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# PLANNING COMMISSION

Department of Planning and Development Services P.O. Box 27210 Tucson, Arizona 85726-7210

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Approved by Planning Commission  
June 2, 2010

Date of Meeting: May 5, 2010

The meeting of the City of Tucson Planning Commission was called to order by Rick Lavaty, Chair, on Wednesday, May 5, 2010, at 6:00 p.m., in the Mayor and Council Chambers, City Hall, 255 W. Alameda Street, Tucson, Arizona. Those present and absent were:

## 1. ROLL CALL

Present:

Rick Lavaty, Chair	Member at Large, Ward 1
Steven Eddy	Member, Ward 6
Joseph Maher	Member at Large, Ward 3
Rich Michal	Member at Large, Ward 6
William Podolsky	Member at Large, Ward 4
Catherine Applegate-Rex	Member at Large, Ward 5
Thomas Saylor-Brown	Member, Mayor's Office
Daniel J. Williams	Member, Ward 1
Craig Wissler	Member, Ward 3

Absent:

Shannon McBride-Olson, Vice Chair	Member, Ward 2
Ralph Armenta	Member, Ward 5

Staff Members Present:

Ernie Duarte, Planning and Development Services Department, Director  
Craig Gross, Planning and Development Services Department, Deputy Director  
Jim Mazzocco, Planning and Development Services Department, Planning Administrator  
Glenn Moyer, Planning and Development Services Department, Planning Administrator  
Adam Smith, Planning and Development Services Department, Principal Planner  
Patricia Gehlen, Planning and Development Services Department, Section Manager  
Joanne Hershenhorn, Planning and Development Services, Lead Planner  
Deborah Rainone, City Clerk's Office, Assistant City Clerk  
Tom McMahan, City Attorney's Office, Principal City Attorney  
Dennis McLaughlin, City Attorneys Office, Principal Assistant City Attorney  
Erin Morris, Planning and Development Services Department, Project Coordinator  
Ceci Sotomayor, City Clerk's Office, Secretary

**2. MINUTES FOR APPROVAL: APRIL 7, 2010**

The minutes from the April 7, 2010, meeting were not available.

**3. OPEN MEETING LAW PRESENTATION**

Deborah Rainone, City Clerk's Office, Assistant City Clerk, and Dennis McLaughlin, City Attorney's Office, Principal Assistant City Attorney, made the presentation on the Open Meeting Law.

Ms. Rainone explained the Open Meeting Law was a State law that required that all public bodies that conduct meetings to do so openly and only after a meeting notice had been properly posted a minimum of twenty-four hours prior to that meeting. She explained the proceedings were open to anybody to walk in, including the general public, the media, and other Commission members. It provided for openness between the government and its citizenry.

Ms. Rainone explained the Arizona Open Meeting Law

- Applied to all the Planning Commission members.
- Applied to all the Planning Commission subcommittees, and advisory committees.
- Had the most stringent laws in the nation.
- States if one is found in violation of the Open Meeting Law, a fine of up to five hundred dollars would be assessed, he/she would be removed from office, and he/she would need to seek his/her own legal counsel.

Ms. Rainone said one of the components of the Open Meeting Law was the agenda. An agenda needed to state the Commission's name, date of the meeting, the start time, and the specific address of the meeting. She said it would need to be sent to the City Clerk's Office to process and be posted twenty-four hours in advance of the meeting. The agenda would then be posted in the four designated locations outside the City Hall building, to be available to the public twenty-four hours a day, seven days a week. She said the agendas were also posted on the City Clerk's website.

Ms Rainone explained another component of the Open Meeting Law was a quorum. A quorum consisted of a majority of the authorized membership of the Commission. She said, according to the Planning Commission bylaws, at least seven Commission members had to be present to have a quorum to be able to conduct any business.

Ms. Rainone explained, if the meeting had to be cancelled, the cancellation notice needed to follow the same notice procedures as the agenda. However, if the cancellation of the meeting was within the twenty-four hour meeting notice window, along with sending the cancellation notice to the City Clerk's Office, a notice also needed to be posted on the doors of the meeting location to advise the public that the meeting was cancelled.

Ms. Rainone explained another component of the Open Meeting Law was the Legal Action Report. She said in 2008, the Legislature changed the rules to say that information of any legal action conducted at a meeting must be posted to the jurisdiction's website within three days after the meeting. Also, the Legal Action Report needed to be sent to the City Clerk's Office to be posted on the website and available to the public. She explained, since subcommittees were also subject to the Open Meeting Law, they also needed to make a Legal Action Report and follow the same procedures as the full commissions.

Ms. Rainone said the minutes of the meeting were another component of the Open Meeting Law. She explained the minutes were more specific and needed to include:

- All the members of the body that were present absent, late, or left early.
- Description of all legal actions.
- Commissioner that made the motion, the person that was second to the motion, and the vote.

Ms. Rainone said the minutes were generally posted two days after the minutes were approved. They would also be forwarded to the City Clerk's office for processing and would be posted on the website.

Ms. Rainone explained that voting consisted of someone making a motion, someone that would second the motion, any discussion, and the vote. A vote could be a voice vote or a roll call vote for clarification on the vote. She said, abstaining meant that an individual was passing on a vote. However, according to Mayor and Council Rules and Regulations, if one passes on a vote twice, it was considered a "yes" vote.

Ms. Rainone stated that Mr. McLaughlin would be explaining communication between meetings, and emphasized they could not caution the Commissioner's enough about that subject.

Mr. McLaughlin said his part of the presentation would focus on discussions outside of the meeting. He reminded the Commissioners that the Open Meeting Law said the meeting agenda needed to have a place, time, and location. The fundamental idea was that business would be discussed at the meeting. The law did not permit discussion either personally, by phone, by email, or by whatever electronic means that was invented.

Mr. McLaughlin said it was expected that there would be contact with constituents and the public and he said that was all right. He emphasized what was not right was to discuss items of business of the Commission among themselves, and that sometimes happened innocently. He explained if someone wanted to build consensus and emailed a Commissioner, and that Commissioner would then email someone else, before it was known, a quorum would be created. When enough people begin discussing an item, it could become a quorum without knowing one was created and with that action the Open Meeting Law was now violated.

Mr. McLaughlin said there was a golden rule he would suggest to avoid this type of trouble. If there were questions or information that a Commissioner wanted to convey, they should communicate with the staff support and not with each other. If one member had a question or an issue, they should send the concern to the staff support or send it to the Chair, and he would send the concern to the support staff. He said he strongly advised not to discuss matters among themselves and try to use the golden rule: He repeated to communicate with staff, not with each other, and they should not have any problems.

Discussion followed.

Commissioner Wissler asked if the Call to the Audience part of the agenda was not a required component of the meeting.

Mr. Rainone answered it was not a requirement of the Open Meeting Law. Call to the Audience was a courtesy offered to the public and it was also the Chair's prerogative to bypass the Call to the Audience or not have one at all.

Mr. McLaughlin added there were many City Boards and Commissions that had a Call to Audience, because the Mayor and Council had Call to the Audience, and the default was to follow them. However, it was not part of open meeting law. There was no right under Open Meeting Law that stated the public had to attend and speak, it was that they had the right to attend and watch the discussions and deliberations.

Ms. Rainone added there were a few restrictions on Call to the Audience. The public could not be disruptive to the Commission's business. The Chair was perfectly welcome to ask the person to leave if anybody was being disruptive or yelling in the audience. She said the Commissioners were not allowed to respond to, or carry on a conversation with the person that was at the Call to the Audience. If there was criticism directly to a Commissioner, that Commissioner could say he/she was not going to listen to the comments.

**4. EUCLID/4<sup>TH</sup> STREET – MEMORIAL COMPLEX PRESENTATION (STUDY SESSION)**

Joanne Hershenhorn, Planning and Development Services, Lead Planner, said her presentation that evening would be on the proposed amendment to the West University Neighborhood Plan (WUNP). She added that the president of the West University Neighborhood was also in the audience.

Ms. Hershenhorn said the applicant for the proposed amendment to the West University Neighborhood Plan was Michael Golec on behalf of Mike Noonan and Bob Cox. They were proposing to amend the Neighborhood Plan to allow a high-density student housing complex west of the University of Arizona (U of A). The proposal consisted of a building that was approximately twelve-stories, tiered, and would house up to about three hundred students. The building height would be up to one hundred forty

feet and the proposed residential density was close to two hundred units per-acre. She continued to explain the location of the proposed amendment by PowerPoint.

Ms. Hershenhorn said she would explain the land uses that surround the amendment site. She said the large structure that served as a reference point on the map for all the aerial photographs was the University of Arizona's Tyndall Parking Garage. She said the parking garage consisted of four stories and included approximately seventeen hundred parking spaces. The area to the south was mostly owned by the Arizona Board of Regents and it was within the University of Arizona's campus planning boundaries. The University of Arizona's Comprehensive Campus Plan, which was adopted in 2003, and recently updated in 2009, identified the area as a student housing node with existing high-rise dorms, was owned and operated by the U of A. She said there was a U of A project that was an approximately five-story complex under construction at the northeast corner of Sixth Street and Euclid Avenue. To the north of the plan amendment site, along University Boulevard, there was the Main Gate Redevelopment area which consisted of commercial uses and some educational uses. On the north side of University Boulevard, there were also some commercial and educational uses with higher intensity. She said, also included, was the Marriott Hotel, the University Services Building and the Louise Foucar Marshall Building, which was used mostly for U of A purposes. She said there was a proposal to put another hotel next to the Marriott Hotel. She continued to explain and point out other locations within the Planned Amendment site.

Ms. Hershenhorn explained briefly the zoning within the Plan Amendment site. She mentioned much of the property was owned by the Arizona Board of Regents and a lot of the development consisted of single-story and multi-story dorms. She added that the State of Arizona did not have to follow our zoning laws, and they usually did not.

Ms. Hershenhorn said, in order to be able to pursue the proposal for the student housing complex, the applicants needed to rezone the site. She explained the applicants wanted to change the zoning on the site from HOCR-2 and HR-3 to the planned area development, or the "PAD" zone. She said they were proposing to remove the "H" overlay and change the underlying zoning to the PAD zone.

Ms. Hershenhorn said the PAD zone was the most flexible zone that they had and it allowed one to rewrite the provisions of the *Land Use Code*. She said it was something that was reviewed by Staff, the public had input on it, and needed to be adopted by the Mayor and Council. She added it was a very flexible zone and well-suited to urban intensity infill.

Ms. Hershenhorn said in order to pursue the rezoning, the rezoning proposal needed to be consistent with the underlying land use plans. She said the proposal was not entirely consistent with the land use policies in the West University Neighborhood Plan, and that was why this item was being presented that evening. The plan needed to be amended to make it consistent with what they were proposing before they could move to the rezoning.

Ms. Hershenhorn said the West University Neighborhood Plan had a policy that limited building height in the transition area between Park Avenue and Euclid Avenue to

forty feet. She added the West University Neighborhood Plan supported the uses that were proposed, and not just the intensity. She said, the changes that were discussed regarded height and density.

Ms. Hershenhorn explained some of the land use plans and the policy direction that were used while evaluating the proposal. She said, in addition to the West University Neighborhood Plan, the site was governed by policies in the *University Area Plan* and the *General Plan*. She added all those plans recognized the U of A as a major activity center and they had policies that supported intensification of land use in and around activity centers that was subject to certain criteria.

Ms. Hershenhorn said the goal of the plan was to protect the residential character of the neighborhood. The plan recognized that there was a trend toward intensification of land use in that area. It was anticipated and there was a policy in the plan that said the impacts of proposed uses in the transition area where the site was located, required a plan amendment similar to what was being discussed that evening and it needed to be identified, evaluated, and mitigated. Other policies encouraged new compatible residential infill development, subject to the provision of adequate off-street parking. Development that was fronted along Euclid Avenue needed to have a design that was sensitive to the residential neighborhood to the west of Euclid Avenue, both in terms of the intensity of land use and the historic character of that neighborhood.

Ms. Hershenhorn talked briefly about the transition area. She said the transition area was important and relative to the policy direction. She continued to explain the boundaries in the transition area and added that the uses in the transition area looked different than the residential neighborhood. There was definitely a trend towards more intensification of land uses in that area.

Ms. Hershenhorn said the University Area Plan identified the site as a pedestrian commercial district, which was basically the Main Gate area west of the U of A. Policies encouraged activities that supported the vitality of the district. High-density residential infill was also supported basically in areas that were not surrounded by low-density residential development. Another policy encouraged incorporating contributing historic buildings into new development when feasible.

Ms. Hershenhorn said the *General Plan* was the most recent of all the land use plans and had the strongest policy direction regarding activity centers. She said she thought that policy was key to the proposal. The *General Plan* policies promoted residential development in the two adjacent activities centers at a density and scale that complemented the size and intensity of the activity center. She said the different levels of activity nodes and intensification of land use should be relative to the intensity of the activity node itself. Other policies encouraged the infill of vacant under-utilized parcels.

Ms. Hershenhorn explained the issues that staff would be looking at when they did their detailed analysis were:

- Could the proposal be implemented in a manner that was compatible with the surroundings and a design that was sensitive to the character of the

neighborhood to the west, both in terms of the lower intensity of land use and the historical character.

- Was the location that was being proposed appropriate for the intensity.

Ms. Hershenhorn added they would also be looking at the reduced parking plan.

Ms. Hershenhorn stated that staff recommended that the Commission set this item for public hearing at the next regularly-scheduled meeting in June. She said the applicant, Michael Golec, would also make a presentation.

Michael Golec, applicant, said his presentation would be on the proposed private student housing project.

Mr. Golec said the project had been a balancing act in trying to consider all the different contractual factors going on with the West University Neighborhood, the City of Tucson, and the University of Arizona's projected growth, traffic, and parking patterns. She said currently, they had over a dozen projects throughout the nation, with nearly a hundred percent occupancy rate. The projects in their forma had been extremely successful and they had more projects in the books right now. He showed some pictures of those projects.

Mr. Golec said, over the past eighteen months, they were trying to work with a lot of different groups that had different opinions and values to the property that they were trying to develop. He said they listened and tried to incorporate what they heard to their project to make sure that they had a successful project. He explained they took a lot of time studying the area, the demographics, and the housing. He said, considering what was happening locally in Arizona, and the strains on the University system having limited funds for providing public housing for students, he believed the private sector needed to step in to help satisfy the growth patterns.

Mr. Golec said before they started on any project, they determined that it was necessary to have a minimum criteria list of what each project needed to have. He said their projects overwhelmingly met all of the standards.

Mr. Golec said their feasibility studies considered a lot of financial, social, and contextual factors that established the desired density needed to make the project successful. There were high capital costs for the project, the regional activity center, and the proposed rehabilitation costs to tie the Euclid Avenue historic structures into the West University Neighborhood. He said it was a balancing act trying to get all the things to fit into a site plan, such as a development plan, a height density massing that worked with all the overlaying planned area, the Tucson *General Plan*, the West University Neighborhood Plan, etc. He said all they were looking for, was to secure one percent of the student population.

Mr. Golec said there was a definitely reported need for housing in close proximity to the University. What they were offering was a natural continuation of the housing that was already happening in the southwest quadrant of the University. He said Ms. Hershenhorn covered most of the needs.

Mr. Golec said there was an increased enrollment trend at U of A last fall, and currently there were thirty-eight thousand students. He explained that the campus could house six thousand of those students and the rest had to find private options for housing, which often left them commuting to campus. The U of A had eleven hundred beds in construction and said they could easily absorb another twenty-five hundred to five thousand beds.

Mr. Golec added there were many alternative modes of transportation and most were provided by the U of A. If a student lived outside of the U of A transportation area, the other option was to commute in their private vehicles. He said they were trying to do the exact opposite by promoting a pedestrian, walking environment.

Mr. Golec said there were several site plans, several different designs, and their design was just one of many. One thing they were trying to do, was doing a public art display that would memorialize some of the history of Tucson. He showed and explained some of the parking areas and parking statistics. He said the U of A had eighteen hundred parking spaces available in their parking permit program and not all those spaces were being used every year.

Mr. Golec explained the six thousand dormitory residents did not have parking problems. No parking was provided to them on-site at their place of residence. They thought it made sense to have more density within walking distance of the University versus building more on-site parking.

Mr. Golec said he wanted to make a quick comparison between Coronado Hall and their proposed project. Coronado was the project just south of their project which was proposed to be taller. It had six times less density than the Coronado, but they offered five times more space and more amenities to keep students on-site versus having to travel to other places. He said he did a comparison of the cost of owning a vehicle versus living on-site. The cost to actually own a vehicle per year was ninety-seven hundred dollars versus five hundred eighty-two dollars to live on-site. That was a savings of nine thousand dollars per month.

Mr. Golec added they were trying to encourage a no-car incentive deduction program to take fifty dollars off a student's rent if they did not bring a car on campus. He said there was also the Hertz connect-program, which was a car share program. He said the Tyndall Garage had three cars that could be rented per household, which also included gas and insurance. He said they were also offering to match the first two hundred fifty dollars spent to the tenants who used that program.

Mr. Golec said their proposed parking was actually ninety parking spaces with a substantial number of bicycle spaces and areas to expand, if needed. He repeated they were trying to promote more of a bicycle-pedestrian environment.

Mr. Golec said in summary, they did have some on-site parking, there was three Hertz cars with the ability to expand, and a couple of incentive programs to encourage students not to bring cars. He said they did early marketing and also some early awareness to make parents and students aware of all the free transportation options and how the U of A parking permit program worked.

Mr. Golec said those were just some of the public options that were available and provided a list of options that were affiliated with the University of Arizona. He said he believed their project would benefit the community. He said another thing they were offering, was a historical bed tax to actually provide an annuity to preserve the West University Neighborhood such as the public art display, rebirth of a dormant commercial building, and a revitalization of the Euclid Avenue facade. They were also offering an actual secured living environment versus students spread out and living throughout the historic neighborhoods. He believed their project would actually reduce traffic congestion which had a lot of beneficial environmental factors and improve the streetscape. He said it was probably the best land use infill lot near the U of A and was non-competing with the U of A housing program. They currently did not have any partnerships with the U of A, although they had a lot of discussions with them and were open for collaboration. He said they were trying to promote a sustainable living environment, educate the people in the building, and also provide a good example for future development.

Mr. Golec said, the approximately three hundred students that would be housed in the University would now be located within walking distance of the University instead of having to commute with the daily traffic, vehicles, and cycles. Also, depending on their routine, once they would get to their site, there would be only a few reasons why they would actually need to leave using a vehicle.

Bob Vint, accompanying Michael Golec also made a presentation and said as previously mentioned by Mr. Golec, they had been looking at a few options. They were in the conceptual design phase and had a number of ideas they were developing and evaluating. One of the earlier ideas was how to preserve the two on-site older buildings on Euclid Avenue which was two-story 1930's apartment and the commercial store front. He said they were also looking to do a contextually-based building design. One of their buildings had become rather tall and they were meeting regularly with the West University neighbors with that concern. They heard some concerns about the height, and one of the ideas that was suggested at one of the last neighborhood meetings was if they were to trade historic preservation for height, could they have a lower building. So in the last week or so, they reviewed that idea. He explained if they could carry a four-story volume across the front, they then would relate to the scale of the Geronimo Hotel, which was to the north, and the graduate student housing to the south. They could take off two stories from the basic block and they would have a different design approach. He explained they were looking at a lot of possibilities and listening to the neighborhood.

Commissioner Rex said she did not see herself supporting to move this item to public hearing because she did not feel it was in context. She said she did not feel it met the requirements of the submittal and the information that was provided was too vague and very generalized. She said they were talking about one percent of parking that was or was not available. She repeated that this item was not ready to go to public hearing.

Commissioner Williams agreed and said there was always an issue with parking. He said the one hundred and forty or fifty bicycle spaces that were mentioned and the other ninety parking spaces did not adequately address the proposed three hundred dorm rooms that they were suggesting. He said more than likely, there could be two to three per-dorm room and the parking spaces really did not address that issue very well. He said the parking issue needed to be addressed to make sure it did not bleed over into the existing neighborhoods.

Commissioner Rex said she did not want to give the impression that she was opposed to infill. She said she was very much supportive of infill projects, but did not support the idea of infill in the area and did not support this as it was presented.

Commissioner Maher agreed that there were some confusing aspects. He said some of the design changed, the materials of the facade changed, and also lost two floors. He asked if this was where they were at this point in the latest rendering.

Mr. Vint said it was a conceptual design and they were in the preliminary schematics, sizing things up, and getting an idea of floor plates and heights. He said they looked at another ways and said, by lowering that height, the tall building in back would help address some of the concerns that they had heard. Essentially, they were trying to define the parameters to carry the project out. He said he wanted to clarify that their policy was to rent one bedroom per student, so there would be three hundred maximum and not the six hundred students mentioned. He explained one of their selling points was to let the parents know that their sons and daughters were in a secure, clean, and safe environment.

Commissioner Maher asked what the sizes of the rooms were and housed only one person per room, so they would not have to fight with their roommate.

Mr. Vint said the sizes of the rooms were approximately eleven by thirteen feet and each room was equipped with their own desk, workstation, and bookshelf.

Commissioner Maher asked how it compared to the Coronado Building in terms of size.

Mr. Vint said the rooms were larger and there were more bathrooms per unit. For instance, a four-bedroom unit would have two private baths, so there would be one-half bath per-bedroom. Whereas, in the University dorms, there was a floor sharing gang bathrooms at the end of the hall. So, it was basically high-end and luxury student living. He added that there was also a living room in each unit with common living, dining, and kitchen areas. He said they were apartments and could be used not only for students, but faculty members or graduate student with a couple of kids could also live there.

Commissioner Rex asked staff if this was a rezoning to the Planned Area Development (PAD). She said it was her understanding that PAD's were a minimum forty-acres, but she did not recall if that had changed. She said there were areas where less than forty-acres would be sufficient with the approval of the Mayor and Council. She asked for clarification.

Ernie Duarte, Planning and Development Services Department Director, said Commissioner Rex was correct. It would require Mayor and Council approval to pursue a PAD for less than the forty-acres.

Commissioner Eddy asked since this was a plan amendment, would it go forward with a PAD.

Mr. Duarte replied that the plan amendment would need to take place prior to the PAD.

Commissioner Eddy asked the developer if there were any numbers on the Tyndall Garage regarding how many free spaces there were at the last parking session.

Mr. Golec replied there were approximately one hundred fifty free spaces and that number was decreasing. He said he believed there were seventeen hundred spaces total in one garage, and seven hundred ninety-eight spaces available in that neighborhood reserved for the Marshall Foundation for public parking. The parking spaces remaining were part of the U of A student-affiliated parking program.

Commissioner Eddy asked if the University had any plans for additional parking garages. He said he was aware there was another student housing complex being built on the corner of Euclid Avenue and Sixth Street, and if there was parking associated with those buildings.

Mr. Golec replied there were surface parking lots just to the south of that and within walking distance. He said once parking became an issue, they would build more, however, currently that was not an issue.

Commissioner Eddy said he was a resident of Coronado for a year and said he thought critical mass in the University area was needed. With the street car line going in the next few years, it was important to get a critical mass near the University to create a pedestrian environment, which was needed. He said he liked the idea that the buildings were scaled down to some of the existing uses and realized that parking and height were going to be an issue, but he believed the idea and intent was what was needed for this area.

Mr. Vint added, if the frontage on Euclid Avenue would be redone, retail would be added in an effort to include more uses that would bring more life to the street along the Euclid Avenue Street front.

Commissioner Podolsky added that he liked the second proposal better than the earlier concept. He said he did not have an issue with the density in that area because it was appropriate. But, it was a very heavy used pedestrian area and more could be done with the ground level to provide a more varied street scene than to park cars on it. He said he was really disappointed to see surface parking in this kind of project.

Commissioner Podolsky said additionally, with the dramatic difference between the two concepts and the fact that they were going to be asked to approve the one hundred forty foot height limit, he agreed with Commissioner Rex. He said he did not

think this project was ready for a public hearing and strongly recommended that the applicant return, work a little more on the concept plans, work more with the West University Neighborhood Association (WUNA), and give it one more month to see what would develop.

Mr. Vint said they were planning another meeting the next evening with WUNA regarding ground-level parking. It was a ground-level parking garage and would not be seen from the street. He said it would be behind the retail and the lobby, so it would be a little deceptive depending on the way one would look at it.

Commissioner Maher said when they looked at the other hotel that was going to be built in back and nestled between a couple of buildings at one hundred and forty feet, this one would be sticking out along the street. He suggested, perhaps the building could be a little shorter and more proportioned.

Commissioner Maher said he did not recall seeing construction costs and whether there was a magic number and a magic number of rooms to make it all happen. He said assuming the Neighborhood Association was in favor of it, he was definitely in favor of the density. He asked Mr. Duarte if he knew where the modern street car stations were going to be.

Mr. Duarte replied he did not know and referred the question to Mr. Mazzocco.

Jim Mazzocco, Planning and Development Services Department, Planning Administrator replied there were two stations planned. One would be on Park Avenue and the other would be on University Avenue and they would run along University Avenue and down Fourth Avenue, but he did not know where the exact location would be.

Mr. Vint said he understood the University was planning on expanding to have access to downtown Tucson. He commented that the modern street car versus having to drive back and forth, worked well with the location of their site.

Chair Lavaty asked if there was any further discussion. Hearing none, he asked for a motion.

It was moved by Commissioner Williams, duly seconded, and carried by a voice vote of 9 to 0 (Vice Chair McBride Olson and Commissioner Armenta absent), to continue the item as a Study Session until such time the Applicant was ready to return.

## **5. DOWNTOWN CORE DISTRICT UPDATE (STUDY SESSION)**

Jim Mazzocco, Planning and Development Services Department, Planning Administrator advised he would give an update on the Downtown Core District idea. He said the first discussion regarding the Downtown Core District was at the Mayor and Council Study Session on March 9, 2010, when a report was first brought forward on what was called the “quick fix” text amendments. At that meeting, the Mayor and Council asked staff to return on April 27, 2010 with more information about a Downtown Core concept that was presented in a letter from two Land Use Code Committee

members, Ruth Beeker and Jim Campbell. They returned to the Mayor and Council on April 27, 2010. He explained their recommendation was to start a draft text amendment within the Infill Incentive District to address some type of Downtown Core District in the Infill Incentive District. He said they also recommended that a subcommittee be formed to help prepare the text amendment, and by using the Infill Incentive District as a guideline, consider a financial incentive concept that would work within the Downtown Core District idea.

Mr. Mazzocco said the City Manager formed a subcommittee and the subcommittee had their first meeting last week where some issues were discussed. The Mayor and Council gave direction to staff to expand the District, not only in the area that was defined on the east side of I-10, but also look at the west side of I-10, which they understood to mean the part of the Infill Incentive District that extended beyond I-10 and part of the Rio Nuevo District. The subcommittee or the Downtown Core Committee studied what kind of strategies to look for when proceeding with the east side and west side idea. He explained they would continue meeting and planned to return to the Planning Commission in June for a Study Session with either an update or a draft text amendment and strategy.

Chair Lavaty asked if they anticipated any changes to consolidate some of the eight or ten different underlying overlays in plans and zoning districts, so there would be one organization trying to develop in this infill district.

Mr. Mazzocco replied that they actually had that discussion, and by reviewing the map, there were several overlays. He said they also talked about what stage to address that subject. On March 24, 2010, the Land Use Code Committee agreed there was a clean-up issue. They also agreed there was another issue of creating something in the Downtown Core that was specific and allowed for an expedited review. He said when they weighed the two and looked at how long it would take to do the clean-up versus how long it would take to do the expedited review concept, they agreed the expedited review concept should be done first. However, it did not mean the clean-up concept would be taken off the table, it would just be done in a later phase.

Mr. Mazzocco said, to do the clean-up concept, they probably could not do it as a sub-area. They would actually need one of the items such as the Urban Overlay District so they could expand it, then dissolve the underlying districts, then do the clean-up at a later stage. He repeated the issue was not off the table, they just felt this was a way to get more for their buck by going forward, creating the expedited review in this sub-area, and then do the clean-up as a later stage.

**BREAK:** Break 07:24 p.m. to 07:35 p.m.

Chair Lavaty called to meeting to order and asked for a roll call.

Upon the roll call, those present and absent were as follows:

Present:

Rick Lavaty, Chair	Member at Large, Ward 1
Steven Eddy	Member, Ward 6
Joseph Maher	Member at Large, Ward 3
Rich Michal	Member at Large, Ward 6
William Podolsky	Member at Large, Ward 4
Catherine Applegate-Rex	Member at Large, Ward 5
Thomas Sayler-Brown	Member, Mayor's Office
Daniel J. Williams	Member, Ward 1
Craig Wissler	Member, Ward 3

Absent:

Shannon McBride-Olson, Vice Chair	Member, Ward 2
Ralph Armenta	Member, Ward 5

**6. LAND USE CODE TEXT AMENDMENTS- RENEWABLE ENERGY GENERATION (PUBLIC HEARING)**

Craig Gross, Planning and Development Services Department, Deputy Director, said on February 7, 2010, the Mayor and Council directed staff to prepare a *Land Use Code* Amendment to address Renewable Energy Generation. He explained that the amendment added a new land use class for renewable energy generation to the utilities use group, providing new regulations and review processes. The amendment also provided a new definition for renewable energy generation and new performance criteria for approvals.

Mr. Gross said the final draft was presented by City staff during the April 7, 2010, Study Session of the Planning Commission. The Planning Commission requested two minor amendments to that draft which allowed renewable energy generation in the "P" parking zone as a special exception and allowed service and storage yards to be a possibility for use in the C-2 and C-3 zones. He said both amendments were added to the draft language being presented to the Commissioners that evening.

Mr. Gross explained that the *Land Use Code* (LUC) currently allowed a generating system for the production of energy in the I-2 Industrial zones. The assumption was made that a typical coal or gas-fired energy generation system would be considered detrimental to adjacent commercial or residential development. He said, however, it did not address alternate systems such as solar power or wind power, which this amendment did.

Mr. Gross said that Staff recommends that the Planning Commission vote to forward the text amendment to the Mayor and Council for review and approval of the final ordinance at a future Mayor and Council meeting.

Gross added, at the request of the Director of Environmental Services, in the definition under Section 6.3.12.3, on the last page where it read "Renewable Energy

Generation,” to add the term “methane gasses.” So it would read, “Solar, geothermal, natural gasses, methane gasses, and wind power.” He said that would help clear up any conflict between methane gas and natural gas. He also asked the Planning Commission to accept those terms in any motion that they made.

Chair Lavaty asked if there were any questions for staff before the public hearing was opened. Hearing none, he opened the public hearing, and asked if there were any speakers on this item.

There were no speakers.

It was moved by Commissioner Maher, duly seconded, and carried by a voice vote of 9 to 0 (Vice Chair McBride Olson and Commissioner Armenta absent), to forward this item to the Mayor and Council for review and approval with the addition of the word “methane” to the definitions.

**7. LAND USE CODE TEXT AMENDMENTS – INFILL IMPROVEMENTS (PUBLIC HEARING)**

- a. Reductions in Required Number of Motor Vehicle Parking Spaces**
- b. Loading Zones**
- c. Urban Overlay District**
- d. Zoning Compliance for Existing Site Improvements**
- e. Development Timelines and Expiration Dates**

Chair Lavaty stated there were five (5) proposed Text Amendments on the public hearing, and what he wanted to do was discuss each one individually. He said it was pretty unrealistic to ask speakers to address five different issues within a three-minute period which was the normal time allowed. Chair Lavaty stated he also wanted to change the order in which the items were discussed and asked the City Attorney if there was anything that prohibited him from discussing each of the items separately and closing the public hearing after each item without closing the public hearing as advertised on the group of text amendments.

Tom McMahan, Principal Assistant City Attorney, responded that he did think there was anything that precluded the Commission from dealing with each of the items individually; this was something commonly referred to as “seriatim.”

Chair Lavaty said, unless there was any objection from the Commission that would be way he would precede with the items.

Commissioner Williams asked, for clarification, if a motion was needed to break out and treat each item separately.

Mr. McMahan said he was not sure if a motion was needed, but was always in favor of a motion and vote so that there was a clear record of what occurred.

It was moved by Commissioner Williams, duly seconded, and carried by a voice vote of 9 to 0 (Vice Chair McBride Olson and Commissioner Armenta absent) to discuss and act upon each item separately as presented by Chair Lavaty.

Chair Lavaty announced he would start with the *Land Use Code (LUC)* Text Amendment on Loading Zones. He said he would move through the items that looked like they would go pretty quickly and then to the ones he suspected most of the audience was present for and wanted to talk about. He stated he did not have any speaker cards for the Loading Zones item and asked staff presentation if they had a presentation.

Jim Mazzocco, Planning and Development Department Services Planning Administrator, stated that most of the information was the same as presented in the study session the previous month. He said the basic idea was to allow some flexibility in a slight overlap of loading zone with parking space in certain situations. He stated Adam Smith, Planning and Development Department Services Principal Planner, could answer them.

Commissioner Maher asked staff if there was cooperation from the sanitation department so that when plans were submitted, weird things would not happen.

Adam Smith, Planning and Development Department Services (PDDS) Principal Planner, stated he had not spoken to Environmental Services (ES) Department specifically about this item; however, what he had been told by other staff members in PDDS was that ES had historically objected to co-location of loading zones with solid waste collection storage areas.

Commissioner Maher asked if it was part of an approved City plan, was ES stuck and had to follow the approved plan.

Mr. Smith answered affirmatively stating by approving the amendment it would allow for the co-location.

Mr. Williams asked if there was potential to create a problem, i.e., if someone was using it as a loading zone and all of a sudden a sanitation truck came in to empty the dumpster and were blocked from getting in there, could ES just drive away and not pick up the solid waste. Would the dumpster then overflow and create a sanitation problem for that particular business.

Mr. Smith responded that there was that potential and what was told to him was that the solid waste collection would just move on if they were not unable to access the dumpsters. However, it may be remote as long as that business was working with whoever was making the deliveries to make sure it did not conflict with solid waste collection.

Commissioner Maher stated he recalled that the City had this problem in the past and was not sure if it was policy and not an actual rule, but he did not see a problem with it and supported it.

Chair Lavaty announced this was the time and place legally advertised for a public hearing on a *Land Use Code* Text Code Amendment regarding Loading Zones. He asked if there was anyone wishing to speak on the item. There was no one.

It was moved by Commissioner Rex, duly seconded, and carried by a voice vote of 9 to 0 (Vice Chair McBride Olson and Commissioner Armenta absent) to close the public hearing on the *Land Use Code* Text Amendment on Loading Zones.

Chair Lavaty asked if there was any further discussion or a motion to forward a recommendation, complete with findings, to the Mayor and Council.

Commissioner Williams said he thought that something should be put into the text amendment about coordination of the deliveries with the ES, so that potential conflict could be reduced. He suggested some wording of some sort stating that deliveries not take place during certain hours when sanitation would be picked up to eliminate that potential conflict. He said the Commission should set something in motion that was not going to create a sanitation issue, draw flies, rats and other things to those particular areas.

Chair Lavaty asked if it was Commissioner Williams' wish to bring the item back before the Commission or to direct staff to add the language to the text amendment before forwarding it to the Mayor and Council.

Commissioner Williams stated he thought it should be added. He said he did not object to the item, but thought the additional wording needed to be added to address his concern.

Ernie Duarte, Planning and Development Services Director, stated he thought that was something staff could coordinate with ES and did not feel this was something that needed to be included in the language of the text amendment. He said perhaps, they could refer the language to the development standard. He said there was a development standard that addressed how the enclosures were to be built and staff could probably include some language that would incorporated some signage stating that pickup dates and times of the Sanitation Department and to please not block the area during those times.

Commissioner Williams responded that Mr. Duarte's suggestion was adequate.

It was moved by Commissioner Maher, duly seconded, and carried by a voice vote of 9 to 2 (Vice Chair McBride Olson and Commissioner Armenta absent), to approve the *Land Use Code* Text Amendment on Loading Zones with findings that it would reduce paved areas, reduce engineering and reduce costs in development and to include language in the development standards regarding scheduling conflicts with Environmental Services.

Chair Lavaty stated the next item of the text amendment to discuss was the Urban Overlay District. He asked staff if there was a presentation.

Jim Mazzocco, Planning and Development Services Department Planning Administrator, stated the idea of the Urban Overlay District (UOD) was to create a new overlay district that could be used for creation of transit-oriented development in areas of the City that the Mayor and Council deemed to need that type of overlay. He said it had qualities of the Planned Area Development (PAD) or could be as simple as a set of urban

design standards that affect a certain area. He stated, since the study session was held last month, staff clarified the purpose statement a little better and was as the five or so items. He said if the Commission wanted to make a finding, they probably could refer to the purpose statement.

Mr. Mazzocco said staff also looked at the name of the zone. He said what was said was that it should have a prefix of a “U” in front of whatever underlying zone. In other words, a C-1 would be UC-1. He said staff wanted that slightly altered by a prefix of the letter “U” followed by a number so that if there was an urban overlay in the Downtown Links. He said the Downtown Links was the area actually looking for this to come forth and it might be U-1/C-1. He said, if there was already an overlay, an arterial for whatever reason, because staff was already doing a design on an arterial the name of the zone might be U-1/C-1, so that way a person who was looking would know that these were separate treatments of C-1; a U-1 with its own rules and a U-2 with its own rules. He stated staff was basically following the precedent set by the PAD concept; PAD-1, PAD-2, PAD-16 and so forth. Again, he stated staff was suggesting the prefix followed by a number was staff’s only change to text amendment.

Commissioner Rex asked for clarification from Mr. Mazzocco. She asked if he was referring to Page 10, Item 2.8.13.3C. Would it be U-1/C-3 and asking that those numbers be made part of this item in the text amendment.

Mr. Mazzocco responded affirmatively, clarifying that the prefix “U” followed by a number and the assigned zoning designation would be what was used; C-3 would become U-1/C-3.

Mr. Mazzocco stated he failed to mention there was a development that the Mayor and Council had directed staff to prepare an overlay for, which was the Downtown Links, an area north of the railroad tracks from Stone Avenue on the railroad tracks on the south, approximately Fourth and Sixth Streets to its north. He said in that general area there were irregular-shaped properties the Mayor and Council wanted an overlay on, and this would be that overlay.

Chair Lavaty asked if it was limited to just that area or did Mr. Mazzocco foresee this being useful in the proposed clean-up on downtown.

Mr. Mazzocco responded on the second point made by Chair Lavaty. He said it was an enabling ordinance that could fit many situations. One would just need to pour design criteria into the overlay.

Commission Podolsky said he wanted to clarify that a U-1 and U-2 would have its own set of designations and asked up to what number.

Mr. Mazzocco stated he was correct and that PSDD was up to number twenty-four.

Chair Lavaty announced this was the time and place legally advertised for a public hearing on a *Land Use Code* Text Amendment regarding the Urban Overlay District and speakers were limited to three minutes. He asked if there was anyone wishing to speak on the item and to state their name and address for the record.

Colette Altaffer stated in looking quickly over at the overlay, she could not help but notice the sheer number of times she saw the word “may,” and it concerned her because without any specificity in regards to limitations on where this zone would be used, and the fact that her understanding was that it could go over into an established neighborhood, she wanted to see some of these words tightened and changed to “shall.”

For instance, Ms. Altaffer said the Mayor and Council “may” adopt a rezoning ordinance. She stated that most overlays went through a rezoning process and felt this should also go through a rezoning process. She said there were also provisions that the Mayor and Council “may” waive the requirement of the above-designed development document and “may” approve an alternative-design document. All of those things that used “may” needed to be tightened in order to ensure that if it went into an established neighborhood, those neighbors would have more than adequate time and opportunity to comment on any provisions that went into such an overlay zone.

Finally, Ms. Altaffer referred to language that stated the City “may” require financial and other assurances. She said she did not know it related to impact fees, but if did, she thought it needed to say we “shall” because the City could no longer afford to subsidize development. Development had to start paying for itself.

Bonnie Poulos from the Campus Farm Neighborhood stated it was funny, she had not seen Colette in a couple of months and, yet, they both had the same comments about some of the issues. She said, besides some of the wording in the text amendment being very nebulous, she wanted to address and relate her comments to PADs and the experience she had in her neighborhood in dealing with developments that were PADs. She said, for the most part, PADs had been very favorable to the neighborhood in terms of the ability for them to really know what kind of development was going to go onto a parcel, especially a parcel of particular size or parcel that was in a particularly difficult area with respect to either parking or nearness to uses that may not be compatible.

Ms. Poulos said one thing she did not see in the UOD was anything that specified the uses that would be made in that district and overlay. She said she thought one of the things really lacking in the City’s view was how zoning, particularly re-zonings, were dealt with. Her concern was after negotiating with a developer regarding the kind of uses and the kind of developments, a week after the development was approved, the property would go up for sale.

Ms. Poulos said they were told that anything in that underlying zone could go in, so that was why she wanted to see something in the Urban Overlay District (UOD) that was similar to the PAD language. She said, that way there would be some assurance, if there was a substantial change, that it would go back to the interested parties in that development.

Ms. Poulos stated one other point she was concerned about was enforcement. She said she had some issues with enforcement as it currently stood and enforcement was something that needed to be looked at as a separate text amendment. She said, perhaps that could be an item the Commission could put on a future agenda. She said by tightening up the language, everyone would know what would happen when the issues

came before the Mayor and Council and no one would guess at whether or not things may or may not happen.

Bill DuPont, representing the Colonial Solano Neighborhood, stated they were a neighborhood that sat in the Broadway Corridor so, of course, this was very interesting to them because of the discussions of overlay zones for Rio Nuevo funding. He said there were some currently in existence, but there had been discussion of another overlay zone. He stated the Neighborhood wanted to see the change in the language to “shall”, to make sure they were fully vetted, and that the neighborhood plans were honored.

Chair Lavaty asked if there were any other speakers wishing to speak on the item. There were none. He then asked for a motion to close the public hearing.

It was moved by Commissioner Sayler-Brown, duly seconded, and carried by a voice vote of 9 to 0 (Vice Chair McBride Olson and Commissioner Armenta absent) to close the public hearing.

Chair Lavaty stated the public hearing was closed and asked if there was any further discussion.

Commissioner Rex stated she was trying to understand which areas were being modified for use of the word “shall.” She said she understood the one on Page 10, 13.3, Item A where it stated, “... the Mayor and Council “shall” adopt a rezoning ordinance for the overlay.” She said she was not sure she followed any of the others because there were some that, for example, on 13.4 A, it states the “UOD ‘may’ have land use regulations and procedures different from the zoning regulations applicable in another UOD or in the *LUC*. She said she thought that it was not a universal change from “shall” to “may,” and wanted to be specific about understanding the change. She also wanted to be sure on the PAD language, and asked if the change would be by reference or whether it would be repeat here.

Chair Lavaty asked Ms. Poulos or Ms. Altaffer if either one of the cared to comment on the change in the language for the PAD.

Ms. Altaffer stated Commissioner Rex was correct; 2.8.13.3A, “Mayor and Council ‘shall’,” and then further down in 2.8.13.5 B., where “ ... the Mayor and Council “may” waive the requirement but the design document “may” contain maps.” She stated she thought it should say “shall” contain maps so that there was something to be looked at. Finally, she said in 2.8.13.6 B., “... the City ‘may’ require financial....” Again, she said she thought it should be “shall” require financial.

Commissioner Rex asked staff, as a follow-up, if under 13.6 B., “...the City ‘shall’ or ‘may’ require financial or other assurances..”; would that be a bond in some cases and not necessarily impact fees. She asked what that meant.

Mr. Mazzocco stated what it meant was that there were a lot of different urban overlay scenarios that this enabling ordinance could take on. He said it could take on something very specific as a PAD-like development and someone would go into a great deal of detail and that would be required. Or, it could be something as simple as one or

two rules that only applied to a certain overlay that met the purpose of the enabling ordinance to encourage, transit-oriented development. He said that was why staff kept it in language using “may.” Mr. Mazzocco said he agreed with the speakers on 2.8.13.3. He said that one probably should have been “shall,” where an ordinance was adopted because they were not saying an ordinance would not be adopted, so that one was a slip and should have said “shall.”

Mr. Mazzocco said he thought staff preferred the use of “may” because once “shall” would be used, the use of the ordinance would be limited. He said if the City was going to require financial incentives for something that did not have anything else to do with financial incentives and was about another subject, it did not work. He said that was why staff left it as a “may.” He said there can be very intensive urban overlays or very simple urban overlays and staff wanted to keep both options open to let the Mayor and Council decide which way to go.

Mr. Mazzocco stated one other thing to understand was that every one of these would be a typical rezoning. They would all have to go through and comply with the *Neighborhood Plan*, the *Area Plan*, the *General Plan*. He said the rezoning would have to have all that compliance in order; there would then be a neighborhood meeting for the surroundings that people could attend and comment on; and then there would be the typical public hearings before the Zoning Examiner and the Mayor and Council. He said as far as these being fully vetted, they would be as fully vetted as any other rezoning. He said a lot of this the Mayor and Council could currently do. They could rezone property, but chose not to for various reasons, but could do a lot of that right now. He said this was a particular overlay meant to look at parts of the City where staff was trying to focus on and create a transit-oriented development option.

Mr. Mazzocco said another thing to understand was that this did not take away the rights of the underlying zoning. If someone had a C-1 and wanted to develop their property as C-1, it could be developed as C-1. If the “U” was used, then the rules of the “U” had to be followed. He said the “U” could mean, as in the Downtown Links, that there could be a group of uses associated with that “U” that were transit-oriented types of uses that had to follow a set of design criteria to develop in that area instead of developing as industrial. He stated this was a big concept with lots of different ways of applying it and was why staff wanted to keep the options open. He said it was just not a PAD concept that was called an overlay.

Commissioner Williams said he had a question regarding Item 2.8.13.5 B. He said it stated, “In its place, Mayor and Council may approve an alternate urban design document.” He asked if that meant that particular document had to go through the full rezoning process and public hearings. In other words, it can be different, but still had to go through the full process before being approved.

Mr. Mazzocco responded affirmatively.

Commissioner Williams said another issue that was brought up was enforcement. He said he knew there was a problem with enforcement which was probably due to lack of staff. He asked if anything was going to be done to improve enforcement, now that additional overlay zones were being adopted or was it going to be status quo.

Mr. Mazzocco said the overlay zone did not change anything or imply that there would be change in the City's organization. He said if there were problems, they needed to be corrected at the different stages; this was not the stage for that, so "yes" it would be status quo.

Commissioner Rex asked about Item 13.5, Application. She said, again, getting back to the question of the PAD language changes and whether or not the Commission needed to elaborate any further than Item A. She stated in Item B, it stated that the Mayor and Council may waive the requirement of the above development document, which was the PAD procedure, and in its place may approve an alternate. She asked if a single sentence was used such as, "The Mayor and Council may modify the components of the requirements of the above development document," would that change the meaning. It did not eliminate the PAD procedure, but might, as Mr. Mazzocco pointed out, the item being requested could be far simpler by modifying the components; but not eliminate the requirement of going through the procedure. She said she did not have enough information at this time, to know whether what she was proposing was what everyone was trying to get at.

Mr. Mazzocco said the reference to the PAD document was to a more flexible PAD that was approved in the Infill Incentive District. He said that was available in the UOD. He said one could say it that way or one could say that a modified site analysis could be done and in that modified site analysis, as long as the Planning Director was okay with it, the Zoning Examiner felt it was adequate, and the Mayor and Council also felt it was adequate, then it could be modified substantially, depending on what it was. He said that was meant mainly for private development, especially in the urban parts of the City. There were other parts of the site analysis process that were not needed.

Mr. Mazzocco said, in the particular case being discussed, the Mayor and Council might want a couple of rules of urban design applied to a certain area that might not be as in-depth as a site analysis; but just to say. "if this and this are done, you will be allowed to" He said these were the rules that could be used to encourage transit-oriented development; thus, you get these particular flexibility options. He stated that was the idea and did not necessarily have to do with a PAD site analysis which was why staff worded it they did. He said maybe the wording was not elegant, but that was the concept staff was trying to get at; a PAD concept and a flexible design concept which was probably more concise.

Commissioner Maher asked if the purpose was to try and provide some incentives for a little bit more design-orientated planning; the underlying zone was there but some incentives or a particular developer and his architect came up with some other criteria that enhanced the site. He said he thought it was just non-residential or commercial site they were talking about.

Mr. Mazzocco stated the type of sites was not specified, but was not intended to change a residential neighborhood and turn it into commercial; that was not the intent. He said the intent was for transit-oriented type of development where there were infill opportunities. This would give an incentive to develop a more urban type of development in an area with its own rules, but at the same time allow the property owner

to develop also using the underlying zoning, but gave incentives to do something more transit-oriented.

Commissioner Maher confirmed transit-orientated as little bit more design conscious, such as in the Downtown Links and Grant Road where it was mostly commercial property that might be enhanced, intensified as in roadways, busses or light rail to enhance the area.

Mr. Mazzocco replied positively.

Chair Lavaty stated he was confused from listening to the discussion. He said previously, in the way that it was originally written, flexibility and enhancement abilities underneath this provision would all be written as zoning requirements under the U-1/C-2. He asked if these would continue to remain written requirements and a part of the rezoning package for the notice and public hearing with the Mayor and Council.

Mr. Mazzocco said there would be a document that would be flushed out for that particular overlay, either at the level of a PAD document or at the level of an urban design plan that might have two or three requirements; it could be very simple or be very complex. He said the one being looked at, the Downtown Links, was a more complex version because it would be very much like a PAD site analysis concept.

Chair Lavaty said to address Ms. Poulos' concern, about the developer who went through the process with a concept plan and then immediately threw a for sale sign on the still vacant property, and someone else comes in whose concept for that property might be different, if a zoning case was done, there would be a specific set of requirements and agreements that had to be followed in order for the zoning to be in effect. He asked if those same kinds of assurances would be built into the rezoning case as they would in a standard.

Mr. Mazzocco stated the assurances would be built into the particular rezoning package that was going forward. He said all of that would be vetted, up front, as to what option the property owner now had on the property, along with the new urban option; that would be what was spelled out in detail in the rezoning process as to what could be done an urban option that was encouraging transit-oriented development. He said there would be specifics about what was being spelled out. Mr. Mazzocco reiterated there were a couple versions of an urban overlay that could come forward. The more PAD-like one and the more Infill Incentive District-like one, where there was a procedure that encouraged infill development.

Chair Lavaty asked if the reason staff kept talking about transit was because of the purpose for which this was immediately intended, but was not limited to. He said he was just looking to make sure that, particularly neighborhoods, were not giving up any of the current assurances and notifications they had under the standard zoning process.

Commissioner Williams asked if the U-1, U-2, or U-3 was going to be specific for each development, or if it was going to be a set of criteria that were written up and made part of this particular ordinance.

Mr. Mazzocco stated there would be a specific set of rules in any given situation that could be as complicated as the Downtown Links. He said the Downtown Links was going to have sub-areas within its overlay that would have rules per sub-area; which was one way of doing that and probably was one of the more complicated versions of. He said a simpler version was an overlay that simulated something like the Infill Incentive District with a procedure that could be followed and encouraged streetscapes and transition plans and so forth.

Commissioner Williams asked if that criterion needed to be referenced in this particular ordinance; that it would be developed and be part of in order for it to move forward.

Mr. Mazzocco stated he did not feel the ordinance needed to be that specific in trying to anticipate all the scenarios or limit the scenarios.

Commissioner Williams said he was just asking if there needed to be reference to those particular types of U-1 or U-2, that they would be developed using specific criteria for each additional site or something like that because that was not really addressed; it was kind of thrown at the Commission so to speak. He said he was trying to understand the concept and what it meant.

Mr. Mazzocco said he thought that was stated and that this was an enabling ordinance and was going to be broad, just as the PAD was broad, and each PAD was different. He stated there had to be that kind of broadness in the enabling ordinance to have it adjust to individual situations that then were discussed in individual rezonings for individual overlays using the enabling ordinance. He commented that the more specific the enabling ordinance was, the more limited the kind of application you could have. He said he thought that was more the type of question whether this was a broad enabling ordinance that allowed very detailed kinds of overlays or very less-than detailed overlays, more like an Infill Incentive District type of overlay where the underlying uses were not touched at all and the dimensions were just dealt with.

Mr. Mazzocco said it allowed for both options to occur without limiting the options. He said one option could be that it just simulates a PAD, period, and if the level of a PAD-type of overlay is not done, then this cannot be used, so staff did not do it that way. He said they made it broad enough so that it could take in options, like the Infill Incentive District, which were dimensional, or a PAD which are use-oriented.

Commissioner Rex said she felt Mr. Mazzocco clarified that the changes were for individual PADs and not for the overall UOD.

Chair Lavaty asked if there was any further discussion. Hearing none, he asked if the Commission was ready to make a motion.

Commissioner Rex asked if staff could recap the discussion and what the Commission was working with, specifically the changes.

Mr. Mazzocco said he thought the changes were; 1) changing the word “may” to “shall” in Section 2.8.13.3, and 2) in 2.8.13.3 C., add the prefix of “U” followed by a

number and the assigned zoning district, i.e., if it was C-3 , it would become U-1/C-3. He said those were the two changes and that staff felt they were good changes.

Commissioner Rex asked if there would be any modifications to Section 13.5 B., by either eliminating the second sentence or changing the wording to “shall contain maps”. She said she understood why the word “shall” was not used, but, there needs to be some definition of what an alternate urban design document entails which was why she was asking. She said she was comfortable with just saying the Mayor and Council “may” waive the requirements, but did not see any reason why they have to go by it verbatim if it did not apply to what was in item A.

Mr. Mazzocco asked Commissioner Rex if it would be satisfactory if the wording was changed to say that the Mayor and Council “may” modify the requirements of the above development document.

Commissioner Rex said she said she was trying to understand and was uncomfortable writing language where it had not been thoroughly thought through except for the last fifteen minutes to half an hour or so.

Mr. Mazzocco asked if the Commission desired staff to revisit the concept and come back next month to give them their opinion as to how it could be modified.

Chair Lavaty asked the Commission what they wanted to do. He said the public hearing had been closed, but they could certainly continue the discussion prior to voting on making a recommendation to the Mayor and Council.

Commissioner Rex asked if the public hearing would be re-opened or continued.

Tom McMahon, Principal City Attorney, stated he thought that motion was needed to continue the item to a date certain and not necessarily to reopen the public hearing at this point. He said since the public hearing was closed, there was going to be some sense of urgency so the Commission could make a recommendation within the time limits of the rules, which he recalled to be forty-five days from the close of the public hearing.

Chair Lavaty stated that perhaps a motion was needed to continue their discussion on the item to their next meeting date in June, which was within the forty-five day period, so that staff could return with the modified language.

It was moved by Commissioner Williams, duly seconded, and carried by a voice vote of 9 to 0 (Vice Chair McBride Olson and Commissioner Armenta absent) to continue the item until the next Planning Commission meeting so that staff could make the necessary modifications per the Commission ‘s recommendations.

Chair Lavaty stated the next item of the text amendment to discuss was the Development Timeline and Expiration Dates. He asked staff if there was a presentation.

Ernie Duarte, Planning and Development Services Department, Director said this item changed the timeline for development plans and tentative plats and their approval

would be good for up to three years instead of only one year. He said this simulated what was currently in the City's protected development right provisions that allowed for three years for something to be approved for.

Chair Lavaty announced this was the time and place legally advertised for a public hearing on a *Land Use Code* Text Amendment regarding the Development Timeline and Expiration Dates and speakers were limited to three minutes. He asked if there was anyone wishing to speak on the item. There were no speakers

It was moved by Commissioner Rex, duly seconded, and carried by a voice vote of 9 to 0 (Vice Chair McBride Olson and Commissioner Armenta absent), to close the public hearing.

Chair Lavaty asked if the original intent of putting the one-year expiration was to ensure that development, which was permitted, actually took place. He said he was somewhat uncomfortable with extending it to three years, and aside from the current economic slow down which had dramatically slowed the entire development environment, he wanted to hear what the reasoning was behind staff's request to extend the timeline for two more years.

Patricia Gehlen, Planning and Development Services Department, Section Manager, stated part of their reasoning was obviously the economy, but also it was often very difficult to get through the system in one year and actually pull a permit with building plans, grading plans, and all the associated documents. She said it was especially difficult having to have a final plat approved and recorded within one year of approval of a tentative plat.

Chair Lavaty asked if there was currently a relatively automatic one-year extension upon request.

Ms. Gehlen replied there was an automatic one-year extension for the development plan and the tentative plat, but not for the final plat.

Mr. Duarte said the intent behind the one-year period was designed to prevent applicants from obtaining approval on a project and then not building it for five, seven, or ten years later when the rules of development had changed significantly. He said the intent was to freeze those regulations in place for one year, make them good for a year, and if there were any Code changes that took place subsequent to that approval, they had to redesign and redevelop to the new code regulations.

Mr. Duarte stated that the three-year window that staff was proposing was consistent with the direction received from the Mayor and Council last April, when they recognized the City was in some fairly unique economic times and there were a number of projects already approved that, if not for this economy, would be going forward and were going to expire. He said the Council extended protected development rights to a total of about seventy projects, giving them an extra couple years of shelf life so when things turned around those projects were ready to go without having to be redesigned. He said the three-year window being recommended was consistent with the Council's direction with protected development rights.

Commissioner Rex stated asked if on Page 23, Section 5, the language had not changed that, "If not extended, the section shall revert to the language as it existed prior to this amending ordinance and this Development Compliance Code shall cease to be effective on January 31, 2012." She said that was less than three years away. She asked if they were going to sunset something in less than the time period, would it mean that there were a few projects that were three years and unless this was extended specifically, they would sunset.

Chair Lavaty said he thought what Commissioner Rex was asking was, and at least what he wanted to hear was that if a tentative plat was approved tomorrow, would it expire in three years or on January 31, 2012.

Jim Mazzocco, Planning and Development Services Planning Administrator, said once three years had been given, they had three years. He said it was just that after January 12th, other applicants that came forward may not get three years if they did not continue it.

Tom McMahon, Principal City Attorney, stated that perhaps an easier way to explain this was that the applicability of this new provision would be available for three years. He said that was what sunset was, it was the availability of this provision. However, staff was not sun setting anybody's rights that would develop during that period of time.

Commissioner Williams clarified that his understanding was that this would apply to shell projects, the seventy projects already out there that were mentioned. He said, in reality, how long did the process typically take and that often times a year was not adequate enough, probably for the larger projects, but wanted to know what the timeframe really was that a project could typically get done. He said he thought it was more in the tune of two years than three years.

Ms. Gehlen said she thought that final plats could definitely be done within two years and that three years gave people a little bit more flexibility to permit various buildings if they had a multi-building site. She said sometimes all the buildings were not permitted within the first or second year.

Commissioner Williams asked if they then got another year's extension on that time as well.

Ms. Gehlen stated the revision proposed that at the end of three years a one-year extension was possible and depended whether there was any code revision. She said a plan could only be extended if no significant Code revisions were made.

Commissioner Williams stated there was the potential that it could be as long as four years without any major Code revisions. He said it seemed to him and he could understand potential for three years, two years with a one-year, but now they were up to four years potentially, and felt that was a little excessive.

Commissioner Rex stated she would agree except for the fact that the City was facing some potentially major changes in the Code within the next four years and,

therefore, as Ms. Gehlen indicated, this would not necessarily apply. She said the extension would not apply if there were things that were not necessarily compliant with the new organization of the *Land Use Code*. She added, to further clarify what this would apply to, she said if there was a development plan that was about to currently expire now that had been approved a year ago, would it be given a one- or three-year renewal, or did it only apply to things that were approved after the text amendment was made.

Ms. Gehlen stated there were currently two options; a one-year extension if no significant Code change were made and the Protected Development Rights (PDR) which had to be applied for and approved by the Mayor and Council to get three years on an un-phased plan.

Commissioner Rex asked if this process was already in place, but in a different form.

Mr. Duarte stated that the proposed amendment applied prospectively to any new applications, new tentative plats, site plans, or development plan applications that came in. It did not apply to retroactive.

Commissioner Rex asked if for the retroactive project, would they go through the PDR process already have in place.

Mr. Duarte responded affirmatively.

Chair Lavaty clarified that what staff was doing, and going back to his earlier example, was that if there was a project that currently had a three-year extension, and assuming this ordinance sunsetted, did that mean that the project could still receive an extension beyond that and would the developer know exactly what their development rights were as they moved into the project

Mr. Duarte stated that if tentative plats, site plan, development plan approvals were obtained, assuming text amendment was adopted by the Mayor and Council; the developer's project would extend beyond the current date.

Chair Lavaty asked if there was any further discussion or motion.

It was moved by (MALE SPEAKER), duly seconded, and carried by a voice vote of 9 to 0 (Vice Chair McBride Olson and Commissioner Armenta) to approve the text amendment of the Development Timelines and Expiration Dates as recommended by staff in order to provide a longer window in tough economic times for a developer currently proposing a project with an eye to review prior to the sunset provision written into the bill.

Chair Lavaty stated the next item of the text amendment to discuss was the Reductions in Required Number of Motor Vehicle Parking Spaces. He asked staff if there was a presentation.

Jim Mazzocco, Planning and Development Services Planning Administrator, said staff presented the item last month and was to clarify issues that related to noise, light and shared parking and provide clarification about mitigation plans focused more on current zoning enforcement procedures. He said staff would come back to the Commission in a couple of months with a different text amendment on the concept of expansion of buildings.

Chair Lavaty announced this was the time and place legally advertised for a public hearing on a *Land Use Code* Text Amendment regarding the Reductions in Required Number of Motor Vehicle Parking Spaces and speakers were limited to three minutes. He asked if there was anyone wishing to speak on the item. There were no speakers

Ruth Beeker said she thought that one of the things the Commission was going talking about was eliminating the annual review of the parking mitigation plan which was part of the Code. She asked staff if that was correct.

Jim Mazzocco, Planning and Development Services Department Planning Administrator, responded affirmatively.

Ms. Beeker stated she supported that portion of the amendment saying no one should be expected to make a financial investment in redoing a building and then thinking they had the parking worked out and have it pulled out from under them a year from that. She said she thought that was unfair to anybody who had taken a financial interest. Ms. Beeker stated what that meant was that it had to be done right the first time because it was tied into a mitigation plan. To be able to do it right the first time, there had to be two parties at the table who were equally knowledgeable about the issues.

Ms. Beeker said she had been present before the Commission time and time again at various venues saying staff needed to provide the neighborhoods and other interested parties the necessary expertise in order to have equal footing in those negotiations; it has never happened. She said she has had a lot of nodding and smiles and saying, "Yes, that would be a really good idea." She stated in order to be able to do any of the mitigations, in a way that was, indeed, fair to neighborhoods, there needed to be a staff member who was proactive, made sure the neighborhoods had the necessary knowledge to know what their options were and what the possible problems would be when working out a mitigation plan.

Alice Roe thanked the Commission for holding the hearing and stated she was speaking regarding parking regulations. She said there were no parking requirements for restaurant food service less than twenty-four hundred square feet and sounded terrific if you were owner of such a proposed business. She asked what happened when the inadequate parking made spilled over on an adjacent neighborhood street; there was recourse.

Ms. Roe said the residential parking program was available in some neighborhoods, and the basic plan ended at 5:00 p.m. Most of the food service places ended little later than that. She commented that residents had to pay more if they want to have 24/7 coverage for residential parking or some other permutation. She asked what

would happen now when permitted food service uses applied for an extension onto the patio that put it over twenty-four hundred square feet; did it then trigger more parking ratios.

Chair Lavaty interrupted Ms. Roe telling her that her concerns did not fall within this item, but rather the next item to be discussed. He said he would ensure that she had the time to continue her comments during the next item.

Ms. Roe apologized for the confusion.

Bonnie Poulos stated she disagreed with Ms. Item 8, Page 4. She said she understood the annual review process was rather onerous, but the last sentences in the document state, "When a change of use occurs a new mitigation plan is required." She said she thought that was essential for this parking mitigation and changes to parking requirements in order for it to work. In most instances, in neighborhoods she had been involved in where parking had become an issue; it was almost always due to a change of use. She said a change of use that brought more traffic, more cars or a change of use in a shared parking area where the shared parking was no longer compatible. She said she thought the statement and need for a new mitigation plan, if there was a change in use, must be stipulated in order for the entire program to work.

Ms. Poulos continued stating that on Page 3, under Section A, 4, C. it said the use would not cause excessive drive-through traffic or habitual parking within the adjacent residential neighborhood or commercial development. She said she guessed her question had always been, and had never been adequately addressed, was how was this determined, how was it monitored, and how was it enforced.

Chair Lavaty asked Ms. Poulos, a quick question. He said on Section 8m Page 4, the next to the last sentence where it stated, "when a change of use occurs..." was she okay with the sentence immediately following that being part of that objection. In other words, he asked if she was all right with a new mitigation plan being required for a change of use and that the Director, at his discretion, may review the existing mitigation plan for its new use if that use was determined to be equivalent.

Ms. Poulos responded affirmatively and said she would envision that both of those statements would stay in that issue.

Chair Lavaty asked if there was anyone else wishing to speak on the item. There was no one.

It was moved by Commissioner Rex, duly seconded, and carried by a voice vote of 9 to 0 (Vice Chair McBride Olson and Commissioner Armenta absent) to close the public hearing.

Chair Lavaty asked if there was further discussion.

Commissioner Rex said that on Page 3, Item B, it states "nor shall such a site layout change add an outdoor seating area within one hundred (100) feet of residentially zoned property unless separated by a building, or loudspeakers or music."

Adam Smith, Planning and Development Services Department Principal Planner stated that the sentence needed to be clarified. He said perhaps, unless separated by a building and, perhaps, putting a period there and then stipulating that loudspeakers or music, live or recorded, within six hundred feet of residentially zoned property was not permitted, something to that effect; it was meant to be two separate criteria, but got combined in one sentence and was not appropriately punctuated.

Commissioner Rex said on Page 4, Item 8, the portion that was crossed out was the sentence that Chair Lavaty was talking about leaving in, "When a change of use occurs, a new mitigation plan is required." She asked if that would be when a more intense change of use occurred. She said if a less intense change of use occurred, did it not revert back to the underlying performance criteria or zoning requirements of the parking and a mitigation plan was no longer needed. She said she had no idea where the new changes with parking were going, so when she said zoning, she meant performance criteria or parking criteria for that use.

Mr. Smith said in his estimation, if was a less-intense use a mitigation plan was no longer needed and reverted back to the underlying zoning.

Chair Lavaty asked Commissioner Rex if her concern would be covered in the sentence immediately following that gave the Director the discretion to look at the new use and decide that if existing plan may be utilized or could the two be incorporated.

Commissioner Rex said that was why she was asking if it would then be when a more intense change of use occurred. She said again, she was not comfortable making changes to language expected that it should be left to staff to think through the ramifications.

Mr. Smith said staff could certainly come back next month with this item in order to and go back and do more research to see if there were any unintended consequences in the changes they were proposing.

Chair Lavaty said the language was largely at his instigation and his concern at the time was that it was entirely possible to have a very reasonable, very professional-looking mitigation plan that was being followed explicitly and correctly that just flat did not work. He added his concern was that the surrounding neighborhood not be stuck with that for twenty to twenty-five years while the existing use on that building continued. He said he was a little bit more comfortable now with what was presented than before. He stated he wanted to see the new language suggested by Commissioner Rex, and have it come back for further discussion at the next Planning Commission meeting.

Commissioner Williams said one of the issues he did not see addressed was if the commercial development was adjacent to residential development which was typically where the problems occurred. He said it was not commercial against commercial or industrial, but when commercial development was right adjacent to residential development.

Mr. Smith said the criterion states that outdoor seating areas could not be located within one hundred feet; an outdoor seating area would have to be one hundred feet or

more, unless separated by a building. He gave a little bit of background stating the criterion, in regards to the outdoor seating area and loudspeaker distance requirements was taken directly from the performance criteria for alcoholic beverages sales in conjunction with restaurant use.

Commissioner Williams clarified that this was currently allowed with an establishment that serves alcohol adjacent to a residential neighborhood.

Mr. Smith stated that this was one of the performance criteria if an establishment was going to have alcoholic beverage sales in conjunction with restaurants; they must comply with the same criteria.

One Commissioner asked if staff knew if this criteria worked or not and might be something they check on when making the revisions.

Chair Lavaty asked if this was currently in the Code or currently part of the criteria and if it needed to be included it again. He said he was with the one sentence prior to the revision, rather than the five or six lines involved in the revision

Mr. Smith stated the change was at the request of the review staff. They felt that the criteria, as worded before, was a bit too vague and did not give enough direction in actually reviewing a plan. He said in an effort to add more specificity, staff referred to this performance criteria and because it had been in the Code for some time and they figured since staff had been reviewing against that criteria, they were familiar and comfortable with it.

It was moved by Commissioner Rex, duly second, and carried by a voice vote of 9 to 0 (Vice Chair McBride Olson and Commissioner Armenta absent) to continue the discussion on this item until the next meeting of the Planning Commission.

Chair Lavaty stated the next item of the text amendment to discuss was the Zoning Compliance for Existing Site Improvements. He asked staff if there was a presentation.

Glenn Moyer, Planning and Development Services Department, Planning Administrator, stated the item was born back in January 2010 as a quick fix to the *Land Use Code (LUC)*. He said when it was taken to the Land Use Code subcommittee in February and March, it was entitled "C of O Regulatory Relief." In April, it came to the Commission for a Study Session under the same name. He stated staff was now calling it "Zoning Compliance for Existing Site Improvement." He said he thought of it as the cryogenic option. Using the term cryogenic was more along the lines of an extremely cold freezing process used to preserve high-value items like shrimp or soft-shell crab or a night blooming cirrus.

Mr. Moyer said that in Tucson there was a significant amount of commercially zoned and developed property that was, at one time, high value. For many reasons, including changes in zoning regulations, these high value properties became more like a box of crackers whose best "if used by date" had passed. He said what was left were

vacant deteriorating buildings along streets and next to neighborhoods. These buildings were a drag on the community and they did not provide services to those neighborhoods.

Mr. Moyer stated that the intent of this proposal was to give these buildings new life and to preserve that life by freezing them; thus, the cryogenic option or zoning compliance for existing site improvements. There were two key points: zoning compliance and existing site improvements. Zoning compliance was required prior to issuance of a Certificate of Occupancy (C of O). He said zoning compliance implied that the use was permitted and that the development and performance criteria had been met. The proposal did not change any of the permitted uses or performance criteria for a site.

Mr. Moyer said under this proposal, a property with C-1 zoning could be used for any principal permitted land use in the C-1 zone. For example, as written, a food service use or restaurant, known as a food service use in the *LUC*, up to twenty-four hundred square feet was allowed, subject to the applicable performance criteria. He said the performance criteria for restaurants in the C-1 zone allowed outdoor seating areas but prohibited loudspeakers within six hundred feet of a residential zone. He stated the C-1 performance criteria for restaurants also prohibited soup kitchens. Alcoholic beverage services were not a principal permitted use in the C-1 zone and a restaurant wishing to sell alcohol could continue to use the standard zoning review process.

Mr. Moyer stated that the second key point was that this proposal only applied to existing site improvements. The proposed amendment identified existing site improvements as those in existence as of May 1, 2005, nothing more, nothing less. What was not eligible were:

- sites not in the same configuration as its existence on May 1, 2005;
- sites developed after May 1, 2005;
- sites that had been altered since May 1, 2005;
- new buildings;
- existing building with an addition constructed after May 1, 2005;
- outdoor activity areas that did not exist on May 1, 2005; and
- anything on the site plan different from what existed on May 1, 2005.

Mr. Moyer said the only exception was to allow restriping of existing parking lots and the easiest way to think of it was that the existing improvements on May 1, 2005, were frozen. He said because the existing sites improvements were frozen, another aspect of zoning compliance, the development criteria, were less critical.

Mr. Moyer said the amendment states, in a long list of *LUC* sections and subsections, that existing site improvements were not subject to compliance with development criteria for site area, floor area, building height, perimeter yards, access, lot coverage, parking, loading, landscaping and native plant preservation. However, for the most part, that was not significant. He said the fact that an existing building was not subject to the building height and perimeter yard regulations or the landscaping and NPPO requirements was moot because under this option that existing building could not be changed anyway. The building could not be made bigger or taller or moved closer to a property line or expanded into the landscape. All parking, loading and access must be

retained. Parking areas could not be deleted. All the building and site improvements were frozen.

Mr. Moyer said, using the C-1 restaurant example again as written, a restaurant could move into any existing C-1 zone building up to twenty-four hundred square feet. No matter how many parking spaces existed in 2005, would have to be retained. He said if the existing parking was limited; it could impact the viability of the building for restaurant use and/or create spill-over parking on adjacent commercial properties or nearby streets. He stated parking conflicts between adjacent commercial properties were best addressed privately. Cut-through traffic and unwanted spill-over parking onto public streets should be prevented through an effective street improvement and parking management program on an as-needed, where-needed basis, down to single blocks if approved. He emphasized that a simple on-street parking prohibition was not an effective parking management program. On-street parking was the greenest parking available; used the least space, least paving; and should be managed accordingly.

Mr. Moyer said some uses that were allowed by right within a zone could nevertheless cause conflicts. Several had been excluded from the draft ordinance to include: billboards, correctional uses and restricted adult activities. He said all uses that required a special exception were excluded; large bars, blood donor centers, big box retailer, cell towers and household goods donation centers. He stated all bar and restaurants over twenty-four square feet were permitted only as continuing uses. Also, if the property was within an overlay zone, or subject of a rezoning variance or special exception approved subject to conditions, or the subject of an unresolved zoning violation, could not use this option.

Mr. Moyer commented on the ability of food service, under twenty-four hundred square feet, to use this option. He said the twenty-four hundred square foot clause came from a draft ordinance presented to the Mayor and Council on March 23rd and shared with the *LUC* subcommittee on March 24, 2010. He said his concern was that the addition of a twenty-four hundred square foot threshold, or any threshold, added significant complexity to what was intended to be a simple, quick process. It was not possible to accurately determine gross floor area from an aerial photograph. He said, as a result, additional documentation was required. A building or business owner that wants to start a new restaurant in an existing building, using that same example, needed to find either approved plans in city records or take time to have architectural plans drawn up; that was the very type of requirement this proposal was intended to alleviate.

Mr. Moyer stated, while the proposal to allow food service uses less than twenty-four hundred square feet to be zoning compliance under this option, was based on recent Mayor and Council direction, was not consistent with Ordinance 10664 adopted by the Mayor and Council on May 5, 2009. He said that ordinance addressed allowable parking reductions and explicitly excluded food service uses. He stated, should the Planning Commission wish to make recommendation for approval, staff suggested that the approval explicitly note that the recommendation represents a potential change to the Mayor and Council policy as a body in Ordinance 10664.

Mr. Moyer said the Mayor and Council directed that this item be returned to them no later than June 22, 2010; therefore, staff was requesting that the Planning Commission consider a recommendation and forward the item to the Mayor and Council following the public hearing and subsequent discussion.

Chair Lavaty announced this was the time and place legally advertised for a public hearing on a *Land Use Code(LUC)* Text Amendment regarding the Reductions in Zoning Compliance for Existing Site Improvements. He said he had a number of speaker cards and when speakers were called they were limited to three minutes.

Colette Altaffer said in looking through the ordinance, there were many problems with it; too numerous to discuss in three minutes. She said contrary to the assurances given by Staff, she knew they were designed to make her feel good about the ordinance and did not see anything written into the actual ordinance. She stated unless it was written into the ordinance, she was very concerned. She stated she was not a lawyer, but had been she liked to think like one.

Ms. Altaffer stated that one of the things that troubled her was the twenty-five percent rule. She said if the business was expanded by twenty-five percent, only the addition had to comply with the *LUC*. If the addition was beyond twenty-five percent, then the entire structure had to comply with the provisions of the *LUC*. She stated if she was an attorney she would argue that the City just waived that provision by waiving that section, therefore, she could in fact, expand her business. Furthermore, because setbacks, building heights, etc., had been eliminated, she could pretty much do whatever she wanted with that site. She said that left the question of the structure height. She said there were things like the scenic corridor and hillside zones in the AEZ. She asked if that meant that now she could build as high as she wanted and ignore those provisions that were designed to protect those specific areas.

Ms. Altaffer said access provisions contain safety requirements that were designed to ensure that pedestrians did not come into conflict with vehicles. She asked if those were being thrown out as well. Parking requirements required the use of asphalt or a similar material, were those also going to be thrown out because those provisions were being waved. She asked about off-street loading zones to do vehicle repairs within a loading zone. She asked what about landscaping; the landscaping section had provisions for stormwater retention, plus site triangles. Site triangles were also a safety provision that was designed to ensure that a driver had clear sight of an oncoming vehicle, were those just thrown out. And finally, what about native plant preservation; reading this section in the ordinance, it applied to blading a fresh site. She asked why that was in the document if staff was talking about existing structures.

Ms. Altaffer commented on the lease agreement language which was designed to provide some level of enforcement. She said she noticed that the wording said “entitles the lessor.” She asked if staff really believe that the same people who were asking to do away with *LUC* requirements for their building were, in fact, going to enforce any kind of violation of the law. She said she hoped that this was not the only method of enforcement put into this Code.

Ms. Altaffer said there were so many opportunities for loopholes and unintended consequences when throwing out literally eighty pages of the *Code*. She urged the Commission to send the item to the City's *LUC* Committee and have it thoroughly vetted before it went to the Mayor and Council.

Ann Rose DeShav said she lived in the Samos Neighborhood near Grant Road and Campbell Avenue and was the new code president of the neighborhood association. She said her neighborhood, for the last six years, has dealt with a business right near Grant Road and Campbell Avenue, twenty-four hours a day, seven days a week which impacted her neighborhood. She said without going into specifics, the Commission may already know what she was talking about.

Ms. DeShav stated on behalf of her neighborhood, the neighborhoods well-being, and that from her cursory understanding of *LUC*, that this business, which had already pretty much done this to the City of Tucson and its regulations, that now any changes to the *LUC* and what Ms. Altaffer just detailed would just give the business license to further impact the residents that live right near this 24/7 restaurant.

Ms. DeShav stated she could get into specifics with email communications between the city and her neighborhood, but would not. She said she wanted to urge the Commission to reconsider before just approving for restaurants up to twenty-four hundred square feet to be able to do whatever they want to in residential neighborhoods.

Bill DuPont, representing Colonia Solano Neighborhood, stated that the first thing he had to look at was the purpose of the *LUC* and it was his understanding that it was to protect the residents, future and past, to look at their health, safety and welfare. He said this ordinance was totally doing away with that. He said, as residents and neighborhood presidents, they had to look at neighborhood watch. The first thing that police say was that they needed to be in charge, know who is there and be aware; ask them to leave or you will call the police. He stated, all of a sudden, neighborhoods will have parking issued of the parking reduction. He asked how that will be managed since the City was losing about 130 to 170 police in the next two to three years.

Mr. DuPoint stated he also served on the State Liquor Board as a neighborhood representative and many times, including the Mayor and Council, the citizens were the scapegoat. You allow that, you pass that. We are not land use. We are not zoning. We look at the capability, the qualification reliability. This isn't our job, the Land Use Code; that is your job and Mayor and Council. And when you do away with these certain restrictions, you open the door to so many things. We've had many people testify - as somebody was saying is 100 feet far enough away? No. We've had plenty of those people testify and those are vetted completely hearings. They can go on for four to six hours per case. We've gone on until midnight starting 9:00 in the morning, so they're long cases. Those people have the option of being represented by attorneys. As neighborhood associations, we can't afford attorneys. So, you know, we're here representing ourselves, giving of our time, going to how many meetings? I don't know. This clearly needs to be sent back; it needs to be put the way of the rainbow bridge, just do away with it.

Tom Warren, said he has been working with the stakeholders involved with this for almost three years and very closely with staff and was in support of. He did not own any property along 22<sup>nd</sup> with his investors and partners, along Grant, Speedway or Broadway, but felt, as a citizen and developer that the neighborhoods had definitely deteriorated along those corridors and the sales tax coming from those corridors had definitely diminished. He said there were vacant buildings, people in industrial areas on the south side that wanted to but could not start businesses because they do not have a lot of capital, and simply cannot do it. He stated that under these regulations and along those corridors they could not either, thus the deterioration of neighborhoods. He said there was a lot of crack problems and substance abuse problems in those neighborhoods. More protection was needed and what paid for that protection was sales tax and sales tax was going down and the City was basically broke

Mr. Warren said he thought other jurisdictions were not asking for anything that was really not appropriate relative to other jurisdictions in the state which everyone competed with, Marana. Oro Valley, etc. He said Oro Valley had become much more business friendly; was much easier to get in, get a permit and C of O than it used to be. He said that was really important for Tucson; he cared about Tucson and hated to see Tucson deteriorate any further. He said buildings were there now, parking lots were there and landscaping. He said a lot of the land was taken away by widening of streets for traffic needs, but what is there is there now and to make something that's there now to comply with today, and when you're talking about small businesses, first of all it's physically impossible in the majority of the cases. And the reason that stakeholders thought it was important to have - candidly and I support it - 2,400 square feet or less for a restaurant, but if you have a liquor license you have to comply with all the liquor rules and so on with the state, but to have that is because the chains can come in and they can buy a corner and they can knock down five buildings and they can - they can comply with the *LUC*; that's not a problem. If capital leaves town, the sales tax we capture and so that was the reason to have more small businesses, more formation, more individual and local flavor on the restaurants and that was the reason some ex-Council people that retired - one person was very much in favor of this, to keep the local flavor of Tucson, so he's the one that brought that up to me to be honest.

Mr. Warren said, so really what's there is there now and it's impossible to have formations of small business employment when you have activity and employment next to a neighborhood it stops deteriorating, and when you have sales tax coming in you can hire more policemen. Thank you very much.

Rich Rodgers, Colonia Solano Neighborhood, stated he was real estate investor and had been working for the past three years now and with staff to try and fix this failed experiment which occurred in 1995, linking the C of O to the *LUC*. As mentioned, buildings are here and, you know, it's almost an exercise if we pass a law that all of a sudden all the buildings will conform to the currency - currency - I mean, Land Use Code regulations. Well, obviously, that's - that's the case; it's impossible; it's - most of my tenants are small mom-and-pop tenants; some don't even have a great grasp of the English language and complying with this current linkage of the C of O to the *LUC* is very expensive, time-consuming, and for small businesses they just don't have the money, the time to do it. They have to - they immediately start their business and start earning money to - to keep going.

Mr. Rodgers said that the 2,400 square foot number came from Wayne Swan who's an architect in town and he told us that, in his experience, 2,400 square feet and smaller are neighborhood restaurants and that's the reason that - that that number is in there. I would ask that regardless as to how you vote on the 2,400 square foot exemption that you vote tonight because, as Glenn mentioned, the Mayor and Council have asked that this be returned to them. But, even more importantly, it's critical that the business community gets this held. We need it as Tom mentioned to start businesses, expand businesses, hire people, pay sales taxes, all of which are required by the city to grow and prosper and pay for programs. So thank you very much.

Ruth Beeker said she found the explanation from staff to be quite interesting because that's not how I experienced it. I've chosen to be an active participant in the *LUC* Committee. I serve on the parking subcommittee, and I've been working with Jim Campbell on the Downtown Core initiative. During the past several months, acting members of this group have worked together in a most collaborative manner. The draft of the ordinance was not presented to us for consideration in the way that I am reading it today.

Ms. Beeker said she wrote a position paper which was distributed expressing her concerns about the removal of the parking regulations, a topic of which she was most familiar with. However, she had no confidence that there were not other significant flaws in the draft presented. When pondering what distinguishes this ordinance from the other two - the other four quick fixes that she could support, words from the medical profession kept coming to mind, do no harm. She believes that we must evaluate any new Land Use ordinance using that standard, answering questions such as: Does the ordinance adequately address areas where past experience tell us that potential problems may arise? Has it been vetted to ensure that there are no unintended consequences? Does it include safeguards to prevent abuse of anyone's rights and quality of life? I find this ordinance lacking in all these areas. Glenn presented a strong case of why this is good, but I can't read any of that in there; it is not a complete ordinance. I, in good conscience, cannot tell myself that this ordinance will do no harm.

Ms. Beeker said perhaps, the greatest harm of this proposal had already been generated; it opened old wounds of division, distrust and fear between neighborhoods and developers. We have been working so hard trying to cooperate, trying to move forward. I really find it very disturbing that Mayor and Council has put all of us in this position because this is not in the best interest of all of us who are really trying to cooperate to solve very real problems. I urge you to send a recommendation of no approval to Mayor and Council.

Karolyn Kendrick, member of the City's *LUC* Committee, stated she was present to speak against the zoning compliance for existing improvements amendments in its current form. Although the *LUC* Committee approved in concept the idea of an amnesty for the 50% of businesses in Tucson that operate without a C of O - and that is a 2008 estimate from a development services staffer by the way - we have not vetted any version in detail, and certainly not the version that you're considering this evening; in fact, we've never seen it in print before, in particular, the exemption of restaurant of less than twenty-four hundred square feet.

Ms. Kendrick said many business and real estate interests blame our byzantine *LUC* for stifling economic activity in Tucson. However, the method by which this version of the amendment was concocted is an illustration of how the *LUC* has come to be the monster it is, where band-aids are piled on band-aids to try to fix what should never have been enacted in the first place. The *LUC* Committee is committed to simplifying and rationalizing the *LUC* in a timely manner. We all want a vital and economically healthy city. And we all want to simplify the process by which buildings can change commercial uses. But as the original version of this amendment acknowledges, restaurant have unique land use characteristics, among which is parking. The parking requirements of a flower shop are not the same as those of a restaurant. To argue otherwise, is absurd; yet, that is exactly what the amendment before you does.

Furthermore, Ms. Kendrick said this amendment will allow alcohol is C-2 zones, even if the business licensing of a previous restaurant had lapsed in between 2005 and now; it could be picked up again without any further ado. She urged the Commission to send this amendment back to Mayor and Council with no approval and to recommend that it be referred to the *LUC* Committee, which the Mayor and Council established, so that it can be considered in context with other *LUC* simplifications. To ensure that this amendment is dealt with in a timely manner, recommend that a deadline be put for - - be put on it to move it forward. In this form, this amendment is not a fix, quick or otherwise. Thank you for your consideration.

Alice Roe stated she wanted to talk about parking in case. And part of it was that she came out of a neighborhood where small restaurants that had been there for a very long time and had inadequate parking that spilled all over the place, and caused problems. She said other people may be talking hypothetically, but the City had it for real, and when you say, oh, yes, let's just put in residential parking. We've talked to Park Wise and that price is going up; it's going to be \$48 at least per household to get a parking permit so then you could have your on-street parking for yourself. She thought that was unfortunate and an unfair burden to put on residents who happen to have bought in 30 years ago a half a block off of one of our arterials.

Ms. Rose said going back to the 2,400 square feet; that was the size of these little restaurants, some of them. She knew of one recently that had to have a C of O and it did not have enough parking. What they were going to do was have valet parking; she asked where were they going to put those cars. So if you want to try to tell people to put in no parking signs or residential parking, \$48 was the minimum. If you want 24/7, it's a lot more; I think it's up to \$70 and, you know, not everybody really wanted to have that; it was a big pain. Stop the problem before it starts and allow these restaurants or tell these restaurants if they're going to go into 2,400 square feet or less, they need to have adequate parking.

Mark Maher said he wanted to assure the Commission that it was not a case of a bad penny that keeps coming back. For many months he has been looking forward to having Wednesday evenings free and it really took something extreme, this proposed ordinance, to get him back down here only a couple of months later. What it amounts to - some of the other speakers having been talking about some of the details, but in its broadest sense what this it was a blanket amnesty for anyone that applies for any zoning violations through a wide swath of the core regulations governing height, bulk, set back

for area ratios, et cetera, that exist as of May, 2005, and this is unlike one of the other speakers said not typical of any other jurisdictions. I know of no municipal jurisdiction in the State of Arizona that's had an amnesty program for zoning violations. He read in the zoning treatises and case law on nonconformance of variances and Code violations, and only very rarely saw this where in that paragon of good planning and zoning and good clean government New Jersey there's a few cases where the municipalities wiped the slate clean. Matter of fact, he even heard that phrase, "wipe the slate clean," from billboard industry representatives when they thought they had more of an upper hand in some of the negotiations taking place some six, eight, ten years ago.

Mr. Maher said the idea that this was being fast-tracked was matter of fact, the fast-track was a friendly amendment before the Mayor and Council on March 23<sup>rd</sup> by a Council member that's not even going to be there to actually deliberate over this when it comes back. He wanted to emphasize one thing about violations. A lot of us live in older neighborhoods. Yes, some of these properties have some problems, but we also have problems, particularly in certain areas of - of town learning about what's transpired with a property and sometimes these things don't get discovered for a long time. And unlike some people talk about - as if this was in the criminal context, something was done a long time ago, there's a statute of limitations and - and so that happened a long time ago. Well, that's not what the law is. Zoning violations are continuing violations; that's why it reads each day is a separate violation because they go on forever. We talk about statute of limitations for somebody that's robbed a bank, you don't have a regulation that says they can continue to - not only will they have no consequence for that, but they can continue to rob the bank every other month for perpetuity, and that's - that's why zoning violations are considered continuing violations.

Mr. Maher said what this ordinance would do was basically create a blanket amnesty for anybody that chooses to apply for all the core zoning regulations, and for all - virtually all commercial uses, with the exception of a handful of what are generally considered onerous uses. So I would strongly urge you to send a strong denial to Mayor and Council on this. And if there are other issues, the smoke screen of C of Os or requirements to bring conforming uses into nonconforming uses that were lawfully established into conformance and how that gets dealt with - those properties, that's a different matter. But what this ordinance would do would create an amnesty program for zoning violations, and you've got to believe those that have been involved in the most egregious violations that are aware of it are going to be the first knocking on the door if something like this gets adopted into law. And please send a very strong recommendation for denial.

J. Lisa Jones stated she resided in the Jefferson Park Neighborhood. She said there were things, sometimes quick fixes, that can instantly work and be fabulous but other things really need to be deliberated, need to be considered. And there's a word that came to my mind - prudence, some wisdom on some real evaluation of consequences, even unintended consequences, complexities. What are the implications of this? It seems that this really does need to be vetted thoroughly before putting in place. When I heard "quick fix," immediately to me that was a red flag. There are some things that are not quick fixable. They can be - they can be expedited, but they need to be vetted thoroughly by people who care and by people who are knowledgeable. I would urge you

please send this to Mayor and Council without approval and send it to the City's Land Use Committee for thorough vetting and recommendation.

Chair Lavaty asked if there was anyone else wishing to be heard on the item. There were no speakers.

Chair Lavaty asked if there were any comments by the Commissioners.

Commissioner Rex stated she had some questions that needed clarification. She said on page 13, Attachment D, at the very bottom, 12.1, "This Section shall only apply to developed property with nonresidential zoning . . ." She asked if there were instances of residential uses in nonresidential zoning that we would then add the words "nonresidential zoning and nonresidential uses" and were they confirming.

Mr. Moyer said they were conforming residential uses in nonresidential zones. There were lots of conforming uses for residential in commercial zones. The development criteria might not be in conformance, say, a house on North Stone that's zoned C-3 or C-2 might now have its front yard anymore, but the use is conforming, the development criteria might be nonconforming.

Commissioner Rex asked if this would not apply to residential uses in nonresidential zones because it cannot meet the performance criteria which listed in 12.6 as being one of the requirements and would this ordinance exclude all residential uses.

Mr. Moyer said it could meet the performance criteria, but could not use this option. He said he did not believe it would exclude all residential uses.

Commissioner Rex said that also in 12.1, it stated that this did not apply to sites that were subject to unresolved zoning violations. She asked if that simply meant that somebody had called on a property and was asking for an inquiry as to whether there was a violation, or did there actually have to be a violation that had started through the court proceedings? She asked what the definition of "unresolved zoning violation" was.

Mr. Moyer said that an unresolved zoning violation was one that had been reported to Housing Community Development and not closed. It was not necessarily already in a court system.

Commissioner Rex asked if anything that was reported or unresolved instead of being unresolved would be subject of a reported unresolved or was it just reported. She said she just wanted to make certain there was a clear understanding of what "unresolved" meant because for somebody wanted to identify an area that had problems, was a matter of reporting.

Mr. Moyer stated was correct, and then it would be up to the property owner or property user to resolve the zoning violation before they went forward with the ordinance.

Commissioner Rex said that Section 12.2, it said, "Existing site improvements shall be determined by referring to May 2005," and then in Section 12.4 D was Liquor Licenses Control from May 1<sup>st</sup> to the present. She said asked the date of May 5 in was that correct.

Mr. Moyer said in looking at 5.3.12.2, there was not an absolute date for the aerial photographs on the Pima Association of Governments website. He said he did not remember or was aware of putting May 5 in anyplace, but if was there the intent would be May 1.

Commissioner Rex said, under 12.6, it stated "the property shall be in compliance with all applicable performance criteria." She asked if that was at the time of the cryogenic process.

Mr. Moyer answered affirmatively.

Commissioner Rex stated that in 12.8 indicates that parking striping may be modified, did that mean that the parking area access lanes and the pedestrian areas may be also modified or did those come under the development standard and were not modifiable. In some cases, in order to increase the number of parking spaces, she asked if PAL would then be reduced.

Mr. Moyer said it required compliance with 3.3.7 which made reference to the development standards. The same dimensional requirements would still be required. He said the intent of this was that there were some older sites in town that had thirty-foot PALs and twenty-foot parking spaces, and if they were reconfigured, there could be an extra couple parking spaces.

Commissioner Rex asked if the development standards applied only for parking or for all development criteria.

Mr. Moyer said he thought 3.3.7 made reference to the development standards in Section 8. He asked if Commissioner Rex was referring to restriping of parking lots. He said the other development standards that were referred to out in other sections would not apply; but, again, other changes could not be made. The only changes that were allowed were the changes to the striping in the parking lot.

Commissioner Rex stated so long as the performance criteria was met on the other sections, except for the striping it did not matter whether the development standards were met.

Mr. Moyer answered affirmatively.

Commissioner Rex asked that staff restate discussions regarding the 2,400 square feet and the two points at which Mayor and Council addressed that.

Mr. Moyer said that the Mayor and Council at the March 23 Study Session, there was a motion to include a draft ordinance. Included in that ordinance was the section regarding exempting out restaurants under 2,400 square feet from the section that did not let you use this ordinance for restaurants. That motion was to consider in the review

restaurants under 2,400 square feet. Mayor and Council did not direct us to approve it, but they do want us to review it.

Mr. Moyer said what he reviewed was based on how it would be administered if adopted, and the intent of the direction received from the Mayor and Council which was to make something that was easy, did not create a lot of time, delay and expense for developing these properties that were not thriving along. And so if you add a requirement that somebody got to figure out what the gross floor area of the building was, it no longer was a simple quick solution.

Commissioner Rex asked if the gross floor area was required as part of the C of O. The square footage of the building, the occupant load and the building construction type were all listed on the C of O.

Mr. Duarte answered affirmatively and was included in the building; that was analyzed as part of the building code review associated with C of O applications for existing buildings. There were two pieces of the C of O process. The building code review of live safety elements and also made reference to C of O being issued in compliance with all regulations deemed by the local jurisdiction. Mr. Duarte said staff historically applied compliance with the *LUC* as being one of those requirements.

Mr. Duarte said the direction staff received from the Council was to streamline the requirements for existing buildings, particularly in the area of the *LUC* and that was what staff attempted to do. As Mr. Moyer pointed out, in the process of providing an update to the Mayor and Council on the C of O process and the improvements that were made, which have resulted in more C of O's being issued over the last three years, fewer expiring, there was a draft ordinance introduced that exempted restaurant uses at 2,400 square feet what was included in the proposal.

Mr. Moyer said to answer the second part of Commissioner Rex's question, which was the previous direction from Mayor and Council, the ordinance being discussed previous to the reduction ordinance was the ordinance that was adopted last May and specifically exclude restaurants from that ordinance.

Commissioner Williams said he believe that there were things that could be done to modify the *Code* to allow for vacant buildings to be occupied without big broad brush strokes that allow pretty much everything to take place as is. He said he thought they needed to be more specific and refined as to how that took place, specifically parking issues that bled over into the neighborhood and unpaved parking lots that created dust problems. He said there were many other which was why he could not support the ordinance.

Chair Lavaty said, for the record, he wanted to note and comment that the public hearing on this item was still open and was uncomfortable at this point with the language in the ordinance presented to the Commission. He said he was unable to attend last month's Study Session and was unable to review the notes to see what staff's proposal really looked like. He was concerned with some of the citizen comments, particularly former Commissioner Mayer's discussion. He said he agreed with Commissioner Williams in that it should be possible to provide the relief that the building owners and

business owners in older properties were rightfully looking for in these tough economic times without simply taking an ax to the *LUC*. He said he thought staff could do a better job than what was presented and wanted to take another look at it, and get public comments on a revision.

Chair Lavaty stated given that, unless the Commission had a great deal of objection, he wanted a motion to continue this public hearing to the next Planning Commission meeting and ask staff to come back with a draft revision

Commissioner Maher asked what revisions was Chair Lavaty specifically looking for and what was staff going to come back with.

Chair Lavaty said he wanted to know how many applications were received in the last 18 to 24 months from restaurants under 2,400 square feet; what percentage of applications for C of O had been turned down for code violations; were C of O applications up and were we still proposing to drop all the zoning requirements for buildings constructed and left in a particular state from May of 2005. He said he was not completely comfortable with using aerial photographs to determine exact building confirmation since in too many instances himself it was difficult to determine exactly what was there from a twenty-five year or May 2005, a five-year-old, photo which might be obstructed by trees. He was totally convinced that there were photos of every property, and that was what he wanted to hear from staff. He also commented that he had only received the document the night before and did not have a chance to review the document in its entirety

Commissioner Mayer and then if was not necessarily just the aspect of the restaurants but other aspects that concerned Chair Lavaty, because he was not limiting what he heard, but what he did hear was the aspect of the smaller restaurants seemed to be a problem. In his mind the document talked about unresolved parking violations not being able to utilize this ordinance and assumed that the three or four culprits, consistent culprits around town that have been there forever, that continue to park in the neighborhoods are in continuous violation and reporting and, perhaps, need specific action to just address those so that they do not affect the rest of the *Code* or the rest of the attitude toward some of these - these attempts to take care of these - what he always referred to for about 25 years, these "unique properties" which had been constantly in that transition, whether it's the '50s Code, the '60s Code or the '80s or the *LUC* that had to be dealt with.

Commissioner Maher said there had never been a transition code where we can deal with little office buildings that had parking at one to 400 and City's transportation department had not done us any favors by slicing all the parking off for decades and not requiring that maybe a couple of buildings be removed so we have parking in between a couple of buildings. And so these are kind of the culmination of a whole pile of abuses and things that had come about, and the fact of the matter was that a lot of these properties needed. And so there were some issues that had been plaguing us for some time and, ironically, most of them had received, in his mind, probably negotiated these elements because there was no transition code, no adaptive reuse code to try and deal with all this stuff.

Commissioner Maher said he thought what Mr. Moyer was trying to point out was that it was simplification in the zoning aspect and the parking aspect rather than the building code. And this needed attention because these properties had been frozen in time for some time. He said he was frustrated that there had not been a lot of investment in a lot of these properties to perhaps keep them up to snuff, especially in some of the building code aspects. But landscaping and parking had been sliced off and there were some unique properties that needed to be dealt with. He said he was frustrated that over time the culprits, abusers that seem to plague the City and then dictate the entire had not been addressed.

Commissioner Maher commented on the parking code reductions in terms of trying to alleviate what was always the major culprit for these zoning aspects to be approved or ignored and permits not pulled. He agreed that maybe was a lot to digest, but his mind it was all factual from what he had seen for fifteen, twenty-five years of trying to deal with a non-transition to these codes, properties that had not been updated.

Commissioner Maher said it appeared the ordinance had a sunset clause to give a lot of these properties a chance to come up to snuff. He said site conditions were not safety conditions necessarily and those site triangles that somebody mentioned already went away some time ago when streets were sliced to enlarge the streets. So there's a lot of things in here that were just plain factual to him that they had been dealing with for a long, long time. He said if everyone could just come to grips about how they were to be handled.

Commissioner Rex said, in terms of the sunset provision, was it possible to add that staff report back to the Planning Commission before the effective date of the sunset to assess the effectiveness and to do it a year from now, six months or November, 2011.

Mr. Duarte said staff could certainly add that language, and was probably good to have a year's worth of data.

Commissioner Williams said, due to the current economy, there were many businesses that had gone under which had created a large amount of vacant buildings and a lot of them were prime buildings that did not have any issues or problems; they met the current regulations for a lot of different uses. Everywhere you looked you could see vacancies, in all the strip malls, everywhere.

Commissioner Williams said he did not quite understand the need to address buildings that were sub-standard with sub-parking in such a timely manner when there were good properties available out there that were prime picking and could be used by any business who wanted to open up. Those were the ones that businesses were attracted to first, not the ones that lacked compliance, lacked parking problems, lacked paid parking lots. All those issues are going to be the last buildings that anyone looked at in order to rent. He asked why there was such a press to get this through when there was such prime property out there, other than the Mayor and Council thinks that it was needed to stimulate the economy, but he did not quite understand that concept when there was such large volume of businesses currently vacant.

Mr. Duarte stated that the direction from the Mayor and Council was the desire to simplify the ability to move into an existing building, irrespective of the type, whether a prime vacant building or one that may be substandard; that was the. He said what he heard from the community stakeholders and the small business owners was to find a way to make it easier to get a C of O to move into an existing building. He said there had been had some data that showed some of the process improvements that were done internally, had resulted in an increase in C of O's; still one of the biggest stumbling blocks staff heard customers and staff, was that sometimes the *LUC* got in the way of being able to quickly move into an existing building, irrespective of the type of building it was, whether a prime vacant building or, perhaps, a substandard vacant building, the *LUC* was an impediment to moving into existing buildings.

Commissioner Williams said he thought there was a better way of addressing it than a broad-brush stroke that applied to everything. He said staff needed to take a look at the specifics and what problems they saw and address those specific issues instead of taking these broad-brush strokes. He felt that was a better approach instead of "opening the wounds back up again" as referenced by Ms. Beeker, for all these businesses that had existed in the past and are potential problems for the future.

Commissioner Maher stated that was the point that we have been customizing these properties forever, trying to deal with individual situations with the landscaping or parking or loading. Quite honestly, we have also been using aerial photographs to identify the stuff because people did not keep drawings, drawings had been lost and permits lost in city files. He said we did not want to continue to customize every time and take a couple of months to figure out it was actually okay,

Commissioner Maher said it was unfortunate, perhaps a little bit of controversy over some of these little restaurants. But, again, in his mind, there were two, three or four abusers that needed to be dealt with so that they did not bother these neighborhoods or to continue to do what they did, even if he lost a couple of places he really liked to patronize; that was just the way it went. He said we could not continue to overshadow trying to get these properties in ship-shape in some fashion. But the prime properties, by the way, were the most expensive and most of the clientele in town, the small businessmen, and small business people need these smaller properties because of the obvious cost and we need to get them used along Speedway and Broadway and 22<sup>nd</sup> Street.

Chair Lavaty stated the public hearing was still open and Mr. Warren indicated that he might be able to provide some additional information along the lines and probably had more experience and wanted to hear from him with the Commission's approval.

Mr. Warren stated that Commissioner Maher answered the question relative to prime properties in that they are very expensive even in today's world, everything's relative. So maybe what was \$25 a square foot to rent in a prime property might now be \$17 or \$18, but these small businesses could not afford that and what was \$17 or \$18 now was now \$9 or \$8 or \$7. He said what he was really talking about was smaller businesses, not extremely well capitalized and represented most of the square footage in Tucson. He added that was only an analogy. He said if you took the office users in the City, 1,250, 1,750, 2,500 was a pretty good size and a few 5,000s that was why we had

small foreplates and so on. In cities that were larger, there was more of an economic base, higher median income, you start at 5,000 and you end up at 25,000, but in our community and the creation of small businesses really we were talking about a lot of these existing buildings that had gone vacant. Even in good times they were vacant, not full, did not have a lot of tenants three years ago when things were booming.

Mark Mayer said he wanted to make a distinction that he did not think he heard in the conversation between aspects of uses that are the result of code violations, as opposed to nonconformance. A lot of the issues that had been talked about in terms of the C of O process and zoning compliance when there was expansion of use more than 25% and when there was a change of use, triggered certain provisions in the *Code* that required lawfully established, nonconforming uses to come into conformance, and that was a lot of what the issue was. He said what this ordinance would do, would bless *Code* violations that occurred that were not a case for someone established use lawfully and did it right according to the *Code*, but id not have enough parking for the next user, the next change. He said if someone had a commercial building, that had a set-back regulation to the property - a side property line of 15 feet – and they add an addition that takes the building right to the property line, without any permit, this ordinance would bless whatever was in place in 2005 and that was a distinction, he was not hearing that was being made.

Mr. Mayer said the discussion of abusers and so forth, whatever the Commission thought of the *Code*, up or down, if a lot of these provisions went back many decades, and there had been some changes, there were going to be violations that would violate any *Code* going back to even the first Tucson Zoning Code in 1930. He said if land users, property owners had built this kind of construction, often without a permit, we should not be passing ordinances that create an amnesty for that, and that was what he was not hearing on the dais or part of this discussion; the distinction between where Code violations had occurred and still violations under the current Code today in cases where use was or any of the development regulations were lawfully established, then the Code changed later and then some process required them to come into conformance; those are two really distinct categories and this ordinance would bless everything. Thank you.

It was moved by Commissioner Rex, duly seconded, to close the public hearing.

Hearing opposition to the motion Chair Lavaty asked for a roll call vote.

Upon roll call, the results were as follows:

Aye: Commissioners Eddy, Maher, Michael, Podolsky, Rex, Saylor-Brown and Wissler

Nay: Commissioner Williams and Chair Lavaty

Absent: Commissioners Armenta and McBride-Olsen

Motion to close the public hearing was passed by a roll call vote of 7 to 2.

Chair Lavaty asked if there was any further discussion.

Commissioner Rex stated she was about to do something that was probably one of the most difficult things she had ever done. She said she was going to make a motion to forward this to Mayor and Council. Her reason for making the motion was exactly as Mr. DuPont had pointed out that there was no real definition of the purpose of the *Land Use Code* or of the *Building Code* in Tucson, Arizona. She said both the Mayor and Council and Senior Staff had failed to provide the leadership to draw the line in the sand and to identify what was the identity of Tucson. Therefore, no one knew. She stated, as Commissioners, they did not have that guidance from their leadership to be able to go through these ordinances and say, “yes” this was consistent and, “no” this was not.

Commissioner Rex said she was going to recommend forwarding this item to the Mayor and Council as a means to reopen those “old wounds”, as pointed out by Ms. Beeker, and address them in a serious sort of way, or at least insist that they be addressed because if we keep sending it back to staff and recycling it, it was not going to go anywhere because the problem were at the top level, not at the Staff level.

It was moved by Commissioner Rex, duly seconded, to forward the Reductions in Required Number of Motor Vehicle Parking Spaces Text Amendment to the Mayor and Council with a recommendation for approval with the following conditions; exclusion of restaurants, residential uses, as well as, residential zones; unresolved zoning violations be clarified; and add a one-year review by the Planning Commission as to the effectiveness of the ordinance. She said, in terms of findings she wanted to say that the Commission was looking for leadership and was asking for that leadership by bringing this forward to be able to at least allow something to happen, whether good or bad.

Chair Lavaty asked if there was any discussion.

A substitute motion was made by Commissioner Williams to send a recommendation for denial of this ordinance to the Mayor and Council with the findings that businesses that are opened back up again that will be in nonconformance, create problems to the neighborhood, potential dust issues with non-paved parking lots, parking violation, parking issues; that there are a lot of decent viable businesses that are open right now that can be used and this needs to be further revised and further massaged to make sure that they address all the issues at hand and that the Mayor and Council provide the proper leadership to do that.

Chair Lavaty asked if there was second for the substitute motion. Hearing none, the substitute motion died for a lack of second. He then asked for a roll call on the original motion made by Commissioner Rex.

Upon roll call, the results where as follows:

Aye:	Commissioners Eddy, Maher, Michael, Podolsky, Rex, Saylor-Brown and Wissler
Nay:	Commissioner Williams and Chair Lavaty
Absent:	Commissioners Armenta and McBride-Olsen

The motion to forward the Reductions in Required Number of Motor Vehicle Parking Spaces Text Amendment to the Mayor and Council with a recommendation for approval with the following conditions; exclusion of restaurants, residential uses, as well as, residential zones; unresolved zoning violations be clarified; and add a one-year review by the Planning Commission as to the effectiveness of the ordinance, was passed by a roll call vote of 7 to 2.

**8. OTHER BUSINESS**

**a. Mayor and Council Update**

Ernie Duarte, Planning and Development Services Department Director, announced that the updates were included during the item five discussion of the Downtown Core District.

**b. Discussion of the Planning Commission meeting start time**

It was moved by Commissioner Williams, duly seconded, and carried by a voice vote of 9 to 0 (Vice Chair McBride Olson and Commissioner Armenta absent), to begin the Planning Commission meetings at 6:00 p.m. and end the distinction of starting public hearings after 7:00 p.m.

**c. Other Planning Commission Items  
(Future Agenda Items for Discussion/Assignments)**

- Land Use Code Text Amendment Enforcement

**6. CALL TO THE AUDIENCE**

- Ruth Beeker expressed her disappointment with the actions of the Planning Commission regarding the Land Use Code Text Amendment – Infill Improvement Ordinance.

**7. ADJOURNMENT – 10:21 p.m.**