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## Legal Action Report – Meeting Minutes Design Review Board (DRB)

Members of the Design Review Board (DRB) held a meeting, which was open to the public on:

**Date and Time: Friday October 22, 2021, 7:30 a.m.**

**Location: Meeting was held virtually using Microsoft Teams**

- 1. Call to Order / Roll Call** **7:34 AM**  
Rosemary Bright Present – Left meeting at 9:55 AM  
Susannah Dickinson Present – Left meeting at 10:50 AM  
Caryl Clement Present  
Nathan Kappler Present – Left meeting at 10:50 AM  
Chris Stebe Present  
**A quorum was established.**
  
- 2. Review and Approval of the 10/1/2021 LAR and Meeting Minutes** **Action Taken**  
Motion was made by DRB Member Bright to approve the LAR and draft minutes of October 1, 2021. Motion was duly seconded by Member Clement. All in favor. Motion passed 5-0.
  
- 3. Call to the Audience**  
Two members of the audience presented arguments against case # DRB-21-18 – TEP Power Poles on Silverbell Road. Staff also indicated that [Tucson Mountains Association Email to DRB & Letter to the Board of Adjustment](#) was forwarded to the DRB members and posted on the [DRB's webpage](#).
  
- 4. Case # DRB-21-18 – TEP Power Poles on Silverbell Road – Variance Request (CONTINUED)**  
**Associated Board of Adjustment Case # [C10-21-08 \(T21SA00376\)](#)**  
**Associated Construction Documents: [T21CM05552](#)**  
**[3800 N SILVERBELL RD](#), Parcel # [10310001C](#)**  
**Scenic Corridor Overlay Zone (SCZ)** **Action Taken**  
  
Staff reintroduced the case and provided the following background information to the DRB:
  - 1) When developing its 1981 Long Range Transportation Plan, the Regional Council of the Pima Association of Governments (PAG, the regional planning entity), stated that to the maximum extent possible, new roadways should be constructed as scenic routes. Following that lead, the City of Tucson's Mayor and Council recognized the need to take measures to preserve views of prominent mountain ridge lines, and scenic viewsheds along new roadways and directed staff to develop recommendations for the establishment of scenic routes. The City's Planning Department, in conjunction with the Transportation Department, developed the Major Streets and Routes (MS&R)

plan. The plan was adopted in 1982 and includes roadway standards, guidance for landscaping roadways, etc. In 1985 the City of Tucson adopted zoning regulations establishing the Scenic Corridor Zone (SCZ) and the Gateway Route Overlays, which are part of the City of Tucson's zoning code, the Unified Development Code. Both processes involved public outreach and public hearings prior to Mayor and Council action;

- 2) The TEP poles along this stretch of Silverbell pre-date the adoption of PAG's Long Range Transportation Plan, the City's Major Streets and Routes (MS&R) Plan and the City zoning regulations pertaining to scenic and gateway routes. The MS&R standards and associated zoning regulations necessitating undergrounding apply to all scenic and gateway routes. This stretch of Silverbell is rather unique in that it lies within an ancient Hohokam Indian settlement. When adopted, neither the MS&R Plan nor the zoning code regulations specifically anticipated the impact of undergrounding along this specific stretch of road. Regulations cannot anticipate every circumstance. With that in mind, it is important to note that regulations do not include any provisions that prohibit the granting of variances to the SCZ regulations.

The applicant presented the information previously requested by the DRB, and Pima County's Manager of the Cultural Resources & Historic Preservation Division presented the potential impact of the proposed project on archeological resources. The applicant, the Pima County's Manager of the Cultural Resources & Historic Preservation Division, the Project Manager for the City's Department of Transportation & Mobility, and members of the consulting team for the roadway project, provided the following clarifications in response to questions posed by the DRB:

- 1) The widening of Silverbell Road is part of the larger voter-approved RTA Plan, to be able to handle traffic into the future; TEP would not need to relocate the powerlines if the road was not going to be widened;
- 2) The current powerlines are 46 kilovolts (KV), do not fall under the jurisdiction of the Arizona Corporation Commission (ACC), which regulate voltages of 115 KV and above, which are exempt from City ordinances;
- 3) If variance is denied, there would be an increase of 30% in disturbance of archeological resources;
- 4) Sewer lines would not be considered a disturbance to the archeological resources, since they are already in place and not being improved, but staying intact in an intermittent manner along the roadway; water lines will remain under the existing roadway, where the old lines in the existing trench, and new lines next to the old ones; as culverts or pipes are being installed underneath the road and relocating the water line underneath drainage channels, are counted as a disturbance in those areas; utility relocation components that are outside of areas that would otherwise be disturbed by construction activities is the less than one acre calculation of disturbance; utility relocations that are occurring within areas that are already going to be disturbed by construction activities are covered by the cut and fill calculations;
- 5) The new power poles would be located within the areas of probable disturbance; TEP is limited by the area of potential effects that their utility relocation must occur within the area potential effects, and cannot go outside of it; in terms of utility trench, it would be compounded in terms of the impacts; it's difficult to mitigate an auger, so monitoring better understands the vertical stratigraphy, and based on what is already known, Pima County would be reviewing TEP's proposed pole locations, and if a pole intersects something that is known, Pima County would work with TEP to determine the wiggle room to locate the pole into an unknown are with the hopes to minimize impact; however there is always a chance for impact, so Pima County will monitor the soils that are removed, document them, and if there is a burial, further investigation takes place and remove all aspects of that burial per agreement with the tribes, but otherwise is a monitoring exercise;

- 6) If the new power lines were to be underground at the crossing of a drainage easement, the lines would be raised up on a pole to go overhead across the drainage crossing, and then go back underground, and while that would be technically feasible, considering the multiple number of drainage crossings would necessitate to still have the discussion of the variance in the scenic corridor;
- 7) The power poles being relocated to the east side of the road is in response to the hilly terrain on the west side, requiring significant amount of excavation and earthwork creating major impacts with the need of earth work and potentially retaining walls; impact on cultural resources on the east side is going to be significantly less than if it were to be constructed as an underground utility;
- 8) The average fill for the roadway is between 2 to 4 feet, with some areas going deeper;
- 9) Around 100 plants are proposed to be mitigated; all landscaped areas are within the area of potential effects, and the archeologists have reviewed all of the landscape plan are adequately planning for any of those disturbance areas where new plantings would occur;
- 10) Around 800 trees will be planting along the entire project, with a significant number along the multiuse path; although the TEP power poles are not shown on the landscape plan, the trees have been placed where there was room left after planned drainage improvements and other infrastructure needs; trees cannot be planted within 17 feet of the multiuse loop path, since there are sewer lines underneath the path;
- 11) City street lights, needed for public safety, define the size of the new power poles; the height of the existing poles is 55 feet, while the new poles will be at a representative point of 65 feet high; the height ranges vary based on topography and where poles are located at intersections, so the structures that support street lights also need to be factored into the discussion of height, so poles could go up to 85 feet in height to be able to go over traffic signals, for example; poles are designed in conjunction with City of Tucson design for the street lights, traffic lights, and other infrastructure components of the project;
- 12) A major powerline runs about 300 feet east of the current Silverbell Road, with 80 to 100 feet high metal cage structures; TEP power poles would be closer to that alignment, rather than the current location on the west side of Silverbell Road; collocation with that major powerline is not an option, given the right-of-way and that the alignment along Silverbell Road contains distribution that feeds homes and commercial development, so Silverbell is acting like a “frontage road” for the larger powerlines; additionally, running the proposed powerlines further east, would incur in the loss of recreational area within Columbus Park;
- 13) TEP is constrained by the US Army Corps designation of the area of potential effects in which they can relocate, so TEP must relocate within that “cage”, and cannot step foot out of that cage.

Motion was made by Chair Kappler to recommend to the Board of Adjustment approval of the requested variance, finding the project in compliance with the criteria established in UDC Section 3.10.3.K, subject to the following conditions: 1) As the height of the new power poles is related to height of the adjacent City’s street light poles, the applicant must demonstrate that the City of Tucson street lights are the absolute minimum required for public safety; 2) The applicant must demonstrate that the heights of the new power poles are the absolute minimum allowed for public safety; and 3) Landscape improvements (i.e. trees) within the scenic corridor are to be strategically positioned to provide visual relief from the power poles’ locations for all users of the scenic corridor. The motion was duly seconded by Member Stebe. Motion failed by a voice vote of 2 to 2 (members Clement and Dickinson abstaining). DRB member Clement indicated she abstained since all possible options for installing the powerlines underground have not been explored by the applicant. DRB member Dickinson stated she abstained because she needed to see in advance if the conditions of approval were going to be resolved by the applicant and presented back to the DRB.

Staff indicated the Board of Adjustment will be informed of the failed motion, with staff submitting and reading into the record that the DRB reviewed this case in two separate meetings, and that at the end of the second meeting a motion was made to approve the variance with conditions, indicating what those conditions were, with the DRB failing to reach consensus, with a split vote of two members recommending approval with the conditions and two members abstaining, pointing out the reasons why the two DRB members abstained from voting. Staff also informed the [Board of Adjustment's meeting](#) for this case is scheduled for October 27, 2021, at 1:30 PM, and the meeting could be accessed virtually through the PDSO's webpage or and Clerk's Office webpage.

At this point two DRB members had to leave the meeting, and quorum was lost. The two remaining cases in the agenda will be reviewed at the next DRB meeting of November 5, 2021, or sooner, if quorum can be reached to another day during the week of October 25, 2021. Effort will be coordinated by staff.

**5. Case # DRB-21-15 (T21SA00389) – Wells Fargo's Parking Garage - Rooftop Solar Carport**

**35 E ALAMEDA ST, Parcel # 11711096C**

**Associated Development Package and Construction Documents: DP21-0187 and T21CM07464**

**OCR-2**

**Rio Nuevo Area (RNA) Review**

**No Quorum, No Action Taken**

Postponed to the next DRB meeting, due to the lack of quorum.

**6. Case # DRB-21-17 (T21SA00375) – Façade Modifications for New Bar**

**128 E CONGRESS ST, Parcel # 117150030**

**Associated Construction Documents: T21CM06854**

**OCR-2**

**Rio Nuevo Area (RNA) Review**

**No Quorum, No Action Taken**

Postponed to the next DRB meeting, due to the lack of quorum.

**7. Staff Announcements**

**Informational**

No staff announcements.

**8. Adjournment**

Meeting adjourned at 10:52 AM.