

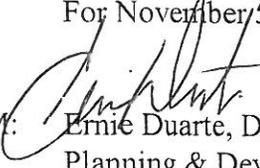


# MEMORANDUM

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DATE: October 21, 2009  
For November 5, 2009 Hearing

TO: Peter M. Gavin  
Zoning Examiner

FROM:   
Ernie Duarte, Director  
Planning & Development  
Services Director

SUBJECT: REZONING – PLANNING & DEVELOPMENT SERVICES DEPARTMENT  
REPORT  
C9-09-08 Freitag – Magdalena Road, SR to RX-1 (Ward 2)

**Issue** – This is a request by Roger Freitag, the property owner, to rezone approximately 1.74 acres from SR to RX-1 zoning to accommodate splitting the subject parcel into two lots. The rezoning site is located on the south side of Magdalena Road, ¼ mile west of Harrison Road (see Case Location Map). The preliminary development plan indicates that the existing home is to remain on the eastern lot, which is proposed to be approximately 0.91. Although no new residence is shown on the preliminary development plan the requested RX-1 zoning would allow a home to be built on the 0.83 acre lot, located to the west of the existing home.

**Planning & Development Services Department Recommendation** – The Planning & Development Services Department recommends approval of RX-1 zoning, subject to the attached preliminary conditions.

## **Background Information**

Existing Land Use: Single family residence.

### Surrounding Zones and Land Uses:

North: Zoned SR; Single family residence  
South: Zoned SR; Single family residence  
East: Zoned R-1, R-3; Single family residence, townhomes  
West: Zoned RX-1; Single family residence

Previous Cases on the Property: None.

### Related Cases:

C9-85-53 Zimmerman – Magdalena Road, SR to RX-1. This was a rezoning request to allow the development of a one-story, single-family residence located immediately to the west of the subject property on the south side of Magdalena Road, approximately 300 feet north of Old Spanish Trail.

On May 15, 1985, Mayor and Council adopted Ordinance No. 6352 and on January 6, 1986, a building permit was issued, effectuating the requested zoning.

C9-96-04 Vermillion – 20<sup>th</sup> Street SR to RX-1. This was a request to rezone 2.02 acres on the south side of 20<sup>th</sup> Street, approximately 600 feet east of Camino Seco, from SR to RX-1. The applicant proposed two-one acre lots and the construction of a one story, single family residence on the new lot. On August 5, 1996, the Mayor and Council voted unanimously to deny the request. The case was closed September 5, 1996.

C9-06-06 Brett – Brown Street, SR to RX-1 This was a rezoning request for 2.54 acres located on the west side of Brown Street, approximately 300 feet south of Broadway Boulevard to create two separate parcels and to construct a new residence on the northern lot. On June 20, 2006, Mayor and Council authorized the rezoning.

C9-07-08 Stetson-Lohman – Brown Street, SR to RX-1 This was a rezoning request for 2.66 acres located on the west side of Brown Street, south of Broadway Boulevard, to create two separate parcels and to construct a new residence on the northern lot. On June 19, 2007, Mayor and Council adopted Ordinance No. 10422 and on July 23, 2007, a lot split was recorded, effectuating the requested zoning.

C9-07-11 Gaul - Stefan Road, SR to RX-1 This was a rezoning request for 4.20 acres located on the southwest corner of Harrison and Stefan Roads to allow the creation of four, one-acre lots consisting of an existing residence on one lot and the construction of one and two-story, single-family residences on the remaining three lots. On June 26, 2007, Mayor and Council authorized the rezoning.

C9-07-31 Fickett – 20<sup>th</sup> Street, SR to RX-1 This was a rezoning request for 2.01 acres located on the south side of Twentieth Street, 600 feet west of Gollob Road to create two separate one-acre lots and to construct a new home on the eastern lot. The request was withdrawn by the applicant on March 18, 2008.

**Applicant's Request** – The applicant request RX-1 zoning to accommodate a lot split. No new construction is planned at this time.

### **Planning Considerations**

Plan Policy – Land use policy direction for this area is provided by the *Pantano East Neighborhood Plan* and the *General Plan*. Both the *Pantano East Neighborhood Plan* and the *General Plan* support new residential development that is compatible with the surrounding land uses. The *Pantano East Area Plan* also requires that the integrity of established neighborhoods be preserved.

*General Plan* policies support infill development that is sensitive to neighborhood conditions, including architectural character. New residential development should protect scenic views, and

reinforce Tucson's ambiance. To ensure compatibility with plan policies, any future development should be architecturally compatible with existing residences in the area, in terms of mass and scale. Exterior colors should be desert and/or earth-tone. To protect neighbors' views, building height should be limited to 18 feet, and exterior mechanical equipment should be screened from view. Use of prevailing setbacks and similar building orientation are also appropriate for any new structure.

Surrounding Zones & Access. The subdivision in which the rezoning site is located, is surrounded by SR and RX-1 zoning. Vehicular access to the rezoning site is from Magdalena Road, a local street with 60 feet of existing and future right-of-way and 24 foot width of asphalt pavement with no curbing or sidewalk adjacent to this project. It was paved in 1999 as part of the "Dirt Streets Paving Program". Harrison Road, identified as an arterial roadway with a future right-of-way of 150 feet on the *Major Streets and Routes Plan* map, is located approximately ¼ mile to the east of the rezoning site. Twenty Second Street, also identified as an arterial roadway with a future right-of-way of 150 feet, is located approximately ¼ mile to the south of the site.

The Pima Association of Governments - Transportation Planning Division provided no estimate for vehicle trips generated per day. Typical trip generation for a single family residence is 10 vehicle trips per day.

### **Design Considerations**

Land Use Compatibility – The subject lot is rectangular, and is located on the southwest corner of Magdalena Road and the Brown Street alignment. A circular driveway provides access to the existing home and crosses portions of both proposed lots. Aerial photos indicate an existing accessory structure exists on the proposed western lot. It must be removed prior to splitting of the lot. There are no homes or new structures proposed on the property at this time.

Based on a review of maps of the surrounding area, there have been a number of other similar rezoning requests to allow lot splits. The property directly to the west, was rezoned in 1985 to allow a lot split with the same configuration, and the construction of a single-story residence. Property to the east of the site is developed at a higher density with single family residences in the R-1 zone and townhomes, zoned R-3. There are larger SR-zoned lots with single family homes to the north and south of the site. Given the generally smaller lot sizes to the east and west, the rezoning requested is compatible with and does not compromise the integrity of the neighborhood.

Drainage/Grading/Vegetation – The site does not lie within a mapped floodplain. The site is located within the Robb Wash watershed, a non-designated basin, and detention/retention is not required when the lot is ultimately developed.

Road Improvements/Vehicular Access/Circulation – The site is an existing 1.74 acre lot located on the south side of Magdalena Road, ¼ mile west of Harrison Road. Pavement width on Magdalena

Road is 24' and there are no constructed sidewalks. Road improvements are not proposed as part of the rezoning request.

**Conclusion** – This proposal is generally consistent with the policy direction provided by the *Pantano East Area Plan* and the *General Plan*, which support development that is compatible with and preserves the integrity of the neighborhood. Subject to compliance with the attached preliminary conditions, approval of the requested RX-1 zoning is appropriate.

Preliminary Conditions

PROCEDURAL

1. A land split in substantial compliance with the preliminary development plan dated August 20, 2009, is to be submitted and approved in accordance with Section 4.3.1 of the *Land Use Code*. Any future development on the newly created 0.83 acre lot must comply with the following conditions.
2. The property owner shall execute a waiver of potential claims under A.R.S. Sec. 12-1134 for this zoning amendment as permitted by A.R.S. Sec. 12-1134 (I) in the form approved by the City Attorney and titled “Agreement to Waive Any Claims Against the City for Zoning Amendment”.
3. Historic or prehistoric features or artifacts discovered during future ground disturbing activities should be reported to the City of Tucson Archaeologist. Pursuant to A.R.S. 41-865 the discovery of human remains and associated objects found on private lands in Arizona must be reported to the Director of Arizona State Museum.
4. The detached accessory structures located on the west lot (per aerial photos) shall be removed prior to approval of the lot split.
5. Any relocation, modification, etc., of existing utilities and/or public improvements necessitated by the proposed development shall be at no expense to the public.
6. The owner/developer shall obtain written documentation from the Pima County Regional Wastewater Reclamation Department that treatment and conveyance capacity is available for any new development within the rezoning area, no more than 90 days before submitting any tentative plat, development plan, sewer improvement plan or request for building permit for review. Should treatment and/or conveyance capacity not be available at that time, the owner/developer shall have the option of funding, designing and constructing the necessary improvements to Pima County’s public sewerage system at his or her sole expense or cooperatively with other affected parties. All such improvements shall be designed and constructed as directed by the Pima County Wastewater Management Department.

LAND USE COMPATABILITY

7. Any new residence shall be architecturally compatible with existing residences in the area, in terms of but not limited to mass and scale.
8. Exterior colors should be desert and/or earth-tone. Color elevations shall be submitted with the development plan to demonstrate compliance with this condition.
9. The maximum building height shall be 18 feet. Elevations shall be submitted with the development plan to demonstrate compliance with this condition.
10. Exterior mechanical equipment shall be screened from view from the surrounding properties.

Preliminary Conditions

11. All walls visible from a public right-of-way and/or adjacent to existing residential development, are to be graffiti-resistant and incorporate one (1) or more visually appealing design treatments, such as the use of two (2) or more decorative materials like stucco, tile, stone, or brick; a visually interesting design on the wall surface; varied wall alignments, (jog, curve, notch, setback, etc.); and/or trees and shrubs in voids created by the wall variations.
12. Six (6) inch wide fence block or greater shall be used for perimeter walls.

DRAINAGE/GRADING/VEGETATION

13. Any vegetation planted on the site shall be predominantly native.

Preliminary Conditions

AGREEMENT TO WAIVE ANY CLAIMS  
AGAINST THE CITY FOR ZONING AMENDMENT

This agreement ( "**Agreement**" ) is entered into between \_\_\_\_\_, as the owner of the property described herein ("**Owner**") and the City of Tucson ("**City**") to waive any and all claims for diminution of value that may be based upon action by the City in response to a request from the Owner. This Agreement is entered into in conformance with A.R.S. §12-1134(I).

The Owner is the holder of fee title to the property located at \_\_\_\_\_, Tucson, Arizona, (the "Property") which is more fully described in the Owner's application to the City in Case C9-09-08 and incorporated herein. The Owner, or the authorized agent of the Owner, has submitted an application to the City requesting that the City rezone the Property. The Owner has requested this action because the Owner has plans for the development of the Property that require the rezoning. The Owner believes that the rezoning of the Property will increase the value and development potential of the Property, and that this outweighs any rights or remedies that may be obtained under A.R.S. §12-1134 et. seq.

By signing this Agreement, the Owner waives any right or claim that may arise under A.R.S. §12-1134, including any claim for the reduction in the value of the Property, as a result of the enactment of the zoning amendment in Case C9-09-08.

The Owner understands that City staff may propose, the Zoning Examiner may recommend and the Mayor and Council may adopt conditions to the requested zoning that limit the potential development of the Property. The Owner acknowledges that the rezoning and conditions are a single, integrated legislative approval. The Owner agrees and consents to all conditions that may be imposed. The Owner retains the right to withdraw the rezoning application prior to a vote by the Mayor and Council or to decline to implement the necessary requirements to effectuate the zoning if the Owner disagrees with any conditions that are proposed or approved. If the Owner does not withdraw the application, the Owner shall be deemed to have accepted all adopted conditions to the requested zoning. If the Owner withdraws the application or does not effectuate the new zoning, this Agreement is null and void.

This Agreement is entered into in Arizona and will be construed and interpreted under the laws of the State of Arizona. The Owner has agreed to the form of this Agreement provided and approved by the City Attorney. The Owner has had the opportunity to consult with an attorney of the Owner's choice prior to entering this Agreement and enters it fully understanding that the Owner is waiving the rights and remedies as set forth herein.

Upon execution, this Agreement shall be recorded in the Office of the Pima County Recorder.

Preliminary Conditions

The Owner warrants and represents that the person or persons listed herein as the Owner is/are the owner in fee title of the Property. The Owner further agrees to indemnify and hold the City of Tucson, its officers, employees and agents harmless from any and all claims, causes of action, demands, losses, costs and expenses based upon an alleged reduction of value of the Property as a result of the City's action in Case C9-09-08.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

OWNER

By: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

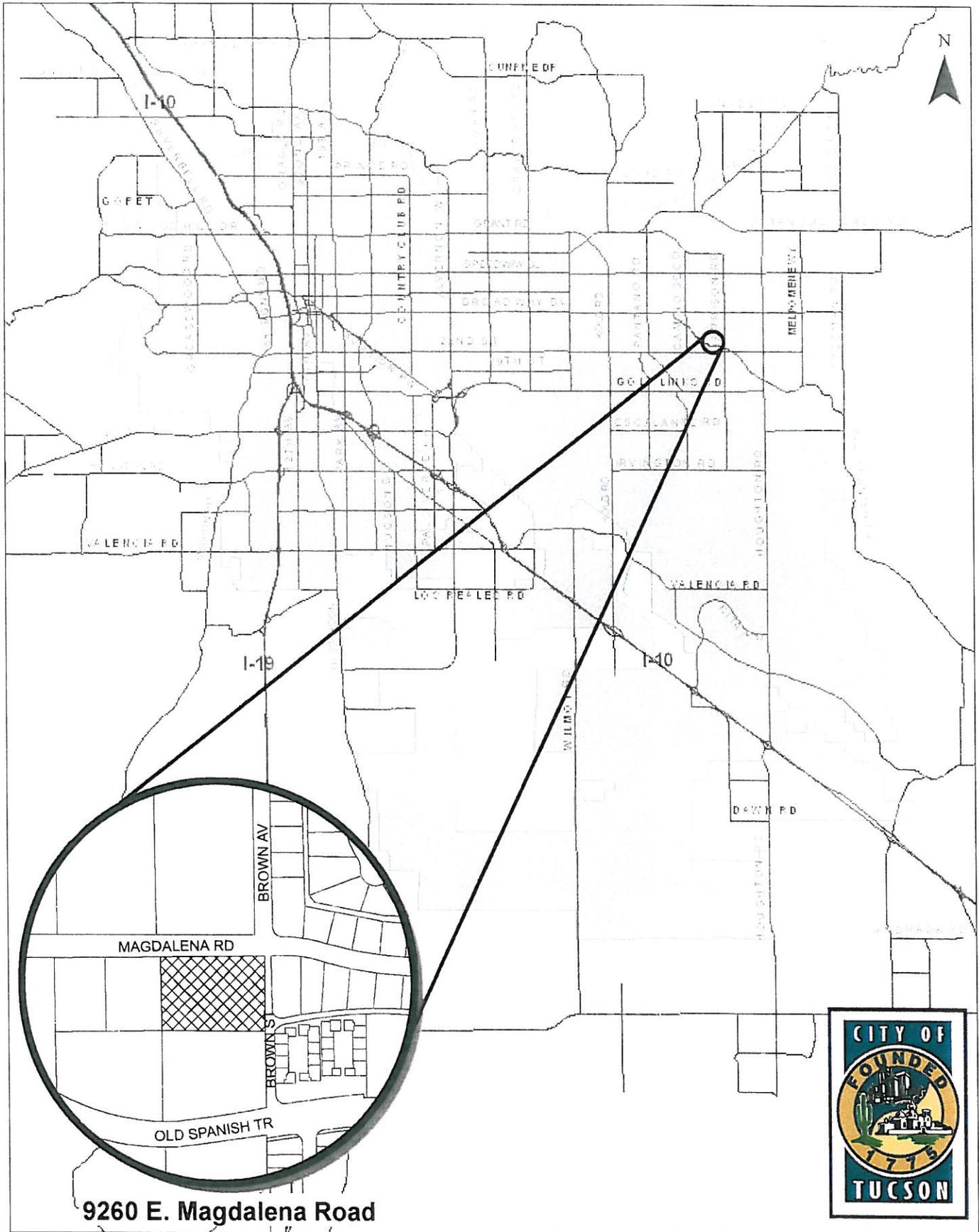
My Commission expires:

City of Tucson, an Arizona municipal  
Corporation

By: \_\_\_\_\_  
Planning & Development Services Department

This form has been approved by the City Attorney.

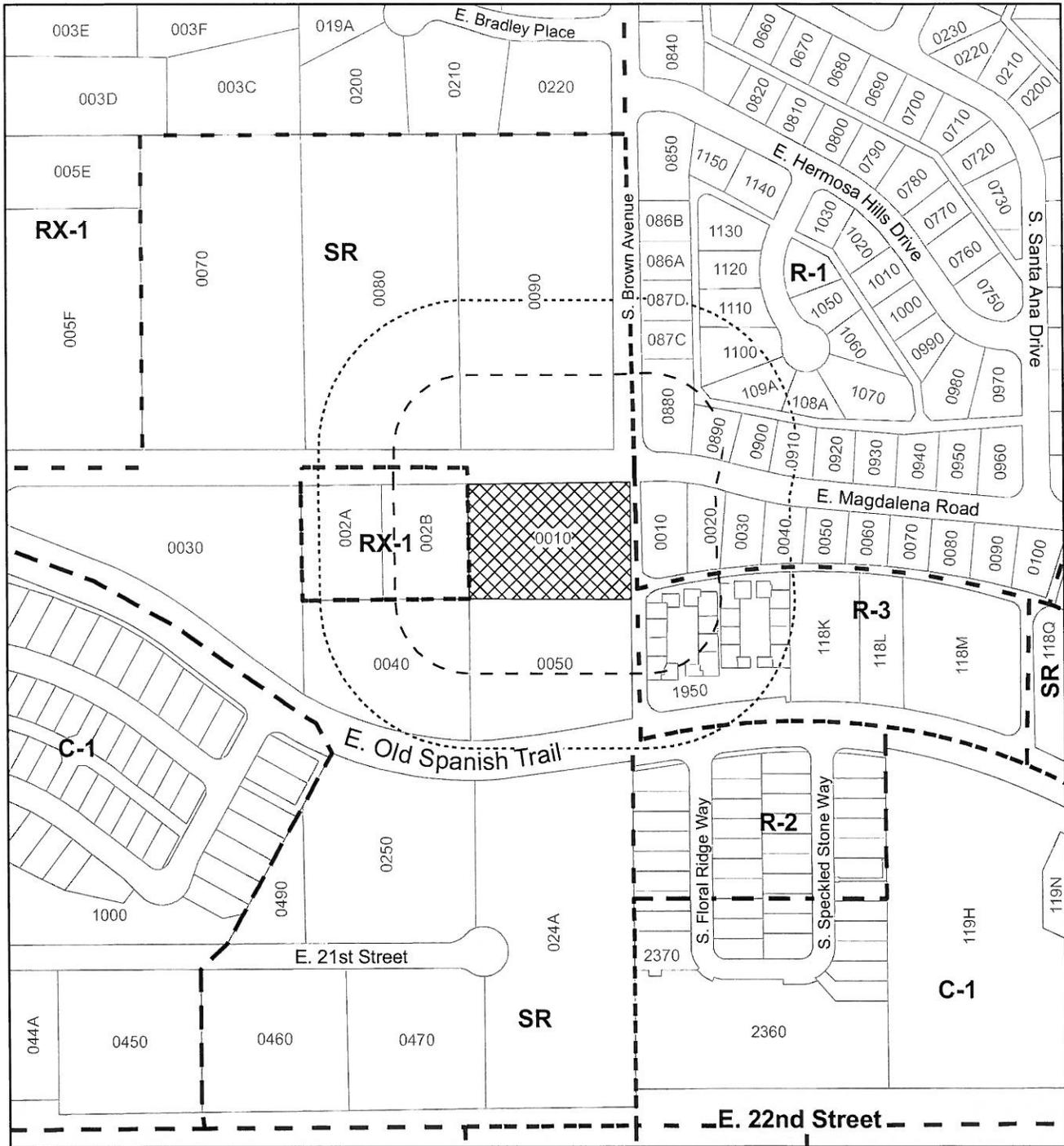
# C9-09-08 Freitag - Magdalena Road



9260 E. Magdalena Road

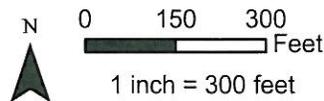
# C9-09-08 Freitag - Magdalena Road

## Rezoning Request: from SR to RX-1



- Area of Rezoning Request
- Protest Area (150 foot radius)
- Notification Area (300 foot radius)
- Zone Boundaries

Plan(s): General Plan  
 Address: 9260 E. Magdalena Road  
 Base Maps: Sec.14 T.15 R.15  
 Ward: 2





**C9-09-08 Freitag - Magdalena Road**  
September 2009 Aerial





## Approval – Protest Form

If you wish to submit a written protest or approval, this form is provided for your convenience. Please print your comments below, sign your name, and mail to the Rezoning Section of the Planning and Development Services Department at the address on the reverse side (you will need to attach postage). The number of approvals and protests along with protest calculations will be reported at the Zoning Examiner’s public hearing.

**Approvals and protests must have an owner’s signature to be recorded.**

If protests are filed from property owners representing 20% or more by area in any quadrant of the area located within a 150 foot radius of the parcel(s) on which the rezoning is proposed, an affirmative vote of ¾ of the Mayor and Council will be required to approve the rezoning ordinance.

Case: C9-09-08 Freitag – Magdalena Road, SR to RX-1 (Ward 2)

\_\_\_\_\_  
I/We the undersigned property owners, wish to  APPROVE the proposed rezoning.  
 PROTEST the proposed rezoning.

**Reason:**

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PLEASE PRINT YOUR NAME	PLEASE PRINT MAILING ADDRESS	PLEASE PRINT LEGAL PROPERTY DESCRIPTION		
		Subdivision	Block	Lot

Owner’s Signature: \_\_\_\_\_ Date \_\_\_\_\_

Place  
Stamp  
Here

City of Tucson  
**Planning and Development Services Department**  
Rezoning Section  
201 N. Stone  
P.O. Box 27210  
Tucson, Arizona 85726-7210

**C9-09-08**

Expose this flap - Affix stamp and return

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City of Tucson  
Planning and Development Services  
Department -Rezoning Section  
201 N. Stone Avenue  
P.O. BOX 27210  
Tucson, Arizona 85726-7210

**C9-09-08**

**IMPORTANT REZONING NOTICE ENCLOSED**

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