potential traffic implications if Catalina High School's enrollment rose above sixteen hundred students.

The motion was passed by a roll call vote of 6 to 1 (Council Member Kozachik dissenting) to affirm the Zoning Examiner's decision with the exception of allowing the school to operate five days a week rather than four and include the student population of one hundred ninety-eight students.

Mr. Rankin stated there was an additional issue on the item relating to the appeal fee.

Mayor Rothschild confirmed the appellant had asked that the appeal fee be waived.

It was moved by Council Member Uhlich, duly seconded, and carried by a voice vote of 7 to 0, to waive the appeal fee.

13. BOARDS, COMMITTEES AND COMMISSIONS: APPOINTMENT TO THE CIVIL SERVICE COMMISSION (CONTINUED FROM THE MEETING OF APRIL 19, 2017)

Mayor Rothschild announced City Manager's communication number 141, dated May 9, 2017, was received into and made part of the record. He asked the City Clerk to read Resolution 22743 by number and title only.

Resolution No. 22743 relating to the Civil Service Commission; appointing _____ as a Civil Service Commissioner, for a term expiring on March 7, 2023; fixing annual compensation; and declaring an emergency.

It was moved by Vice Mayor Romero, duly seconded, and passed by a roll call vote of 7 to 0, to pass and adopt Resolution 22743 appointing Rebecca Montano as a Civil Service Commissioner.

Mayor Rothschild announced there were three vacancies for the Commission and once filled should have equal representation from both the Republican and Democratic parties.

Roger Randolph, City Clerk, informed the Mayor and Council that Max Parks and Malcolm Pavey were current members on the Commission and both of them are of the Republican party.

14. APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS

Mayor Rothschild announced City Manager’s communication number 137, dated May 9, 2017, was received into and made part of the record. He asked for a motion to approve the appointments in the report.

It was moved by Vice Mayor Romero, duly seconded, and carried by a voice vote of 7 to 0, to approve the appointments of Joshua M. Proctor to the Commission on Food Security, Heritage, and Economy (CFSHE), Zaira Livier Serrato and Suzette Jimenez to the City Magistrates Merit Selection Commission (CMMSC), and Leo Quesada to the Fire Code Review Committee (FCRC)

Mayor Rothschild asked if there were any personal appointments to be made.

There were none.

15. ADJOURNMENT: 8:55 P.M.

Mayor Rothschild announced the next regularly scheduled meeting of the Mayor and Council would be held on May 23, 2017, at 5:30 p.m., in the Mayor and Council Chambers, City Hall, 255 West Alameda, Tucson, Arizona.

MAYOR

ATTEST:

CITY CLERK

CERTIFICATE OF AUTHENTICITY

I, the undersigned, have read the foregoing transcript of the meeting of the Mayor and Council of the City of Tucson, Arizona, held on the 9th day of May 2017, and do hereby certify that it is an accurate transcription.


DEPUTY CITY CLERK

RWR:ms:yl