



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
on May 8, 2018.

Date of Meeting: Tuesday, November 21, 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 5:38 p.m., on Tuesday, November 21, 2017, all members having been notified of the time and place thereof.

1. ROLL CALL

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

Present:

Regina Romero	Vice-Mayor, Council Member Ward 1
Paul Cunningham	Council Member Ward 2
Karin Uhlich	Council Member Ward 3
Shirley C. Scott	Council Member Ward 4
Richard G. Fimbres	Council Member Ward 5
Steve Kozachik	Council Member Ward 6
Jonathan Rothschild	Mayor

Absent/Excused:

None

Staff Members Present:

Michael J. Ortega	City Manager
Michael Rankin	City Attorney
Roger W. Randolph	City Clerk

2. INVOCATION AND PLEDGE OF ALLEGIANCE AND APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS

a. INVOCATION

The invocation was given by Father Charlie Knapp, Catholic Diocese of Tucson.

b. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was presented by the entire assembly.

c. PRESENTATIONS:

1. Mayor Rothschild announced that Susan Hicks and Richie Denner would present the Eighth Annual Pinewood Trophy. Mayor Rothschild was awarded the second place trophy.

2. Mayor Rothschild presented the Copper Plaque Recognizing Council Member Karin Uhlich for her years of service on the Council.

d. APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS

Mayor Rothschild announced City Manager's communication number 383, dated November 21, 2017, was received into and made part of the record.

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

Vice Mayor Romero announced her personal appointments of Tom Goodrich to the Tucson Commission on Gay, Lesbian, Bisexual and Transgender Issues (GLBT), and Michael O'Connell to the Environmental Services Advisory Committee (ESAC).

Council Member Scott announced her personal appointment of Melo Dominguez to the Public Art and Community Design Committee (PACDC).

3. MAYOR AND COUNCIL/CITY MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS

Mayor Rothschild announced City Manager's communication number 379, dated November 21, 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 and the City Manager to report on current events and asked if there were any reports.

Current event reports were provided by Vice Mayor Romero and Council Members Cunningham, Scott, Fimbres, and Kozachik.

No report was given by the City Manager.

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

4. BOARDS, COMMITTEES AND COMMISSIONS: REPORTS TO MAYOR AND COUNCIL

Mayor Rothschild announced City Manager’s communication number 380, dated November 21, 2017, was received into and made part of the record. He also announced this was the time scheduled to allow Boards, Committees, and Commissions to report on their activities during the past year, as well as anticipated future activities.

Reports were provided by Max Parks, Civil Service Commission (CSC) Chairperson, and Gabrielle Ficchi, Commission on Disability Issues (CODI), Chairperson.

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

5. LIQUOR LICENSE APPLICATIONS

Mayor Rothschild announced City Manager’s communication number 381, dated November 21, 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. Street Taco and Beer, Ward 6
5870 E. Broadway Blvd. #532
Applicant: Kevin Arnold Kramber
Series 12, City 74-17
Action must be taken by: November 26, 2017

Staff has indicated the applicant complies with city requirements.
2. Oregano’s Pizza Bistro, Ward 1
4884 S. Landing Way
Applicant: Mark Steven Russell
Series 12, City 75-17
Action must be taken by: November 27, 2017

Staff has indicated the applicant complies with city requirements.
3. Taco Giro Mexican Grill, Ward 2
9165 E. Tanque Verde Rd.
Applicant: Maria Guadalupe Ramos Mora
Series 12, City 76-17

Action must be taken by: December 2, 2017

Staff has indicated the applicant complies with city requirements.

4. Meat the Sizzle, Ward 6
4699 E. Speedway Blvd.
Applicant: Kim Chu
Series 12, City 77-17
Action must be taken by: November 30, 2017

Staff has indicated the applicant complies with city requirements.

Public Opinion: Written Argument in Support Filed

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)

5. Arco AM/PM, Ward 5
501 W. Irvington Rd.
Applicant: Inder Preet Kaur
Series 9, City 72-17
Action must be taken by: November 26, 2017

Staff has indicated the applicant complies with city requirements.

Public Opinion: Written Argument Opposed Filed

This item was considered separately.

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)

c. Special Event(s)

1. Tucson Rodeo, Ward 5
4823 S. 6th Ave.
Applicant: Gary G. Williams
City T153-17
Date of Event: February 17, 2018 - February 25, 2018
(Annual La Fiesta de los Vaqueros)

Staff has indicated the applicant complies with city requirements.

2. AZ Wine Cellars, Ward 6
536 N. 4th Ave.
Applicant: Richard Sharp
City T158-17
Date of Event: December 8, 2017 - December 10, 2017
(4th Avenue Street Fair)

Staff has indicated the applicant complies with city requirements.

3. St Thomas the Apostle Roman Catholic Parish-Tucson, Ward 6
134 S. 5th Ave.
Applicant: Michelle Lynn Garmon
City T159-17
Date of Event: December 8, 2017
(Fundraiser)

Staff has indicated the applicant complies with city requirements.

4. St Thomas the Apostle Roman Catholic Parish-Tucson, Ward 6
134 S. 5th Ave.
Applicant: Michelle Lynn Garmon
City T160-17
Date of Event: February 16, 2018
(Fundraiser)

Staff has indicated the applicant complies with city requirements.

d. Agent Change/Acquisition of Control/Restructure

1. Whole Foods Market, Ward 6
3360 E. Speedway Blvd.
Applicant: Jeffrey Howard Roff
Series 7, City AC72-17
Action must be taken by: November 27, 2017

Staff has indicated the applicant complies with city requirements.

2. Whole Foods Market, Ward 6
3360 E. Speedway Blvd.
Applicant: Jeffrey Howard Roff
Series 10, City AC73-17
Action must be taken by: November 27, 2017

Staff has indicated the applicant complies with city requirements.

3. Rancho Rustico Family Mexican Restaurant, Ward 4
8270 S. Houghton Rd. #140
Applicant: Jose Luis Arceo Verbera
Series 12, City AC74-17
Action must be taken by: December 2, 2017

Staff has indicated the applicant complies with city requirements.

It was moved by Vice Mayor Romero, duly seconded, and carried by a voice vote of 7 to 0, to forward liquor license applications, 5b1 through 5b4, 5c1 through 5c4, and, 5d1 through 5d3, to the Arizona State Liquor Board with a recommendation for approval.

5. LIQUOR LICENSE APPLICATIONS

- b. Person/Location Transfer(s)

5. Arco AM/PM, Ward 5
501 W. Irvington Rd.
Applicant: Inder Preet Kaur
Series 9, City 72-17
Action must be taken by: November 26, 2017

Staff has indicated the applicant complies with city requirements.

Public Opinion: Written Argument Opposed Filed

Roger W. Randolph, City Clerk, announced the item to be considered separately was Item 5b5, located in Ward 5.

Council Member Fimbres called on the applicant and the person filing the protest to come forward.

Inder Preet Kaur, Applicant, stated she had tried to contact Yolanda Herrera regarding the letter of protest, left her contact information and never heard from Ms. Herrera. She then spoke in defense of her request and stated she felt they were very capable running their business without any issues.

Yolanda Herrera, Sunnyside Neighborhood Association President, spoke in opposition to the approval of the liquor license transfer/application and asked that the Mayor and Council deny the request.

It was moved by Council Member Fimbres, duly seconded, and carried by a voice vote of 7 to 0, to forward liquor license application, 5b5, to the Arizona State Liquor Board with a recommendation for denial.

6. CALL TO THE AUDIENCE

Mayor Rothschild announced this was the time for any member of the public 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:

Keith Van Heyningen Ken Scoville Yolanda Herrera

Vice Mayor Romero requested that City staff address Ms. Herrera’s concerns regarding landscaping in medians.

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 C

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 NOV21-17-382 CITY WIDE
2. Mayor and Council Regular Meeting Minutes of March 7, 2017
3. Mayor and Council Regular Study Session Legal Action Report and Minutes of March 7, 2017
4. Mayor and Council Regular Meeting Minutes of March 21, 2017
5. Mayor and Council Study Session Legal Action Report and Minutes of March 21, 2017

b. EMERGENCY MANAGEMENT: ADOPTION OF PIMA COUNTY MULTI-JURISDICTIONAL HAZARD MITIGATION PLAN

1. Report from City Manager NOV21-17-388 CITY WIDE

2. Resolution No. 22839 relating to Emergency Management; adopting the 2017 Pima County Multi-Jurisdictional Hazard Mitigation Plan as the official City of Tucson Hazard Mitigation Plan; and declaring an emergency.
- c. REAL PROPERTY: SALE OF SURPLUS CITY PROPERTY LOCATED AT 261 EAST GRANT ROAD
1. Report from City Manager NOV21-17-386 WARD 3
 2. Ordinance No. 11502 relating to Real Property; declaring property located at 261 East Grant Road to be surplus City-owned property; authorizing the sale thereof to Grohall Incorporated; and declaring an emergency.

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

8. PUBLIC HEARING: ZONING (C9-17-02) 22ND AND HOUGHTON PAD – HOUGHTON ROAD, SR TO PAD-32, CITY MANAGER’S REPORT, ORDINANCE ADOPTION

Mayor Rothschild announced City Manager's communication number 387, dated November 21, 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 a request to rezone approximately 16.3 acres from SR to PAD zoning. He said the rezoning site was located at the northeast corner of 22nd Street and Houghton Road.

(Note: Council Member Kozachik departed at 6:52 p.m., and returned at 6:54 p.m.)

(Note: Council Member Fimbres departed at 7:27 p.m., and returned at 7:30 p.m.)

Mayor Rothschild asked if the applicant or representative was present.

Council Member Kozachik asked a procedural question to the November 2nd, Zoning Examiner (ZE) decision that was based on a certain site development plan that included a ninety-nine thousand, nine hundred eighteen square foot Fry's. He said since that decision and the public hearing that evening, the site plan changed. He asked if the Mayor and Council was discussing the site plan the ZE ruled on or were they talking about a “moving target” where the proposed site plan had changed. He said in other words, the Mayor and Council were scheduled to vote on what was presented for the record for everyone who had an opportunity at the ZE hearing to weigh in on, and now that that had changed, where were they at in that regard.

Scott Clark, Planning and Development Services Department Director, stated the site plan had been reduced since the initial submittal. He said it was reduced to ninety-

six thousand square feet for the Fry's; a three hundred square feet kiosk for the gas station; twelve thousand square feet for the retail outlet and six thousand square feet for a second retail outlet.

Council Member Kozachik reiterated he understood that, but the ZE had made a determination based on a record that was presented with respect to a ninety-nine thousand square foot Fry's not a ninety-six thousand. He asked what was being voted on at the evening's meeting.

Michael Rankin, City Attorney, clarified the decision was to vote on the ninety-six thousand depiction and the revised site plan. He said as part of the review, the also had a complete record of both of the ZE's hearings that had taken place and the Mayor and Council could certainly take into consideration the comments and recommended conditions attached to the ZE's report.

Council Member Kozachik stated that one of the flaws that were cited in the Planned Area Development (PAD) was with respect to the large retail establishment, which was what was presented at the ZE's hearing and now because of the change; evidently, it came under the hundred thousand square feet. He said none of the people who had opposed the requested had a chance to weigh in on the changed site plan and asked if that was appropriate in the Attorney's opinion.

Mr. Rankin responded that he believed the notice was sufficient, particularly in light of the fact that the PAD document itself, including an advance of the ZE hearing identified a large retail establishment as a prohibited use. He said the notion of it being below one hundred thousand square feet was the case throughout the process.

Mayor Rothschild stated he felt that they might hear, that evening, some suggestions and conditions that the applicant may or may not agree to, so suggested proceeding with the public hearing.

Mayor Rothschild commented on how he intended to proceed with the public hearing. He said he would give the applicant seven minutes for their presentation and then he would give the opposition the same seven minutes for their presentation and thereafter the public hearing would commence.

Mayor Rothschild announced the public hearing was scheduled to last for no more than one hour and speakers were limited to five-minute presentations. He commented that there were a large number of speaker cards submitted, eighty-four cards in all, and there would only be enough time for approximately six or seven speakers for each side as that would be representative of the public's opinion. He asked the audience for civility during the public hearing.

Keri Silvyn, representing the applicant and property owner of the Twenty-Second Street Baptist Church, to rezone approximately 16.3 acres from SR (Suburban Ranch) to Planned Area Development (PAD) zoning with a base zoning of C-1. She stated that C-1

zoning provided for low-intensity commercial and other uses that were compatible with other uses adjacent uses. She continued that the reasons they used the PAD were: 1) to prohibit uses, which they had done for large retail establishments over one hundred thousand square feet; 2) to request permission for limited outdoor vestibules that would be closed at night, and 3) to allow three more gas pumps in order to improve service, having people not idling and minimize neighborhood impact.

Ms. Silvyn stated her presentation would focus on some context and the open space issue. She described the property to be re-zoned as a 16-acre single ownership parcel which had been owned since 1979 and that in 1985 the *Houghton East Neighborhood Plan (HENP)* was adopted. She said the property was surrounded by residential to the north and to the east as one acre lots with a roadway on either side. She indicated that the other three intersections were already rezoned to C-1.

Ms. Silvyn stated that the *HENP* was a twenty-four page policy document adopted in 1985 that covered two square miles of area and the property being discussed was one of two intersections designated for non-residential use. She said the open space provision being discussed was actually in the non-residential policy section. She stated the purpose for the open space was to create visual diversity and interest in passive recreation if developed for commercial and was not for the wildlife corridor, which was a different section in the *HENP*.

Ms. Silvyn commented that the only reason neighborhood commercial and community commercial came into play, which were defined terms within the *HENP*, was for how much open space was required if there was development for non-residential. She stated neighborhood commercial required twenty percent and was low-intensity commercial serving neighborhood retail and service needs. She said neighborhood services was also a defined term and gave an example of a grocery store.

Ms. Silvyn continued stating that community commercial was a retail and service uses center and served a population of three miles or greater. She said they were proposing a grocery store with a service area of under three miles. The non-residential section in the *HENP* also gave an example of neighborhood commercial and called out the southeast corner of Houghton and Broadway Blvd. which was C-1. She said the size of the store did not matter and was not brought out in the *HENP*. Prior grocery stores were always forty to sixty thousand square feet and were always part of a neighborhood shopping center that had other uses such as a pharmacy, retail, and when those uses were added together, it came out to close to the same square footage as the ninety-nine thousand square foot Fry's with the other associated retail.

Ms. Silvyn continued her comments on explaining their request and the reasons why Mayor and Council should approve their request. She said that consolidated open space was required, but more open space was provided for in the PAD than required. She said almost thirty percent was being allowed, where only twenty percent was required. Ms. Silvyn said that the purpose of the open space was to create visual diversity and

interest, and to allow for passive recreation. She said they met more than the requirements set out in the *HENP*.

Ruth Beeker, on behalf of the Houghton East Neighborhood Association (HENA), who was in opposition to the proposed project for a Fry's Grocery store located at 22nd and Houghton stated that the PAD violated both the *Unified Development Code (UDC)* and the *HENP*. She said HENA provided the Mayor and Council with two documents that listed five areas of contention with a recent update which made clear what the violations were. She stated the HENA had a comprehensive *Plan*, approved in 1985 by the Mayor and Council that guaranteed their unique two square miles would remain a "special" place even after they had been annexed to the City of Tucson.

Ms. Beeker stated regulations had been built into the *Plan* so that the area remained primarily low-density, single-family residential development and acknowledged their close proximity to Saguaro National Park. She said keeping open space for nature was a priority. She explained that there was no question *HENP* had a legal standing; the *UDC* was clear and stated that each PAD must be in compliance with the *General Plan* and the applicable sub-regional and neighborhood plans, which meant all aspects of the *HENP*.

Ms. Beeker commented that this site should never have been considered for high intensity commercial development. She said the *HENP* identified Houghton Road at Broadway to be the primary site for development up to thirty-five feet tall. She said only two sentences in the *HENP* directly addressed the intersection and one limited the intersection to be twenty feet tall in building and was changed back in March to be twenty-six for this specific project. The other sentence addressed non-residential uses only at the intersection of the Houghton Road and 22nd Street. because it violated the *HENP*.

Ms. Beeker continued her presentation and stating reasons why the PAD should not be approved. She said *HENP's* non-residential development restriction had proven to be a major stumbling block in reconciling the *HENP* and the proposed PAD. She stated the *HENP's* non-residential goal was to serve neighborhood needs and to that end, it tied percentage required open space to the intensity of the site development. She said they had evidence that the applicant would have trouble meeting the open space requirement. She explained the different definitions of neighborhood zones that existed. She said the definition should be removed from the *UDC* if it was not being followed.

Ms. Beeker said the request must be denied, as it did not comply with the *HENP*. She stated neighborhood plans mattered and they felt it was the time for the Mayor and Council to "step-up" and to say it was time to change the ways were being done in the City.

Mayor Rothschild stated that they would now move to the public hearing which was scheduled to last for no more than one hour and speakers were limited to five-minute presentations.

Comments were made by:

Ryan Gaston	Colette Altaffer	Fred Yamashita
Bonnie Poulos	Vicki Senter-Sheley	Daniel Porzio
Eli Stinger	Linda Schaub	Jeannie Ngugen
Linda Warkomski	J. Lisa Jones	Judy Kaiser
Barbara Lehmann	Eddie Trisler	David Little
Ruth Beeker	Carrie Silvyn	

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

Council Member Cunningham asked for justification on how it was determined that the proposed PAD was in compliance with the *HENP*.

Mr. Clark stated that when the determination was made on compliance or conformity of a PAD, the plans and policies of the *HENP* were looked at and when there was ambiguity then they referred back to the *UDC*. He said with the *HENP* itself, it states that there should not be any non-residential uses at the intersection of Broadway Blvd. and Houghton Road and 22nd Street and Houghton Road. He commented that it further defined that non-residential were commercial, neighborhood commercial and community commercial.

Mr. Clark said that in 1984, when the *HENP* was written, neighborhood commercial was not clearly defined in the *UDC* and came about in the *Land Use Code (LUC)* in 1995. However; in the original *HENP* document, the classification neighborhood commercial was applicable both to a commercial development, business commercial on Broadway and Houghton and at that time the zoning was B-1, which was later translated to C-1. He said neighborhood commercial was translated to commercial one over time in the *LUC*. So that was how it was defined; they had to go back to the *UDC* and back to the code in time to see how that translates.

Council Member Cunningham asked what community commercial was and what was it presently considered.

Mr. Clark stated that in the *HENP* it was only defined by a level of open space and was zoned C-2.

Mayor Rothschild asked for clarification on the difference between C-1 and C-2 zoning. He said his understanding was centered around and focused on areas that were under three miles versus over three miles.

Michael Wyneken, Planning and Development Services Department, stated that the three mile radius was referenced in the *HENP* and in the *UDC* focused on the overall intensity, not the market aspect of it.

Council Member Cunningham asked how often grocery stores were developed in a C-1 zone area and was it typical or not typical and were there grocery stores in a C-2 zoning area as well.

Mr. Clark responded he believed it was typical and yes they had them in a C-2 zoning area. He said typically, when looking at a C-2 use, you were looking at a more intense use.

Council Member Cunningham asked why they had eighteen gas pumps when C-1 zoning allowed for only twelve. He said if the City was considering this as a C-1 project, how did the developer get to build up to eighteen gas pumps.

Mr. Clark stated that as part of a PAD zoning, the developer was allowed to set some of their own zoning conditions. He said one of the requests in this PAD zoning was for the authorization of a nine-pump, eighteen nozzle gas island.

Council Member Cunningham remarked that he was pretty clear at the time discussions were held about the height variance in granting the PAD was that the only reason the PAD was being allowed was so that there could be neighborhood input. He said he could pretty much guarantee that no neighbors wanted eighteen gas pumps.

Mayor Rothschild explained that the Mayor and Council could impose conditions and new conditions on any condition. He asked Ms. Silvyn to come forward.

Ms. Silvyn stated they requested, as part of the PAD, that one of the additions for C-1 was to put in the three additional pumps to go from six to nine. She said they believed it was a consumer preference and that Fry's had the experience that a lot of the projects they had with six pumps had consumers waiting for gas and complaining about the idling. She said the reason they asked for it was because in the PAD, C-1 could be modified. She said if that was becoming a major part of the problem with the project and was a comfort level for everyone to take it back to the six pumps, she would have that discussion with her client. She stated it was requested from the very beginning and was part of the *HENP* to which they advised they would be making that request.

Council Member Cunningham stated this was a pretty big store regardless. He said one of the things he wrestled with on the project was that you could build a mini-mall with a smaller grocery shop and still build up to one hundred ten thousand square feet. On the other side, he said, they needed to do what the rules said especially with the neighborhood plan, which was covenant with the neighbors. He said he wanted to hear from his colleagues on their thoughts and ideas.

Mayor Rothschild asked the City Attorney, if someone on the Council, during the course of the evening, wished to impose an additional requirement, could that be done.

Mr. Rankin responded they could. He said their options at the evening's meeting, even if they were to approve the PAD as presented, could impose additional conditions if they ultimately agreed to it as a governing body.

Council Member Uhlich asked if in a PAD rezoning there was still the requirement of compliance with the neighborhood plan.

Mr. Rankin replied in the affirmative.

Council Member Uhlich stated she wanted to walk through a couple more of the list of nine questions. She asked if the open space requirement was met and was it met without including the public rights-of-way adjacent to the actual property.

Mr. Clark said the open space requirement that was set by the PDSO director, twenty-five percent, was met based on the calculations provided by the applicant and did not include the right-of-way.

Council Member Uhlich asked if the term "minimal grading" was a legal term. She said she noticed it in the *Plan* that there be "minimal grading" and was it accurate that there was a thirty foot drop from the east side to the west side. She asked if the grading issue was looked and determined to be in compliance.

Mr. Clark responded that "minimal grading" was not defined. He said they did not look at the level of grading in the PAD; it was something that would be looked at in the preliminary development plan and design review.

Council Member Uhlich commented on how they could ensure compliance with that element of the neighborhood plan if it was not looked at. She asked if there was a stipulation in the approval process that made sure that the plan being developed met that requirement. She wanted to know how that would read.

Ms. Silvyn stated that one of the changes they made was to grade the entire site and re-vegetate the open space. She said that was some that was heard loud and clear. She said that in their PAD, that north and eastern area was an area that would retain the natural grade and the vegetation would remain. She said there would be some restoration of vegetation. She commented that in their open space exhibit, the brown area was the only area of the Plan that would be graded; the full twenty percent or 3.2 acres on the north and east would remain in their natural grade.

Council Member Uhlich explained that she understood what Ms. Silvyn was saying, but the challenge for her was that what she was hearing was that eighty percent of the area was being graded and twenty percent was not, which constituted "minimal grading". She said she agreed with Council Member Cunningham that they were bound by what was in the *Plan* and she needed to hear how a decision such as this one could be codified in this development and would "minimal" be defined.

Mr. Rankin responded that as Mr. Clark explained, “minimal grading” was not a legally defined term and what did that mean in percentage. He said fairly, it could be looked at in terms of, “are they minimizing the amount of grading that they have to engage in in the context of the development.” He said he understood the Mayor and Council were struggling with the issue of compliance or conformance to the neighborhood plan, which was a type of specific plan, and yes the *Code* required that a PAD and/or any rezoning conforms and complies with the *General Plan*, *Area Plan* and the *Neighborhood Plan*.

Mr. Rankin explained that Arizona law gave some guidance on what that meant, what was compliance, conformance, and what was it consistent with. He stated there was a case out of Phoenix that involved whether a rezoning proposal complied with a specific plan, a type of neighborhood plan, and the courts said that what was looked at when comparing rezoning to an underlying neighborhood plan was if there was basic harmony between what the provisions of the plan were and the rezoning itself.

Mr. Rankin said a neighborhood plan was not meant to be a defining document on each of the individual elements and the court recognized that what a council was expected to do, what administration was suppose to do was to evaluate the proposed rezoning in terms of all of the different elements and components of an underlying plan and determine whether the proposed rezoning was in basic harmony with the goals and policies of that plan.

Council Member Kozachik commented that a year ago, the Mayor and Council had done a plan amendment and the only thing that was decided upon was to allow a twenty-six foot high building. He said at that time, he raised several issues where he believed in the conversation there was still discrepancy between what was being proposed at the time and the *HENP*. He said he did not feel any of those issues had been addressed and frankly, the *ZE* in his most recent decision ignored all of the inconsistencies presented by the opponents.

Council Member Kozachik questioned the large retail establishment. He said nowhere in the *ZE*'s transcript did it say they were going from ninety-nine thousand, nine hundred eighteen square feet to ninety-six thousand square feet. He asked staff if the *ZE* ruled based on a ninety-nine thousand, nine hundred eighteen square foot Fry's plus other buildings and no one at the *ZE* hearing had a chance to weigh in on a proposal to drop it to ninety-six thousand square feet, why was the City not bound by what the *ZE* actually ruled on.

Mr. Rankin replied the *ZE* did not rule, they made recommendations based on the proposal. He said the proposal as it moved forward to the Mayor and Council included, on page 54 of the PAD documents, the illustration showing the footprint of the main building at ninety-nine thousand, nine hundred eighteen square feet. He said he believed, what Ms. Silvyn was discussing in terms of what happened in front of the *ZE* was the discussion that it included the kiosk, which was not labeled on page 54 as having additional square footage and included in the 99, 918.

Mr. Rankin stated that it was reflected in the ZE's report itself on the first page where it identified that the ninety-nine thousand, nine hundred square feet was referring to the main building include kiosk space. He said that point was that, as presented to the ZE, and quite frankly presented to the Mayor and Council, the illustration in the PAD which was the ninety-nine thousand plus square feet. He stated what the applicant informed the Mayor and Council was that they were willing to specify that the actual footprint of the building was actually less, ninety-six. He said that was certainly within the scope of what the Mayor and Council could consider and would certainly be more problematic, if at a legislative hearing, they were proposing to actually increase beyond what people had an opportunity to offer comment on. He stated everyone had an opportunity to comment on a proposal with a footprint of ninety-nine thousand, nine hundred eighteen square feet.

Mr. Rankin commented that if the Mayor and Council decided to move the Plan forward with an approval, and wanted to specify that it was actually a ninety-six thousand square foot footprint for that building, they could do so.

Council Member Kozachik questioned consolidated open space permitted uses. He requested clarification once more on the ZE's recommendation for approval of the PAD based on the previous quoted sizes of the project and not the newly reduced size of 96,000 square feet. He also questioned how it could be approved based on the hundred-year flood plain that the proposed plan would sit on. He said he could not support the proposed PAD plan.

Vice Mayor Romero asked if the proposed site plan was within a designated wildlife corridor or a wash. She asked if there were any designed washes in the area that needed to be protected.

Mr. Clark replied it was not. He side in looking at the *HENP*, there were no spine washes on the site and according to the biologist report, there were no washes that would merit protection for wildlife.

Vice Mayor Romero said she had received a lot of input from City residents and as the Council considers rezoning, it was always difficult. She stated she had spent a lot of time reading the pros and cons and she appreciated the time put forth by everyone involved. She said from what she had read and heard it was fifty/fifty. She stated that at the same time, she looked at what was happening in the area and usually considered neighborhood plans as living documents. She said she felt that the open space question mark, for her, had been answered.

Vice Mayor Romero said she was comfortable with the amount of open space provided in the plan, but wanted to hear from her colleagues on the issue.

Council Member Scott commented that this was a very difficult re-zoning case and many hours had been spent on meetings. She recapped a lot of what the other Council Members had brought forth and gave her views of what she had seen and heard. She said she felt the applicant had gone out of their way to work with the HENA and

meet the requirements of the *HENP*. She said she would be supporting the proposed project.

It was moved by Council Member Scott, duly seconded to pass and adopt Ordinance No. 11503.

Mayor Rothschild provided his comments on the proposed PAD and said he was also going to support it.

Council Member Cunningham requested a couple of amendments to the motion. He asked if, on the grading, could it be minimized during the permitting process and could the plan reduce the number of gas pumps from nine to six.

Mayor Rothschild asked the applicant if they were agreeable to the amendment,

Ms. Silvyn replied to the grading issue. She said when you talk about minimizing grading, what that was saying was taking hills and grading them. She said what she was talking about was that they are maintaining the slope of the site in the north and east and the only area being graded was the area being developed, they were not mass-grading the entire site.

Ms. Silvyn stated that as far as reducing the number of pumps from nine to six, they were agreeable to that.

Michael J. Ortega, City Manager, pointed out that page 62 of Exhibit A had a grading plan that showed what Ms. Silvyn was talking about.

Council Member Uhlich asked staff, with regard to the hundred year flood plain and what would be placed in the flood plain, could they talk a little bit more about that.

Mr. Clark stated that the preliminary drainage report provided by the applicant as part of the PAD submittal, looked at the flood insurance rate map for Pima County and identified that this was zone X and was outside the one hundred year flood hazard zone. He said what was being recorded was localized flooding during particular storms. He said during the Design Review Process he was asking the City Engineer to come back and model that with the Mayor and Council to demonstrate they were not in the hundred year flood plain.

Council Member Uhlich also said that the issue of the kiosk was actually explicitly addressed in the ZE hearing held on October 19, 2017, which was important. She also commented on the City Attorney's reference to the court case.

Mayor Rothschild asked Council Member Scott if she accepted the amendments made to her motion by Council Member Cunningham.

Council Member Scott stated she accepted the amendment referencing the change on the number of gas pumps simply because the developer was also in agreement with

the change and because it was consistent with the neighbor's desires. However, she did not accept the amendment on grading.

Mr. Ortega pointed out that on page 65 of the plan, there was reference to the one hundred year flood plain and riparian areas. He said he wanted to make sure they were aware of that.

Council Member Cunningham stated that in this permitting process, they had to be sure that if the developer had to re-grade for drainage or change their drainage plan, it could compromise the open space. If that happened, they would not be in compliance.

Mr. Ortega confirmed the comment made by Council Member Cunningham. He said the drainage standards kicked so they cannot negatively impact a neighbor downstream or upstream. He said in addition, if the grading impacted the open space and it became a factor further discussions would need to be had.

Mayor Rothschild asked the City Clerk to read Ordinance No. 11503 by number and title only.

Ordinance No. 11503 relating to Zoning: amending zoning district boundaries in the area located at the northeast corner of 22nd Street and Houghton Road in case C9-17-02, 22nd & Houghton Planned Area Development (PAD-32), SR to PAD-32; and setting an effective date.

The motion to pass and adopt Ordinance No. 11503, as amended, was passed by a roll call vote of 6 to 1, (Council Member Kozachik dissenting).

9. ELECTIONS: CANVASSING THE RETURNS AND DECLARING THE RESULTS FOR THE CITY GENERAL AND SPECIAL ELECTIONS HELD NOVEMBER 7, 2017 (CONTINUED FROM THE MEETING OF NOVEMBER 13, 2017)

Mayor Rothschild announced City Manager's communication number 389, dated November 21, 2017, was received into and made part of the record.

Mayor Rothschild asked the City Clerk to read Resolution 22840 by number and title only.

Resolution No. 22840 relating to Elections; canvassing the returns and declaring the results of the General Election for the offices of Council Members for Ward III, V, VI, and the Special Election for Propositions 202, 203, 204, and 406, held in the City of Tucson, Arizona on November 7, 2017.

It was moved by Council Member Scott, duly seconded, and passed by a roll vote of 7 to 0, to pass and adopt Resolution 22840.

10. ADJOURNMENT: 8:37 p.m.

Mayor Rothschild announced the next regularly scheduled meeting of the Mayor and Council would be held on Tuesday, December 5, 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 21st day of November 2017, and do hereby certify that it is an accurate transcription.


DEPUTY CITY CLERK

RWR:ms jg