

ZONING MEMBERS PRESENT:

Linus Kafka, Zoning Examiner
Glenn Moyer, Planning & Development Services
Delma Sanchez, City Recording Clerk

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1 ZONING EXAMINER: Gentlemen, most of you have been
2 here for a prior hearing, but I'm going to go through my regular
3 comments, my preliminary comments for the record.

4 Good evening. My name is Linus Kafka. I'm the Zoning
5 Examiner for the City of Tucson. I conduct rezoning hearings on
6 behalf of the Mayor and Council. I make findings of fact which
7 I put into a report, along with my recommendation which I then
8 send along to Mayor and Council. My report will be based on the
9 evidence submitted to me as part of the rezoning application, as
10 well as on testimony taken tonight.

11 I'd also - well, a tape recording is being made of
12 tonight's testimony by the City Clerk's Office, and if
13 necessary, a transcript will be prepared.

14 I'll prepare a preliminary report and a final report.
15 After I close the hearing, I'll prepare a preliminary report
16 within five working days. I'll prepare a final report two weeks

1 after the close of the public hearing.

2 For those of you who wish to receive a copy of my
3 preliminary report, you'll find orange cards by the podium. If
4 you fill those out, leave them here. We will then send you a
5 copy of the preliminary report. If you're already a principal
6 listed on the case, you don't need to fill out one of those
7 orange cards.

8 A copy of the final report will be available from the
9 Planning & Development Services Department, and I'll send that
10 report along to Mayor and Council. They may consider my
11 recommendation, along with other factors and make their decision
12 on that.

13 At the start of the hearing, I'd like to have Mr.
14 Glenn Moyer give me a brief update since the last time we were
15 here. After that, I may have the Applicant come up and respond
16 to questions, and after that, anybody else.

17 Since I cannot have any communications with parties
18 involved in the case, now is the time to speak. If you wish to
19 speak tonight, I'll call you up and have you sign in at the

1 sign-in sheet, and actually I'll swear everybody in before that.

2 If you're planning on speaking this evening, or if you
3 think that you might be swayed to speak this evening, it would
4 be wise to stand up right now so that I can swear you in.

5 All right. If you'll raise your right hands. Do you
6 swear or affirm to tell the truth, the whole truth and nothing
7 but the truth?

8 (Affirmative.)

9 ZONING EXAMINER: All right. Thank you. All right.
10 Mr. Moyer.

11 MR. MOYER: Mr. Kafka, the only update I have is new
12 approval/protest numbers. Updated approval/protest numbers,
13 there are currently 72 approvals and 23 protests. Protests by
14 area within 150 feet, there have been 21 protests, and two
15 protests outside of the 150 feet.

16 And that equates to a protest by area of 38.9% to the
17 north. 29.3% to the south, and 79.9% to the east, and 15.8% to
18 the west. That protest level within 150 feet is important
19 because if there is a protest level greater than 20% in any one

1 of the four compass directions around the site, it requires a
2 three-quarters majority vote of Mayor and Council to adopt a
3 rezoning ordinance.

4 ZONING EXAMINER: And that's three quadrants have more
5 than 20%?

6 MR. MOYER: That's correct.

7 ZONING EXAMINER: Thank you. All right. I'm in
8 receipt of a memorandum also dated March 3rd from you, Mr.
9 Moyer, regarding the PDSD's position on removing zoning
10 conditions other than Prop. 207 waiver and sewer capacity
11 documentation.

12 I'm also in receipt of, I make that part of the
13 record, receipt of a letter from the Colonia Del Ray Homeowners
14 Association dated March 1st, reflecting certain conditions they
15 would like to see, and reflecting the inability to have a
16 meeting as I directed at the last hearing. And I believe Mr.
17 Moyer confirmed that the meeting that I requested has not been
18 held. That's right.

19 All right. I'm just gonna - that's important to me.

1 I want to make some recap and summary of what we went through at
2 the last hearing. And then I might comment on that.

3 So last hearing, we confirmed this is a residentially-
4 zoned property currently. Currently operates as a cultural use
5 under a non-conforming use right. I think we went into a little
6 bit of detail last time about what a non-conforming use is, and
7 what rules pertain to it.

8 There's testimony that this is a historic site,
9 recognized as such by the State, and the National Historic
10 Registers, is it? And also recognized as a community cultural
11 asset. Had testimony about the philosophy of Valley of the
12 Moon, including kindness, compassion, neighborliness.
13 Testimony that the entertainments offered at Valley of the Moon
14 may have changed in configuration, or scope over the years.

15 An assertion that the application is more of a
16 designation as a landmark rather than a rezoning. Testimony
17 that the current use will not be changed by the rezoning.
18 Request that the rezoning be, rezoning, no change the land use
19 classification be approved without conditions.

1 An assertion that if the case isn't approved, that
2 other historic properties will be dissuaded from attempting to
3 go through historic landmark zoning process. Testimony by
4 neighbors that the current use seems to or may be more intense
5 than a few years ago. That some events held seem crowded or
6 over-amplified, or otherwise intrusive to peaceful enjoyment of
7 property.

8 Testimony that neighbors support Valley of the Moon,
9 but are concerned by the use of the property to the extent that
10 there are impacts regarding noise, trash, lighting, parking,
11 traffic, substance use. Evidence that Valley of the Moon
12 leadership has apologized in the past for conduct of visitors.
13 Promised to make an effort to run things better.

14 I think that was the gist of most of the testimony.
15 After that testimony, I directed the Applicant and the neighbors
16 to meet and to work on drafting an operations agreement,
17 facilities maintenance agreement that would address the concerns
18 of the neighborhood regarding those things listed - trash,
19 noise, parking, traffic, alcohol use and similar issues, and

1 asked that that document, I didn't think I asked for a full
2 document, but a draft, that would include how neighbors would be
3 involved in addressing issues, how value (sic) and volunteers
4 might be trained to deal with those issues.

5 I heard testimony that the Applicant might, indeed,
6 withdraw their application. And those are some of the notes
7 that I took down from the, the last hearing. This isn't the
8 straightforward historic landmark designation rezoning.

9 I think a straightforward historic designation
10 rezoning would be one that involved a zone and a use that were
11 consistent with the zone. But here we have the complication of
12 a non-conforming use under the zone. This is a use which would
13 not be allowed today.

14 And an historic property wouldn't just obtain rezoning
15 by the simple designation of its historic qualities. This is a
16 rezoning. The rezoning changes land use regulations. It
17 changes the rights that apply to the property. Rights of the
18 property to develop, rights of subsequent property owners. I
19 think they commented on this at the last hearing. Rights of how

1 the community can respond to the way the property's used.

2 And any property owner who wishes to change the
3 classification of their property and the rights that they have
4 in that property through rezoning has to go through a State-
5 mandated public review process. That's this process.

6 This process has to provide meaningful input,
7 meaningful opportunity for the community to address the ways
8 that the property, their properties, might be impacted, and to
9 offer possible ways that the impacts might be mitigated.

10 I know that this is also a new process, the HL
11 rezoning process is the first one we're looking at. But the
12 underlying rezoning process still applies. Public review
13 procedure is still in place, and the ordinance contemplates that
14 the public will have the Zoning Examiner process applied.

15 And I know that the, one of the ways that the HL
16 rezoning process has, as we go through it, been streamlined is
17 Planning & Development Services accommodating conditions, and
18 that's, that's a good thing. But conditions also get imposed
19 through the public review process, through the rezoning public

1 process. And those conditions address, or try to address
2 mitigation issues, mitigation concerns.

3 Now I'm not breaking new ground with what I'm about to
4 do because in any case where I have directed an Applicant and
5 neighbors meet, and they fail to do so, I continue the hearing.
6 I do not close the hearing when I've directed an Applicant and
7 neighbors to meet.

8 That applies to a multi-million-dollar developer of a
9 shopping mall, or a small non-profit that entertains people. If
10 I direct that a Applicant and neighbors should meet, and make a
11 good-faith effort, then they will do so. The way to get to
12 Mayor and Council through this rezoning process is through me.

13 When I close the hearing and give my recommendation,
14 it goes to Mayor and Council. And I don't intend to close a
15 hearing when the Applicant and the neighbors have not followed
16 my direction.

17 Now I don't know why that meeting didn't take place.
18 I hope that no one feels that they are exempt from the process
19 or should be exempt from the process, or should be exempt from

1 scrutiny or exempt from public input, or exempt from meeting
2 with people they might disagree with. But I respect this
3 process and the people who are in it will have to respect it or
4 they won't get out of it.

5 So tonight, I'm not gonna take any testimony. I heard
6 four and a half hours of testimony at the last hearing. At that
7 time, I decided it was necessary for the community and the
8 Applicant to meet. Nothing's changed since then, so I don't
9 intend to hear anything new.

10 We'll continue this to April 2nd. If at that time
11 there hasn't been an opportunity to meet, and make a good-faith
12 effort to come up with a guiding document, one that provides
13 some direction to maintain the facilities, and professionalize
14 operations and address the criteria of what the non-conforming
15 use is and what its dimensions are, and scope is, how neighbors'
16 concerns might be addressed, and I'll reiterate what I said at
17 the prior meeting doesn't have to be a final document, doesn't
18 have to be the last word. I need a document that's a good-faith
19 effort.

1 So we'll continue this to April 2nd. If at that time
2 there hasn't been an opportunity, we'll continue it again. I
3 apologize to anybody who's expecting to testify this evening,
4 but I - it's my policy not to move forward if my direction
5 hasn't been followed in the past. So thank you very much for
6 your patience, and have a good evening.

7 MALE SPEAKER: (Inaudible)

8 ZONING EXAMINER: I can't take off-the-record
9 testimony, but if you want to speak to Mr. Moyer or Mr. Beall
10 afterwards, you can.

11 (Case: C9-14-13 was continued to April 2, 2015.)

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I hereby certify that, to the best of my ability, the foregoing is a true and accurate transcription of the original tape recorded conversation in the case referenced on page 1 above.

Transcription Completed: 03/08/15

KATHLEEN R. KRASSOW - Owner
M&M Typing Service