



MEMORANDUM

①
S. 3.6

DATE: May 23, 2006

TO: Zoning Administration Division
DSD Zoning Review Section

FROM: Walter Tellez
Zoning Administrator

SUBJECT: LUC 5.3.6 Nonconforming Status; LUC 1.2.4, State or Federal Health and Safety
Laws Compliance
Land Use Code: Zoning Administrator Determination

Zoning has held that improvements that are required to comply with State or Federal health and safety laws may be made to nonconforming properties without being considered new construction or an expansion of the nonconforming structure or use (ie: Halcyon Acres well site).

s:zoning administration/za determination/LUC 5.3.6b.doc

5/23/06

537 ②

From: Walter Tellez
To: Balak, William
Date: 04/21/2006 9:37:29 AM
Subject: Re: Civano Pulte Homes TUP

Looks like LUC 5.3.7.1.D.1 allows "...additional twelve month extensions may be granted..." and Time Limit LUC 5.3.7.6 states

"...unless otherwise stipulated ... Sec. 5.3.7.1..."

So one year extensions are not limited for subdivision sales offices.

>>> William Balak 04/21/06 9:16 AM >>>

Pulte is planning a large modular sales office (this is the "big box" of modulars) for Civano that will take up about 5 lots when the parking area is included with landscaping and paving. Pulte has approx. 1100 homes to market in Civano and they expect it will take at a minimum 4 years and probably more like 6 years to sell all the homes. A two year TUP is not enough time and they would like us to consider more time as an option because this is a new concept in home sale modulars. It does not really fit the TUP idea of a sales trailer sitting on a vacant lot with a gravel parking lot so should we consider this a new type of TUP not addressed in the LUC?

CC: Ernie Duarte; Gross, Craig; Viola Romero

PAD-12 - CIVANO
4/21/06

Reds ③

From: Robert Dear
To: Saldate, Jr., Rick
Date: 04/06/2006 10:26:41 AM
Subject: Fwd: Re: CONCERNED CITIZEN DREXEL & 12TH

Rick,

On 4/5/06 at approx. 7:15 pm, I spoke with the 2 employees of Whatachon Hot Dogs at the SW corner of Drexel & 12th. I informed them of the violation (3-77a, flashing strobe light) and we had recieved complaints.

I informed them of the interference and or confusion cuased by their proximity to the traffic signal lights. The light was disconnected at this time. Violation issued # T06VL00517- I will follow up

Robert Dear
Sign Inspector
791-5550 x1152

>>> Rick Saldate, Jr. 04/05/06 12:16 PM >>>
Hi Robert,

Please read attached correspondence and pursue this as a case. E-mail a status once you have completed this and include these E-mails so as to have a full record.

thanks

CC: Anderson, Mike; Balak, William; Cruz, Cecilia; Rankin, Mike; Tellez, Walter

5.3.06
243



3.22.06

MEMORANDUM

DATE: March 14, 2006

TO: Zoning Administration Division
DSD Zoning Review Section

FROM: Walter Tellez
Zoning Administrator

SUBJECT: LUC 1.2.1, Zoning Administrator Interpretation of County Courts Project
Land Use Code: Zoning Administrator Determination

The building at 240 North Stone can be used to store and analyze any discovered and exhumed human remains during the ground excavations for the new Pima County Justice Courts as a phase in the Courts Complex construction project and is not a separate use of the property.

s:zoning administration/za determination/LUC 1.2.1.doc



MEMORANDUM

3.5.3 (5)

DATE: February 3, 2006

TO: Zoning Administration Division
DSD Zoning Review Section

FROM: Walter Tellez
Zoning Administrator

SUBJECT: LUC 1.2.4, State Contracted Function on State Owned Property
Casa Run Family Resource Center at DES Center, 29th/Swan
Land Use Code: Zoning Administrator Determination

A private business operating under direct contract from a State agency, on State land, and carrying out the governmental (DES) function does not need to meet LUC requirements provided the services offered are similar to the actual existing government uses on the property.

s:zoning administration/za determination/LUC 1.2.4c.doc



MEMORANDUM

3,5,3 (6)

DATE: September 19, 2005

TO: Zoning Administration Division
DSD Zoning Review Section

FROM: Walter Tellez
Zoning Administrator

SUBJECT: LUC 1.2.4, State exemption from LUC requirements
Land Use Code: Zoning Administrator Determination

A specific exemption is not in any State or local laws. The “exemption” is based upon prior case decisions that have recognized the general legal principal that zoning restrictions do not apply to the State or an agency of the State that has eminent domain authority, (e.g.: a county or local government). This principle applies only where there is also a governmental activity and does not apply to a “proprietary” operation of the government or a private entity using governmental property. The seminal case in Arizona is the 1962 case of City of Scottsdale v. Municipal Court of the City of Tempe where the Arizona Supreme Court held that Tempe zoning laws did not apply to Scottsdale’s sewage treatment facility since it was a governmental function.

s:zoning administration/za determination/LUC 1.2.4a.doc



MEMORANDUM

DATE: August 12, 2005

TO: Zoning Administration Division
DSD Zoning Review Section

FROM: Walter Tellez
Zoning Administrator

SUBJECT: LUC 1.1.2, Street Name Changes; TC Sec.25.62
Land Use Code: Zoning Administrator Determination

The Tucson Code defines a street as a public right of way and thus the code section that provides that street names must be changed by ordinance applies only to public streets, not to private streets (ie: UofA campus streets).

s:zoning administration/za determination/LUC 1.1.2.doc

3.5.7

From: Ernie Duarte
To: Ibarra, Jose
Date: 06/21/2005 3:03:15 PM
Subject: Re: 2730 N. Broken Arrow Place

Jose:

Thanks for allowing us the time to research this. The first question was about a rezoning. There was none. Originally, there was a request to rezone from R-1 to R-2 but it expired. The homes built there were done under the existing zoning. The El Paso Natural gas line has been there for many years, long before homes were contemplated in this area. It runs from the far SE side of town through various parts of town and out towards the Phoenix Valley. I'm not certain this site is a "sub-station" more than it is a "service area" for the lines. As we learned with the Kinder Morgan Gas line, the City has limited (no) jurisdiction in dealing with these large utility lines. I also believe that this line is/has been operational. More specific questions on the gas line should be directed the Arizona Corp Commission and the State Office of Pipeline Safety. Here are some numbers and an e-mail address: Pipeline Safety Office (602) 262-5601, Pipeline Safety Fax No. (602) 262-5620, Emergency Contact No. (602) 252-4449, E-Mail: safety@cc.state.az.us

I hope this helps in answering some of Ms. Haluski's questions.

Ernie

>>> Jose Ibarra 06/21/2005 11:37:34 AM >>>
Anything new?

>>> Ernie Duarte 6/16/2005 5:11:27 PM >>>
I'll research it and get back to you.

>>> Jose Ibarra 06/16/05 3:50 PM >>>

Ernie,

Just got a call from Ms. Michelle Haluski, her phone number is 743-3738. She had a question for us that I'm unsure who to ask so I'll start with you.

They bought their home in 1984/1985 next to a natural gas line sub station. Her question is, why was the City allowed to rezone land in 1984/1985 for homes next to this sub station? Second, they were promised by Pulte Builders that the sub station was inoperable and was abandoned. Recently trucks have been servicing this sub station and have told the residents the sub station is going to up and running again. Can they do this? I know it will take some time to research the issue but if you can please get back to me.

CC: Walter Tellez



MEMORANDUM

3.5.3

DATE: June 23, 2005

TO: Zoning Administration Division
DSD Zoning Review Section

FROM: Walter Tellez
Zoning Administrator

SUBJECT: LUC 1.2.1, City AD Section 1.07-6, Temporary Greyhound Bus Station
Land Use Code: Zoning Administrator Determination

The City is leasing City property to Greyhound for a temporary bus station near Congress and I-10. The site is part of a City transportation project, not the direct leasing of City property to a private entity, and there will be no permanent structures therefore a City Manager waiver (AD Section 1.07-6) is possible on this type of project.

s:zoning administration/za determination/LUC 1.2.1.doc

2.3.4/15

From: Patricia Gehlen
To: Herron, Diane
Date: 10/11/2004 8:10:32 AM
Subject: Re: 4+ bedroom zoning questions

Yes, Zoning does review all residential plans. The change is we no longer do residential plans for 4+ bedrooms over the counter. They must be submitted for a 4 week review. It will apply to any new construction which will create a new 4+ bedroom home (new home, an addition, conversion of a garage). Let me know if this clears things up.

>>> Diane Herron 10/08/2004 11:23:34 AM >>>
Two questions came up:

1. Doesn't Zoning review all houses anyway?
2. Is this just for new construction or for any permit in a home with 4 + bedrooms?

CC: Duarte, Ernie; Gross, Craig; Jessie Sanders; Tellez, Walter

5.1.11 = DSD



MEMORANDUM

5.3.7 ⑪

DATE: August 3, 2004

TO: Zoning Administration Division
DSD Zoning Review Section

FROM: Walter Tellez
Zoning Administrator

SUBJECT: LUC 1.2.3, Pollution Remediation Facilities (El Vado, TIAA)
Land Use Code: Zoning Administrator Determination

Extraction wells at specific locations are to be viewed in the same manner as other necessary pollution remediation facilities that are allowed regardless of the zoning on the property.

s:zoning administration/za determination/LUC 1.2.3.doc



MEMORANDUM

3.5.1
13

DATE: July 20, 2004

TO: Zoning Administration Division
DSD Zoning Review Section

FROM: Walter Tellez
Zoning Administrator

SUBJECT: LUC 1.2.4 Private Covenants
Land Use Code: Zoning Administrator Determination

The City has no legal authority to consider the terms of private covenants. DSD can only review an application for compliance with local, state and federal laws and can not refuse to issue a permit because of a private covenant even when it knows that such a covenant exists.

s:zoning administration/za determination/LUC 1.2.4.doc

3.2.1 (14)

From: Walter Tellez
To: Gehlen, Patricia; Gross, Craig
Date: 06/28/2004 9:08:08 AM
Subject: Apartments at 605 E. 9th St.

No variances are needed to install a fire escape to the existing balcony.

CC: Ernie Duarte



MEMORANDUM

13
5.5.2

DATE: June 2, 2004

TO: Zoning Administration Division
DSD Zoning Review Section

FROM: Walter Tellez
Zoning Administrator

SUBJECT: LUC 1.2.1, Stop work orders, 1415-1440 East Elm
Land Use Code: Zoning Administrator Determination

Representatives of the owners of these properties having existing stop work orders for not meeting setbacks requested that they be allowed to continue building and if the LDO and variance were denied then the building would be torn down. In consultation with the City Attorney's office, the Zoning Administrator stated that the stop work order should remain in effect and there is no construction we would allow to continue that violates the code based upon the premise that they might later get approval for it.

s:zoning administration/za determination/LUC 1.2.1b.doc

3.5.17

From: William Balak
To: "azpa-l@yahoogroups.com".GWIA.GWDOM1;
 "planner1@bullheadcity.com".GWIA.GWDOM1; Sarah More
Date: 11/07/2003 4:38:16 PM
Subject: Re: [azpa-l] Garage Sales....

Mr. Morris,

The following information applies to yard sales activities within the city limits of Tucson. The Zoning Enforcement section of the Development Services Department enforces yard sales activities under the Land Use Code (LUC) and interpretations of these LUC regulations. Our Code does not specifically address yard sales but the Zoning Administrator has made a determination of what is considered a customary and usual residential activity. The following is the ratio of yard sales permitted over specific time frames.

Yard sales may occur no more than two times in a three month period, three times in a six month period, and four times in a twelve month period to be considered a customary and usual residential activity. To exceed these numbers is considered a commercial activity. Such commercial activities are not permitted on residentially zoned or used property.

Enforcement is in response to complaints from the public. When a complaint is received, a violation case is opened. The yard sale operator is sent an initial notice of a potential violation, then one warning letter if the violation continues. If the violation continues, a civil citation is issued with a maximum fine of \$2,500 per charge and a one year abatement period in which no yard sales can take place. Any violation of the court ordered abatement can result in criminal charges being filed. We encourage neighbors to attend the court hearings and testify for us. We have had excellent success with abating these type of violations.

We do not issue permits or have any type of fees for yard sales. I would guess that on a good weekend in Tucson, there might be a couple of hundred yard sales which would be a mess to try and permit. You can contact me if you need any additional information, I would be glad to assist you.

William Balak
 Principal Planner
 Zoning Administration
 Development Services Department
 City of Tucson

>>> "plannerlmorris" <planner1@bullheadcity.com> 11/07/03 03:22PM >>>
 Bullhead City is exploring the possibility of updating our garage sale ordinance.

Would you please be so kind as to e-mail or fax copies of your regulations concerning garage sales. If permits are required please include the fee amount.

Also, please provide contact information for the person responsible for enforcement of your garage sale regulations.

As always, thank you for your assistance!

Thanks,

Luke Morris
 Planner
 Bullhead City

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CITY OF
TUCSON

OFFICE OF THE
CITY ATTORNEY

October 3, 2003

Ann Graham-Bergin, Esq.
3936 E. Fort Lowell
Suite 200
Tucson, Arizona 85712

Re: Riverstone Apartment Project, 50 Stone Loop Road

Dear Ann:

You have asked for the City's position regarding the previously approved development plan for this project. In 1986, that development plan was the subject of litigation in *Ridgebrook v. City of Tucson*, Superior Court No. 26604. As a result of that litigation, a mandamus order was issued by the Pima County Superior Court on April 1, 1986, which directed the City to process and approve the proposed development plan. The order specifically stated in paragraph 3(A) that the City was compelled to:

"Accept, process, and approve a Development Plan ("the Development Plan") for the Property in substantial conformity with the 4th Development Plan for the Property introduced into evidence within fourteen (14) days from the date hereof."

It is my understanding that the City fully complied with all aspects of the order in this case in 1986. I do not believe that the Court sought to create a perpetual right to rely upon that plan, when clearly, there was not then, and is not now, any legal basis for such a position.

It is also my understanding that the original developer of this project completed approximately 464 apartment units in Phase I of the development during that time period. Subsequently, a development plan for Phase II was submitted to and approved by the City in late 1994, and early 1995. Those plans expired on August 22, 1996, without any action by the developer. A further inquiry was made to this office in late 1998, and early 1999, wherein another development plan was approved and extended, provided certain additional measures were included to address handicap accessibility. That plan likewise expired. I made it clear to the attorney representing Riverstone at that time, that no further reliance upon the 1986 development plan and judgment would be allowed.



2+3
17
1.2



163

October 3, 2003

17

In reviewing this history, and the judgment issued by the Superior Court, it is evident that the City has fully complied with the Court's order. Both at and after the immediate time period of 1986, the City was required by paragraph 3(A)(ii) to

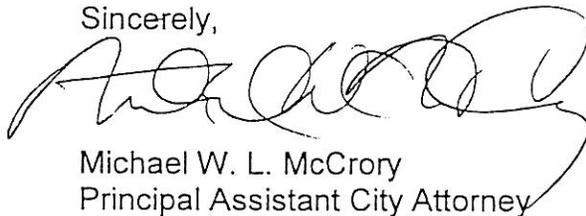
"comply with all of the provisions of the Tucson Zoning Code and all other applicable regulations, ordinances or statutes of the City as they may now or may hereafter exist."

As you know, the Land Use Code replaced the Tucson Zoning Code in 1995. As part of that change, all persons who asserted any rights to construct under the provisions of the Zoning Code, were given a period of one year in which to file a notice of intention to construct under the Zoning Code, obtain necessary approvals, and pull building permits. Failure to follow those provisions extinguishes any pre-existing reliance upon the Zoning Code.

Since the developer has failed to comply with the duly enacted requirements to preserve any right to develop under the Zoning Code, that code no longer applies. Any proposed development will, therefore, have to fully comply with the provisions of the Land Use Code.

If you have any further questions, please let me know.

Sincerely,



Michael W. L. McCrory
Principal Assistant City Attorney

MWLM:dc

c: Ernie Duarte, Development Services Director
Walter Tellez, Zoning Administrator
Frank Bangs, Esq.

July 9, 2003

*WTF
Your copy (18)
1602
3.5.7*



CITY OF
TUCSON

DEVELOPMENT
SERVICES
DEPARTMENT

ZONING
ADMINISTRATION

Robert S. Larson
3375 North Golden Bush Place
Tucson, AZ 85750

SUBJECT: Proposed Assisted Living Neighborhood Project
Land Use Code (LUC) Information

Dear Mr. Larson:

Thank you for your letter, dated June 17, 2003, regarding the above referenced assisted living project. The project, as proposed, consists of approximately eight (8) homes of 6,000 square feet each spaced around a cul-de-sac (the neighborhood.) The neighborhood would be gated for security. Each home will provide assisted living care and services for up to ten (10) residents and be separately licensed and staffed. The residents of each neighborhood home will their meals prepared in their own kitchens.

The Zoning Administration Division, in consultation with the City Attorney's Office, has reviewed your letter and request you submit additional information on the project. The project is considered for zoning purposes to be a "Residential Care Services - Adult Care Services" land use. The question for staff is whether or not the neighborhood functions more as a single project or facility, or as individual homes. The difference will be determined by the degree of commonality or separateness that can be demonstrated between the homes (e.g. common vehicular/pedestrian access, property ownership, service providers, staffing, program advertising, etc.) Based on the information you have thus far provided the "neighborhood" appears to function more as a single project, or facility, and not as separate and individual homes. Project as defined in the LUC Section 6.2.16 as:

6.2.16 Project. A development, consisting of one (1) or more contiguous lots, planned and constructed to function as a single entity, utilizing common or shared facilities, structures, parking, and vehicular and pedestrian access.

Please provide staff with more detailed information about the proposal, giving special attention to the individual nature of each home and how it functions. If you should require further LUC information from the Zoning

*LUC Definition = Project
All Res Zoning
6.2.16.5A Res Care Ser.
- Adult Care
177*

Assisted Living Proposal
07/09/03

Administration Division, please contact William Balak (ext. 1168) or
Wayne Bogdan (ext. 1116) at (520) 791-4541.

Sincerely,



for Walter Tellez
Zoning Administrator

s:zoning administration/zoning/2003/asstlivingproject.doc

c: Michael McCrory, City Attorney's Office



MEMORANDUM

3.1.3 (19)

DATE: June 9, 2003

TO: Zoning Administration Division
DSD Zoning Review Section

FROM: Walter Tellez
Zoning Administrator

SUBJECT: LUC 1.2.4, LUC Regulations on TIA Properties
Land Use Code: Zoning Administrator Determination

The LUC only applies directly to property within the City Limits. TIA, Ryan Field and Tucson Water wellsites are all government functions on governmentally owner property therefore are exempt from County zoning. Private activity, such as the proposed aerospace plant (Project Olympus) would normally not be exempt as a governmental facility but , at least for the areas of TAA that are in Pima County, that is Pima County's decision. The may be IGA between Pima County and the City to apply the LUC to TAA but it would need to be reviewed by the City Attorney's office.

s:zoning administration/za determination/LUC 1.2.4d.doc

3.5.7

From: Walter Tellez
To: Gehlen, Patricia; Gross, Craig
Date: 5/16/03 11:26AM
Subject: Additional Utility Meters

Me and Michael Mc. have discussed the issue of multiple utility meters being requested for single family dwellings. I have determined that requests for more than one meter (per utility) for a single family dwelling must be approved by me. The applicant can submit a letter to me explaining the need for the additional meter.

CC: Balak, William; Bogdan, Wayne; Ernie Duarte; McCrory, Michael

sent ad

3.1.2

From: Walter Tellez
To: Duarte, Ernie
Date: 4/22/03 11:39AM
Subject: Re: Silverbell Property

Placing dirt on a site to be used on site is not a use for zoning purposes. It does have to match grading/site plan or plat.

>>> Ernie Duarte 04/22/03 11:33AM >>>

We'd handle the stockpiling permit. However, we need to work closely on this as there may be some issues we need to address regarding the current zoning of the property and its support of "stockpiling". What is the zoning?

>>> Andy Dinauer 04/22/03 11:17AM >>>

PCFCD, DSD or me, and COTP&R. Yes, it's feasible.

Also, there are a lot of contractors that regularly need to get rid of decent fill material and all you would need to foot the bill for is the transportation costs (\$2/CY+/-). A "stockpiling" permit could be issued for the property and as free material became available it could be directed to the site. There is 16K CY's available out near Old Spanish Trail right now.

>>> John Updike 04/22/03 11:05AM >>>

Andy - who would weigh in on the question of hauling from our Prince Road surplus site east of the Santa Cruz to this site? Is that feasible?

>>> Andy Dinauer 04/22/03 10:35AM >>>

\$3.25/CY.

>>> Tim Murphy 04/18/03 11:29AM >>>

Monterey Homes is telling us that they need an estimated 250,000 cubic yards of fill for the site development due to existing drainage situation....this amount may be ultimately reduced if we can allow some flexibility in the ERZ wash improvements. They estimate the fill costs at \$4.00 to \$10.00 per yard. Can you provide me with a more accurate cost for fill. Also, the City owns the property across the River to the east and would like to consider using fill from that site. Is it possible to transport across the river??

thanks

CC: Gross, Craig

ERZ-2.8.6
DSD-5.1.11

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4.1.1 (22)

From: James Maurer
To: Andy Dinauer; Jim Vogelsberg; Walter Tellez
Date: 9/26/02 11:29AM
Subject: Re: Permits v. Plat

Generally, permits may be issued for construction, if the work could be permitted under the underlying zone.

More specifically, Section 4.1.3.1 permits issuance of up to five model home permits upon approval of the tentative plat, subject to limitation on sale or occupancy of the home until after the final plat is recorded, and also subject to the location of the home being consistent with the layout of the plat.

Land clearing and grading is permitted under Section 4.1.4.4., after grading plans are approved, subject to grading plans being consistent with an approved tentative plat, and if the grading is in conformance with the underlying zoning.

So, I guess the answer to your question is - permits may be issued upon approval of a tentative plat, without the approval of a final plat. Permits cannot be issued for construction of a development proposed by a tentative plat until the tentative plat is approved, unless the construction could be accomplished under the underlying zoning. For example, a single family home subdivision in R-1, which generally permits only one residence per lot, may have one home permit issued prior to the tentative plat approval. A single family home subdivision in R-2, which permits multiple unit development on a single lot, may have multiple unit permits issued, as long as the number of units does not exceed that permitted under the underlying zoning in an unsubdivided lot, with the understanding that each unit will be located on a lot proposed by the plat, and cannot be sold until the final plat is recorded.

Commercial properties can be developed based on the underlying zoning, and may be constructed before, during, or after a subdivision plat is filed, subject to meeting all code requirements in place at the time of submittal.

Questions? Call me at 4505.

Jim M.

>>> Andy Dinauer 09/13/02 10:38AM >>>

Is there a LUC regulation that says - if you have a plat in process, you can't get permits (even for work under the preplatted land use)?

CC: Craig Gross; Dave Dotson; David Mann; Sarah More

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CITY OF
TUCSON

PLANNING
DEPARTMENT

REVISED

January 30, 2002

Robert Page, RA
345 East Toole Ave., # 202
Tucson, AZ 85701

Subject: 7601 South Houghton Road, I-2: New Bar-Restaurant-Athletic Club
Use Land Use Code (LUC) Information

Dear Mr. Page:

Thank you for your letter dated January 17, 2002 and concept site plan requesting zoning information. The property is addressed 7601 South Houghton Road and zoned "I-2" Heavy Industrial. The 3.1 acre property is proposed for mixed use development including; Bar, Restaurant, Retail and Recreation land uses. Total building area for the project is 21,731 square feet. You are requesting verification of the appropriate zoning classifications for the proposed uses.

The Planning Department has concluded its review of the information you have provided. The mix of land uses proposed for this property are not permitted uses of land in the I-2 zone, the exceptions being that of the Restaurant use and Retail. Regarding your reference to LUC Section 2.7.3.2.G "I-2 Zone, Any land use...". This zoning regulation is applicable to those land uses not specifically listed in other zoning classifications. Because your mix of uses are listed in other zoning classifications as permitted use (e.g. LUC Section 2.5.4.2.A.2 "C-2 Zone, Alcoholic Beverages", etc.), this zoning regulation does not apply. The mix of Bar, Restaurant, and Recreation, as proposed, requires the property be rezoned to a general commercial zone (C-1 excluded) or "I-1" Light Industrial. Also, staff reviewed and agrees with your parking calculations for the proposed mix with the exception of the pizza delivery use which is considered to be a "Retail" land use (i.e. provided delivery only and no sit down seating) calculated at the ratio of 1/200.

CITY HALL • 255 W. ALAMEDA • P.O. BOX 27210 • TUCSON, AZ 85726-7210
(520) 791-4505, 791-4571, 791-4541 • FAX (520) 791-4130 OR 791-2663

Website: <http://www.ci.tucson.az.us/planning> • E-Mail: comments_planning@ci.tucson.az.us

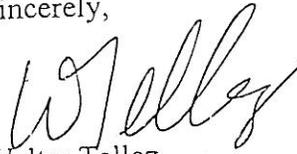
2.7.3
23

75

Robert Page
REVISED January 30, 2002
Page 2

Please note that a copy of this letter must be attached to the project's development plan when submitted to the Development Services Department, 201 North Stone Avenue for the zoning compliance review process. Rezoning information can be obtained by contacting either Aline Torres or Glenn Moyer of the Planning Department at 791-4571. Should you require further zoning information from the Planning Department, please contact Bill Balak, Wayne Bogdan or myself at 791-4541.

Sincerely,



Walter Tellez
Zoning Administrator

s:zoning/2002/7601hough.doc

3.1.1 (24)

From: Walter Tellez
To: Craig Gross; GEHLEN, Patricia
Date: 1/16/02 11:59AM
Subject: Re: Apache Business Park

Trish and Craig

I don't necessarily agree, we have done rezonings with 2 or 3 zones for one use, as long as the zone allows the use as a principle use, it can be used as accessory to the higher zone. Lets discuss.

>>> Patricia GEHLEN 01/16/02 11:27AM >>>

Hello Mike and Walter,

If I recall our meeting correctly, the principal use of the site is not "commercial storage". I do believe it was some type of industrial use which is permitted in the I-1 zone and not the C-2. The already developed lot is zoned I-1 and may be used for the principal use. Since the commercial storage which is to occur on the C-2 lot is secondary to the industrial use it is not permitted.

The code does allow for a principal land use of "commercial storage" in a C-2 zone but not a principal use of industrial.

I discussed and confirmed this with Craig.

Let me know if this helps and the end result.

Patricia

PS My fax number is 791-5559

>>> "mjm122762" <mjm122762@cox.net> 01/16/02 11:26AM >>>

Patricia,

I couldn't fax my memo to you, so I'm trying to email it. I'm not certain I have your correct address, so if this gets through, would you call me (885-5021 or 241-8876), or send an email in reply, to confirm your receipt. Thanks.

I-2 zone: 2.5.4
Comm Storage: 6.3.1.2
I-1 zone: 7.0.2
Residential: 5.0.2

77

OK

3.5.7
②



MEMORANDUM

OFFICE OF
THE
CITY ATTORNEY
CIVIL DIVISION
(520) 791-4221

DATE: February 27 2001

TO: Jerry Anderson
Vice Mayor, Ward III

FROM: Michael D. House *MDH*
City Attorney

RE: ENTRADA REAL NORTE APARTMENTS, 1850 N. TYNDALL

Your memorandum requests information relating to the issue of the Entrada Real Norte Apartment complex. The same company that developed a similar complex at 1 and 2 W. University owns this complex. During the construction of the University project, it came to the attention of the City of Tucson that the developer, Royal Apartments, was leasing each individual bedroom of an apartment. This raised a question regarding compliance with the project's parking requirements under the Land Use Code (LUC). The project had sufficient parking for a multi-family housing project but not as a dormitory.

At the time these two projects were being developed, concerns were raised that they would be leasing individual bedrooms that in turn could increase the intensity of the use. After reviewing these issues with David Deibel and Michael McCrory, the Zoning Administrator determined that separately leasing the bedrooms of a multi-family housing complex would change its use to that of a dormitory. As such, the rental of individual bedrooms is in the Group Dwelling land use category while the rental of apartments is in the multifamily dwelling category. The LUC was later amended to adopt this distinction.

Shortly after this determination was issued, the City became aware that the Entrada Real Norte project was also leasing by the bedroom. A notice of a zoning violation was given to Royal Apartments since this project's LUC zone does not allow dormitories. The issue in this case was how the apartments at Entrada Real Norte were being leased. When only a portion of a housing unit is leased, such a unit is more appropriately categorized as a dormitory. In such an instance, a tenant is not responsible for the actions of the unit's other tenants. Therefore, there is no shared liability for damages, payment of rent, or unruly behavior. When an entire housing unit is leased and all tenants are liable for complying with the conditions of the lease, each tenant is responsible for the actions of the other tenant's of the unit. This distinguishes a typical apartment lease from that of a dormitory.



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After receiving the notice of zoning violation, Royal Apartment's attorney contacted this office to determine how it should comply. He was informed that the individual bedroom leases would have to be discontinued and leases requiring joint and several liability for the entire apartment would have to be used. A copy of a typical apartment lease was sent to the attorney for his information. Thereafter, the attorney forwarded a lease that met the requirements of for a multi-family housing unit. Based on the avowal that this lease agreement would be used to lease apartments at Entrada Real Norte, the zoning violation was not pursued.

Since that time, the neighbors surrounding Entrada Real Norte have alleged that the apartment complex was still renting by the bedroom. Contact was made again with Royal Apartment's attorney who forwarded a copy of the lease being used at Entrada Real Norte. As this lease was the same as the previously provided lease, no further action was taken.

The neighbors' concerns apparently stem from the fact that Royal Apartments advertises its rental rate on a per bedroom basis. This is not a violation of the LUC nor is this an uncommon practice. Individuals with an available bedroom in an apartment or single family house often advertise for tenants with a pro rata share of the rent. What legally separates a dormitory style living arrangement from multi-family housing is the legal obligations of the tenants. If all the tenants of a living unit are each liable for damages arising from use of the unit, it is not a dormitory.

Contrary to your concern that the actions of the City Attorney's Office "undermine the credibility" of the City, providing unbiased information relating to the laws of the City to citizens facing enforcement actions enhances the City's credibility. It is common for this office, in conjunction with the Zoning Administrator's staff, to assist in resolving zoning violations, whether for individual residents or businesses. The City Attorney's Office provides information equally to all people dealing with the City. This information is based on the state of the law at that time and not whether an individual, group, or business disagrees with it.

The City has been supplied with a lease that Royal Apartment's attorney warrants is being used at both of the apartments they own in Tucson. The lease provides that each tenant of a living unit is liable for the performance of the lease obligations of the other tenants. It is this fact that satisfies the interpretation of the LUC. If the City receives information that this lease is not being used, appropriate action will be taken.

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Attached are the leases used by Royal Apartments and Park Place Condominiums and the lease supplied to Royal Apartment's attorney. I do not have copies of the other leases you requested, as there have been no LUC actions taken against these apartments. The attachment referred to as the "new and improved" Entrada Real lease in your memorandum is a rental application, not a lease. If you have any further questions, please contact me.

MDH:DD:hm

cc: w/o Att: James Keene – City Manager
William D. Vasko, Planning Director, Planning Department
Walter Tellez – Zoning Administrator, Planning Department ✓
Paul Swift – Director, Development Services Center
Ernie Duarte – Development Services Center
Brad Detrick – Deputy City Attorney
Michael McCrory – Principal Assistant City Attorney
David L. Deibel – Senior Assistant City Attorney

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