



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
on September 8, 2010.

Date of Meeting: February 23, 2010

The Mayor and Council of the City of Tucson met in regular session in the Mayor and Council Chambers in City Hall, 255 West Alameda Street, Tucson, Arizona, at 5:54 p.m., on Tuesday, February 23, 2010, all members having been notified of the time and place thereof.

1. ROLL CALL

The meeting was called to order by Mayor Walkup and upon roll call, those present and absent were:

Present:

Regina Romero	Council Member Ward 1
Rodney Glassman	Vice Mayor, Council Member Ward 2
Karin Uhlich	Council Member Ward 3 (departed @ 6:35 pm)
Shirley C. Scott	Council Member Ward 4
Richard G. Fimbres	Council Member Ward 5
Steve Kozachik	Council Member Ward 6
Robert E. Walkup	Mayor

Absent/Excused:

None

Staff Members Present:

Mike Letcher	City Manager
Michael Rankin	City Attorney
Roger W. Randolph	City Clerk

2. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Chaplain Aleck Brown, Davis-Monthan Air Force Base, after which the Pledge of Allegiance was presented by the entire assembly.

Presentations:

- a. Mayor Walkup presented Copper Plaques to Machinist Mate First Class, Stephen Porter as “Sailor of the Year”; Electricians Mate Second Class, Andrew Rask, as “Junior Sailor of the Year”; and Machinist Mate, David Thomas, as “Blue Jacket of the Year” from the submarine U.S.S. Tucson. He also presented Honorary Citizen Certificates to Deseree Nicole Rask and Miki Kishima Porter.
- b. Presentation to Sun Tran postponed.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced City Manager’s communication number 76, dated February 23, 2010, was received into and made part of the record. He also announced this was the time scheduled to allow members of the Mayor and Council to report on current events and asked if there were any reports.

- a. Vice Mayor Glassman invited the public to a release party at the Loft Cinema on March 6, 2010, for the children’s book “Jeremy Jackrabbit Harvests the Rain” that he and his wife wrote. He noted the City Attorney’s wife had illustrated the lead character, Jeremy Jackrabbit.
- b. Council Member Scott congratulated the Arizona Canning Company on their success and expansion as noted in a recent Arizona Daily Star article. She said they were producing refried beans, whole beans and enchilada sauces under the brand names of La Costiña and Sun Vista.
- c. Council Member Fimbres announced two open houses on the possible assignment of the F-35 aircraft to Davis Monthan Air Force Base. The open houses were scheduled for March 1, 2010, at Sunnyside High School and March 5, 2010, at Roskruge Elementary School. He also invited citizens to participate in the Annual Community Food Bank Hunger Walk on March 13, 2010.
- d. Council Member Kozachik announced Click Automotive donated a gas powered pressure washer to the Palo Verde Neighborhood Association to assist with graffiti abatement; and the Alliance of Construction Trades donated funds toward the effort to bring back Downtown Saturday Night events. He also thanked the people and organizations that donated food and supplies for the Ward 6 Office Open House.

- e. Mayor Walkup said U.S. Secretary of Transportation, Ray LaHood, officially awarded a sixty-three million dollar Federal TIGER (Transportation Investment Generating Economic Recovery) Grant for the Modern Streetcar at the Historic Train Depot on February 18, 2010. Tucson now had the funds to start and complete the Modern Streetcar project.

4. CITY MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced City Manager's communication number 77, dated February 23, 2010, was received into and made part of the record. He also announced this was the time scheduled to allow the City Manager to report on current events, and asked for that report.

Mike Letcher, City Manager, announced the Independent Audit and Performance Commission recently launched their Collaborative Auditing website. The website, now available online to the public, contained City financial data and Police and Fire Department response times.

5. LIQUOR LICENSE APPLICATIONS

Mayor Walkup announced City Manager's communication number 78, dated February 23, 2010, was received into and made part of the record. He asked the City Clerk to read the Liquor License Agenda.

- b. Liquor License Application(s)

New License(s)

- 1. Walgreens #06244, Ward 6
4700 E. Broadway Blvd.
Applicant: Randy Allen Guse
Series 10, City 108-09
Action must be taken by: February 6, 2010

Staff has indicated the applicant is in compliance with city requirements.

Public Opinion: Written Arguments Opposed Filed

(Continued from the Mayor and Council Meeting of February 9, 2010)

This item was considered separately.

2. Walgreens #06766, Ward 5
1880 E. Irvington Rd.
Applicant: Randy Allen Guse
Series 10, City 117-09
Action must be taken by: February 8, 2010

Staff has indicated the applicant is in compliance with city requirements.

Public Opinion: Written Arguments Opposed Filed

(Continued from the Mayor and Council Meeting of February 9, 2010)

This item was considered separately.

3. May's Counter, Ward 6
2945 E. Speedway Blvd.
Applicant: Lauren Kay Merrett
Series 12, City 104-09
Action must be taken by: February 5, 2010

Staff has indicated the applicant is in compliance with city requirements.

4. Sachiko Sushi II, Ward 5
3210 E. Valencia Rd.
Applicant: Eunil Jang
Series 12, City 2-10
Action must be taken by: February 27, 2010

Staff has indicated the applicant is in compliance with city requirements.

5. OM, Ward 3
1765 E. River Rd. #131
Applicant: Allen-Andrew Joonhan Yap
Series 12, City 4-10
Action must be taken by: March 11, 2010

Staff has indicated the applicant is in compliance with city requirements.

NOTE: State law provides that for a new license application, "In all proceedings before the governing body of a city...the applicant bears the burden of showing that the public convenience requires and that the best interest of the community will be substantially served by the issuance of a license". (A.R.S. Section 4-201)

Person/Location Transfer(s)

6. Office Bar, Ward 1
6333 S. 6th Ave.
Applicant: Rudolph Daniel Flores
Series 6, City 5-10
Action must be taken by: March 8, 2010

Staff has indicated the applicant is in compliance with city requirements.

Public Opinion: Written Arguments Opposed Filed

NOTE: State law provides that for a person and location transfer, Mayor and Council may consider both the applicant's capability, qualifications, reliability and location issues. (A.R.S. Section 4-203; R19-1-102)

This item was considered separately.

c. Special Event(s)

1. 4th Avenue Merchants Association, Ward 6
4th Ave. between University Blvd., and 9th St.
Applicant: John A. Sedwick
City T1-10
Date of Event: March 19, 2010 - March 21, 2010
(Fundraising Civic Event)

Staff has indicated the applicant is in compliance with city requirements.

2. Tucson International Mariachi Conference, Inc., Ward 6
900 S. Randolph Way
Applicant: Alfonso Dancil
City T2-10
Date of Event: April 24, 2010
(To raise funds for La Frontera Center, Inc.)

Staff has indicated the applicant is in compliance with city requirements.

3. Kokopelli Winery, Ward 6
4th Ave. and 5th St.
Applicant: Dennis M. Minchella
City T4-10
Date of Event: March 19, 2010 - March 21, 2010
(Wine Festival/4th Avenue Street Fair)

Staff has indicated the applicant is in compliance with city requirements.

d. Agent Change/Acquisition of Control/Restructure

NOTE: There are no agent change(s) scheduled for this meeting.

It was moved by Council Member Kozachik, duly seconded, and carried by a voice vote of 7 to 0, to forward liquor license applications 5b3 through 5b5 and 5c1 through 5c3 to the Arizona State Liquor Board with a recommendation for approval.

5. LIQUOR LICENSE APPLICATIONS

b. New License(s)

1. Walgreens #06244, Ward 6
4700 E. Broadway Blvd.
Applicant: Randy Allen Guse
Series 10, City 108-09
Action must be taken by: February 6, 2010

Staff has indicated the applicant is in compliance with city requirements.

Public Opinion: Written Arguments Opposed Filed

(Continued from the Mayor and Council Meeting of February 9, 2010)

Roger W. Randolph, City Clerk, announced the first application to be considered separately was Item 5b1, Walgreens #06244, located in Ward 6.

Council Member Kozachik said the Ward 6 Office met with Walgreens, as well as, with the neighborhood association and they did not have an overwhelming objection to the application.

It was moved by Council Member Kozachik, duly seconded, and carried by a voice vote of 7 to 0 to forward liquor license application 5b1 to the Arizona State Liquor Board with a recommendation for approval.

5. LIQUOR LICENSE APPLICATIONS

b. New License(s)

2. Walgreens #06766, Ward 5
1880 E. Irvington Rd.
Applicant: Randy Allen Guse
Series 10, City 117-09
Action must be taken by: February 8, 2010

Staff has indicated the applicant is in compliance with city requirements.

Public Opinion: Written Arguments Opposed Filed

(Continued from the Mayor and Council Meeting of February 9, 2010)

Roger W. Randolph, City Clerk, said the next item to be considered separately was Item 5b2, Walgreens #06766, located in Ward 5.

Council Member Fimbres said there were neighborhood residents present who wished to speak against the application. He asked Sandra Fimbres to come forward.

Sandra Fimbres, Bravo Park Lane Neighborhood Association, urged the Mayor and Council to deny the Walgreens liquor license application for the Campbell Avenue and Irvington Road location. Her first reason was that Walgreens was going back on their word. She said when they wanted to build a larger facility and move it to the corner, Walgreens said they would no longer sell liquor; and they assured the neighborhoods they were trying to meet the needs of the community by expanding their pharmacy operations. Her second reason was that Walgreens did not consider the needs of the neighborhood. It was only after Walgreens learned there were letters of protest and they were instructed by the City, that they agreed to meet with the neighbors.

Ms. Fimbres said at the meeting she attended, the Walgreens representative stated they wanted to meet the needs of some of their customers who wanted to purchase liquor as they were making their other purchases. She said when pressed as to who those customers were or how many, Walgreens' answered, "customers from back east" and they could not give any numbers as to how many requests were received from local customers. She stated Walgreens had no proof that it was something the neighborhood needed or wanted. She said, if need was the basis, then they should have been expanding their pharmacy instead of beer sales.

Ms. Fimbres explained as a resident living in the neighborhood for almost twenty-three years she was concerned with the quality of life for all residing in the area. She said crime had always been an issue and while it might be down compared to other areas it did not mean that crime did not exist. There were studies that showed crime went up when more establishments that sold alcohol were added to an area. She was willing to bet that crime went down after Walgreens stopped selling alcohol and moved to their current location. She mentioned that there was a daycare in the same area and a charter school on the same block. She pointed out they already had sufficient establishments in the immediate area that sold alcohol, and adding Walgreens would not increase the sales tax base for the City. It would only contribute to higher crime, costing the City more money in the long run. She said that even though she was the only one speaking that evening, she asked those in the audience objecting to the Walgreens liquor license application to stand and be recognized.

Michael Rankin, City Attorney, explained that given they were taking testimony, the applicant or representative should be given an opportunity to address the Council.

Peter Schelstraete, Attorney representing Walgreens, stated the application was for a Series 10 liquor license, for beer and wine only, and did not include hard liquor. He confirmed he had spoken to the District Manager and to the Store Manager who said the request was in response to customers who came into the store asking where the beer and

wine were at that location. He said Walgreens would have twelve to sixteen feet of shelf space for room temperature beer and wine, and two coolers for cold beer and wine; single cans of high-octane beer or wine would not be sold separately.

Mr. Schelstraete explained that all employees would be required to take the Title 4 training classes for liquor laws and commented that Walgreens probably had one of the best records in the State as far as compliance with Arizona liquor laws was concerned. He stated they had fifty licenses in the State and in the past year they had no violations. In the past two years they only had one violation, and in the past five years they only had one violation. He felt that was an outstanding record, and emphasized they were a very responsible provider of beer and wines at their other store locations. There was no reason to suspect the Campbell Avenue and Irvington Road location would be any different. He said he was available to answer any questions the Mayor and Council had.

Council Member Fimbres thanked Mr. Schelstraete. He said he was recommending denial of the application based on the neighborhood protests, the issue of saturation in the area, and the fact that the applicant had not proven that public convenience and best interest of the community would be substantially served by the issuance of the license.

It was moved by Council Member Fimbres, duly seconded, and carried by a voice vote of 7 to 0 to forward liquor license application 5b2 to the Arizona State Liquor Board with a recommendation for denial.

5. LIQUOR LICENSE APPLICATIONS

b. Person/Location Transfer(s)

- 6. Office Bar, Ward 1
6333 S. 6th Ave.
Applicant: Rudolph Daniel Flores
Series 6, City 5-10
Action must be taken by: March 8, 2010

Staff has indicated the applicant is in compliance with city requirements.

Public Opinion: Written Arguments Opposed Filed

NOTE: State law provides that for a person and location transfer, Mayor and Council may consider both the applicant's capability, qualifications, reliability and location issues. (A.R.S. Section 4-203; R19-1-102)

Roger W. Randolph, City Clerk, announced the final item to be considered separately was Item 5b6, Office Bar, located in Ward 1.

Council Member Romero asked if the applicant was present and wanted to make any comments.

Rudy Flores, Applicant, said he was present primarily to look for assistance from the Mayor and Council. He said he was putting together a “mom and pop” business, a local bar, a sports bar in theme at the South Sixth Avenue location. He emphasized he had taken much time in trying to isolate a location that was not saturated in terms of the series of license he was applying for. He said he had provided the Mayor and Council a packet of information covering the four main areas contained in the arguments of opposition and stated he wanted to address those arguments. He explained the Office Bar location was chosen because it sat alone at least one mile away from other licensed establishments. It was predominantly a business, industrial, commercial and government area with a lot of open space. He said the building and property was zoned to be a bar, and had been zoned as such for almost fifty years.

Mr. Flores added Valencia Road and Sixth Avenue experienced an extremely high volume of traffic in customer potential. He asked the Mayor and Council to notice in their packet where he had highlighted non-residential areas. He said it was not entirely complete as there were some other areas that were non-residential, business, commercial, government and empty space. That was one of the primary reasons for selecting the area. He stated there were fourteen active Series 6 liquor licenses in this zip code and that saturation was the same or less than in comparable zip codes. He also stated the wide open space allowed him to do some things with classic cars that he had wanted to do for a very long time, and he was very excited about it.

Mr. Flores continued saying as far as crime statistics were concerned, he checked online and with the Tucson Police Department and there were no records of calls to the location going back ten years. He said crime in Tucson had declined over the last three years and he did not think the bar being closed during that time had necessarily contributed to that; he thought crime as a whole had gone down. He directed the Mayor and Council to the information packet giving area crime statistics provided by the Tucson Police Department. He said there was a lower crime stress area in the area where the bar was located than in the center of town and other areas.

Mr. Flores said being a small business owner meant he and his wife had to invest quite a bit to get prepared. He confirmed just getting the Certificate of Occupancy was a lot of work. They also had liquor license training classes to attend and much more to get the business ready. He said that a recommendation of approval from the Mayor and Council would allow them to move forward.

Mercedes Flores said she wanted to address the letters of opposition that were received. She said she really wanted to stress that there were six letters of opposition from one particular group. She said they met many of their neighbors while fixing up the building, meeting with vendors and getting the building prepared for the Certificate of Occupancy, and those neighbors offered nothing but support. The only negative comments they received were the six letters of opposition when they filed their

application for a liquor license. She said the neighborhood support had been overwhelming and they had over one hundred twenty letters of support including their immediate neighbors within the area. She said, in fact, every single one of their immediate neighbors had given them a letter of support. She restated that the letters of opposition primarily came from one group, and three of the six letters came from people living more than a mile away from the bar location; one even came from someone in a completely different zip code.

Ms. Flores said what they were asking was to honor the neighbors' wishes and open the bar, because at the present time, it was a large vacant piece of property and a vacant piece of property did not contribute to the neighborhood. She stated they wanted to be part of the community. They wanted to contribute their time, energy and efforts to the community, because they lived there; their families lived there; and their children lived there. She emphasized they wanted to make sure they were good business owners and that they were being the good 'mom and pop' shop that they knew they could be. They wanted to help the neighborhood, be active in the neighborhood association, and be responsible business owners and practice good security. She said they controlled ingress and egress strictly to Sixth Avenue and tried to stay off the neighborhood streets. They wanted to talk about beautifying the property by adding some trees. She said there was a bus stop in front of the location and it would be great if they could clear some of the debris there and provide a nice place for people to wait for the bus. She emphasized they wanted to be good members of the community, if just given the opportunity.

Ms. Flores stated the bar was an expensive investment for them and they were wholeheartedly invested. She said they were residents of Tucson and would not only be locally owned but on-site owners. She emphasized that they had a personal stake in the business, which many large corporations applying for liquor licenses did not. She also commented that the bar would create twelve to fifteen jobs in the neighborhood, and if they showed a profit, others they had spoken to were interested in developing some of the other commercial properties in the area. Some of the investors were interested in opening a hair salon, a tax business and a law office, if they could see increased business activity in the area.

Council Member Romero asked Ms. Flores to bring her comments to a close.

Ms. Flores finished by saying their business could bring development to the neighborhood. She thought they could contribute positively and in a good way for the neighborhood, if given the opportunity.

Council Member Romero asked if there was anyone representing the neighborhoods surrounding the area. She asked Beki Quintero from the Sunnyside Neighborhood to come forward and if she had any comments to make.

Mr. Flores informed Council Member Romero that he had other neighbors present who were in support of the license and who were in the neighborhood association as well. He asked if they could have time to speak.

Council Member Romero answered that it was wonderful that he had spoken and she appreciated it. She said she wanted to keep it to one speaker each in support and opposition and he already had two, so she wished to hear someone that opposed the license. She thanked Mr. Flores for his time.

Beki Quintero, Sunnyside Neighborhood Association President, said she had lived in the Neighborhood all her life and was one of the founding members of the Association, which was started in late 1988. She said the Association's basic mission was to improve the quality of life in their community. She explained the neighborhood had recently become a Literacy for Life Zone and were working hard to increase literacy along with the literacy coalition. She said they had also been selected to be a recipient of the Drachman Institute which was helping them create a healthy, walkable community by using "Safe by Design" processes with the Tucson Police Department (TPD). She said the targeted response team and TPD worked together to eliminate the criminal element in the neighborhood by thirty percent in just one year, and it was awesome; they did a phenomenal job. It was the community working together and they wanted to continue that. She said putting a bar in the area would decrease everything they worked for.

Ms. Quintero explained she had received a phone call from Rudy Flores in October asking her to meet with him. She said when they met, she informed him that if he wanted to open a business, the neighborhood needed a bookstore; but he did not want to open a bookstore, he wanted to open a bar. She stated there were currently four places to buy liquor at on Sixth Avenue, two at Sixth Avenue and Bilby Road, Grand Market at Valeska Road and Sixth Avenue, and a Circle K at the corner of Sixth Avenue and Valencia Road. She did not think there was a need to purchase any more liquor on that dark street. She again explained they were trying to create a safe walkable community; and by providing another place for people to go drink, stumble on a dark street, and create an unsafe environment for residents, as well as, drivers was not a good idea. She commented that at the neighborhood meeting, the neighbors gave Mr. Flores suggestions on what could be built instead of a bar, because they did not feel a bar was an asset to the community. She said he heard their concerns regarding another liquor establishment in an already saturated neighborhood, and at the November 16, 2009, meeting the Association voted not to support the bar. She asked those from the neighborhood who were present at the meeting to stand and show that the community did not want the bar.

Council Member Romero thanked Ms. Quintero. She said she looked at the letters that came in while deliberating and thinking about reasons why the neighborhood voted against the bar. She said she felt strongly that the bar should not be located there because South Sixth Avenue diverted into the neighborhood. It was not a commercial area, as it went from Irvington Road into Sixth Avenue inside of the neighborhood. The Old Nogales Highway continued on what used to be Sixth Avenue, and the area was surrounded by residences, so location was a big issue for her. She also mentioned that when the previous bar was open there were many littering issues, many accidents, much loitering after the bar closed, much yelling and screaming, and much crime in the area.

It was moved by Council Member Romero, duly seconded, to forward liquor license application 5b6 to the Arizona State Liquor Board with a recommendation for denial.

Mayor Walkup asked if there was any discussion.

Council Member Kozachik said it was a difficult case for him because the applicants did it right. They engaged the neighborhoods and the community; they were investing their own money, their own time and their own resources in developing a small locally-owned business. He said he would feel hypocritical to ignore the pleas of the neighborhoods because there were issues of saturation and crime in the area and they needed to listen to the wishes of the surrounding neighborhood. He commented that even though the applicants did a great job, they were investing in the community and doing what was asked of them. He said he had to default to the neighborhood and support Council Member Romero in her motion.

The motion to forward liquor license application 5b6 to the Arizona State Liquor Board with a recommendation for denial was carried by a voice vote of 7 to 0.

Mayor Walkup commented that the applicant did a good job and suggested there was a possibility of a better location that would be more compatible with the neighborhoods. He stated the neighbors that came that evening were very conscientious about their neighborhood and, as far as he knew, had never given the Council bad advice in the last eleven years. He emphasized that it was a tough decision, but an appropriate one.

(Note: Council Member Uhlich departed at 6:35 p.m.)

(Note: Vice Mayor Glassman departed at 6:38 p.m. and returned at 6:40 p.m.)

6. CALL TO THE AUDIENCE

Mayor Walkup announced this was the time any member of the public was allowed to address the Mayor and Council on any issue except for items scheduled for a public hearing. Speakers were limited to three-minute presentations.

- a. Rome Hamner, representing Tucson's Japanese Drumming Ensemble, spoke about the social benefits of the Tucson Arts and Culture Industry as well as its importance in the area's economy. A dancing presentation was given in honor of the Tucson Tango Festival taking place March 4 through March 8, 2010.
- b. Stuart Thomas spoke in support of Access Tucson, which he considered a Tucson treasure and democracy on television. He asked about a line item on his cable bill and wondered where those funds were spent.

Vice Mayor Glassman directed the City Attorney to provide Mr. Thomas with a copy of the cable license agreement to answer some of his questions.

- c. Joe Sweeney spoke in support of Access Tucson. He also spoke about the costs associated with illegal aliens.

- d. Barbara Whitaker, Chair of the Silverbell Corridor Neighborhood Committee and member of the Citizens' Task Force for the Silverbell Road Widening Project, spoke about balancing high-density development with preserving the character of the Silverbell Corridor.
- e. Rudy Flores spoke of his disappointment in not getting to meet with his Council Member regarding his liquor license application even after repeated requests.

7. CONSENT AGENDA – ITEMS A THROUGH E

Mayor Walkup announced the reports and recommendations from the City Manager on the Consent Agenda were received into and made part of the record. He asked the City Clerk to read the Consent Agenda.

A. TRANSPORTATION: ACQUISITION OF RIGHT-OF-WAY FOR THE GOLF LINKS ROAD AND KOLB ROAD INTERSECTION IMPROVEMENT PROJECT

- 1. Report from City Manager FEB23-10-80 WARD 4
- 2. Resolution No. 21482 relating to transportation; authorizing the City Manager to acquire by negotiation, and the City Attorney to condemn if necessary, certain real property located at Golf Links Road and Kolb Road for completion of an intersection improvement project; and declaring an emergency.

B. INTERGOVERNMENTAL AGREEMENT: WITH THE REGIONAL TRANSPORTATION AUTHORITY FOR THE GOLF LINKS ROAD/KOLB ROAD INTERSECTION IMPROVEMENT PROJECT

- 1. Report from City Manager FEB23-10-85 WARD 4
- 2. Resolution No. 21483 relating to Intergovernmental Agreements; authorizing and approving the execution of an Intergovernmental Agreement between the City of Tucson and the Regional Transportation Authority of Pima County (RTA) for the Golf Links Road/Kolb Road Intersection Improvement Project; and declaring an emergency.

C. CITY VEHICLES: ANNUAL APPROVAL OF EXEMPTION OF CERTAIN CITY VEHICLES FROM BEARING IDENTIFYING MARKINGS

- 1. Report from City Manager FEB23-10-84 CITY-WIDE
- 2. Resolution No. 21484 relating to city vehicles; pursuant to A.R.S. Section 38-538.03(B), exempting certain City motor vehicles from the requirement that they bear markings identifying them as City vehicles; making this exemption effective from February 27, 2010 through and including February 26, 2011; and declaring an emergency.

D. APPROVAL OF MINUTES

- 1. Report from City Manager FEB23-10-83 CITY-WIDE

2. Approval of minutes for the regular meeting of the Mayor and Council held on October 6, 2009.

E. **INTERGOVERNMENTAL AGREEMENT: WITH YUMA COUNTY SHERIFF'S OFFICE FOR SHARING OF LAW ENFORCEMENT INFORMATION**

1. Report from City Manager FEB23-10-87 CITY-WIDE

This item was continued to the meeting of March 9, 2010 at the request of staff.

It was moved by Council Member Romero, duly seconded, that Consent Agenda Items A through E, with the exception of Item E, which was continued to the meeting of March 9, 2010, be passed and adopted and the proper action taken.

Mayor Walkup asked if there was any discussion. Hearing none, he asked for a roll call vote.

Upon roll call, the results were:

Aye: Council Members Romero, Scott, Fimbres, and Kozachik;
Vice Mayor Glassman and Mayor Walkup

Nay: None

Absent/Excused: Council Member Uhlich

Consent Agenda Items A through E, with the exception of Item E, which was continued to the meeting of March 9, 2010, were passed and adopted by a roll call vote of 6 to 0.

8. **PUBLIC HEARING: (SE-09-11) ACADEMY DEL SOL, INC. – SANTA CLARA AVENUE, R-1 ZONING, SPECIAL EXCEPTION – APPEAL OF ZONING EXAMINER'S DECISION**

Mayor Walkup announced City Manager's communication number 82, dated February 23, 2010, was received into and made part of the record. He also announced it was a public hearing on an Appeal of a decision of the Zoning Examiner regarding a special exception land use case. The applicant was Honorio Ivan Nieto on behalf of eleven area property owners. He asked the City Clerk to read the order of Appeal.

Roger W. Randolph, City Clerk, announced they would begin by having the City Attorney summarize the procedural question presented in the case.

Michael Rankin, City Attorney, informed the Mayor and Council that in hearing the Appeal of the Zoning Examiner's decision, they could consider the following items in making their determination. They could consider the prior decision by the Zoning

Examiner and the record of the proceedings before the Zoning Examiner, which were included in their materials; the testimony and evidence presented to the Mayor and Council at the evening's public hearing; and the communication and material submitted by the City Manager.

Mr. Randolph announced the Zoning Examiner would first present a report in summary of the request.

Peter Gavin, Zoning Examiner, stated the request before the Mayor and Council was for an Appeal of his decision to approve a conversion of an existing daycare and preschool to a kindergarten through sixth grade charter school at the northwest corner of Santa Clara Avenue and Calle Aragon. The subject site was located approximately a quarter mile south of Valencia Road, and midway on Twelfth Avenue to the east, and I-19 to the west.

Mr. Gavin reported as background and findings of fact, the existing daycare and preschool had been in operation for over twenty years with a maximum capacity of about ninety children. He said the proposed charter school was licensed for two hundred fifty students by the State. However, as a condition of his approval for the proposed charter school, the enrollment would be limited to a maximum of one hundred students, to which the applicant had agreed. Therefore, he said the overall impacts and the amount of traffic generated by the charter school would be comparable to those of the existing preschool and daycare.

Mr. Gavin confirmed that on July 23, 2009, he held a public hearing at which four people testified: Jason Riegert and Joseph Riegert in support, and Ivan Nieto and Monica Ford in opposition to the request. He said during the hearing, the Planning and Development Services Department recommended approval of the charter school. On July 30, 2009, he approved the request based on two major points. First, was that the charter school was in compliance with the *Twelfth Avenue/Valencia Road Area Plan* that encouraged development of child-friendly uses such as schools that complemented the character of the surrounding neighborhood. Second, was that the proposed charter school was comparable in nature with the existing daycare and preschool that had been in operation for the past twenty years.

Mr. Randolph announced the order of the Appeal was going to begin with the Appellant presenting their Appeal to the Mayor and Council. After which, he said, City staff could respond if they desired and then they would open the public hearing to receive input from the public. He stated at that time, the Mayor and Council could direct questions to the parties appearing before them. Then upon close of the public hearing, the Mayor and Council could discuss the case and reach their decision. He asked the Appellant, Ivan Nieto, to present the Appeal.

Ivan Nieto said regarding Item C of the Zoning Examiner's decision, he did not understand how the vehicle and pedestrian access to the educational-use site had to be from a street designated as a major street by the *Major Street and Routes Plan* or from a

local street other than the internal residential neighborhood street from the site zoned C-1 or more respective zoning. He asked if Santa Clara Avenue was considered a main street in that case.

Mr. Gavin replied Santa Clara Avenue was not considered a main street, it was considered a local street.

Mr. Nieto asked if the charter school had to be on a main street.

Mr. Gavin said what Mr. Nieto was referring to was Item E of the Performance Criteria in the *Land Use Code (LUC)*. He said that as part of the special exception, he had the authority and power to waive that requirement. The reason he waived the requirement was, as he mentioned earlier, the proposed charter school was comparable with the daycare and preschool.

Mr. Nieto asked if the area of the proposed charter school was considered a flood zone.

Mr. Gavin replied the building in question was not in a flood zone at that time.

Mr. Nieto acknowledged his girlfriend, Monica Ford, stating she worked for the existing daycare center. He said he appealed the decision because he thought it was wrong to close the existing daycare and put people out of a job. He understood that the *Area Plan* supported bringing in more schools, but asked if that meant closing a school to bring in another. He asked how many schools had been erected in the neighborhood since the *Area Plan* went into effect. He said he had a list of six schools in the area, three charter schools, a Math and Science Academy at Lerdo Road and Twelfth Avenue, San Miguel Catholic School at Lerdo Road and San Fernando Road, and Maranatha Christian Academy at Twelfth Avenue and Los Reales Road, plus three public schools, Santa Clara Elementary School, Elvira Elementary School and Challenger Middle School. He said his son would be attending a public school and for another charter school to be in the area was not necessary.

Mr. Nieto said he had lived on West Calle Casas Lindas all his life and for the last six or seven years, he attended the church where the Academy Del Sol would be replacing the daycare. He said the neighborhood was never informed of the proposed charter school and never took a vote on it. He said church members took a vote regarding the proposed charter school, but the church membership was only about ten percent of the neighborhood residents. He said the neighborhood was ill informed and the only reason he knew about the charter school was because he attended the church. He said he did not think the church understood the burden to the neighborhood because they did not live there.

Mr. Nieto also said traffic for a daycare and a charter school was different. He presented photographs to the Mayor and Council showing three entrances in and out of the church parking lot. He said the south entrance had been blocked with rocks as a favor

to the homes in front of the church to limit traffic in that area. He emphasized that showed there was already a traffic burden to the community. He expressed concern about public school funding and news he had heard about public school children having to share books and the effect that charter schools had on funding. He mentioned it was the second location for the charter school. He stated the neighborhood did not need another charter school.

Mr. Randolph asked if City staff had any response prior to the public hearing.

Mr. Gavin said he did not have any response at that time.

Mayor Walkup opened the public hearing and announced that speakers would be limited to a five-minute presentation.

Pastor Jimmy Nelson, Hope United Methodist Church, said it had not been an easy decision when he made the suggestion to the congregation to look at some alternatives for the building. He confirmed The Learning Tree Daycare and Preschool had been there for more than twenty years, and he had been at the church three and a half years. He said he had asked members that had been there far longer than twenty years and they said The Learning Tree had its ups and downs since it first went into operation, and unfortunately the downs had been substantial. He said starting in February 2009, the downs were very substantial. They were a congregation of eighty-three people and they reached out to the community in every way they could in the ministry. He said their congregation had subsidized The Learning Tree anytime there was a downturn; but unfortunately in the current economic climate, the downturn has been far greater than those before. He said as Pastor, he had to consider if it was something the congregation was going to be able to continue to support. Over the last year the Church supported and underwrote about eight to ten thousand dollars for The Learning Tree, and that was a lot of money for a congregation of eighty-three.

Pastor Nelson stated they wanted to be a ministry to the neighborhood, the youth and children, but unfortunately, childcare was problematic. They might gain three new children and lose two, they gained two more and lost four; and so at a church meeting the congregation voted overwhelmingly that after twenty years of making the effort, maybe it was time to try something new. He said it was hurtful to all of them. They did not want to hurt the community but when there was a potential to have one hundred children and twenty to twenty-five were enrolled, and they were not even there every day or all day, then as pastor he could not go to the members and ask them to continue to underwrite to that extent. He said if they had something like a charter school that was stable, all of their money could go into the community and ministry. He said he was a revitalizing pastor and they were going to be working and reaching out into the community in the very near future and had been talking about how to best serve the community. He appreciated the Appeal from the neighbors to keep The Learning Tree open, but they were not getting enough tuition to support it.

Pastor Nelson said other pastors were faced with similar circumstances. Because of the economy, things such as food pantries were empty and they were trying to fill them. He said Hope United Methodist Church was not the only childcare on the down turn. He talked to several pastors over the past few months and their attendance was down because people who received Department of Economic Security (DES) funds, which were about ninety percent for The Learning Tree, had lost their jobs, lost their funding, and lost their child care. The Learning Tree tended to be very low priced as they accepted the DES payment with only a small co-pay.

Pastor Nelson concluded by saying he was a youth and children's ministry pastor at his last church so it was a hurtful situation. He hoped that once the church became more financially stable they would be able to erect a new education building and put childcare back into the community. He said first they had to stabilize the church by stabilizing their finances and it would be a sad thing if they lost The Learning Tree, did not have a charter school and people got so upset that they lost a church in the community. He said Hope United Methodist served the community well and had for fifty-six years. He confirmed it was a very painful decision, but thought it was the right one.

Jason Riegert, Academy Del Sol Charter School, asked that his wife Sarah, the Director of the school, join him. He said there were several things added to Mr. Nieto's Appeal that he did not see in the original letter. He said he would try to address the things in the letter and those just brought up. He mentioned that people speaking earlier in the evening were discussing over saturation of certain businesses and too much alcohol in an area, but he never remembered anyone saying there were too many schools or options for education. He said he loved to hear there were choices, if one did not find what they were looking for in school A, they could go to school B. He stated standards of excellence were very high for Academy Del Sol. In order to receive a top score in the school, students must have a ninety-five percent or better, they stressed academics.

Mr. Reigert said they were a fine arts and practical life school. He explained they were not only bringing in the arts but also bringing in making choices that would affect student lives and lives around them and that was something not found at every charter school. Charter schools were a choice, they understood they would not get every student, but they were going to offer their services to the students and families who would like to be at Academy Del Sol. He said they looked forward to serving the community.

Mr. Riegert said he grew up in Ward 1. He said he was born, raised and graduated from high school in Ward 1 and it was important to him to be located there. He indicated the church site was their first choice, but when they realized the process was taking longer than expected, they found a location for site two on Broadway between Columbus Boulevard and Swan Road. He said they had twenty-five students who came from Ward 1 taking forty minutes by bus to get to that location. He stated they spent forty-five thousand dollars of their budget to make sure they kept their promise to the parents who signed the paperwork sending their precious children to the school that he would find a way for them to get their education at Academy Del Sol. He stated it was his utmost priority to keep his word.

Sarah Riegert, Owner and Director of Academy Del Sol, said they were a new school only existing for about seven months. She said at the present time they served sixty-four children in grades kindergarten through sixth grade. Initially they did not believe they would be able to set up the school in Ward 1, and through a laborious process they ended up somewhere else, but their goal was still to serve the community in Ward 1. She said the Appeal was erroneous in many respects. It was listed that there were three charter schools in the area, when in actuality, two of them were private schools and were not options for many people in the current economic phase. She said the petitioner in his report stated that because public schools were in such disarray, he did not feel there was really a need for so many charter schools.

Ms. Reigert said she believed he had made their point, which was that charter schools offered competition that was needed when considering public schools. She said that it was here nor there where the funding came from or how that worked, but they truly believed that a charter school was needed in that community.

Mr. Reigert spoke again and said Mr. Nieto mentioned how there would be a loss of jobs from closing the daycare. He stated the school was going to employ teachers and staff members who would be monitors and help with the front desk. He thought there were three or four individuals currently working at the daycare and those jobs would be quickly replenished in the school setting. In fact with one hundred students they would have more jobs than the current daycare.

Mr. Riegert addressed the comment about the neighborhood not being informed by stating they mailed out notices to the area homes within the three hundred foot radius notifying them of a meeting regarding their request for an exception to the *Land Use Code*, stating it was part of the exception process.

Monica Ford said she grew up in the Elvira Neighborhood, and she attended the district public schools in the area. She said she was bussed to middle school and high school, but went to the elementary school in the neighborhood. She worked at The Learning Tree Christian Preschool/Daycare Center down the street from her house and it was where her son also attended. She said it was in the same building where they wanted to put the charter school. She said she could understand if the building was vacant. But it was not vacant; it was occupied. She stated she could see if they closed the daycare to put in something else, but to kick them out to have another school seemed greedy to her.

Ms. Ford said they had three grade schools, one middle school and three charter schools in the area, plus all the high school and middle school bus stops around the neighborhood. She indicated the schools started and ended at a set time, so the neighborhood was jammed packed with cars, buses and pedestrians in the mornings and afternoons, and that was without the extra school. She said the daycare did not bring that kind of traffic because parents brought their kids in anytime from seven to ten in the morning and then picked them up throughout the day until six o'clock in the evening. She explained they already had problems with drivers speeding up and down the neighborhood streets and turning their corners.

Ms. Ford said she lived one street away from Santa Clara Avenue and Valencia Road and drivers were constantly using her driveway, speeding up and backing out. She said they had actually had their wall hit once and that was due to the traffic from the schools. She mentioned the lights on Santa Clara Avenue and Valencia Road did not have an arrow to turn south and that helped some with the traffic, but the pedestrian sign blinked so fast one could not make it to the middle of the street before it stopped. There was no button to push to have the walk sign pop up again and that she thought was very dangerous.

Norma Mendoza stated she thought it was a great idea to have a charter school in the neighborhood, but they had enough schools already. She did not believe they were a good occupancy to the limit where more students could still go to those schools. There was a private school where her son attended and that school charged by income level, so during economic times they had scholarships that helped families. It helped her because she was a single parent and could not afford the tuition.

Ms. Mendoza said her main concern was safety for the children and for the residents. She confirmed what Ms. Ford mentioned about no arrow going north on Santa Clara Avenue and the congested traffic in the area. She said she walked a lot in the neighborhood because she did not drive and if she was walking on Twelfth Avenue to cross Santa Clara Avenue going west it did get very congested. She said she could not even see to the other side if cars were coming or not and a minimum three days a week she could wait there for ten minutes just to cross the street to get to her residence on West Calle de Casas Lindas. She said it was not only the school traffic, but there was casino traffic also coming from the south. She asked, if the charter school opened, what the City was going to do to improve congestion in the area for the safety of the residents in the community.

Mayor Walkup asked if there was anyone else who wanted to speak on the subject. There was no one.

It was moved by Council Member Romero, duly seconded, and carried by a voice vote of 6 to 0 (Council Member Uhlich absent/excused) to close the public hearing.

Mr. Randolph announced that, at this point the Mayor and Council could discuss the item, or they could question the individuals that spoke, or they could render a decision.

Mayor Walkup asked the Council if they had any questions or any rebuttals for any comments that were made. There were none.

Council Member Romero said she appreciated everyone's time invested in the hearing. She said she thought Mr. Nieto and Ms. Ford would be a wonderful new voice in their neighborhood association. She understood the reasons why they were concerned. One reason was jobs in the area; she thought the new charter school would provide jobs and hopefully the jobs would be open to neighborhood residents. She stated if the applicants were amenable to that it was good and helpful for the neighborhood to be able to walk to work.

Council Member Romero said another concern was the transportation issue. She explained there were plans her office had been working on with the Elvira Neighborhood to alleviate congestion in the area. She said the Mayor's Office, together with Ward 1, put HURF (Highway User Revenue Funding) funds to work to take care of some of the transportation issues in the neighborhood. Her office had also applied to the Tohono O'Odham Nation for some funds to ease transportation concerns on Los Reales Road from Santa Clara Avenue to Old Nogales Highway, so she said there would be movement in infrastructure improvements in that area.

Council Member Romero said she thought Mr. Gavin established a proper number of students for the charter school as it would not change the amount of people going to drop off their children in the area. She hoped there would be continued communication with the Elvira Neighborhood Association, residents, Mr. Nieto, Ms. Ford, the church and the charter school to make the community much better. She said she knew that was what they all had in mind.

It was moved by Council Member Romero, duly seconded, to affirm the Zoning Examiner's decision, by denying the Appeal and directing the City Clerk to send the Applicant a written letter with the decision and stated findings.

Mayor Walkup asked if there was any further discussion. Hearing none, he asked for a voice vote.

The motion to affirm the Zoning Examiner's decision, by denying the Appeal and directing the City Clerk to send the Applicant a written letter with the decision and stated findings was carried by a voice vote of 6 to 0 (Council Member Uhlich absent/excused).

9. ZONING: (C15-09-03) RAYTHEON ANNEXATION DISTRICT, COUNTY CI-2, CUZ-1 AND RSZ ZONES TO CITY I-2, CUZ-3 AND I-2 RESTRICTED ZONES, CITY MANAGER'S REPORT, DIRECT ORDINANCE ADOPTION

Mayor Walkup announced City Manager's communication number 81, dated February 23, 2010, was received into and made part of the record. He also announced it was a request to rezone the recently annexed property located east of Nogales Highway and southwest of Tucson International Airport. The Zoning Examiner and staff recommended approval subject to certain conditions.

Mayor Walkup asked the City Clerk to read Ordinance 10763 by number and title only.

Ordinance No. 10763 relating to zoning: establishing original City zoning in the area located east of Nogales Highway and southwest of Tucson International Airport in Case C15-09-03, Raytheon Annexation District, which was annexed to the City of Tucson by Ordinance No. 10689 adopted on August 5, 2009; County CI-2, CUZ-1, and RSZ zones to City I-2, CUZ-3, and I-2 Restricted zones: and setting an effective date.

It was moved by Council Member Fimbres, duly seconded, to approve the request for original City zoning as recommended by the Zoning Examiner and pass and adopt Ordinance 10763.

Mayor Walkup asked if there was any discussion. Hearing none, he asked for a roll call vote.

Upon roll call, the results were:

Aye: Council Members Romero, Scott, Fimbres, and Kozachik;
Vice Mayor Glassman and Mayor Walkup

Nay: None

Absent/Excused: Council Member Uhlich

Ordinance 10763 was declared passed and adopted by a roll call vote of 6 to 0.

10. WATER: ADOPTING TUCSON WATER'S FINANCIAL PLAN FOR FISCAL YEARS 2010 THROUGH 2015

Mayor Walkup announced City Manager's communication number 86, dated February 23, 2010, was received into and made part of the record. He asked the City Clerk to read Resolution 21485 by number and title only.

Resolution No. 21485 relating to Tucson Water; authorizing and adopting the Tucson Water Financial Plan and Conservation Fund Financial Plan for the period from fiscal year 2010 to fiscal year 2015; and declaring an emergency.

It was moved by Council Member Scott, duly seconded, to pass and adopt Resolution 21485.

Mayor Walkup asked if there was any discussion.

Council Member Kozachik stated he noted the property tax was assumed in the Financial Plan and asked the City Manager if the Council was automatically agreeing to that tax being imposed if they approved the resolution.

Michael Rankin, City Attorney, replied negatively; the Mayor and Council still had a separate legislative decision to make, specifically with respect to approving the rates. He said, if ultimately, the Mayor and Council decided not to include the pilot payment in lieu of tax and incorporate it into the rates, then they could make that decision at that time.

Council Member Kozachik congratulated Jeff Biggs, Tucson Water Director, and his staff on a tremendous job keeping the Mayor and Council apprised of the study. He said any concerns he expressed with respect to the Financial Plan were the same he expressed that afternoon. He wondered whether or not they, as a community or a governing body, had really vetted the issue of the capital improvements included in the fifty-seven million dollars to build out for the full allocation of the Central Arizona

Project (CAP) and the forty-eight million dollars for road repair projects. He said that was one hundred five million dollars in capital improvements that were assumed they were going forward with, and the Mayor and Council would probably have to vote for rate increases to accommodate them. He said they spoke about ten million dollars in meter replacements and how, over time, the meters degraded and could actually end up costing the City money. He said he agreed with Vice Mayor Glassman that the City needed to take care of degrading infrastructure, which was twenty-two million dollars of the capital projects listed.

Council Member Kozachik stated he was going to vote 'no' only because he wanted to deliver the message that when it came to capital improvements, Tucson Water was legitimately building into their proforma going forward that they needed to be ahead of those conversations in the future. He explained, for instance, when Regional Transportation Authority (RTA) projects were brought up and discussed there were hidden expenses they were going to have to deal with later on; forty-eight million dollars they legitimately included in the pricing mechanism, fifty-seven million dollars for a CAP allocation that Tucson Water might not even need yet. He said they were correctly looking forward because it was part of their responsibility as an enterprise fund. He said he was encouraging the broader conversations ahead of these financial plans so in the future they were not necessarily buying into capital expenditures realizing that the preponderance of their budget were fixed costs based on debt and debt financing. He stated he just wanted the governing body to address the fact that debt financing was not free and it was going to wind up causing peoples' rates to go up.

Mayor Walkup responded that some members of the Council had been listening to the water story for a number of years and perhaps they had a broader understanding of why capital expenditures for the water enterprise were so important. He stated it had been years that the City had allowed the infrastructure some neglect. He said there was some catch up going on in the Water Department, for mains, for capital improvements and the policy of the City Council to proceed with the full recharge of their CAP allocation. He stated that meant doing whatever it took to make that happen, get back to buying their full allocation and getting it stored if they were not going to use it. He thought the underlying policy was to be prudent, but they had to have an infrastructure that could support the growth of the community.

Mayor Walkup acknowledged it could be expensive, and at the same time hold down the annual increases to as nominal a number as possible. He thought that was what they were doing. He said he was comfortable with the progress they were making on infrastructure improvements within the water system. He said Council Member Kozachik's thoughts were exactly correct; but the Mayor and Council had listened to this story for the past ten years, and he thought it was appropriate action the Council was taking.

Vice Mayor Glassman asked Mr. Biggs to supply the Council Offices with a rate chart comparison as to where the City of Tucson stood relative to the rest of the state. He also asked that the Tucson Water Department supply a box of business cards, similar to the prior year, to each Ward Office demonstrating what the recommended rate increases

looked like and with the rate structure on the back. He said it was something very informative they could pass out to their constituents.

Mayor Walkup asked if there was any further discussion. Hearing none he asked for a roll call vote.

Upon roll call, the results were:

Aye: Council Members Romero, Scott, and Fimbres;
Vice Mayor Glassman and Mayor Walkup

Nay: Council Member Kozachik

Absent/Excused: Council Member Uhlich

Resolution 21485 was declared passed and adopted by a roll call vote of 5 to 1.

Roger W. Randolph, City Clerk, announced that a second vote was necessary for the purpose of the emergency clause only.

Mr. Rankin explained that for an item to be adopted as an emergency, it required five Council votes. He said they had already adopted the resolution, which approved the plan by a vote of five to one; but that vote only included four Council votes. In those situations what was frequently done was to ask for a separate vote on the emergency clause, since the item was actually passed. He said the affect of that was that the decision of the Mayor and Council went into effect right away, which, in this instance, helped Tucson Water proceed with the next steps in the statutory process for filing the data with the City Clerk, for establishing the rate, scheduling the notice of intention and the public hearing, etc. He explained it also relieved the City of certain publication requirements which were costly to the City Clerk's Office.

For the purpose of the emergency clause, Mayor Walkup asked for a roll call vote.

Upon roll call, the results were:

Aye: Council Members Romero, Scott, Fimbres and Kozachik;
Vice Mayor Glassman and Mayor Walkup

Nay: None

Absent/Excused: Council Member Uhlich

The emergency clause for Resolution 21485 was declared passed by a roll call vote of 6 to 0.

11. APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS

Mayor Walkup announced City Manager's communication number 79, dated February 23, 2010, was received into and made part of the record. He asked for a motion to approve the appointments in the report.

It was moved by Vice Mayor Glassman, duly seconded and carried by a voice vote of 6 to 0 (Council Member Uhlich absent/excused), to approve the reappointment of Danielle Flink to the Gay, Lesbian, Bisexual and Transgender Issues Commission.

Mayor Walkup asked if there were any personal appointments to be made.

Council Member Scott announced her personal appointment of Vanessa Richter to the Tucson-Pima County Metropolitan Energy Commission.

Council Member Fimbres announced his personal appointment of Imelda Cuyugan to the Tucson-Pima County Metropolitan Energy Commission and Robert Lanning to the Board of Adjustment.

12. ADJOURNMENT: 7:40 p.m.

Mayor Walkup announced the next regularly scheduled meeting of the Mayor and Council would be held on Tuesday, March 9, 2010, at 5:30 p.m., in the Mayor and Council Chambers, City Hall, 255 West Alameda, Tucson, Arizona.

MAYOR

ATTEST:

CITY CLERK

CERTIFICATE OF AUTHENTICITY

I, the undersigned, have read the foregoing transcript of the meeting of the Mayor and Council of the City of Tucson, Arizona, held on the 23rd day of February 2010, and do hereby certify that it is an accurate transcription.

DEPUTY CITY CLERK

RWR:jr:sac