

BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: March 15, 2016

Title: Co9-03-03 Lawyers Title of Arizona, Inc. 7638-T - La Cholla Boulevard Rezoning (Closure/Time Extension)

Introduction/Background:

A) Proposal to close a 7.63-acre rezoning from SR to CR-5; if not closed then, B) Applicant requests two consecutive five-year time extensions (10 years total) for the rezoning which was approved by the Board of Supervisors on January 17, 2006 and expired on January 17, 2011.

Discussion:

The applicant did not request a time extension for the rezoning prior to the expiration date and 10 years has elapsed since the date of rezoning approval. Therefore, the rezoning case must first be considered by the Board of Supervisors for closure prior to consideration of the time extensions which have now been requested. The applicant indicates that the economic downturn, weak multi-family market, and uncertainly caused by the Magee Road project caused delay in both requesting the time extensions and completing rezoning conditions for the proposed 128-unit apartment complex.

Conclusion:

A time extension is warranted due to the historical economic recession. The proposed apartment complex remains an appropriate use at this location in the vicinity of other apartment developments and the Foothills Mall. Concurrency of infrastructure exists as per agencies that have reported. Road projects have improved capacity.

Recommendation:

Staff recommends: A) Against closure of the rezoning; and B) Approval of two consecutive five-year rezoning time extensions subject to original and modified conditions.

Fiscal Impact:

N/A

Board of Supervisor District:							
⊠ 1	□ 2	□ 3	□ 4	□ 5			
Department: Development Services Department - Planning Telephone: 724-9000							
Department Director Signature/Date:							
Deputy Cou	inty Administrator	Signature/Date	Alusay	a John Ber	nal 2/24/16		
County Administrator Signature/Date: C. Phillelberry 2/24/16							



TO: Honorable Ally Miller, Supervisor, District/#

FROM: Chris Poirier, Interim Planning Official Public Works-Development Services Department-Planning Division

DATE: February 22, 2016

SUBJECT: <u>Co9-03-03</u> <u>LAWYERS TITLE OF ARIZONA, INC. 7630-T – LA CHOLLA</u> <u>BOULEVARD REZONING</u>

The above referenced Rezoning Closure / Time Extension is within your district and is scheduled for the Board of Supervisors' **TUESDAY**, **MARCH 15**, **2016** hearing.

<u>REQUEST</u>: A. Proposal to **close** a 7.63-acre rezoning from SR (Suburban Ranch) to CR-5 (Multiple Residence).

B. A five-year **time extension** of a 7.63-acre rezoning from SR (Suburban Ranch) to CR-5 (Multiple Residence).

- OWNER: Landmark Title TR18261 Attn.: Niner Holdings 1, LLP 12500 Cloud Lane Los Angeles, CA 90049
- AGENT: The Planning Center Attn: Tim Craven, Planner 110 S. Church Ave., Suite 6320 Tucson, AZ 85701

DISTRICT: 1

STAFF CONTACT: David Petersen

PUBLIC COMMENT TO DATE: As of February 22, 2016, staff has received no public comments.

STAFF RECOMMENDATION: Staff recommends **A) AGAINST CLOSURE; AND B) APPROVAL** OF TWO CONSECUTIVE FIVE-YEAR TIME EXTENSIONS SUBJECT TO ORIGINAL AND MODIFIED STANDARD AND SPECIAL CONDITIONS.

MAEVEEN MARIE BEHAN CONSERVATION LANDS SYSTEM DESIGNATIONS: The site is located outside of the Maeveen Marie Behan Conservation Lands System (MMBCLS).

CP/DP/ar Attachments



BOARD OF SUPERVISORS MEMORANDUM

Subject: Co9-03-03

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FOR MARCH 15, 2016 MEETING OF THE BOARD OF SUPERVISORS

TO: HONORABLE BOARD OF SUPERVISORS

FROM: Chris Poirier, Interim Planning Official Public Works-Development Services Department-Planning Division

DATE: February 22, 2016

ADVERTISED ITEM FOR PUBLIC HEARING

REZONING CLOSURE /TIME EXTENSION

A. Rezoning Closure

<u>Co9-03-03</u> <u>LAWYERS TITLE OF ARIZONA, INC. 7638-T – LA CHOLLA BOULEVARD</u> <u>REZONING</u>

Proposal to **close** Co9-03-03, a 7.63-acre rezoning from SR (Suburban Ranch) to CR-5 (Multiple Residence) located on the northeast corner of La Cholla Boulevard and Old Magee Trail. The rezoning was conditionally approved in 2006 and expired on January 17, 2011. Staff recommends **AGAINST CLOSURE**. (District 1)

B. Rezoning Time Extension

<u>Co9-03-03</u> <u>LAWYERS TITLE OF ARIZONA, INC. 7638-T – LA CHOLLA BOULEVARD</u> <u>REZONING</u>

Request of Landmark Title TR 18261, represented by The Planning Center, for two consecutive five-year time extensions, one of which is retroactive to the January 17, 2011 expiration date, for the above-referenced rezoning from SR (Suburban Ranch) to CR-5 (Multiple Residence). The subject site was rezoned in 2006. The site is approximately 7.63 acres located on the northeast corner of La Cholla Boulevard and Old Magee Trail. Staff recommends APPROVAL OF TWO CONSECUTIVE FIVE-YEAR TIME EXTENSIONS SUBJECT TO ORIGINAL AND MODIFIED STANDARD AND SPECIAL CONDITIONS.

(District 1)

STAFF RECOMMENDATION

Staff recommends **AGAINST CLOSURE** of the rezoning and **APPROVAL** of two consecutive fiveyear time extensions (a total of ten years) to January 17, 2021 as per the applicant's request for the 7.63-acre rezoning from SR (Suburban Ranch) to CR-5 (Multiple Residence), subject to original and modified standard and special conditions as follows:

- 1. Submittal of a development plan if determined necessary by the appropriate County agencies.
- 2. --- Recording of a covenant holding Pima County harmless in the event of flooding.
- 32. Recording of the necessary development related covenants as determined appropriate by the various County agencies.
- 4<u>3</u>. Provision of development related assurances as required by the appropriate agencies.
- 54. Prior to the preparation of the development related covenants and any required dedication, a title report (current to within 60 days) evidencing ownership of the property shall be submitted to the Development Services Department, Document Services.
- 6<u>5</u>. There shall be no further lot splitting or subdividing <u>of residential development</u> without the written approval of the Board of Supervisors.
- 76. Transportation conditions:
 - A. The property owner(s)/developer(s) shall participate in the Improvement District for Magee Road/Carmack Wash and Drainage improvements.
 - B. The property owner(s)/developer(s) shall dedicate to Pima County appropriate rightof-way for La Cholla Boulevard adjacent to the subject property to allow for 100 feet east half right-of-way (200 feet total).
 - C<u>A</u>. The property owner(s)/developer(s) shall accept responsibility for the maintenance, control, safety and liability of privately owned roads, parking areas, drives, physical barriers, drainageways and drainage easements.
 - DB. The property owner(s)/developer(s) shall provide off-site improvements to La Cholla Boulevard and <u>Old</u> Magee Road <u>Trail</u> as determined necessary by the Traffic Impact Study and the Department of Transportation.
 - EC. The owner(s)/developer(s) shall not use McCarty Road for construction or permanent access.
- 87. Flood Control conditions:
 - A. Drainage shall not be altered, disturbed or obstructed without the written approval of the Flood Control District.
 - B. The property owner(s)/developer(s) shall provide all necessary on-site and off-site drainage related improvements that are needed as a result of the proposed development of the subject property. The location, design and construction of said improvements shall be subject to the approval of the Flood Control District.
 - C. The property owner(s)/developer(s) shall dedicate right-of-way or easements for drainage purposes to the Flood Control District, as determined necessary during the development plan/subdivision plat review.

- D. The property owner(s)/developer(s) shall comply with detention/retention conditions and restrictions, or provide an in-lieu fee, as stated in the Floodplain Management Ordinance since the property lies within a balanced or critical basin.
- 98. Wastewater Management Reclamation conditions:
 - A. The owner(s)/developer(s) shall construe no action by Pima County as a commitment to provide sewer service to any new development within the rezoning area until Pima County executes an agreement with the owner / developer to that effect.
 - B. The owner(s)/developer(s) shall obtain written documentation from the Pima County Wastewater Management Department that treatment and conveyance capacity is available for any new development within the rezoning area, no more than 90 days before submitting any tentative plat, development plan, sewer improvement plan or request for building permit for review. Should treatment and / or conveyance capacity not be available at that time, the owner / developer shall have the option of funding, designing and constructing the necessary improvements to Pima County's public sewerage system at his or her sole expense or cooperatively with other affected parties. All such improvements shall be designed and constructed as directed by the Pima County Wastewater Management Department.
 - C. The owner(s)/developer(s) shall time the construction of all new development within the rezoning area to coincide with the availability of treatment and conveyance capacity in the downstream public sewerage system.
 - D. The owner(s)/developer(s) shall connect all new development within the rezoning area to Pima County's public sewer system in the manner specified by the Wastewater Management Department in its capacity response letter and as specified by the Development Services Department at the time of review of the tentative plat, development plan, sewer construction plan, or request for building permit.
 - E. The owner(s)/developer(s) shall fund, design and construct all on-site sewers necessary to serve new development within the rezoning area.
 - F. The owner(s)/developer(s) shall design and construct the off-site and on-site sewers to accommodate flow-through from any properties adjacent and up-gradient to the rezoning area that do not have adequate access to Pima County's public sewer system and accommodate the anticipated wastewater flow from any properties down-gradient from the rezoning area that can reasonably be served by those sewers, in the manner specified at the time of review of the tentative plat, development plan, sewer construction plan or request for building permit.
 - G. The owner(s)/developer(s) shall complete the construction of all necessary public and/or private sewerage facilities as required by all applicable agreements with Pima County, and all applicable regulations, including the Clean Water Act and those promulgated by ADEQ, before treatment and conveyance capacity in the downstream public sewerage system will be permanently committed for any new development within the rezoning area.

- A. <u>The owner/developer shall not construe any action by Pima County as a commitment</u> to provide sewer service to any new development within the rezoning area until Pima County executes an agreement with the owner/developer to that effect.
- B. The owner/developer shall obtain written documentation from the Pima County Regional Wastewater Reclamation Department (PCRWRD) that treatment and conveyance capacity is available for any new development within the rezoning area, no more than 90 days before submitting any tentative plat, development plan, preliminary sewer layout, sewer improvement plan, or request for building permit for review. Should treatment and conveyance capacity not be available at that time, the owner/developer shall enter into a written agreement addressing the option of funding, designing, and constructing the necessary improvements to Pima County's public sewerage system at his or her sole expense or cooperatively with other affected parties. All such improvements shall be designed and constructed as directed by the PCRWRD.
- C. <u>The owner/developer shall time all new development within the rezoning area to</u> <u>coincide with the availability of treatment and conveyance capacity in the</u> <u>downstream public sewerage system.</u>
- D. <u>The owner/developer shall connect all development within the rezoning area to Pima</u> <u>County's public sewer system at the location and in the manner specified by the</u> <u>PCRWRD in its capacity response letter and as specified by PCRWRD at the time of</u> <u>review of the tentative plat, development plan, preliminary sewer layout, sewer</u> <u>construction plan, or request for building permit.</u>
- E. <u>The owner/developer shall fund, design and construct all off-site and on-site sewers</u> <u>necessary to serve the rezoning area, in the manner specified at the time of review</u> <u>of the tentative plat, development plan, preliminary sewer layout, sewer construction</u> <u>plan, or request for building permit.</u>
- F. The owner/developer shall complete the construction of all necessary public and/or private sewerage facilities as required by all applicable agreements with Pima County, and all applicable regulations, including the Clean Water Act and those promulgated by ADEQ, before treatment and conveyance capacity in the downstream public sewerage system will be permanently committed for any new development within the rezoning area.
- 109. Adherence to the preliminary development plan as approved at public hearing.
- Plants to be used for landscaping and revegetation shall be drought tolerant native species which are compatible with native vegetation endemic to the project area. Under no circumstances shall the following exotic plant species be planted anywhere on the site: Fountain grass (Pennisetum setaceum) Buffelgrass (Pennisetum ciliare) Johnson grass (Sorghum halapense) Giant reed (Arundo donax) Common crabgrass (Digitaria sanguinalis Pampas grass (Cortaderia selloana)

Red brome (Bromus rubens Mediterranean grass (Schismus spp.) Tree of heaven (Ailanthus altissima) African sumac (Rhus lancea) Russian olive (Eleagnus angustifolia) Salt cedar/Tamarisk (Tamarix pertandra & T. ramosissima) Bermuda grass (Cynodon dactylon) excluding sod hybrid Bermuda Lovegrasses (Eragrostis spp.) excluding Plains lovegrass (Eragrostis intermedia)

Upon the effective date of the Resolution, the owner(s)/developer(s) shall have a continuing responsibility to remove buffelgrass (Pennisetum ciliare) from the property. Acceptable methods of removal include chemical treatment, physical removal, or other known effective means of removal. This obligation also transfers to any future owners of property within the rezoning site and Pima County may enforce this rezoning condition against the property owner. Prior to issuance of the certificate of compliance, the owner(s)/developer(s) shall record a covenant, to run with the land, memorializing the terms of this condition.

- 12. The site shall be surveyed for the presence or absence of the cactus ferruginous pygmy-owl by an entity qualified to perform biological surveys and who possesses a valid permit from the U.S. Fish & Wildlife Service to perform such surveys. Surveys shall be done according to the most current protocol approved by the U.S. Fish & Wildlife Service, or a letter shall be provided from the U.S. Fish & Wildlife Service stating that a survey is not required.
- 1311. The northern units shall be limited in height to one (1) story and a maximum of eighteen (18) feet with a minimum twenty (20) foot setback from the northern property line.
- 14. No building permits shall be issued until Magee Road is under construction.
- 1512. The owner(s)/developer(s) shall provide a sixteen (16) foot Equestrian Easement by Garfield Wash; the underpass height shall be fourteen (14) feet to safely accommodate equestrian users.
- 13. In the event the subject property is annexed, the owner(s)/developer(s) shall adhere to all applicable rezoning conditions, including, but not limited to, development conditions which require financial contributions to, or construction of infrastructure, including without limitation, transportation, flood control, or sewer facilities.
- 14. The property owner(s) shall execute and record the following disclaimer regarding Proposition 207 rights. "Property Owner acknowledges that neither the rezoning of the Property nor the conditions of rezoning give Property Owner any rights, claims, or causes of action under the Private Property Rights Protection Act (Arizona Revised Statutes Title 12, chapter 8, article 2.1). To the extent that the rezoning or conditions of rezoning may be construed to give Property Owner any rights or claims under the Private Property Rights Protection Act, Property Owner hereby waives any and all such rights and/or claims pursuant to A.R.S. § 12-1134(I)."

Original condition #2 is recommended for deletion because recording of a "hold harmless" against flooding is no longer a standard requirement requested by the Flood Control District.

Renumbered condition #5 pertaining to Board of Supervisors approval of further lot splitting or subdividing is recommended for modification to limit to the condition to residential development as per current standard.

Old condition #'s 7A and 7B pertaining to participation in the Improvement District for Magee Road/Carmack Wash and drainage and dedication of right-of-way for La Cholla Boulevard are recommended for deletion as the right-of-way has been acquired and the Magee Road/Carmack Wash project has been completed.

Renumbered condition #6B is recommended for modification to refer to potential off-site improvements to Old Magee Trail rather than Magee Road due to the realignment of Magee Road away from the site and the renaming of Magee Road fronting the site to Old Magee Trail.

Deletion of existing conditions and addition of new conditions under renumbered condition #8 are recommended to update Wastewater Reclamation Department conditions to current standards for the required use of sewerage. The deleted conditions are similar to several of the new conditions.

Renumbered condition #10 is recommended to be modified to substitute the listing of prohibited exotic plan species for the current standard language for the on-going requirement to remove invasive buffelgrass from the site as pertains to proposed development plan sites outside of the MMB Conservation Lands System.

Renumbered condition #11 pertaining to height limits and setback requirements has added wording to convey "maximum" and "minimum" for clarity.

Old condition #14, pertaining to prohibiting issuance of permits until Magee Road is under construction is recommended for deletion because the Magee Road project has been completed.

New condition #'s 13 and 14 pertaining to adherence to rezoning conditions upon annexation and waiver of Proposition 207 rights and claims are recommended for addition as current standard conditions.

STAFF REPORT

Staff recommends against closure of the rezoning; but, closure must be considered prior to consideration of a time extension because the owners did not request a time extension prior to the case expiration date of January 17, 2011 and it has been more than 10 years since the date of rezoning approval, January 17, 2006. Staff sent the owners a time expiration warning letter dated August 5, 2010. The current time extension request was received on January 4, 2016. Because of the continued appropriateness of the proposed residential apartment use at the location of the subject site, staff does not believe the case should be closed.

By code, consideration of closure occurs after 10 years has elapsed from the date of rezoning approval and/or if a time extension request has not been received on or before the date of expiration. Both of these factors apply. Also, the initial time limit for approved rezonings is recommended by staff at five years; and five years is the maximum interval of staff recommended time extensions.

Because of the elapsed time, the applicant requests two "concurrent" (consecutive) five-year time extensions. The request letter alludes to the economic downturn, the weak market for multi-family

residences, and the uncertain marketability of the property due to Magee Road improvements as causes for the delayed site development (and completion of rezoning conditions). With the completed road project and the recovering market, the applicant requests to allow the residential apartment development proposed for the rezoning. Approval of the requested five-year time extensions will provide a total of 15 years to complete rezoning conditions from the initial approval date by extending the expiration date to January 17, 2021.

The site is located at the northeast corner of La Cholla Boulevard and Old Magee Trail. The approved rezoning preliminary development plan shows groupings of one- and two-story apartment buildings and associated parking area on the north and south sides of Garfield Wash which runs through the site. The wash is proposed to remain natural with the exception of a box culvert crossing. Support data indicates that 128 units are proposed. One-story apartments are shown along the northernmost boundary adjacent to SR zoning. Renumbered condition #11 limits those units to one story and 18 feet in height, setback a minimum of 20 feet from the northern property line.

The proposed density is higher than current comprehensive plan designation allows by nearly four residences per acre (RAC). Under the Pima Prospers Comprehensive Plan Update, the site was down-planned from Medium High Intensity Urban (MHU) to Medium Intensity Urban (MIU). MIU provides for a variety of housing types including attached dwellings and garden apartments as is proposed for the subject rezoning. However, the allowed density range is a minimum of five and a maximum of 13 RAC. The original proposed density of the 8.22-acre site was 15.57 RAC. With dedication of road right-of-way that has occurred post rezoning approval, the smaller 7.63-acre site is now proposed for 16.78 RAC. Strict conformance with the 13-RAC maximum would call for a reduction of units from 128 proposed to 99.

However, staff does not recommend a reduction in units because it appears that the rezoning entitlement for the undeveloped subject site was overlooked with Pima Prospers Update. The Update eliminated the MHIU category that the site had. High-density developed sites, such as the 200-unit, 13.10-acre condominium complex adjacent to the site, were re-designated Higher Intensity Urban (HIU). That site is developed at 15.27 RAC. Undeveloped sites which did not have a development plan, such as the subject site, were re-designated as MIU. Had the rezoning been recognized, staff would likely have designated the site as HIU which provides for a maximum density as allowed by the requested conforming zoning district.

The proposed use and density is supported by adequate infrastructure, including improved capacity east-west and north-south arterials and would join existing apartment developments to the east and southwest. These complexes are appropriately located near the major Foothills shopping mall that provides service and employment opportunity. There remains a secondary transportation concurrency concern related to over capacity operation of Ina Road one-half mile south of the site. It is operating just over its capacity as noted in the Transportation Report below.

Conditions on the site are the same as when the rezoning was approved. The site contains partially disturbed natural vegetation and one of three parcels contains a residence which would be removed. Adjacent surrounding residential development and vacant property and zoning also remains the same as when the rezoning was approved. However, property to the west across La Cholla Boulevard has now been platted, but not yet developed, under CR-1 zoning.

Denial of the time extension will cause the site to revert to SR zoning which would not conform to the MIU plan designation due to its very low density in an urban setting. Closure of the rezoning would

TRANSPORTATION REPORT

The Department of Transportation has no objection to this time extension request. There is a secondary transportation concurrency issue due to the overcapacity nature of Ina Road within two miles of the site. Ina Road between La Canada and Oracle is within two miles of this site. The current traffic count for this segment is 35,949 average daily trips (ADT) and the capacity is 35,820 ADT. Major roadways in the vicinity of this project have recently been upgraded since the original approval of this rezoning.

La Cholla Boulevard has been widened to a four lane cross section between Magee and Overton. This segment has a current traffic count of 12,403 ADT. Its capacity is 35,820 ADT. La Cholla from Ina Road to Magee Road is a six lane cross section and has a current traffic count of 20,762 ADT. The capacity for this segment is 53,910 ADT. The right-of-way for La Cholla has been acquired, thus condition 7B is met.

Magee Road is a four lane medium volume arterial. Recent improvements have extended the four lane cross section east all the way through to Oracle Road. The capacity of Magee Road is 38,820 ADT and the current traffic count is 17,361 ADT between La Cholla and La Canada.

The Department of Transportation recommends the removal of conditions 7A and 7B as these conditions have been met due to the completion of the Magee Road / Carmack Wash improvements project.

FLOOD CONTROL REPORT

The Regional Flood Control District has reviewed the request and has the no objection to the rezoning time extensions. The District recommends deletion of rezoning condition #2 pertaining to recording of a "hold harmless" covenant.

WASTEWATER RECLAMATION REPORT

The Planning Section of the Pima County Regional Wastewater Reclamation Department (PCRWRD) has reviewed the request for a rezoning time extension and offers the following comments for your use. The subject property was conditionally rezoned from SR (Suburban Ranch) to CR-5 (Multiple Residence) in 2006. The rezoning expired on January 17, 2011. The rezoning is for residential apartments.

The proposed development is within the PCRWRD service area and is tributary to the Tres Rios Water Reclamation Facility via the Canada del Oro Interceptor. The nearest public sewer consists of an 8-inch sewer line (G-84-076) located in the W. Old Magee Tr. right-of-way.

If the decision is made to approve the two 5-year time extensions of the rezoning, the PCRWRD requests the existing wastewater conditions in rezoning Ordinance 2007-16 adopted April 20, 2004 by the Board of Supervisors be replaced with updated conditions under #8 above.

NATURAL RESOURCES, PARKS AND RECREATION REPORT

Natural Resources, Parks and Recreation staff have no objection to this request.

ENVIRONMENTAL PLANNING REPORT

The Office of Sustainability & Conservation has no objection to the requested rezoning time extensions and recommends striking rezoning condition #12 regarding surveys for the cactus ferruginous pygmy-owl (CFPO). No CFPO have been documented in the northwest since 2006. An update to renumbered condition #10 regarding drought tolerant plantings and prohibited exotic plan species to reflect the current standard condition is also recommended.

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UNITED STATES FISH AND WILDLIFE SERVICE REPORT

Staff has not received a response to a request for comments.

WATER DISTRICT REPORT

Metropolitan Water District has not responded to a request for comments.

SCHOOL DISTRICT REPORT

Amphitheater Unified School District has not responded to a request for comments.

FIRE DISTRICT REPORT

Mountain Vista Fire District has not responded to a request for comments.

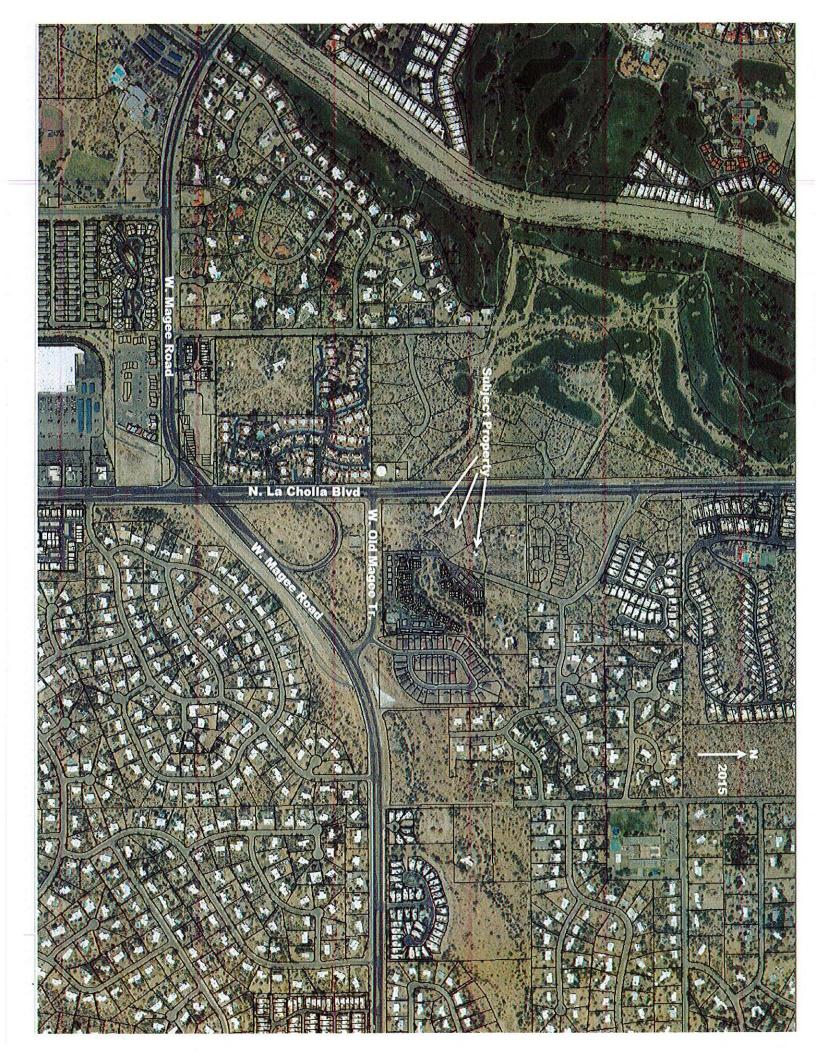
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PUBLIC COMMENT

Notice has been mailed to property owners within 1,000 feet of the rezoning site. To date, no written public comments have been received.

CP/DP/ar Attachments

 c: Landmark Title TR 18261, Attn.: Niner Holdings 1, LLP, 12500 Cloud Lane Los Angeles, CA 90049
The Planning Center, Attn: Tim Craven, Planner, 110 S. Church Ave., Suite 6320 Tucson, AZ 85701
Co9-03-03 File



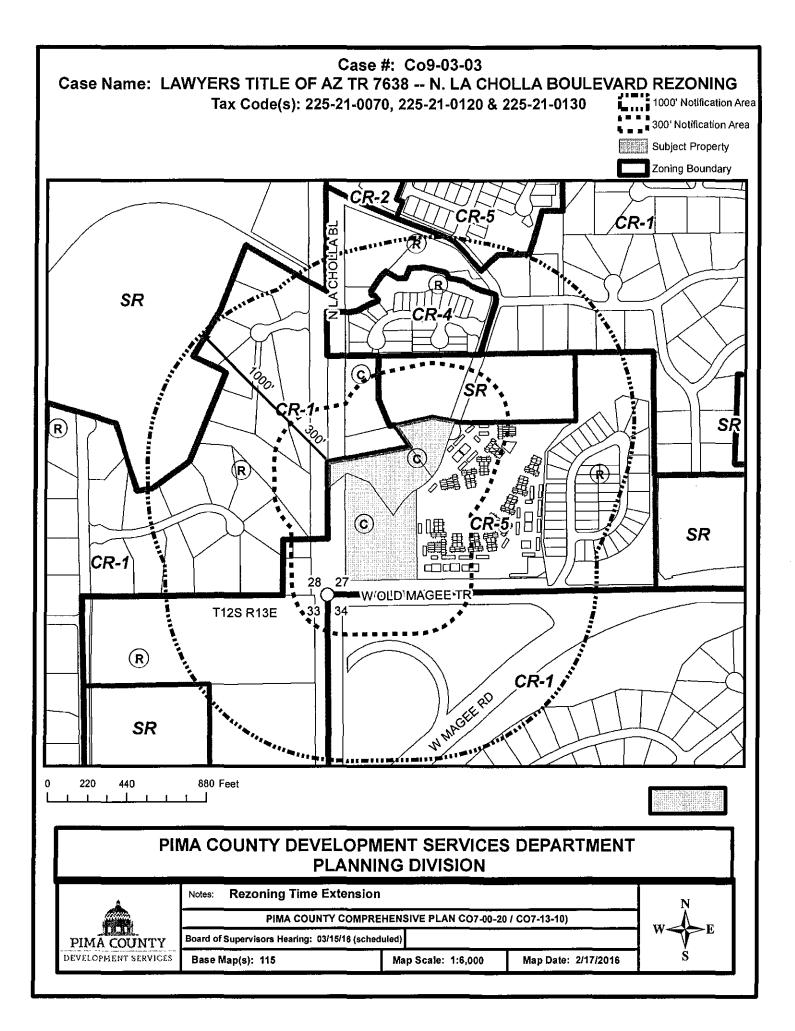
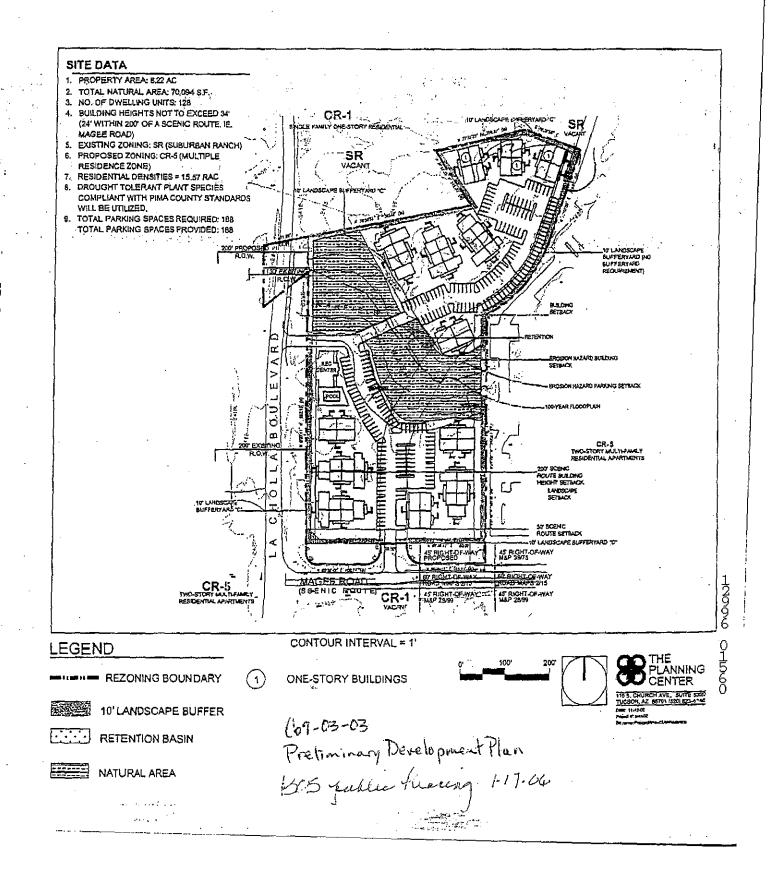


EXHIBIT "B"





January 4, 2016

Chris Poirier Assistant Planning Director Pima County Development Services 201 North Stone, 2nd Floor Tucson, AZ 85701-1207

Subject: Co9-03-03 La Cholla Boulevard Rezoning CHA-01

Dear Chris:

On behalf of Landmark Title Trust 18261, we are requesting two concurrent 5-year time extensions for the rezoning case #Co9-03-03, La Cholla Boulevard Rezoning. The subject site is approximately 8.14 acres at the northeast corner of North La Cholla Boulevard and West Old Magee Trail located in Township 12 South, Range 13 East, Section 27, on County Assessor's Parcel numbers 225-25-0070, 225-21-0120, and 225-21-013A. See enclosed location map.

The rezoning from SR to CR-5 occurred in 2006 (Ordinance 2007-16), prior to a period of economic downturn and a planned road improvement project referred to as the Magee Road realignment. Because of the weak market for the type of multifamily residences, and uncertainty in the marketability of the property created by the scheduled road project, the property remained undeveloped. Now that the road improvement projects have been completed and the market is recovering, the owners are seeking concurrent extensions to allow for development under the current CR-5 zoning conditions.

The parcels have remained unchanged since the approval of the original rezoning ordinance with the exception of parcel 225-21-013A, which was identified in the rezoning ordinance as 225-21-0130, but was split in 2011 for right-of way dedication along La Cholla Boulevard to accommodate the road improvements. The ROW dedication resulted in the reduction of acreage of the entire rezoned property from 8.22 acres in the rezoning ordinance to roughly 8.14 acres today.

If you have any questions, please do not hesitate to contact me.

Sincerely, THE PLANNING CENTER

1 Cour

Tim Craven Planner

- a 110 s church ste 6320 tucson az 85701
- o 520.623.6146
- f 520.622.1950
- w azplanningcenter.com

December 28, 2015

Pima County Development Services Department-Planning Division Public Works Building, 201 N. Stone Avenue, 2nd Floor Tucson, Arizona 85701

RE: Co9-07-16 - La Cholla Boulevard Rezoning Time Extension

To Whom It May Concern:

As the authorized representative for the property owner of the approximately 8.14-acre property, parcel # 225-21-0070, 225-21-0120, and 225-21-013A, located at the northeast corner of La Cholla Boulevard and Old Magee Trail, I hereby authorize The Planning Center to act on our behalf in planning related matters including the rezoning time extension of this site in Pima County.

The parcels are situated in Pima County, Arizona and are located in Township 12 South, Range 13 East, Section 27, Gila and Salt River Base and Meridian.

Sincerely,

Neal Morse, (Trustee) Managing Partner Landmark Title Trust 18261 Attn: Niner Holdings 1 LLP 1515 SW Clifton St Portland, OR 97201-3137

By:

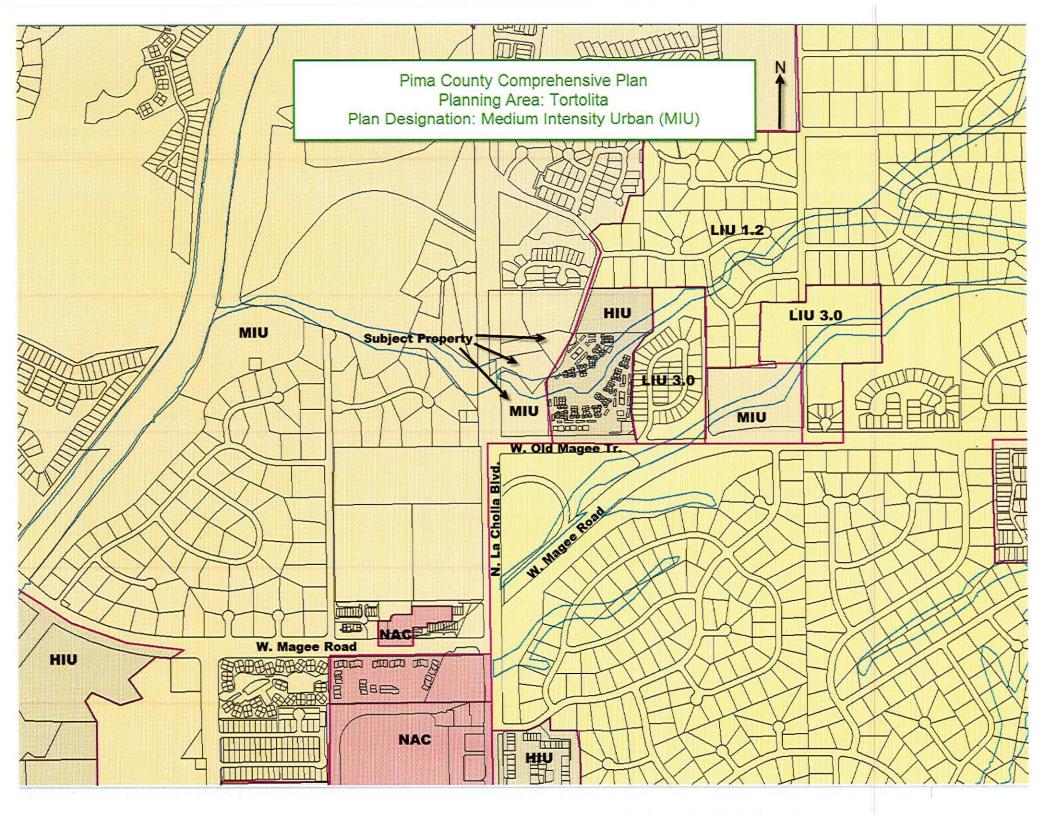
Neal Morse (Trustee), Managing Partner Landmark Title Trust 18261 Attn: Niner Holdings 1 LLP

Beneficiaries of Landmark Title Trust 18261, Attn: Niner Holdings 1 LLP:

Melissa Miles	(25% Beneficiary)
5-7848 Kuhio	Hwy
Princeville, HI	96741

Greg Morse (25% Beneficiary) 1515 SW Clifton Portland OR 97201

Jonna Fries (25% Beneficiary) 499 Santa Anita Court Sierra Madre, CA 91024 Neal Morse (25% Beneficiary) 12500 Cloud Lane Los Angeles, CA 90049



7. Medium Intensity Urban (MIU)

a. Objective: To designate areas for a mix of medium-density housing types, such as attached dwellings, garden apartments, and single family, as well as non-residential uses such as offices, medical offices, and hotels. Special attention should be given in site design to assure that uses are compatible with adjacent lower-density residential uses. Where possible, pedestrian and bicycle access shall be provided to commercial areas, schools, institutional uses, and other similar uses.

b. Residential Gross Density: Residential gross density shall conform to the following:

1) Minimum – 5 RAC

2) Maximum – 13 RAC.

c. Residential Gross Densities for Developments Using Transfer of Development Rights (TDRs): Projects within designated Receiving Areas utilizing TDRs for development shall conform to the following density requirements:

1) Minimum – 5 RAC

2) Maximum – 10 RAC.

F. ANN RODRIGU RECORDER RECORDED BY: SU DEPUTY RECORDER

1456 AS1 P0230 PIMA CO CLERK OF THE BOARD PICKUP



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PAGE:	1553		
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ORDINANCE 2007-16

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA; RELATING TO ZONING; REZONING PROPERTY (PARCEL CODES 225-21-0070, 225-21-0120 & 225-21-0130) FROM SR (SUBURBAN RANCH) TO CR-5 (MULTIPLE RESIDENCE); IN CASE Co9-03-03 LAWYERS TITLE OF ARIZONA INC. 7638-T - LA CHOLLA BOULEVARD REZONING; LOCATED ON THE NORTHEAST CORNER OF MAGEE ROAD AND LA CHOLLA BOULEVARD; AMENDING PIMA COUNTY ZONING MAP NO. 115.

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA:

Section 1. The 8.22 acres, located on the northeast corner of Magee Road and La Cholla Boulevard, illustrated by the shaded area on the attached rezoning ordinance map (Exhibit "A"), which amends Pima County Zoning Map No. 115 is hereby rezoned from SR (Suburban Ranch) to CR-5 (Multiple Residence).

Section 2. Rezoning Conditions.

- Submittal of a development plan if determined necessary by the 1. appropriate County agencies.
- Recording of a covenant holding Pima County harmless in the 2. event of flooding.
- Recording of the necessary development related covenants as 3. determined appropriate by the various County agencies.
- Provision of development related assurances as required by the 4. appropriate agencies.
- Prior to the preparation of the development related covenants 5. and any required dedication, a title report (current to within 60 days) evidencing ownership of the property shall be

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submitted to the Development Services Department, Document Services.

- 6. There shall be no further lot splitting or subdividing without the written approval of the Board of Supervisors.
- 7. Transportation conditions:
 - A. The property owner(s)/developer(s) shall participate in the Improvement District for Magee Road/Carmack Wash and Drainage improvements.
 - B. The property owner(s)/developer(s) shall dedicate to Pima County appropriate right-of-way for La Cholla Boulevard adjacent to the subject property to allow for 100 feet east half right-of-way (200 feet total).
 - C. The property owner(s)/developer(s) shall accept responsibility for the maintenance, control, safety and liability of privately owned roads, parking areas, drives, physical barriers, drainageways and drainage easements
 - D. The property owner(s)/developer(s) shall provide off-site improvements to La Cholla Boulevard and Magee Road as determined necessary by the Traffic Impact Study and the Department of Transportation.
 - E. The owner(s)/developer(s) shall not use McCarty Road for construction or permanent access.
- 8. Flood Control conditions:
 - A. Drainage shall not be altered, disturbed or obstructed without the written approval of the Flood Control District.
 - B. The property owner(s)/developer(s) shall provide all necessary on-site and off-site drainage related improvements that are needed as a result of the proposed development of the subject property. The location, design and construction of said improvements shall be subject to the approval of the Flood Control District.
 - C. The property owner(s)/developer(s) shall dedicate rightof-way or easements for drainage purposes to the Flood Control District, as determined necessary during the development plan/subdivision plat review.
 - D. The property owner(s/developer(s)) shall comply with detention/retention conditions and restrictions, or provide an in-lieu fee, as stated in the Floodplain

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Management Ordinance since the property lies within a balanced or critical basin.

9. Wastewater Management conditions:

' - - - - **-**

- A. The owner(s)/developer(s) shall construe no action by Pima County as a commitment to provide sewer service to any new development within the rezoning area until Pima County executes an agreement with the owner / developer to that effect.
- в. The owner(s)/developer(s) shall obtain written documentation from the Pima County Wastewater Management Department that treatment and conveyance capacity is available for any new development within the rezoning area, no more than 90 days before submitting any tentative plat, development plan, sewer improvement plan or request for building permit for review. Should treatment and/or conveyance capacity not be available at that time, the owner(s)/developer(s) shall have the option of funding, designing and constructing the necessary improvements to Pima County's public sewerage system at his/her sole expense or cooperatively with other affected parties. All such improvements shall be designed and constructed as directed by the Pima County Wastewater Management Department.
- C. The owner(s)/developer(s) shall time the construction of all new development within the rezoning area to coincide with the availability of treatment and conveyance capacity in the downstream public sewerage system.
- D. The owner(s)/developer(s) shall connect all new development within the rezoning area to Pima County's public sewer system in the manner specified by the Wastewater Management Department in its capacity response letter and as specified by the Development Services Department at the time of review of the tentative plat, development plan, sewer construction plan, or request for building permit.
- E. The owner(s)/developer(s) shall fund, design and construct all on-site sewers necessary to serve new development within the rezoning area.
- F. The owner(s)/developer(s) shall design and construct the off-site and on-site sewers to accommodate flow-through from any properties adjacent and up-gradient to the rezoning area that do not have adequate access to Pima County's public sewer system and accommodate the anticipated wastewater flow from any properties down-

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gradient from the rezoning area that can reasonably be served by those sewers, in the manner specified at the time of review of the tentative plat, development plan, sewer construction plan or request for building permit.

- G. The owner(s)/developer(s) shall complete the construction of all necessary public and/or private sewerage facilities as required by all applicable agreements with Pima County, and all applicable regulations, including the Clean Water Act and those promulgated by ADEQ, before treatment and conveyance capacity in the downstream public sewerage system will be permanently committed for any new development within the rezoning area.
- 10. Adherence to the preliminary development plan as approved at public hearing (Exhibit B).
- Plants to be used for landscaping and revegetation shall be 11. drought tolerant native species which are compatible with native vegetation endemic to the project area. Under no circumstances shall the following exotic plant species be planted anywhere on the site: Fountain grass (Pennisetum setaceum) Buffelgrass (Pennisetum ciliare) Johnson grass (Sorghum halapense) Giant reed (Arundo donax) Common crabgrass (Digitaria sanguinalis Pampas grass (Cortaderia selloana) Red brome (Bromus rubens Mediterranean grass (Schismus spp.) Tree of heaven (Ailanthus altissima) African sumac (Rhus lancea) Russian olive (Eleagnus angustifolia) Salt cedar/Tamarisk (Tamarix pertandra & T. ramosissima) Bermuda grass (Cynodon dactylon) excluding sod hybrid Bermuda Lovegrasses (Eragrostis spp.) excluding Plains lovegrass (Eragrostis intermedia)
- 12. The site shall be surveyed for the presence or absence of the cactus ferruginous pygmy-owl by an entity qualified to perform biological surveys and who possesses a valid permit from the U.S. Fish & Wildlife Service to perform such surveys. Surveys shall be done according to the most current protocol approved by the U.S. Fish & Wildlife Service, or a letter shall be provided from the U.S. Fish & Wildlife Service stating that a survey is not required.

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- 13. The northern units shall be limited in height to one (1) story of eighteen (18) feet with a twenty (20) foot setback from the northern property line.
- 14. No building permits shall be issued until Magee Road is under construction.
- 15. The owner(s)/developer(s) shall provide a sixteen (16) foot Equestrian Easement by Garfield Wash; the underpass height shall be fourteen (14) feet to safely accommodate equestrian users.

Section 3. Time limits, extensions and amendments of conditions.

- 1. Conditions 1 through 15 shall be completed by January 17, 2011.
- 2. The time limit may be extended by the Board of Supervisors by adoption of a resolution in accordance with Chapter 18.91 of the Pima County Zoning Code.
- 3. No building permits shall be issued based on the rezoning approved by this Ordinance until all conditions 1 through 15 are satisfied and the Planning Official issues a Certificate of Compliance.
- 4. The rezoning conditions of Section 2 may be amended or waived by resolution of the Board of Supervisors in accordance with Chapter 18.91 of the Pima County Zoning Code.

Section 4. The effective date of this Ordinance shall be on the date of signing of this Ordinance by the Chair of the Board of Supervisors.

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Passed and adopted by the Board of Supervisors of Pima County, Arizona, this <u>13th</u> day of February, 2007

2/13/07

Chair, Board of Supervisors

Date

ATTEST:

Clerk, Board of Supervisors

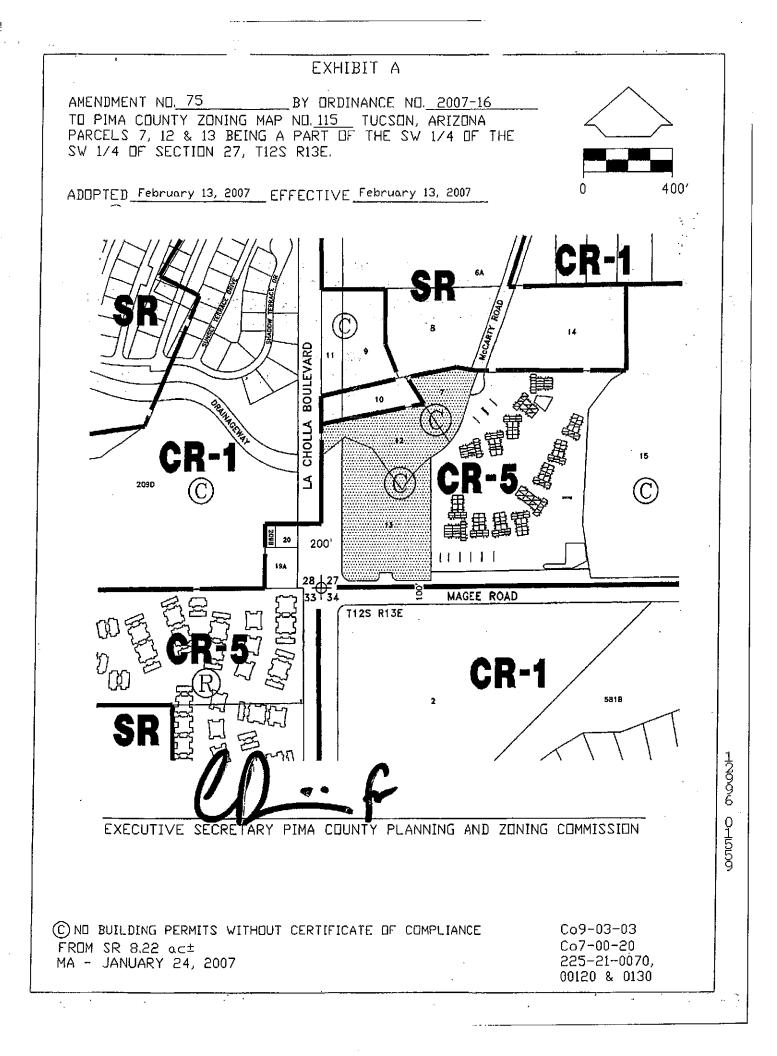
Deputy County Attorney

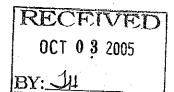
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Executive Secretary, Planning and Zoning Commission

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MEMORANDUM OF AGREEMENT TO PARTICIPATE IN THE PROPOSED MAGEE ROAD – CARMACK WASH IMPROVEMENT DISTRICT

WHEREAS, _MC Realty Advisers, LLC is the owner (Owner) of certain real property located within unincorporated Pima County, more particularly described in Exhibit A hereto, and

WHEREAS, said property is the subject of a rezoning request titled Co-9-03 Lawyers Title of Arizona, Inc. 7638-T La Cholla Blvd. Rezoning, and

WHEREAS, the Pima County Department of Transportation (DOT) has made a finding of "no concurrency" with respect to the capacity of the adjacent street system to support the traffic demand to be generated by the property when developed as described in the rezoning request, and

WHEREAS, DOT has proposed the formation of an Improvement District for the purpose of widening and realigning Magee Road as a four-lane road from Shannon Road east to Zarragoza Drive, along with dikes, a constructed channel and improved road crossings for the Carmack Wash and associated improvement of La Cholla Boulevard, as shown in the Final Summary Report, Concept Design Analysis for the Carmack Wash Drainage Improvement at La Cholla Boulevard by Tetra Tech Inc. dated April 25, 2005, which would result in sufficient street capacity to support the proposed development, and

WHEREAS, Owner has expressed willingness to participate in the Improvement District,

NOW THEREFORE, in consideration of the foregoing Owner and DOT agree that:

- 1. The Owner, its successors and assigns shall join in said Improvement District by affirmative consent to the lawful petition when presented, and Owner, successors and assigns shall waive their right of protest to said Improvement District except as to the method of assessment.
- 2. Participation in the Improvement District shall be an enumerated condition of rezoning approval. In the event that the rezoning is not approved, or approved but conditions are not acceptable to Owner, then Owner may, at his option, choose not to participate in the Improvement District
- 3. The minimum assessment for the Improvement District shall be the total roadway development impact fees that would be due on the total number of units that are approved and platted in the final Development Plan, and issued building permits. The impact fees shall be those in effect at the time the Improvement District Board of Directors accepts the plans, specifications, cost estimate and the Assessment Diagram, but may be adjusted depending on the final plat.
- 4. Assessments shall become due and payable upon final plat approval by Pima County.
- 5. DOT shall rescind the previous finding of no concurrency and shall make a finding of concurrency subject to the formation of the Improvement District.
- 6. This Memorandum of Agreement shall be made a part of the rezoning case file and shall accompany the case through the public hearing and approval process.

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- 7. This Memorandum of Agreement is effective as of the date signed by all parties.
- 8. This Memorandum of Agreement may be amended by mutual agreement of all parties.

9. This Memorandum of Agreement shall remain in effect until terminated or superseded by subsequent agreement or by incorporation as conditions of rezoning into the zoning ordinance for the property.

SIGNATURES

Director

Dept. of Transportation

ut Owner

Co9-03-03 Remanded to PtZ Commission BOS Minutes 7-6-04

On consideration, it was moved by Chair Bronson, seconded by Supervisor Valadez, and unanimously carried by a five to zero vote, to close the public hearing and to pass and adopt Ordinance No. 2004 - <u>48</u>.

33. DEVELOPMENT SERVICES: REZONING

The Board of Supervisors on November 18, 2003, February 17, 2004, and April 20, 2004, continued the following to this date:

C09-03-03, LAWYERS TITLE OF ARIZONA, INC. 7638-T - LA CHOLLA BOULEVARD REZONING

Request of Lawyers Title of Arizona, Inc., 7638-T, represented by The Planning Center, for a rezoning of approximately 8.22 acres from SR (Suburban Ranch) to CR-5 (Multiple Residence) located on the northeast corner of Magee Road and La Cholla Boulevard. The proposed rezoning conforms to the <u>Pima County Comprehensive Plan, Co7-00-20</u>. On motion, the Planning and Zoning Commission voted 6-2 (Commissioners Membrila and Spendiarian voted nay, Commissioner RedDog was absent) to recommend **DENIAL**. Staff recommends **DENIAL**. (District 1)

"IF THE DECISION IS MADE TO APPROVE THE REZONING, THE FOLLOWING STANDARD AND SPECIAL REQUIREMENTS SHOULD BE CONSIDERED: Completion of the following requirements within five years from the date of rezoning approval by the Board of Supervisors:

- 1. Submittal of a development plan if determined necessary by the appropriate County agencies.
- 2. Recording of a covenant holding Pima County harmless in the event of flooding.
- 3. Recording of the necessary development related covenants as determined appropriate by the various County agencies.
- 4. Provision of development related assurances as required by the appropriate agencies.
- 5. Prior to the preparation of the development related covenants and any required dedication, a title report (current to within 60 days) evidencing ownership of the property shall be submitted to the Public Works Department, Real Property Services.
- 6. There shall be no further lot splitting or subdividing without the written approval of the Board of Supervisors.
- 7. Transportation conditions:
 - A. A Traffic Impact Analysis (TIA) shall be provided by the property owner(s) for this rezoning for review and approval by the Department of Transportation, prior to the first development plan or tentative plat submittal. The results of the approved TIA shall be used to establish required transportation improvements to the area roadway system. The property owner(s) shall be responsible for construction of all required improvements.
 - B. The property owner(s) shall dedicate to Pima County appropriate right-of-way for La Cholla Boulevard adjacent to the subject property to allow for 100 feet east half right-ofway (200 feet total).

07-06-04 (42)

- C. The property owner(s) shall accept responsibility for the maintenance, control, safety and liability of privately owned roads, parking areas, drives, physical barriers, drainageways and drainage easements.
- 8. Flood Control conditions:
 - A. Drainage shall not be altered, disturbed or obstructed without the written approval of the Flood Control District.
 - B. The property owner(s) shall provide all necessary on-site and off-site drainage related improvements that are needed as a result of the proposed development of the subject property. The location, design and construction of said improvements shall be subject to the approval of the Flood Control District.
 - C. The property owner(s) shall dedicate right-of-way or easements for drainage purposes to the Flood Control District, as determined necessary during the development plan/subdivision plat review.
 - D. The property owner(s) shall comply with detention/retention conditions and restrictions, or provide an in-lieu fee, as stated in the Floodplain Management Ordinance since the property lies within a balanced or critical basin.
- 9. Wastewater Management condition: The property owner must connect to the public sewer system at the location and in the manner specified by Wastewater Management at the time of review of the tentative plat, development plan or request for building permit.
- 10. Adherence to the preliminary development plan as approved at public hearing.
- 11. The amount of disturbance to the Garfield Wash corridor shall be restricted to a maximum of 5 percent. The natural open space for the Garfield Wash corridor, as identified on the PDP, shall be shown on the development plan, grading plans, and native plant preservation plans and preserved as natural open space as defined in the zoning code.
- 12. Plants to be used for landscaping and revegetation shall be drought tolerant native species which are compatible with native vegetation endemic to the project area. Under no circumstances shall the following exotic plant species be planted anywhere on the site: Fountain grass (Pennisetum setaceum) Buffelgrass (Pennisetum ciliare) Johnson grass (Sorghum halapense) Giant reed (Arundo donax) Common crabgrass (Digitaria sanguinalis) Pampas grass (Cortaderia selloana) Red brome (Bromus rubens) Mediterranean grass (Schismus spp.) Tree of heaven (Ailanthus altissima) African sumac (Rhus lancea) Russian olive (Eleagnus angustifolia) Salt cedar/Tamarisk (Tamarix pertandra & T. ramosissima) Bermuda grass (Cynodon dactylon) - exluding sod hybrid Bermuda Lovegrasses (Eragrostis spp.) - excluding Plains lovegrass (Eragrostis intermedia) The existing abandoned dirt road alignment located within the 13. designated natural open space, excluding the active channel and the retention/detention basin shall be rehabilitated by replanting and seeding native xeroriparian plant species to replicate Garfield

Wash's vegetation community.

07-06-04 (43)

14. The site shall be surveyed for the presence or absence of the cactus ferruginous pygmy-owl by an entity qualified to perform biological surveys and who possesses a valid permit from the U.S. Fish & Wildlife Service to perform such surveys. Surveys shall be done according to the most current protocol approved by the U.S. Fish & Wildlife Service, or a letter shall be provided from the U.S. Fish & Wildlife Service stating that a survey is not required."

Chris Poirier, Interim Zoning Administrator, stated this is a rezoning request from SR to CR-5 for a parcel comprised of 8.22 acres. Approval of this request would allow for the placement of a 128 unit apartment complex. The Planning and Zoning Commission and Planning staff recommended denial, however, Planning staff recommended this request be remanded to the Planning and Zoning Commission for reconsideration pending the establishment of an improvement district.

Dick Walbert, The Planning Center, concurred with the recommendation to send this request back to the Planning and Zoning Commission because they felt the transportation concurrency issues would be resolved upon the establishment of an improvement district. He requested this item be sent to the Planning and Zoning Commission for their August 25, 2004, meeting.

Mr. Poirier stated it was mentioned to Planning staff that the improvement district would not be formed until September or October 2004, and it was likely the Planning and Zoning Commission would want to see the final product prior to making any new recommendations.

The Chair inquired whether anyone wished to be heard. No one appeared.

On consideration, it was moved by Supervisor Day, seconded by Chair Bronson, and unanimously carried by a five to zero vote, to send this item, Co9-03-03, Lawyers Title of Arizona - La Cholla Boulevard Rezoning back to the Planning and Zoning Commission for reconsideration based on the establishment of an improvement district.

34. DEVELOPMENT SERVICES: PLAT NOTE WALVER

Co12-72-92, SILVERBELL WEST LOT 58

Request of <u>Athena L. Taylor</u>, for a waiver of subdivision Plat Note No. 16 which states, "No more than one dwelling unit shall be placed on each lot until such time as public sewers are available." The applicant requests the waiver for Lot No. 58 to allow a second mobile home on the lot. The lot comprises of 1.00 acres, is zoned SH, and is located at the northwest corner of Kalama Circle and Hong Street,

07-06-04 (44)

Cog-03-03 Rezoning Approval BOS Minutes 1-17-06

14 FRANCHISE/LICENSE/PERMIT: AGENT CHANGE-ACQUISITION OF CONTROL-RESTRUCTURE

05-08-008, Richard Dean Franks, AMVETS Post 770, 3057 South Kinney Road, Tucson.

The Chairman inquired whether anyone wished to be heard. No one appeared. It was thereupon moved by Supervisor Bronson, seconded by Supervisor Valadez, and unanimously carried by a five to zero vote, to close the public hearing and approve the request.

15. FRANCHISE/LICENSE/PERMIT: BINGO LICENSE

05-01-8020, Jesse K. Thorpe, d.b.a. Skyline Country Club, 5200 E. St. Andrews Drive, Tucson, Small Game.

The Chairman inquired whether anyone wished to be heard. No one appeared. It was thereupon moved by Supervisor Bronson, seconded by Supervisor Valadez, and unanimously carried by a five to zero vote, to close the public hearing and approve the license request.

16. DEVELOPMENT SERVICES: COMPREHENSIVE PLAN AMENDMENT

The Board of Supervisors on November 5, 2005, continued the following to this date:

CO7-05-26, TITLE SECURITY AGENCY OF ARIZONA, TROST NO. 509 - W. BRIAR ROSE LANE PLAN AMENDMENT

Without objection, this item was continued to the Board of Supervisors meeting of March 7, 2006.

17. DEVELOPMENT SERVICES: REFERRED REZONING

C09-03-03, LAWYERS TITLE OF ARIZONA, INC. 7638-T - LA CHOLLA BOULEVARD REZONING

Request of Lawyers Title of Arizona, Inc., 7638-T, represented by The Planning Center, for a rezoning of approximately 8.22 acres from SR (Suburban Ranch) to CR-5 (Multiple Residence) located on the northeast corner of Magee Road and La Cholla Boulevard. The proposed rezoning conforms to the Pima County Comprehensive Plan, Co7-00-20. On motion, the Planning and Zoning Commission voted 8-0 (Commissioner Cuyugan was absent) to recommend **APPROVAL WITH CONDITIONS**. Staff recommends **DENIAL**. (District 1)

01 - 17 - 06 (9)

"IF THE DECISION IS MADE TO APPROVE THE REZONING, THE FOLLOWING STANDARD AND SPECIAL REQUIREMENTS SHOULD BE CONSIDERED:

Completion of the following requirements within five years from the date the rezoning request is approved by the Board of Supervisors:

- 1. Submittal of a development plan if determined necessary by the appropriate County agencies.
- 2. Recording of a covenant holding Pima County harmless in the event of flooding.
- 3. Recording of the necessary development related covenants as determined appropriate by the various County agencies.
- 4. Provision of development related assurances as required by the appropriate agencies.
- 5. Prior to the preparation of the development related covenants and any required dedication, a title report (current to within 60 days) evidencing ownership of the property shall be submitted to the Public Works Department, Real Property Services.
- 6. There shall be no further lot splitting or subdividing without the written approval of the Board of Supervisors.
- 7. Transportation Conditions:
 - A. The property owner shall participate in the Improvement District for Magee Road and Drainage improvements.
 - B. The property owner shall dedicate to Pima County appropriate right-of-way for La Cholla Boulevard adjacent to the subject property to allow for 100 feet east half right-of-way (200 feet total).
 - C. The property owner(s) shall accept responsibility for the maintenance, control, safety and liability of privately owned roads, parking areas, drives, physical barriers, drainageways and drainage easements.
 - D. The property owner shall provide off-site improvements to La Cholla Boulevard and Magee Road as determined necessary by the Traffic Impact Study and the Department of Transportation.
 - E. The developer shall not use McCarty Road for construction or permanent access.
- 8. Flood Control conditions:
 - A. Drainage shall not be altered, disturbed or obstructed without the written approval of the Flood Control District.
 - B. The property owner(s) shall provide all necessary on-site and offsite drainage related improvements that are needed as a result of the proposed development of the subject property. The location, design and construction of said improvements shall be subject to the approval of the Flood Control District.
 - C. The property owner(s) shall dedicate right-of-way or easements for drainage purposes to the Flood Control District, as determined necessary during the development plan/subdivision plat review.
 - D. The property owner(s) shall comply with detention/retention conditions and restrictions, or provide an in-lieu fee, as stated in the Floodplain Management Ordinance since the property lies within a balanced or critical basin.
- 9. Wastewater Conditions:

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- A. The owner/developer shall construe no action by Pima County as a commitment to provide sewer service to any new development within the rezoning area until Pima County executes an agreement with the owner/developer to that effect.
- B. The owner/developer shall obtain written documentation from the Pima County Wastewater Management Department that treatment and conveyance capacity is available for any new development within the rezoning area, no more than 90 days before submitting any tentative plat, development plan, sewer improvement plan or request for building permit for review. Should treatment and/or conveyance capacity not be available at that time, the owner/developer shall have the option of funding, designing and constructing the necessary improvements to Pima County's public

sewerage system at his or her sole expense or cooperatively with other affected parties. All such improvements shall be designed and constructed as directed by the Pima County Wastewater Management Department.

- C. The owner/developer shall time the construction of all new development within the rezoning area to coincide with the availability of treatment and conveyance capacity in the downstream public sewerage system.
- D. The owner/developer shall connect all new development within the rezoning area to Pima County's public sewer system in the manner specified by the Wastewater Management Department in its capacity response letter and as specified by the Development Services Department at the time of review of the tentative plat, development plan, sewer construction plan, or request for building permit.
- E. The owner/developer shall fund, design and construct all on-site sewers necessary to serve new development within the rezoning area.
- F. The owner/developer shall design and construct the off-site and on-site sewers to accommodate flow-through from any properties adjacent and up-gradient to the rezoning area that do not have adequate access to Pima County's public sewer system and accommodate the anticipated wastewater flow from any properties down-gradient from the rezoning area that can reasonably be served by those sewers, in the manner specified at the time of review of the tentative plat, development plan, sewer construction plan or request for building permit.
- G. The owner/developer shall complete the construction of all necessary public and/or private sewerage facilities as required by all applicable agreements with Pima County, and all applicable regulations, including the Clean Water Act and those promulgated by ADEQ, before treatment and conveyance capacity in the downstream public sewerage system will be permanently committed for any new development within the rezoning area.
- 10. Adherence to the preliminary development plan as approved at public hearing.
- 11. Plants to be used for landscaping and revegetation shall be drought tolerant native species which are compatible with native vegetation endemic to the project area. Under no circumstances shall the following exotic plant species be planted anywhere on the site: Fountain grass (Pennisetum setaceum) Buffelgrass (Pennisetum ciliare) Johnson grass (Sorghum halapense) Giant reed (Arundo donax) Common crabgrass (Digitaria sanguinalis) Pampas grass (Cortaderia selloana) Red brome (Bromus rubens) Mediterranean grass (Schismus spp.) Tree of heaven (Ailanthus altissima) African sumac (Rhus lancea) Russian olive (Eleagnus angustifolia) Salt cedar/Tamarisk (Tamarix pertandra & T. ramosissima) Bermuda grass (Cynodon dactylon) excluding sod hybrid Bermuda Lovegrasses (Eragrostis spp.) excluding Plains lovegrass (Eragrostis intermedia)
- 12. The site shall be surveyed for the presence or absence of the cactus ferruginous pygmy-owl by an entity qualified to perform biological surveys and who possesses a valid permit from the U.S. Fish & Wildlife Service to perform such surveys. Surveys shall be done according to the most current protocol approved by the U.S. Fish & Wildlife Service, or a letter shall be provided from the U.S. Fish & Wildlife Service stating that a survey is not required.

13. The northern units shall be limited in height to 1 story of 18 feet with a twenty (20) foot setback from the northern property line."

Chris Poirer, Zoning Administrator, stated approval of this request would allow a 128 unit apartment complex on 8.22 acres and change the zoning from SR to CR-5. This request went to the Planning and Zoning Commission (P&Z) in April 2003, but the commission denied the request based on concurrency issues. The request was heard by the Board of Supervisors in July 2004, and the Board referred the request back to P&Z pending the applicant entering into an Improvement District to address off-site transportation impacts. On October 3, 2005, Planning staff received a Memorandum of Agreement from the applicant to enter into the Magee-Carmack Wash Improvement District. Since the applicant entered into an agreement for the Improvement District, P&Z recommended approval on November 30, 2005. Staff recommended denial due to concurrency considerations primarily along Ina Road. Staff received four letters of protest and one petition containing three signatures and seven letters of concern. The opposition expressed concerns related to traffic and a super majority vote requirement was needed.

Mike Grassinger, Planning Center representing the developer, stated one of the primary concerns related to buffering the property owner to the north and two options were presented to address the buffering. Those options would include moving the two story buildings farther south and locating the parking lot on the north, or to reduce the buildings to one story. At the P&Z hearing the developer agreed to move the buildings farther south with a minimum of a 20-foot landscaped buffer along the northern edge, and the single story buildings would be restricted to 18 feet in height with a 20 foot buffer. Other issues included the retention of the existing Equestrian Easement through Club Carmel, the underpass height, Garfield Wash and transportation. The developer agreed to a 14 foot height for the underpass to address equestrian safety and, since Garfield Wash was subject to the Flood Control District's Riparian Mitigation Ordinance, the applicant would comply with the ordinance. The applicant expressed a willingness to not begin construction until the Magee Road realignment was underway.

Supervisor Day stated her motion would include the condition that no building permits would be issued until Magee Road was under construction. Mr. Grassinger concurred, and said one of the key elements of the proposed development was the developer's participation in the Improvement District. The developer agreed to participate in the Improvement District and the improvements to La Cholla Boulevard along the frontage of this property to relieve some of the problems that currently exist.

The following speakers addressed the Board with their comments or concerns:

- 1. Donna Heidinger, La Canada/Magee Neighborhood Association;
- 2. Ken Scoville, Amphitheater Public Schools;
- 3. Sue Clark, Pima Trails Association;
- 4. Bill Nettling, area resident; and,
- 5. Mary Wilson, area resident.

The speakers provided the following comments:

- A. A letter was read into the record from Betsy Sandlin and Scotty Campbell who expressed opposition to the proposed development for the reasons as outlined by Mr. Grassinger;
- B. There were many unresolved issues and the modifications recommended by P&Z were insufficient;
- C. The developer agreed to a Donation Agreement for Amphitheater Public Schools;
- D. Concern was expressed regarding the timing of the proposed development;
- E. There are no immediate plans to widen Magee Road beyond La Cholla Boulevard;
- F. Traffic on the two lane Magee Road hampers area residents from exiting their neighborhoods;
- G. Some area residents were not opposed to growth, but they urged the Board to allow growth when the roadways can accommodate that growth; and,
- G. No plans were mentioned for the widening of the two lane La Cholla Boulevard north of Magee Road which makes it difficult for area residents to exit onto La Cholla, and the proposed development adding more traffic could potentially create a dangerous situation.

Chuck Huckelberry, County Administrator, stated the improvements to Magee Road are on the bond authorized project from Oracle Road to La Canada for which the County was awaiting the outcome of the RTA election in May 2006.

01-17-06 (13)

Included in the RTA project list, in the five year implementation period, was the widening improvement of Magee Road from Oracle Road all to the way to Thornydale Road. He said in the event the election was successful, the County would piggyback not only intersection improvements, but the bond project described on the RTA's project list and do them all at one time.

On consideration, it was moved by Supervisor Day, seconded by Supervisor Bronson, to close the public hearing and approve Co9-03-03 subject to conditions including the Memorandum of Agreement in which the developer agreed to participate in the proposed Magee Road/Carmack Wash Improvement District. In addition, that Building Permits would not be issued until Magee Road was under construction, the developer was to provide a 16 foot Equestrian Easement by Garfield Wash, and the bridge underpass was 14 feet high to safely accommodate equestrian users.

A roll call vote was requested. Upon the roll call vote being taken, the motion carried unanimously by a five to zero vote. Chairman Elías stated the super majority requirement on the vote was met.

18. RECESS

Without objection, the Chairman declared a closed captionist recess at 10:25 a.m.

19. RECONVENE

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The Board of Supervisors meeting reconvened at 10:39 a.m. All members were present.

20. DEVELOPMENT SERVICES: MODIFICATION (SUBSTANTIAL CHANGE) OF REZONING CONDITIONS:

Co9-02-27, TEMUNOVIC - WETMORE ROAD REZONING

Request of <u>Broadway Motors Inc.</u>, represented by Planning <u>Resources</u>, for a modification (substantial change) of the following Rezoning Conditions: No. 10 which reads: "Adherence to the preliminary development plan as approved at public hearing is required. Uses are restricted to the sale, rental or display of automobiles;" and, No. 11 which pertains to the reduction of a twenty five (25) foot bufferyard to a ten (10) foot bufferyard and retention/detention basin requirements. The subject

01-17-06 (14)