

ZONING MEMBERS PRESENT:

Linus Kafka, Zoning Examiner
Glenn Moyer, Planning & Development Services
Carolina Almeraz, City Recording Clerk

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1 ZONING EXAMINER: All right. Let's, let's be seated
2 and we can go forward on the third case on the agenda this
3 evening. All right. The next case is Case No. SE-13-14. AT&T
4 East 25th Street. Mr. Moyer.

5 MR. MOYER: Mr. Kafka, this is a request by Tim Burmer
6 of FM Group, Incorporated, on behalf of the property owner, the
7 City of Tucson, for approval of a wireless communications
8 facility. The special exception site is located on the north
9 side of 25th Street approximately 160 feet west of Third Avenue.

10 The Preliminary Development Plan proposes a wireless
11 communications tower and antennas concealed within an artificial
12 palm tree 70 feet in height with associated ground equipment
13 located inside a new equipment shelter.

14 The facility will be placed with a 36-by-36-foot lease
15 area at the southwest corner of an existing walled enclosure
16 surrounding a point one-acre City well site. A communications
17 use of this type in the R-2 zone is subject to Section
18 4.9.4.5.2.3 and .7 of the Unified Development Code, and requires
19 approval through a Mayor and Council special exception procedure.

20 Because the tower height exceeds 50 feet and is not set
21 back at least two times the height of the boun- -- of the - from

1 the boundary of adjacent R-2 zone property - I need to correct
2 the record. The Staff report that you received said the R-2
3 property to the west. It's actually to the south.

4 Documentation provided by the Applicant indicates that
5 no practical alternative exists and measures are being taken to
6 conceal or disguise the tower and antenna from view.

7 Land use policy direction for this area is provided by
8 the Old Pueblo South Neighborhood Plan and the General Plan. The
9 Old Pueblo South Neighborhood Plan provides policy direction for
10 community facilities to provide landscaping. No specific
11 policies address cellular communications facilities.

12 The General Plan land use policies protect established
13 residential neighborhoods by supporting compatible development,
14 including non-residential uses where the scale and intensity of
15 use is compatible with adjacent uses.

16 Community character and design policies require that
17 if possible, wireless communications facilities be located,
18 installed and maintained to minimize their visual impacts and
19 preserve views.

20 To increase opportunities for all to have access to
21 high quality telecom services, wireless providers are encouraged
22 to install infrastructure in older, as well as newer
23 neighborhoods. The proposed monopalm design is consistent with
24 the policy objectives of the Old Pueblo South Neighborhood Plan

1 and the General Plan.

2 The site is zoned R-2 and is within a well site owned
3 by the City of Tucson. To the north, east and south are single-
4 family homes zoned R-2. To the west, along the east side of 4th
5 Avenue are commercial retail uses zoned C-1.

6 The proposed monopalm will include three antennas per
7 sector with three sectors for a total of nine antennas. The
8 Applicant has submitted a photo simulation of the monopalm
9 showing that the antennas will be concealed by the artificial
10 fronds of the monopalm's crown. The monopalm will be set back
11 from 25th Street approximately 40 feet and will be partially
12 screened by the existing well site perimeter wall.

13 The required setback of two times the height of the
14 structure from the boundary of the R-2 zoned property, and again
15 it says "west", but it should be "south", is not met. The
16 monopalm trunk centerline is proposed to be located, and it says
17 28 feet, 3 inches, but that's from the west. It should read 90
18 feet from the south property line, from the R-2 zoned property to
19 the south.

20 The monopalm will be visible from the surrounding
21 residential neighborhood which consists of single-story
22 residential development and some vacant parcels. The nearest
23 resident is across 25th Street in the R-2 zone approximately 100
24 feet from the proposed location of the monopalm.

1 The area is not densely vegetated and existing vertical
2 structures such as Tucson Electric power poles are not at a
3 height to match the proposed monopalm wireless communications
4 tower. However, there are some desert trees just outside the
5 well site perimeter wall, and one smaller live palm tree
6 approximately 20 feet in height across 25th Street to the south.
7 The proposed monopalm stealth design reduces the visible impacts
8 to the neighborhood.

9 Vehicular access to the wireless communications
10 facility is through a 13-foot wide gate opening on the well
11 site's perimeter wall along 25th Street. Both 25th Street to
12 the south of the site, and 3rd Avenue to the east of the site
13 are local streets with right-of-way widths of 60 feet.

14 The Applicant's proposal requires approval as a Mayor
15 and Council special exception, and must meet the Unified
16 Development Code use specific standards. Mayor and Council may
17 forward the request to the Design Review Board for design review
18 and communication.

19 The Applicant has provided responses to the use
20 specific standards. Staff finds that the proposal is in
21 compliance with the use specific standards in the UDC. The
22 special exception request is consistent with the policies and
23 intent of the Old Pueblo South and the General Plan. And
24 approval of the request is appropriate, subject to the attached

1 preliminary conditions.

2 As of today, the Planning & Development Services
3 Department has received a total of zero approvals and one
4 protest. There were zero approvals by owners, and the one
5 protest is from owner. And there were no other approvals or
6 protests or related correspondence received on this case. That
7 concludes our report.

8 ZONING EXAMINER: Thank you, Mr. Moyer. I thought I
9 had the approval and protest map. But if I could just reference
10 yours.

11 MR. MOYER: Yes. Mr. Kafka, the approval protest map
12 shows that the protest is on property on 24th Street to the north
13 of the site. We can make a new copy of that map. You can have
14 that one for your record.

15 ZONING EXAMINER: All right. Thank you. I, I'm sure I
16 have it in this pile. It's just - all right. Thank you.
17 Messrs. Burmer and Lake.

18 MR. LAKE: You get tired of us, I'm sure. What I think
19 we'd like to do is similar to what we did on the last case is
20 provide you a description of the propagation map which identifies
21 the gap that we're trying to fill and then have Mr. Burmer go
22 through and discuss the different sites that he looked at to try
23 to fill this gap.

24 This particular site, as you know, is a site that's

1 currently a well site owned by the City of Tucson. So we have a
2 lease with the City of Tucson for this site. So if you would -
3 let's first go ahead and talk about the gap in coverage.

4 MR. BURMER: Okay. Similar as with the last - sorry.
5 Just a point of, of order. Do we have to re-sign the sheet for a
6 new case?

7 ZONING EXAMINER: No.

8 MR. BURMER: Okay. Okay, so where we have -

9 ZONING EXAMINER: For the transcriptionist, though,
10 just repeat your name right now so that she knows that Mr.
11 Burmer's talking.

12 MR. BURMER: Okay. Timothy Burmer with FM Group,
13 Incorporated, representing the Applicant, City of Tucson, and
14 AT&T Mobility Corporation.

15 What we're looking at here is the, the coverage map
16 without, and with, correctly labeled, for the site. Here you see
17 a significant amount of red, as well as yellow. The red and
18 yellow being the, the worst coverage. And you can see the
19 significant improvement in that coverage gap with the, with the
20 site as proposed. So -

21 ZONING EXAMINER: Those are the same as the maps that
22 are provided in the site analysis?

23 MR. BURMER: They appear to be just without the AT&T -
24 correct. Yup, they are the same. So about this search ring.

1 It's actually very similar in a lot of ways to the area from the
2 previous case where it is largely residentially zoned with a
3 strip of commercial on either side to the west side of the ring.
4 It's - appears to be a transitional area.

5 There's a lot of residential lots that are vacant, and
6 there's, there's, there's some commercial lots that are also
7 vacant and undeveloped. And there is a portion in the search
8 ring to the east and the south that is residential - I mean, I'm
9 sorry. Is on industrial with a, again, a large number of those
10 properties being undeveloped.

11 Looking at the alternate candidates considered map, the
12 thing to point out is clearly the least obtrusive solution to the
13 coverage gap would have been Santa Rita Park to the north, a
14 portion of which is in the north part of the ring labeled as
15 number four.

16 We first began working with the City of Tucson Parks
17 Department in late 2010 trying to find a location within the park
18 that we could get their approval on. Yes?

19 ZONING EXAMINER: Let me just interrupt you there
20 again. Do you have a, a separate alternative site analysis on
21 this site as well?

22 MR. BURMER: As I was saying, starting in late 2010, we
23 started working with the City of Tucson Real - or Parks
24 Department through the Real Estate Department to try to find a

1 location on the Santa Rita Park property for the site.

2 A number of different options were considered and it
3 was pursued through 2011 'til the latter part of 2012 where we
4 were just - we were unable to get Parks Department approval for
5 finding a suitable location on the park. It would have been our
6 first and best desire.

7 That being said, there were three candidates that had -
8 that met the criteria of having a willing landlord, being
9 acceptable to AT&T from an engineering coverage perspective for
10 correcting the coverage gap.

11 And two of those three were, in fact, on industrial
12 properties. And then, of course, the candidate property being on
13 the City of Tucson Water property with - immediately adjacent to
14 a commercial use.

15 In, in our final analysis, even though industrial would
16 ideally probably be considered to be more ideal, given the, the
17 natural existing screening, including the screened wall around
18 the water facility as well as the mature trees on the south and
19 the east side, that from outside looking in, there was actually
20 better natural screening of the infrastructure.

21 As we all agree, a 70-foot tall palm isn't going to be
22 naturally screened by any of that existing infrastructure, but
23 the ground mounted equipment, concerns about noise coming from
24 the, the air conditioners would be buffered by the existing CMU

1 wall. And so it is our opinion to be less obtrusive than the
2 two, the two candidates that were on - or are located on
3 industrial property.

4 ZONING EXAMINER: All right. Thank you. Anybody here
5 wishing to speak in favor of the application in SE-13-14?
6 Anybody here wishing to speak in opposition? Sir. If Mr.
7 Williams were still here, I'd ask him to look at our air
8 conditioning.

9 MR. GETSI: Good evening. My name is James Getsi, and
10 I live - where they're proposing to put this tower, I live
11 probably 300 to 700 feet, depending on where they're gonna put it
12 on the lot.

13 I received a notice in the mail and right away I was
14 concerned because the area I live in, it's largely Hispanic. And
15 the letter that I received was only in English. And that was a
16 big concern for me. So the last couple of days, I've been going
17 around to all my neighbors - well, about 30, 35, and most of them
18 said they didn't receive the letter. And others said they didn't
19 really understand what it was.

20 A lot of my neighbors speak Spanish only, some English.
21 But they definitely don't read English. I mean - so, so that's a
22 big concern for me, and I think it would be appropriate to re-
23 issue notices out to my neighborhood in, in Spanish and in
24 English. I, I think that's why you don't have a turn-out here at

1 all.

2 ZONING EXAMINER: It's my understanding that there
3 actually was a second notice in this case given - let me - Mr.
4 Burmer, if you could come up and address that.

5 MR. BURMER: That is correct. There were two
6 neighborhood meetings that were held. And at the first
7 neighborhood meeting, a member of the neighborhood association
8 attended, and actually she's right here in the audience. And,
9 and her name is Angie Queros (sic)?

10 MS. QUIROZ: Quiroz.

11 MR. BURMER: Quiroz? She asked that, you know, she
12 explained the, the dynamics of the neighborhood, and basically
13 had two concerns. One, what this gentleman just brought up is
14 that it's largely Spanish-speaking. She also brought up the
15 concern that they also, a large number of them don't have
16 transportation.

17 So she implored us to have a second neighborhood
18 meeting. Advertise it in Spanish, have a Spanish-speaking person
19 at the neighborhood, and have the neighborhood meeting within the
20 community. And, and we did all of, all of the above. I'm not
21 sure if this gentleman might not be referring to the notice for
22 the, for this hearing.

23 MR. GETSI: Yeah. Actually, I am referring to this
24 notice. I didn't receive anything for the first meeting myself.

1 But I, when I saw this notice, I definitely showed up.

2 MR. BURMER: And just a matter of record, and, and
3 Staff already knows that, we actually obtained the mailing from
4 the City of Tucson.

5 MR. GETSI: Okay.

6 MR. BURMER: We don't, we don't determine who comes and
7 who doesn't come. They give us the addresses. We simply prepare
8 the letter and make the mailing.

9 MR. GETSI: Okay.

10 ZONING EXAMINER: Is it Mr. Getsi?

11 MR. GETSI: Yes.

12 ZONING EXAMINER: That, that would concern me, too.
13 In this case, as far as I know, and as Mr. Burmer has stated,
14 that a second letter did go out in Spanish. I know you were
15 addressing the issue of whether people read those letters -

16 MR. GETSI: Yeah.

17 ZONING EXAMINER: - as well. But a second letter did
18 go out, and I believe a translator was available at the second
19 meeting. As I read, there was a translator -

20 MALE SPEAKER: Are you talking about the notice
21 (inaudible)

22 ZONING EXAMINER: This, this notice for this meeting,
23 yeah.

24 MR. GETSI: This, this notice right now was only in

1 English (inaudible)

2 ZONING EXAMINER: But this is the only notice that you
3 got?

4 MR. GETSI: Yeah. That's the only notice I got. I
5 didn't even know about the meeting before. I would have been
6 there.

7 ZONING EXAMINER: So this was the notice that was
8 fixing the original notice that -

9 MR. GETSI: Yeah. Yes.

10 ZONING EXAMINER: - you didn't get. I'm gonna, right
11 now, just take it - your statements, weigh them against also the
12 fact that we, we did have these other meetings. And somebody
13 else in the, in the audience may be able to clarify that issue as
14 well, or testify to that.

15 MR. GETSI: Yeah. Another concern of mine is, you
16 know, they talk about following the FCC regulations all the time.
17 And, and I know that they are based on the thermal effects of
18 microwave radiation. But they, you know, my concern is the non-
19 thermal effects. And that's where most of the health issues come
20 up. And we're not allowed to talk about that, of course.

21 But, but I've got a, a guy staying in my guest house
22 and he, he's there 24/7. And it kind of concerns me that he's
23 gonna be exposed to all of this radiation. And another thing is
24 this tower's gonna be erected about 50 feet away from the soup

1 kitchen. A lot of these people - I mean they've had enough bad
2 luck as it is, but sometimes their only meal, you know, would be
3 radiated by, by this cell tower.

4 And I just think it's very inappropriate to go into one
5 of the poorest neighborhoods and erect this thing and, and
6 without really knowing the true health effects that it can have
7 on people. And also, the soup kitchen is kind of a social
8 gathering place for a lot of people. So at times they'll spend
9 anywhere from a half hour to five hours there.

10 I mean, they have nowhere else to go really. So to eat
11 their only meal under the radiation of this cell tower is just
12 kind of, I don't know, I think it's a terrible thing to do. But
13 I think that is about all I have to say really.

14 ZONING EXAMINER: All right. Thank you.

15 MR. GETSI: Oh. Also there is a community center for
16 children probably about a block and a half away from this thing,
17 too. And that's a big concern of mine, too. So - about the
18 health issues. Thank you.

19 ZONING EXAMINER: Thanks. I'm gonna reiterate it for
20 the record in this case. I've already said it in the other case,
21 but I'm not allowed under the TCA to use the environmental
22 effects of RF emissions or any testimony that they would have
23 negative environmental effects in making my recommendation.

24 That being said, I, I do allow some leeway for people

1 to talk about it, to express their concerns about it because this
2 is part of a legislative proceeding. And I respect the forum of
3 public comment. And I think that these kinds of proceedings are,
4 by their nature, ones where people can address issues that they
5 have concerns about, even if I'm not allowed to use that evidence
6 when making my determination.

7 And I think that Mr. Lake would agree with me that it's
8 really an evidentiary standard in this case in the legislative
9 proceeding that I'm bound by, but not necessarily a public
10 speaking or a free speech issue that I'm not gonna go into the -
11 I don't think the FCC, even the FCC believes that the long arm of
12 their regulatory reach reaches into the public assembly and the
13 right to express opinions on public issues.

14 So they can into my determinations, but not into the
15 bulwark of local democracy, so to speak. All right. With that
16 editorial comment, sir, thank you for indulging me.

17 MR. FLAGG: Thank you, Mr. Kafka. My name's Brian
18 Flagg. I live at 401 East 26th Street. It's Casa Maria. So I
19 live and work at Casa Maria and I live and work directly across
20 the street from this - where this thing is supposed to go. I'm
21 also the President of the Santa Rita Park Neighborhood
22 Association, which is where this - that's the neighborhood there.

23 I think you should, what, deny this request by AT&T.
24 And, and here's the, here's the visual. Here's, here's what's

1 gonna happen. If they're gonna try to put that in, it's gonna be
2 like shouted out across this valley from, from, you know, all of
3 Tucson is gonna know about this thing. And the visual is five -
4 we serve 500 people bag lunches every day, and we're open every
5 single day. And we also serve 200 family food bags every day.

6 And we're open from about 6:30 in the morning 'til
7 noon. And so all these people that come there are gonna be
8 sitting there, like James said, eating their lunch really and
9 truly right in the shadow, right underneath the cell phone tower,
10 that I think the public is gonna think is spewing radiation.

11 You heard a bunch of testimony about that stuff
12 tonight, and whether you can accept it in your report. Really,
13 that's not the issue, 'cause the issue's way bigger than that.
14 And I guess you make a recommendation or not to the City Council,
15 and ultimately they decide. It's gonna be a big, huge political
16 thing.

17 And there was one guy from our neighborhood that didn't
18 come toni- -- well, he was here, and he left, it's so late. But
19 our neighborhood will turn out for things. We have a track
20 record. Seven hundred people came to the El Casino Ballroom a
21 few months ago to deal with the school closure issue. People
22 were there big time. The schools didn't close in our
23 neighborhood.

24 A few years ago, the RTA was gonna turn 22nd Street

1 into a freeway. And the neighborhood turned out big time. It
2 didn't happen. We got a track record. I'm not just up here
3 talking trash. And we also made connections with the woman that
4 knows all the details about the radiation with Mr. Fossdal, with,
5 with, with all these people that were there who live across the
6 street from the church.

7 And they're talking about making connections about this
8 issue all over the city. So this is kind of cutting edge stuff
9 from what I'm learning. And so I really think that you need to
10 consider that and, and call this thing off.

11 The other thing is, there's two things. The water.
12 What is, is, is this radiation that happens out of the cell phone
13 tower gonna do to the water? This is a water well, you know? I
14 think there's gonna be a lot of issues, environmental issues
15 involved with something that puts out radiation being situated in
16 the water well yard.

17 That's the water we drink, and the south side of Tucson
18 has had way, way more than its fair share of dealing with
19 contaminated water. You probably remember the TCE scandal that
20 shook the south side, and created all kinds of havoc. So that
21 was, what do they call that kind of - environmental racism, you
22 know? You don't want that to happen again. So that's another
23 issue.

24 You know, from, from 3rd Avenue to the railroad tracks

1 going east from that, it's industrial. You can make this thing,
2 put this thing in an industrial thing right by the railroad
3 tracks? But instead, it's gonna go right in front of the soup
4 kitchen while the people eat their lunch every day all morning
5 long. That doesn't seem to make sense to me.

6 And the one other thing is, the church on the north
7 side got compensated for, for this. I haven't heard of no
8 compensation at all coming down to the neighborhood association,
9 or anything. And I find that kind of insulting.

10 And we're not even having the respect of, of AT&T, this
11 giant, wealthy company. They're not even gonna try to buy us
12 off. I mean I find that insulting. And so maybe they should
13 think about that, too. And the one other thing is - I think
14 that's it. So, please deny -

15 ZONING EXAMINER: Are you suggesting that the soup
16 kitchen would welcome a lease from AT&T?

17 MR. FLAGG: No. But you know what you could do? I
18 heard that you guys are getting raises. What, five million dol-
19 -- no, \$8 million worth of rai- -- no, it's \$11 million worth of
20 raises now.

21 ZONING EXAMINER: We're not -

22 MR. FLAGG: So you're getting raises for \$11 million.
23 I don't think that they need to come in and give money to the
24 soup kitchen, I'm not asking for that. But you know the pool

1 that all the kids in our neighborhood go right up to the street
2 to at Santa Rita Park, it's been closed. And the City Council is
3 not - they're giving you \$11 million in raises, and they're not
4 gonna deal with stuff like that? Well, they could, they could -
5 AT&T -

6 ZONING EXAMINER: Not me personally.

7 MR. FLAGG: Yeah. I know you're not on the Council.
8 But AT&T, they could deal with the swimming pool in our - issue
9 in our neighborhood or something. They're not even trying to buy
10 us off. I guess that only happens on the north side. Thanks.

11 ZONING EXAMINER: All right. Thank you, sir. All
12 right. Ms. Kelley.

13 MS. KELLEY: Thank you. And I just - oh, well. I'll
14 sign here, right?

15 ZONING EXAMINER: I don't think you need to sign if
16 you're -

17 MS. KELLEY: I already did?

18 ZONING EXAMINER: Well, it's on the new case.
19 Technically, I - that is basically used for the transcriptionist
20 to make sure that everybody's signed the right name. So it's
21 best to keep it, keep it straight.

22 MS. KELLEY: I just want to spend a minute adding into
23 the record what I said earlier. Now that I understand a little
24 more about how this hearing is supposed to proceed as a

1 legislative proceeding.

2 I disagree a bit with the attorney representing AT&T
3 here tonight, having worked on this issue now for 18 years,
4 looking at the federal policy.

5 When the law passed in 1996, Section 74 was slipped in
6 at the last minute by a retiring U.S. senator from Montana. And
7 that's when the pre-exemption language appeared. It was heavily
8 contested, but that was a landmark bill, as you know, this huge
9 bill revising the Broadcast Acts of 1934. And so it, it stood.

10 There was no review of the radiation exposure by the -
11 under the NEPA, National Environmental Protection Act. They gave
12 it a negative declaration, but they did not review the proposal
13 in terms of the science. The first standards that were adopted
14 by (Inaudible) in 1965 were based on protection against thermal
15 level only. And that has been the case ever since, even though
16 there's a mountain of science showing the non-thermal effects.
17 And the world organization now has confirmed that by classifying
18 it as a class two human carcinogen.

19 But we still go forward. I - we - many of us now,
20 having watched this for so many years, realize that the FCC radio
21 frequency guidelines are wholly inadequate. They never were
22 relevant in the first place. But with all the new devices and
23 exposure conditions and now infrastructure going in, they really
24 should be revised to be somewhat relevant.

1 And FCC is currently circulating an intent to set a new
2 - release a new NPRM, Notice for Proposed Rule-Making and we've
3 been commenting. The final comment is the guy who torched the
4 wireless revolution, the chief lobbyist that really was
5 responsible and master mind, Civil War strategist, Tom Wheeler,
6 has been nominated to be Chair of the FCC.

7 And many of us have written our members of Congress
8 complaining about this. It's like the fox guarding the chicken
9 coop, and Congress is holding - the Senate is holding a hearing
10 on this June 5th, or 4th, or 5th. And they're gonna take that
11 issue up, the nomination. And they're also gonna talk about the
12 current FCC guidelines. Thank you.

13 ZONING EXAMINER: Thank you. Ma'am.

14 MS. QUIROZ: My name is Angie Quiroz. I'm on the Board
15 of Santa Rita - Barrio Santa Rita, and I wanted to make
16 clarification on those references to two neighborhood meetings
17 held. I would define it as one neighborhood meeting. The first
18 neighborhood meeting was at Quincy Douglas which is outside and
19 away from the immediate neighborhood, and the neighborhood
20 immediately impacted by this tower.

21 The second is that in the area we do have the mono-
22 lingual Spanish families and residents living there. And in the
23 '90's, I worked with City Council and City Staff to work on an
24 ordinance which was approved by Mayor and Council that in

1 neighborhoods with a high population of Latinos, that there be
2 notices, especially in zoning, that it be bilingual, Spanish and
3 English. And the last mailing by the City was not. It was all
4 in English. And I think that the mailing needs to be re-sent in
5 Spanish, and I think that's all.

6 ZONING EXAMINER: How would that -

7 MS. QUIROZ: Oh, I have one more -

8 ZONING EXAMINER: (Inaudible)

9 MS. QUIROZ: - point, okay? At, at the meeting, I did
10 ask if there was a mailing sent out to South Tucson because we
11 do, the location here, the proposed location is a half a block
12 away from the boundary of South Tucson residents. And we have a
13 public housing unit there with a lot of elderly. And we also
14 have part of that with families and small children.

15 And I never got an answer. But when I asked about it,
16 I did get a blank stare. And although it's a different
17 jurisdiction, they're half a block away and they need to be
18 informed. So that's all.

19 ZONING EXAMINER: Thank you. Let me ask Mr. Moyer just
20 for clarification on the meetings, the neighborhood meeting
21 notice, because it sounds like I have some conflicting testimony.

22 My understanding was one went out in English, and then
23 there was concern about that. And a second one went out, a
24 second notice went out, not a, not a requirement for a second

1 meeting, but just there was a second notice with English and
2 Spanish for a meeting, and that at that meeting, there was a
3 translator.

4 MR. MOYER: Mr. Kafka, I can't address what the
5 Applicant did in terms of his notice for his neighborhood
6 meetings. That's a requirement prior to, the neighborhood
7 meeting is a requirement prior to us accepting the case.

8 What I can say is that there's a - and I, I don't know
9 if it is adequate for the folks here, but there is a block within
10 our notice that has a brief translation of the essence of the
11 case. And then I think a question that if you need to speak to
12 someone about this in Spanish to call our number. And we do have
13 Spanish speakers on staff that can respond.

14 ZONING EXAMINER: And that, that we were provided by
15 the Applicant, the copy of the letter that went out in both
16 Spanish and English. The other question on our notice map, even
17 if the, even if South Tucson were not South Tucson, the notice
18 area wouldn't jump the, wouldn't jump 26th Street.

19 MR. MOYER: Mr. Kafka, that's correct. The notice goes
20 to properties within 300 feet. It jumps over adjacent right-of-
21 ways, but it doesn't jump over subsequent right-of-ways. But the
22 notice does take into account - or it does include properties in
23 South Tucson. This is the city limit line.

24 ZONING EXAMINER: This, this dotted line is the city

1 limit line?

2 MR. MOYER: Correct. So if South Tucson owned any
3 property within that notice area, they would get notice, but they
4 would not receive general notice as a jurisdiction.

5 ZONING EXAMINER: Okay. Thank you. Mr. Burmer, can
6 you clarify for me the chain of events in the neighborhood
7 meeting?

8 MR. BURMER: Okay. As I already previously said, there
9 were two neighborhood meetings. The first one was held at the
10 library, at which Angie was the only participant from the
11 neighborhood. And -

12 MR. FLAGG: Miles away.

13 MR. BURMER: Pardon?

14 MR. FLAGG: Miles away.

15 MR. BURMER: No, it's -

16 ZONING EXAMINER: Sir - Mr. Flagg, we need to have this
17 all addressed on the microphone on the record, so -

18 MR. BURMER: And, in fact, the, the library complies
19 with City of Tucson requirements for proximity for neighborhood
20 meetings. But it was at Angie's request, based on it being a
21 largely Spanish-speaking-only neighborhood, and most - or a large
22 number of people that live in the community don't have access to
23 vehicles, that we have a second neighborhood meeting advertised
24 in both Spanish and English, and held at a location within the

1 neighborhood.

2 The location for that meeting was actually at a
3 location that was directed by the neighborhood to us as a place
4 for the meeting. We did have a Spanish-speaking person at that
5 meeting who actually ended up running the majority of the, of the
6 neighborhood meeting because it was largely attended by Spanish-
7 speaking-only neighbors. And you have a report in the case file
8 reporting on, on that meeting.

9 ZONING EXAMINER: Thank you. I'm - I have the Quincy
10 Douglas sign-in sheet. I'm trying to find the subsequent meeting
11 sign-in sheet. And maybe you can assist me. There's, there -
12 okay. I've got it. And, Mr. Flagg and Ms. Quiroz, you were both
13 at the, the meeting at 1501 South 3rd on February 7th?

14 MR. FLAGG: Yeah, but I had to leave early.

15 ZONING EXAMINER: Okay. I am concerned about the
16 sufficiency of notice in neighborhoods where there's a good
17 number of Spanish-speaking residents and maybe people who
18 wouldn't necessarily give regard to a letter of this nature. Mr.
19 Flagg, can you come forward for a moment? And maybe Ms. Quiroz
20 also.

21 Ms. Quiroz, you've been active in trying to have
22 official notices reach people more sufficiently in the past?

23 MS. QUIROZ: Yes, sir.

24 ZONING EXAMINER: In this case, there were - there was

1 an attempt, and I think it was a genuine attempt to reach out and
2 to correct any flaws in, in earlier attempts to reach out.

3 What's your standard, what would your standard be for reaching
4 the maximum number of people to give them sufficient notice for
5 informed -

6 MS. QUIROZ: The notice from -

7 ZONING EXAMINER: - policy making?

8 MS. QUIROZ: The notice from the City of Tucson should
9 have been in Spanish. That's what I worked on in the past. That
10 was what was approved by Mayor and Council. And in that
11 particular case, it happened to be a zoning issue as well.

12 ZONING EXAMINER: So the notice for this meeting should
13 have been in Spanish as well?

14 MS. QUIROZ: Yes.

15 MR. FLAGG: Yeah.

16 MS. QUIROZ: I mean I think it's respect to the
17 community. It's respect because they live there, and they're
18 gonna be affected.

19 MR. FLAGG: Can I give you a viewpoint on that?

20 ZONING EXAMINER: Absolutely.

21 MR. FLAGG: I think a whole lot of notices that go out
22 from the City about this meeting, that meeting and the other kind
23 of meeting is a lot, a lot of times, it just is nothing more than
24 fake public input. And so no matter what happened with these two

1 meetings and, and all that kind of stuff, it's like I think you,
2 you, and then the elected officials, are gonna have to deal with
3 the political realities.

4 And when people really are informed, they'll come out
5 and our community cares, and they really care about their kids.
6 And I think that those issues will come out and there'll be a lot
7 of media coverage of it I think.

8 So the people will come out. It's just they don't come
9 out when they get some weird little yellow, you know, paper that
10 doesn't mean anything to them. You know, you kinda gotta go talk
11 to them to get them to come out.

12 MS. QUIROZ: If I may, also in the past, I've received
13 phone calls from people who know that I'm active in the community
14 asking for translation of what a particular letter says because,
15 from the City, because it's in English.

16 We have the widening of 22nd Street. The RTA meeting
17 has sent out a notice, it was all in English. At the bottom of
18 the notice it said: If you want this in Spanish, please call
19 this particular number. That was in English.

20 So it's very frustrating when I have to repeat, and
21 repeat, and request that they send material in Spanish so that
22 they are informed, they are aware of things coming in that will
23 be impacting their lives.

24 ZONING EXAMINER: Thank you.

1 MS. QUIROZ: Thank you.

2 ZONING EXAMINER: Mr. Burmer, Mr. Lake.

3 MR. LAKE: Yes, sir. What can we answer for you?

4 ZONING EXAMINER: I, I, I think the, the legal
5 requirements have been sufficiently met for notice in this case,
6 but it does concern me. And I would like to have every
7 opportunity for people who might have concerns that they may not,
8 you know? May reach out to people and -

9 MR. LAKE: I think we've -

10 ZONING EXAMINER: - nobody shows up.

11 MR. LAKE: - satisfied both the legal requirements, and
12 with what Tim did in sending out the second, he sent - any good
13 faith requirements as well.

14 ZONING EXAMINER: I think you did. I, I think I would
15 like to have a City notice go out for this meeting in Spanish.
16 And - but I'm not - I don't think I have the wherewithal to - Mr.
17 Flagg? Actually, I need you on the microphone.

18 MR. FLAGG: One solution to this dilemma would be to
19 maybe go through the Council Office. That's one step closer to a
20 south side -

21 ZONING EXAMINER: Well, the -

22 MR. FLAGG: - way of dealing with it.

23 ZONING EXAMINER: The Council Office gets notice of all
24 these cases.

1 MR. FLAGG: But, but if the guy's personally involved
2 in like reaching out to the community, then it will really
3 happen, and then, you know, you can be sure that nobody cares, or
4 they do care, or whatever the criteria is.

5 ZONING EXAMINER: What I think I'd like to do is send
6 that notice out to the notice area in Spanish as well, and
7 anything else would be incumbent on, on the community and the
8 Council Office. I mean that, that, that what I - what I'm
9 bouncing here is what we would do in every other case. Every
10 other case we send written notice and, you know, don't expect the
11 City to do activism, or go door-to-door and tell people. But to
12 do the legally sufficient notice.

13 But here, I have questions about its sufficiency if
14 people can't understand it, and we know that it's a predominantly
15 Spanish-speaking and reading area.

16 MR. FLAGG: Uh-huh.

17 ZONING EXAMINER: So, and that, and that's a concern
18 that's been brought to my attention that I would like to address.
19 Whether that has any impact on the case later on, I don't know.
20 And Ms. -

21 MS. QUIROZ: The remaining question I have is, are the
22 residents south of the boundary there, will they be informed?
23 Were they informed?

24 ZONING EXAMINER: If they're in the notice area,

1 they'll, they'll receive the letter that I'm suggesting be sent
2 out.

3 MS. QUIROZ: Even though it's in South Tucson?

4 ZONING EXAMINER: And I, I - if you'd like to see this
5 map of the notice area, I can let you take a look at it.

6 MS. QUIROZ: Okay.

7 ZONING EXAMINER: And it, it shows that we, we did send
8 notice letters to properties south - in South Tucson if they're
9 in the notice area.

10 MS. QUIROZ: Okay.

11 ZONING EXAMINER: We did not send separate notice to
12 the jurisdiction. That's my understanding.

13 MS. QUIROZ: That they were in English?

14 ZONING EXAMINER: That they were in English.

15 MS. QUIROZ: Yeah.

16 ZONING EXAMINER: And, and I, I would add, I think that
17 the legal requirement is only that they go out in English. But I
18 agree with you that for an effective meeting that these property
19 owners should be informed in Spanish. So that's what I gonna ask
20 for.

21 MS. QUIROZ: Thank you.

22 MR. FLAGG: Thank you.

23 MR. LAKE: Were they not already informed in Spanish
24 for the neighborhood meeting?

1 ZONING EXAMINER: They were informed of the
2 neighborhood meeting, but not of, not of tonight's meeting.

3 MR. LAKE: It's not a legal requirement. I think, as
4 Mr. Moyer indicated, there is Spanish wording on the (inaudible)

5 ZONING EXAMINER: Yeah, but if you don't know what the
6 content of a letter - I, I understand the point. It's, it's, it
7 is a - but -

8 MR. LAKE: These people -

9 ZONING EXAMINER: - this, this is a - it's a
10 fundamental question that we confront all the time, and I think
11 that -

12 MR. LAKE: Absolutely. These people do a wonderful
13 work in that neighborhood.

14 ZONING EXAMINER: Yeah. And I'd like to have - have
15 them to have that opportunity, which probably means as well that
16 I need to request a Spanish translator for the next hearing.

17 MR. LAKE: Yeah. (Inaudible)

18 ZONING EXAMINER: Okay. All right. I'm gonna continue
19 this hearing as well to -

20 MR. LAKE: Continue it?

21 ZONING EXAMINER: To June -

22 MR. LAKE: What, what issues can we address for you?

23 ZONING EXAMINER: Oh, you've made your case. I - but I
24 think what we're gonna have to do is reiterate it on the - what

1 was the date?

2 MR. LAKE: Send out a notice that's not legally
3 required?

4 ZONING EXAMINER: I'm going to send out a notice that's
5 not legally, legally required in this case.

6 MR. BURMER: Mr. Kafka.

7 ZONING EXAMINER: Yes.

8 MR. BURMER: Before you set a date, I want to know what
9 type of threshold do you want to meet with that notice, mailed
10 notice and posted notice. And published notice generally are 15
11 days before the -

12 ZONING EXAMINER: The hearing date.

13 MR. BURMER: - public hearing date. And if we're going
14 to do published notice as well, we need time to get it to the
15 newspaper.

16 ZONING EXAMINER: I believe that we've already
17 sufficiently covered legal notice. This is an additional notice
18 that I would like to add as a courtesy. So I think just a letter
19 mailed out in Spanish to those property owners about the hearing,
20 the, the Mayor and Council public hearing that I'm holding.

21 MR. BURMER: And how many days ahead?

22 ZONING EXAMINER: Well, how long would it take us to
23 generate that letter?

24 MR. BURMER: I assume our contract is open, and we can

1 get it in a couple days.

2 ZONING EXAMINER: So we should be able to do 15 days
3 before the hearing.

4 MR. BURMER: We have Spanish speakers in the office,
5 but I believe for our translation services, we use a service
6 that's not in the office.

7 ZONING EXAMINER: Okay. But it sounds like we could
8 still get 15 days before hearing if we continue it 30 days.

9 MR. BURMER: Definitely.

10 ZONING EXAMINER: Okay. So let's continue it 30 days,
11 and put it on the same date.

12 MR. BURMER: Twenty-eight days.

13 ZONING EXAMINER: Twenty-eight days. Sorry. Continue
14 it 28 days to June 13th. All right. With that, Case No. SE-13-
15 14 is continued to June 13th.

16 (Case No. SE-13-14 is continued to June 13th.)

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

Transcription Completed: 05/30/13



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