

AGENDA MATERIAL

DATE 5/19/20 ITEM NO. RA 23

To: The Pima County Board of Supervisors

Respectfully submitted by: Charles and Dianne Nylander (homeowners) and Susan Rosenberg (homeowner) and Peter Benitez (spouse)

Subject: **Protest Rezoning Application P19RZ00012 Harbour Trust 1/3, ET AL. North La Cholla Boulevard Rezoning**

Date: May 18, 2020

Harbour Trust 1/3, ET. AL. (Owners), represented by Projects International, Inc. (hereinafter "the Agent"), is seeking a rezoning of approximately 50.7 acres from SR (Suburban Ranch) to CR-5 (Multiple Residence) zoning, parcel codes 225-04-002A, 225-04-002C, 225-04-003P and 225-04-008B, located at the northwest corner of W. Overton Road and N. La Cholla Boulevard. The proposed rezoning conforms to the Pima County Comprehensive Plan, as revised in 2018, which designates the property for Low Intensity Urban 1.2 and Medium Low Intensity Urban. (District 1).

We are the owner/occupants of the two homes in the Ironwood Ridge Estates subdivision which is located on W Ironwood View Pl, off La Cholla Boulevard, ~1,000 feet north of the vacant land parcels, which are the subject of the rezoning application. We strongly **OBJECT** to and **PROTEST** the proposed rezoning.

Pima County Comprehensive Plan Background Regarding this Rezoning Request

In 2018, the Pima County Zoning and Planning Commission (hereinafter "the Commission") held a hearing on the application by the Agent to amend the Pima County Comprehensive Plan (hereinafter "the Plan") to re-designate two connected parcels of land for greater density housing than originally provided by the then recently approved Plan. While the properties are separately owned, the land owners intend to jointly build a high-density housing development on the land. Reports concerning the hearing indicate that certain discrepancies were found in the Agents information, and a negotiation between the Agent and County staff took place before a final Commission vote. The Commission voted to recommend approval of the Plan amendment. On October 16, 2018, the Board of Supervisors (hereinafter "the Board") held a hearing and approved the amendment of the Plan for the Owner's two parcels from Low Intensity Urban to Medium Low Intensity Urban (MLIU) land use designation. While approving the re-designation of the subject properties for greater density, Medium Low Intensity Urban (MLIU), the Board reduced the density sought by the applicant. Nevertheless, the Board then increased the density designation for these parcels, apparently accepting the Agent's argument that its proposed use of the land was "justified as an expansion of the well-established urbanized core already in place to the immediate south." Developer was quoted in the Commission's Staff Report attached to the Board's October 16, 2018 agenda.

We would like to point out that we were not notified of the Commission's and Board's hearings on the Agent's proposal in 2018. Indeed, the ink on the Plan was not yet dry

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when the Agent sought and obtained an amendment to that Plan that would relate specifically to these two separately owned parcels proposed to be developed with increased density.

The Pima County government web page states that:

...“the Comprehensive Plan amendment process, [Section 18.89.040](#) provides opportunities to address oversights, inconsistencies, or land use related inequities in the plan, or to acknowledge significant land use changes in a particular area or region. The process is also to promote implementation of: Arizona Growing Smarter (1998) and Growing Smarter Plus (2000) legislation for mixed use, compact development, multi-modal transportation, rational infrastructure expansion and improvements, conservation of natural resources, and promoting development in growth areas; Community values (e.g., healthy communities, economic development principles); and Adopted plan policies”

When the amendment to the Plan was sought, no argument was made by the Agent that the original Plan was misguided or inconsistent in its designation of these parcels and the area surrounding it, that the original designation of these parcels was an oversight, or that changing land use warranted an amendment of the Plan. Rather, the Agent simply stated that the re-designation of these parcels was consistent with Smart Growth principles. Likewise, in approving the amendment by the Commission and by the Board of Supervisors did not explain why an amendment of the Plan was warranted. Rather, the amendment was explained as simply expanding an “existing urbanized core.” We believe that this is inconsistent with the intent of the Plan, inconsistent with Smart Growth principles, and wrong for the reasons stated below.

The Agent, on behalf of the Owners, is seeking rezoning of the land parcels to finalize its pursuit of an opportunity to build as many homes as possible on these land parcels. Despite the prior actions of the Commission and the Board, the present rezoning application should be rejected for the following reasons.

Reasons for Rejection of Rezoning Application

Historical Zoning and High Density Development

The existing housing density on parcels of land along La Cholla Boulevard from Overton Road north to Lambert Lane has historically been low density, with single family housing primarily on large lots (typically zoned SR on both the east and west side of La Cholla Boulevard). With the exception of the Alive Church, Grace Church, and the Sunkist Stables, the existing land use pattern along the ~ one-mile stretch of La Cholla Boulevard from Overton Road to Lambert Lane has been restricted historically to low density housing. Ironwood Ridge Estates, LLC purchased 30 acres of land on the west side of La Cholla Boulevard south of the Grace Church, approximately fourteen years ago, land that is now the Ironwood Ridge Estates subdivision and located less than 1,000 feet north of the land parcels that are the subject of this rezoning request. Ironwood Ridge Estates, LLC purchased the 30 acres of land from Tierramar Construction after Pima County rejected their rezoning application to construct 64 townhomes on the 30 acres. Historically, Pima County had previously rejected higher density housing projects in this area along

La Cholla Boulevard. In point of fact, Ironwood Ridge Estates, LLC was restricted by Pima County, and was only permitted to develop 8 single family residences on half their property, i.e. 15 acres, with a County agreement that 15 acres of the developers 30 acres of land would be set aside and dedicated as a perpetual Ironwood Conservation Area. In other words, with 30 acres of land, Ironwood Ridge Estates, LLC was only allowed to develop half of their property, and that development approved at very low density (SR) when compared to the subject request for a zoning change to CR-5 just 1,000 feet south of their property.

Thus, one can conclude Pima County, and its original approved Plan, before the 2018 amendments, was aware of the previous efforts to develop this general area, and specifically rejected further medium or high intensity housing development on the east or west sides of La Cholla Boulevard north of Overton Road. At present, it would be inconsistent with the historical, long-held Pima County Planning policy to change the zoning and development nature of the subject tract of land increasing housing units to such intense urban density. The overall density of approved housing developments along this segment of La Cholla Boulevard has always been a very low density compared to the subject proposal. The proposed rezoning is seeking to allow 51 acres to be developed with 139 single family residences – with 14.2 acres of open space. One-story and two-story residences are proposed to be constructed dependent on market needs on lot sizes of 120 feet by 40 feet (or 50 feet).

Smart Growth principles do not support this proposed expansion of medium and high intensity housing development north of Overton Road along La Cholla Boulevard where none presently exist. An adequate supply of medium and high density housing developments already exist along La Cholla Boulevard south of Overton Road. The Bluffs Subdivision, an older, existing high density subdivision lies immediately to the south of Overton Road. Less than a quarter mile further south of The Bluffs on the west side of La Cholla Boulevard, north of the Tucson Omni National Golf Course, is the new high density KB Homes Montaretto Estates recently built by KB Homes. Kachina Homes is also building 25 high density residences on the east side of La Cholla Boulevard across from the golf course. The proposed rezoning would in effect be an expansion of these existing high density subdivisions (the most adjacent to Overton, The Bluffs) into a presently zoned Suburban Ranch corridor along La Cholla Boulevard between Overton Road and Lambert Lane that was never intended (or even allowed by Pima County) to be rezoned for high density development. High density tract home builders typically attempt to build developments next to more upscale neighborhoods so they can inflate their sale prices. If they are allowed to game the zoning system, they make more profit while the nearby upscale homes generally lose property value by being located next to lower cost tract homes. All the the existing landowners along this segment of La Cholla Boulevard would be financially penalized by approval of this subject rezoning request for this reason, and because historically they were not allowed to rezone their properties for higher density construction when their rezoning requests were submitted to Pima County.

Roads Infrastructure and Traffic

Although the north-south transportation infrastructure along La Cholla Boulevard is being improved to accommodate higher traffic use, the east-west road infrastructure along Overton Road and to the east and west of La Cholla Boulevard is not adequate to support the increased traffic volume that would result from approval of the higher density housing development including 139 residences. Overton Road to the east and west of La Cholla Boulevard is a two-lane road that is in sub-standard and in poor condition. Overton Road to the east has the additional disadvantage of having a road crossing across Canada Del Oro wash that is impassible and closed during runoff events. In truth, Overton Road to the east and west of La Cholla Boulevard is pot holed and rutted and in dire need of improvement. Thus, regarding this rezoning request, only La Cholla Boulevard will be constructed to specifications that could nominally support the increased traffic from the proposed 139 single family residence subdivision proposed at the intersection of La Cholla Boulevard and Overton Road.

Maeveen Marie Behan Conservation Lands System (CLS)

Pima County's draft staff report states that the subject site is located within the Maeveen Marie Behan Conservation Land System (CLS) classified as Multiple Use Management Area, and Special Species Management Area. The staff report acknowledges that 14.2 acres of the proposed project site will be set aside as open space, and that the proposed project will acquire off-site land for dedicated open space as a mitigation measure. However, the draft staff report and the Comprehensive Plan suggests considerable biological resources within the proposed development site and impacts on CLS. The proposed development properties represent a premier example of the biological diversity of Sonoran Desert ecotone with diverse fauna and flora species and abundant density of saguaros, ironwoods, and cacti species. Typically, off-site land acquisition by a developer is not of the same biological and CLS quality as the land they are disturbing by development. This will certainly be the case for the subject properties that are located in the lower end of the La Cholla Wash drainage basin.

The distributed and braided channel hydrology of the La Cholla Wash represents a diverse wildlife habitat and wildlife corridors that allows wildlife to move freely under present conditions, but wildlife movement will be constrained and hampered by a large, increased density subdivision at the lower end of the La Cholla Wash. Existing low-density housing along the La Cholla Wash drainage from Overton Road north to Lambert Road allows indigenous wildlife to move freely and the undeveloped portions of parcels owned by present land owners provides habitat and forage for multiple species of mammals, birds, reptiles, plants and insects. Altering the housing density along this wildlife corridor will adversely affect wildlife and negatively impact open space and conservation.

Pima County recently purchased land adjacent to the Canada Del Oro Wash and southeast of the intersection of La Cholla Boulevard and Overton Road. This new land acquisition lies directly southeast of the 51 acre proposed project land. The new Pima County land is designated for natural preservation, yet comparing the preservation and CLS value of the Pima County purchased parcel(s) which were previously occupied by Suburban Ranch developments versus the CLS value of the proposed heavily vegetated project area, which is a pristine example of Sonoran Desert with abundant wildlife, common sense dictates that there is no comparison. While the Pima County land is largely a grassland with some shrubs, the proposed project area land is a

rich tapestry of Sonoran Desert vegetation. Why would Pima County preserve open desert grassland (previously grazed) and allow destruction of prime Sonoran Desert? Please refer to our example comparison photos at the end of this document.

Moreover, within and adjacent to the 50 acres of this proposed project in the lower floodplain of La Cholla Wash, there have been numerous siting of species that are either listed by the U.S. Fish and Wildlife Service (USFWS) under the Endangered Species Act of 1973 (ESA) or listed by the Arizona Department of Game and Fish (ADGF). For example, existing residents living along the western boundary of the proposed project area along N Camino Del Plata have seen Sonoran Desert Tortoises (*Geochelone agassizi*) which are listed by the USFWS as “threatened”. Other existing property owners on the western boundary of the project site along W La Cresta Road, have sited Western Burrowing Owls (*Athene cunicularia*) which are protected under the Migratory Bird Treaty Act and listed by USFWS as a “national bird of conservation concern”. Other listed species in addition to the Western Burrowing Owl have been observed by residents in the project area, and the La Cholla Wash, including: Bald Eagle (*Haliaeetus leucocephalus*) and Golden Eagle (*Aquila chrysaetos*).

We strongly recommend that Pima County and the Agent for the proposed project contact the USFWS and ADGF for a “consultation” so as avoid future liabilities under the ESA. USFWS should perform a site survey to ascertain whether the 50 acre project area represents “critical habitat”, as defined by the ESA. Knowing about the presence of threatened species and proceeding with this project while failing to at least consult with USFWS could result in future ESA civil liabilities, and also criminal liabilities for performing a knowing “take” or causing knowing “harm” pursuant to the definitions and regulations of the ESA.

Hydrology and Flood Flows

The original rezoning application for this proposed project was contested in 2019, and it was eventually withdrawn by the Agent due to the existence of a myriad of hydrology issues, presenting stumbling blocks for progressing on the proposed project. In the interim, the Agent and consultants have performed additional hydrology studies and most importantly, Pima County’s La Cholla Boulevard Widening Project has constructed significant drainage infrastructure upstream of the proposed project that will divert much of the 100 year flood flow in La Cholla Wash, i.e. divert ~1,722 cubic feet per second (cfs) [of the total La Cholla Wash 100 flood flow of 2,904 cfs], which will now be diverted under La Cholla Boulevard upstream of the proposed project area, diverting the flow into the Canada del Oro. Any remaining sheet flows and breakout flood flows (~1,182 cfs) will either be diverted from the proposed project area or captured and routed to on-site detention basins, according to the Agent. Thus, during the past year it appears that the Agent and Owners have in essence become a beneficiary of a significant and expensive infrastructure contribution from both Pima County and the Town of Oro Valley, a project contribution derived from taxpayer funding. In fact, it would appear that an additional culvert was added to the La Cholla Boulevard Road Project (not in the original engineering plan) so as to divert even more water under La Cholla Boulevard to the Canada Del Oro Wash upstream from the proposed project area. It would appear that the road upgrade project was adding scope to help the approval process for this subject proposed high density development project.

The proposed project has a preliminary plan for on-site detention of sheet and fugitive flood flows generated off-site and also separate on-site detention for on-site runoff from the extensive hard scape areas within the project area e.g. roads, sidewalks, roof tops, etc. Captured fugitive and on-site flood flows will be channelled under Overton Road into the drainage ditch system that services The Bluffs. Cautions: Please be aware that the drainage ditches serving The Bluffs are not adequate to handle current runoff events. Moreover, their ditch system has severe sedimentation issues, thus diminishing capacity even more; another caution involves the proposed density of the project, and volume of hard scape, if this rezoning were to be approved and ultimately constructed, the Owners should be required to manage capacity of all detention structures by employing a rigorous sediment removal process. La Cholla Wash flow events contain a high volume of sediment, which will settle in the detention structures and decrease their capacity for future runoff events. Sediment removal, as well as vegetative growth removal will be frequently needed, with mosquito control possibly needed regarding standing water, and it would be expected that Pima County should require by permitting such maintenance, if this proposed project goes forward.

In summary, the proposed project does not fit well with the existing CLS nature of the natural hydrology and biology of the lower end of La Cholla Wash. Nor does the proposed project fit within the historical and existing major designation of Suburban Ranch zoning along this segment of La Cholla Boulevard. Although Pima County might choose selected goals and policies articulated in the long-range plan update “Pima Prospers” to justify rezoning for a high density development in a predominately Suburban Ranch zoning area, there are obvious and numerous conflicting goals and policies in “Pima Prospers” that justify disapproval of this rezoning application.

In the chapter of “Pima Prospers” that relates to Use of Land, there are a number of enumerated goals and policies that will be completely ignored if this proposed project rezoning is approved. Policies that relate to: conservation planning, community design decisions, community input, respect for private property rights, and others will be effectively ignored by approval of this rezoning request. Additionally, although the Use of Land chapter states that implementation of the goals and policies of this chapter will assist in the expansion of a tax base, we would voice our concerns regarding Pima County’s development of a tax base, driven by an apparent desire to approve infilling rezoning for high density developments throughout the County, and especially along the major transit routes, e.g. La Cholla Boulevard. Yes, the resulting high density projects may initially contribute cumulatively to increase the tax base. However, closer scrutiny of these high density projects, for example, KB Homes and their developments throughout the County (see their website), demonstrate that infilling with low cost tract homes, of lesser if not inferior quality compared to custom homes, being quickly constructed, using almost pre-fab methods, will result in housing products that won’t stand the construction durability test of time. Pima County’s encouragement for construction of these types of lower cost high density subdivisions will ultimately result in the creation of high density slums with debilitated structures in need of repair that will: not hold their market value, result in deflation of market value of adjacent homes, including our homes, and ultimately result in decreased contributions to the County tax base. Pima County planners and regulators, as well as prospective home buyers should be wary of these types of high density, low quality home construction projects, and Pima County should

avoid any potential perception that the County is “rent seeking” by approving high density zoning and development in historically low density housing areas in Pima County.

In conclusion, we respectfully urge the Pima County Board of Supervisors to reject the subject proposed rezoning application for the reasons stated above.

Respectfully submitted,

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Pima County Preservation Land at Southeast Corner of La Cholla Boulevard and Overton Road Across From Proposed Development.





Sonoran Desert Vegetation in Proposed Project Area
Looking West Toward N Camino Del Plata.

