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## **CALL TO ORDER**

[Time: 00:00:01]

Mayor Ortega: Good evening, everyone. I call the January 9, 2024 City Council Regular Meeting to order. City Clerk Ben Lane, please conduct the roll call.

## **ROLL CALL**

[Time: 00:00:13]

City Clerk Ben Lane: Thank you, Mayor. Mayor David Ortega.

Mayor Ortega: Present.

City Clerk Ben Lane: Vice Mayor Solange Whitehead.

Vice Mayor Whitehead: Here.

City Clerk Ben Lane: Councilmembers Tammy Caputi.

Councilwoman Caputi: Here.

City Clerk Ben Lane: Tom Durham.

Councilmember Durham: Here.

City Clerk Ben Lane: Barry Graham.

Councilmember Graham: Here.

City Clerk Ben Lane: Betty Janik.

Councilwoman Janik: Here.

City Clerk Ben Lane: And Kathy Littlefield.

Councilwoman Littlefield: Here.

City Clerk Ben Lane: City Manager Jim Thompson.

Jim Thompson: Here.

City Clerk Ben Lane: City Attorney Sherry Scott.

Sherry Scott: Here.

City Clerk Ben Lane: City Treasurer Sonia Andrews.

Sonia Andrews: Here.

City Clerk Ben Lane: Acting City Auditor Lai Cluff.

Lai Cluff: Here.

City Clerk Ben Lane: And the Clerk is present. Thank you, Mayor.

Mayor Ortega: Excellent. I do want to mention that we have Scottsdale Police Sergeant Sean Ryan, as well as Ryan Lowing, police officers here, and Firefighter Brad Reynolds should anyone need assistance. Let's begin with the pledge and call on Councilwoman Littlefield.

**PLEDGE OF ALLEGIANCE**

[Time: 00:00:57]

Councilwoman Littlefield: I pledge allegiance to the flag of the United States of America, and to

the Republic for which it stands: One nation under God, indivisible, with liberty and justice for all.

**MAYOR'S REPORT**

[Time: 00:01:26]

Mayor Ortega: Well, at this time, I want to call our attention to the ongoing wars in foreign countries, as they fight to protect their democracy and their freedom. And also mention that our own military is under attack as well in these danger zones. So, I ask you to join me in a moment of silent reflection for these war-torn areas.

Thank you. Our hearts are heavy as Scottsdale mourns the loss of Captain Kory Yule, a courageous first responder, husband, and father. Our deepest condolences turn to his family and to the ferociously loyal firefighter families in Scottsdale. There will be services and those announcements will come through the department. Also, you may notice we have a black ribbon on our lapels and there may be some others that also recognize this huge loss to our city.

Today is National Law Enforcement Appreciation Day. So let's take a moment to thank the men and women of Scottsdale Police Department and our partner law enforcement agencies around the valley for all they do in keeping our community safe.

Next, I have the pleasure of presenting a proclamation, and I see that Joan Fudala is in our audience, coincidentally, so I will read our proclamation in her honor.

Whereas the city of Scottsdale boasts a rich history and western heritage which serve as a foundation of our vibrant community; and whereas the accuracy and preservation of our local history is of paramount importance and broadens our understanding of the past; and whereas, Joan Fudala possesses a keen knowledge of the individuals and events that shaped Scottsdale, and she generously shares that knowledge with the residents and visitors alike; and whereas, as an accomplished author, Joan has written numerous books about Scottsdale, including Images of America, Scottsdale; Historic Scottsdale; Golf in Scottsdale; and the People's Preserve – How Scottsdale Created the McDowell Sonoran Preserve; and whereas Joan has served her country and community as an officer in the United States Air Force and as a board and commission member for several Scottsdale nonprofits in the city.

Therefore, I David D. Ortega, 12<sup>th</sup> Mayor of Scottsdale, do proclaim Joan Fudala as official Scottsdale Historian. With responsibility of preservation and promotion of the historical legacy of Scottsdale through continued service as a valuable resource to the Scottsdale historical society museum. She's at every event the city holds. Educational institutions and community groups. Congratulations, Joan. Please join me up front. And I will add, it's her birthday!

There is a groundbreaking. I will see Joan tomorrow at the Museum of the West. By the way, we

are making a new addition to that building.

Next, we will call on the City Manager Jim Thompson and give us your report.

### **CITY MANAGER'S REPORT**

[Time: 00:06:41]

City Manager Thompson: Thank you, Mr. Mayor and members of City Council. This evening we have a short video for you.

Hi, I'm Public Affairs Specialist Stephanie Hirata with Five Fast things happening around the city you need to know.

Starting us off at number five, Scottsdale residents interested in volunteering their time and instituting a positive change in their community are invited to apply to serve on a City board or commission. Applications are being accepted until January 26th for openings on eight boards and commissions, including the Board of Adjustment. The Board of Adjustment has the power to hear and decide on appeals from administrative decisions and variances from the provisions of the zoning requirements. The Board of Adjustment makes the final decision on items that come before it. Decisions are not passed on to the City Council for final approval. To view a complete list of current and future openings or to apply, visit [Scottsdaleaz.gov](http://Scottsdaleaz.gov) and search boards and commissions.

Coming in at number four, Agua Linda Park enhancement project is complete. Over 2,500 square feet of underutilized space has been revitalized with the planting of fresh shrubs and trees creating a serene environment for all park goers to enjoy. More than 40 spirited volunteers rolled up their sleeves to make Agua Linda Park better than ever. The funding was provided by the Neighborhood Advisory Commission's grant program and was a coordinated effort from interested neighbors, Parks and Recreation staff and the Commission.

Next up at number three, Scottsdale honors city employees at annual awards ceremony. Capturing IRS tax credits for using natural gas, saving a hiker's life, creating solutions to short-term rental challenges, these are just some of the ways employees made Scottsdale even better in 2023. 270 city employees were nominated for several categories. Read a summary of those honored and their contributions at [Scottsdaleaz.gov](http://Scottsdaleaz.gov) and search 2023 Employee Awards.

At number two, tis the season! Not that one. We survived the December holidays. Now it's on to another special season. Welcome to Scottsdale's event season, which runs through spring. The fun begins Saturday, January 20th with the Barrett-Jackson Auto Auction. This world-renowned event brings in hundreds of the finest collector automobiles and thousands of spectators to WestWorld. The excitement continues with Western Week, a slew of cowboy cahoots and boot-stomping fun. And let's not forget the W.M. Phoenix Open for golf

fans and Cactus League spring training at Scottsdale Stadium. Residents and visitors can learn about news and traffic information at [Scottsdaleaz.gov](https://scottsdaleaz.gov). Check out the calendar of activities under the things to do section. You can subscribe to the City's weekly Scottsdale update Newsletter at [Scottsdaleaz.gov](https://scottsdaleaz.gov) and search Scottsdale update.

Wrapping things up at number one, Scottsdale is on its way to becoming a Blue Zones community. That means residents and organizations are focused on improving well-being for themselves and their neighbors. Together, we can make Scottsdale a healthier and happier place for current and future generations. The City's free community kickoff event will be from noon to 3 p.m. on Saturday, January 13th at Scottsdale Civic Center. Come enjoy yoga, food demos, lawn games, giveaways, and so much more. We hope to see you there. For a deeper dive go to [Scottsdaleaz.gov](https://scottsdaleaz.gov) and search Podsdale to hear an interview with Sarah Kearney, Executive Director of the Scottsdale Blue Zones project. And that's Scottsdale's Fast Five for January. Thanks for watching.

#### **PRESENTATION/INFORMATION UPDATES**

[Time: 00:10:31]

Mayor Ortega: Very good. Next, we will have a presentation, the Arizona Anti-Trafficking Network Award Presentation. Presenters will be Jeff Walther, our Police Chief and Nate Boulter, Arizona Anti-Human Trafficking Network CEASE Program Director. Welcome. Thank you for being here.

CEASE Program Director Nate Boulter: Thank you, Mayor Ortega, and esteemed members of the Council, my name is Nate Boulter, I'm currently the CEASE Program Director for the Arizona Anti-Human Trafficking Network.

I'm honored to be here to recognize the continued dedication of the City of Scottsdale and the fight against human trafficking. For the second year, Scottsdale has committed to and completed the Anti-Trafficking Network CEASE training. CEASE stands for cities empowered against sexual exploitation. The mission of CEASE is to train and educate employees of Arizona cities and counties to recognize, report and respond to incidents of human trafficking across the state and thereby disrupting the demand for sexual exploitation.

I would like to point out that in 2022, Scottsdale was the very first city in the State of Arizona that actually received the CEASE designation. Scottsdale has been unwavering in its commitment to the anti-trafficking through the city and law enforcement efforts and has been an amazing partner to the Arizona Anti-Trafficking Network. To obtain a CEASE designation, a city must train a minimum of 75% of its employees. This year, Scottsdale has trained over 2400 employees throughout the city, and this astounding number equates to just over 88.3% of all Scottsdale employees.

I would like to express my gratitude to Mayor Ortega, Councilmembers, Chief Walther, and Ruth, where did Ruth go? There you go. And especially also the Scottsdale Human Trafficking Unit for your ceaseless devotion in the fight against human trafficking. We have seen firsthand how Scottsdale's efforts have made a notable difference in the lives of numerous human trafficking victims you have encountered. With your continued leadership on this issue, we know Scottsdale will continue to inspire other cities and organizations to be proactive in any human trafficking.

In closing, it is my honor and privilege to present this plaque to you and the City of Scottsdale on behalf of the Arizona Anti-Trafficking Network and recognizing your continued dedication through 2023 to ending trafficking in Arizona. Together, we will create an Arizona where no one is bought, sold, or exploited. Thank you.

[Time: 00:13:07]

Police Chief Jeff Walther: Ruth, why don't you come on down. We'll take a picture. Members of my Human Exploitation and Trafficking Unit, let's take a picture as well. You're right. We won't do that. We'll thank you anonymously. Just real quick. Mayor, members of Council. I just want to thank you for your support in this I know I had conversations with each of you as we were bringing on it the Human Exploitation and Trafficking Unit and we had a lot of positive discussion. I also want to recognize City Manager Jim Thompson who really was incredibly supportive in us moving forward as a city to train all of our employees and so without everybody's effort and the Arizona Anti-Trafficking Network, Nancy Baldwin and all the work from Nate and his crew, we really did a great job. And like Nate said, as the first city in 2022 to have that CEASE designation, that's really important for us, and recognizing the tourism and major events that come to Scottsdale, this was something that was quite important to us, and just want to thank everybody for their support.

## **EXECUTIVE SESSION**

Mayor Ortega: Well, next with our process and procedures, during tonight's meeting the Council may make a motion to recess into Executive Session to obtain legal advice on any applicable item on the Agenda. If authorized by the Council, the Executive Session would be held immediately and will not be open to the public. The public meeting will resume following the Executive Session.

Secondly, I want to point out that per our Council Rules of Procedure, citizens attending Council meetings shall observe the same rules of order and decorum applicable to members of the Council and city staff. Unauthorized remarks or demonstrations from the audience, such as applause, stamping of feet, whistles, boos, yells, and/or other demonstrations shall not be permitted. Violation of these rules could result in removal from the meeting by security staff. This allows us to keep the meeting flowing and in an efficient manner.

**PUBLIC COMMENT**

[Time: 00:16:10]

Next, we will go on to Public Comment. Public Comment is reserved for Scottsdale citizens, business owners and/or property owners to comment on non-agendized items that are within the Council's jurisdiction. Advocacy for or against a candidate or ballot measure during the Council meeting is not permitted pursuant to state law and is therefore not deemed to be within the Council's jurisdiction.

No official Council action can be taken on the Public Comment items and speakers are limited to three minutes to address the Council. If you wish to speak, and we have had several requests, they advise the Clerk and I have a list of several. So as I name you, you may come forward to the podium. You have three minutes. You will see a timer and at this point, I will announce three of you. One is Tiffany Ellington and then Daniel Ishac, if you would state your place of residence and three minutes. Thank you, hello.

[Time: 00:17:08]

Tiffany Ellington: Hello, everyone, my name is Tiffany Ellington and I'm the 2024 Miss Scottsdale, part of the Miss America Organization. I'm a local here in downtown Scottsdale area. And I wanted to say thank you all for making the City of Scottsdale such a wonderful place. I'm getting my year started and I have been Miss Scottsdale for a couple of months now and with being Miss Scottsdale, we are in the community a lot.

Not only is it a scholarship organization, but it's a community service organization. So I know I have seen many of you. I was at Arabian Library last night doing a story time, but I really just wanted to come here and thank each one of you for everything that you do for the city. I'm proud to live here and I'm very proud to represent Scottsdale as Miss Scottsdale. So, thank you all for your time tonight and I'm honored to be here.

Mayor Ortega: Thank you. Next we have Daniel Ishac, and Bob Pejman followed by Brent Bieser.

[Time: 00:18:24]

Dan Ishac: That's a little hard to follow. Dan Ishac, address on record. I'm here to speak about Susan Woods' current affairs discussion group, which has caused some concerns. Some believe the city should stop allowing them on city property. I don't agree with that. The group consists of residents with valid concerns, traffic, crime, water et cetera. Though there's a profound lack of understanding, anger and misinformation don't violate city rules. Moreover, why don't we want to restrict free speech? I support the First Amendment though sadly Miss Wood doesn't by banning people from the meeting and blocking them on her social media accounts.

I attended one of the meetings last month and it had about 30 people and lasted almost two hours. A handful seemed sincere about their desire to address city issues, but the majority of the meeting was politicking and attacking. Councilmember Durham was there, he made a herculean effort to correct some of misunderstandings within the group. He must have felt a bit like Sisyphus eternally rolling the rock up that hill. Councilmember Littlefield was also there. Councilmember, you have on more than one occasion, commented that it's important for the Council and the staff to work together regardless of differing views for the benefit of the city. I wholeheartedly agree with that sentiment. But the collegiality was notably lacking when you sat silent amid the personal attacks on Councilmember Durham, including one participant literally yelling at him saying, I don't care what you think. You need to be quiet. You said nothing when several members referred to the Mayor and other Councilmembers as quote, liars, along with attacks on members of the boards and commissions.

When a small group spewed invective about Councilwoman Whitehead and wanted to initiate a recall, you again said nothing. There were many times that people left of center were referred to as quote, socialist, Marxist, and communist and ruining our state and city, and again you were silent. I doubt anyone expects an elected official to defend the views of colleagues with whom they disagree, but I think most expect our elected officials to defend others against personal attacks. Well, not you, Mr. Graham, since you actively participate in public attacks of your colleagues and the city staff. But to Councilmember Littlefield, for the better part of an hour you said nothing amidst the attacks and your silent is an implicit approval and your attendance is tacit support of ugly behavior. Disappointing doesn't begin to describe the situation.

Mayor Ortega: Okay. Next, we have Bob Pejman and Brent Bieser and then Jason Alexander.

[Time: 00:20:56]

Bob Pejman: Thank you, Mayor Ortega, Councilmembers, name is Bob Pejman, the address is on the record. And I want to do a follow-up comment on the last regular session we had, which was December 5<sup>th</sup>. There was a discussion on parking by the Civic Center. And some comments were made that frankly, I think deserve a response. General comment was made to the effect that we're not going to go to the taxpayers and tax them so that we can build extra parking around the Civic Center in peak season.

I got to tell you, I felt like I was in a parallel universe because isn't that what we did in 2019 when we passed the bond? I'm talking about C.I.P.63. Can I put this on the projector? So let me point to specific language here, portions of Old Town Scottsdale experience parking shortages at various times, emphasis on parking shortages, during peak season. It says peak visitor periods and major events in the area, and the cost was \$2 million dollars, and there are three alternatives included the locations were all within walking distance of the Civic Center. So that's what you did back then. And the City went to the voters said look if you want part with \$20 million this is what you are going to get in return.

The argument was made, and, you know, now those of us who want to get this built were made to look like lobbyists, that we're lobbying for this. When if you really think about it, it was the City who lobbied the voters by making these arguments about the fact that we have parking shortage in some parts of downtown, named peak season and named large events, that's pretty much around the Civic Center and spring training. And those locations that were stated, they made the voters, they led the voters to believe that that's kind of like where it's going to get built. So, I hope that, you know, I shouldn't even be here. This argument was made by the City, and the voters approved it and it should just get done.

One further note, on the parking study, there's an effort, I'm not sure where it is that the 2015 Walker Study is going to be updated. And that's a great idea because I think it should get updated. But look, it should not have an impact on this because back then, in 2015, when the argument was made, it was made clearly based on where the shortage is and what the recommended locations are. So I hope that this gets built and the shorter, the voters are going to be happy about getting what they were promised. Thank you.

Mayor Ortega: Thank you. Next, we have Brent Bieser and Jason Alexander.

[Time: 00:24:14]

Brent Bieser: Let me throw this up here just for a memory refresher. Good evening Mayor, City Council, my name is Brent Bieser, 7317 East Vista Drive and you probably remember me because I was here in October and I was here in November and I'm following up again. And I know I've sent emails off to the Mayor and the City Council regarding the problem that we're having at this office building located 5225 North Scottsdale Road. It has to do with a parking easement that the hotel, the Doubletree Paradise Valley Hotel basically wrote itself to allow itself, to allow the hotel to put parking onto the Scottsdale land.

After my last presentation in November, the City Manager Thompson greeted me after the meeting, wanted to make sure he got my contact information. I unfortunately I never did hear from him. I did send an email a week later, and after about a month, I didn't hear from him after my email. So I went ahead and reached out to the Mayor and the City Council in total. Councilwoman Betty Janik did, you know, kindly reply within a few hours, I think, to let me know that she did get the email.

Basically, we have our hat in our hand. Our neighborhood doesn't know what to do about getting the City to enforce the zoning. The zoning is S-R, it's small office, quiet little office uses, and the idea of hotels parking its trucks and its buses and its valets in this little office parking lot clearly has nothing to do and is completely out of compliance with S-R zoning. What we have been doing is asking for the, asking the staff we worked with, Waylon Barton, Brad Carr. All we want to know is the city going to enforce S-R Zoning? I'm getting crickets. Nobody will respond to the question. They give me some song and dance about, you know, look over here. They will not answer the simple question, will the staff back up the S-R zoning.

What we want to know is if we find that the hotel starts parking there and we call zoning enforcement, is the staff going to back us up or are they going to basically leave us hanging out to dry. So, we just don't know what to do at this point. We don't know who to talk to. I did reach out and I said I would love to be able to, you know, sit down and meet with you, Mayor Ortega, to discuss the issue in more depth, maybe get some history of it. This is a problem that's going back to the mid-90s. So it looks like I'm running out of time there. So, I welcome to talk to anybody who will talk to me, who would give me any kind of information on what I'm supposed to do. Councilmember Graham approached me before the meeting and said the keyword is persistence, so I will keep coming back, I suppose.

Mayor Ortega: Thank you, Mr. Beiser. You are not, and the matter is not on the agenda and so we can't discuss it at this time, but we take note of your message. Next, we have Jason Alexander. Public comment is allowed for five participants, so we've heard from four. And your turn.

[Time: 00:27:36]

Jason Alexander: Thank you, Jason Alexander. My address is on record. And staff, I would like to use the overhead, please. Last month, to be specific on December 6<sup>th</sup>, the City's Transportation Department sent around an update doing a little bit of a different analysis on your existing numbers of the road system of lane enhancements and lane reductions. This wasn't new data, but they presented it in a new and cumulative way.

And what they concluded as you can see here, this came from the memo, is that the City hefted up its road system, bulked up its roads by almost 40 miles with, over several decades, with approximately 11 miles of lane reductions for increased safety. And that in the next year or two, things that have already been improved will lead that total lane bulking and lane enhancements up to 62 miles of new lanes on the system.

Now, here they presented this in a graph-like format where you can see year-by-year the additions and the subtractions and the cumulative totals and here we see 62 miles. And this little dot right down here, that little bitty reduction represents 68<sup>th</sup> Street, which got turned into as many of us know a huge confrontational issue largely driven by people who live nowhere near 68<sup>th</sup> Street, people who live in McCormick Ranch and Cactus Acres, trying to create a wedge issue and basically weaponize a very tiny safety enhancement to our road system.

The transportation staff's update went on to include graphical presentation of changes in the transportation action plan, and, again, we see a huge bulking up of our roads planned, with some minor changes and minor corrections. All told, our plan over the past few decades and moving into the next few decades will add 145 new lane miles to our roads.

The idea that Scottsdale is gratuitously reducing road usages is really just ridiculous. But now that you all have the facts and that the facts are our in the public forum and presented in a way

that we can really see all this information, so graphically and so clearly showing how our system is being enhanced and bulked up and beef up rather than reduced, I'm looking forward to each and every one of the members of the Council and the city staff continuing to share the facts and data rather than false information, misinformation, and political propaganda.

It really reminds me people who are misreading this data of yo-yo diets. Maybe you've heard that term. It comes around every year, every January. A yo-yo diet are people who make a New Year's resolution to get into the gym and lose some weight. And it's notorious that they'll go to the gym for two weeks or a month and lose maybe two or three pounds. The 68<sup>th</sup> Street nibble off of their size and then they go right back to their previous ways and by the Super Bowl they've put all that weight back on. So thank you for sharing facts and data about the hefting up of our road system. Thank you.

Mayor Ortega: Okay. This concludes the Public Comment segment. Our Council rules do allow any Councilmember to respond if they feel something may or may not be represented correctly. Did you have a comment, Councilwoman?

[Time: 00:31:14]

Councilwoman Littlefield: Yes, thank you, Mayor. Yeah, I did attend one of Sue's Council sessions. In fact, I have attended two to make sure that my initial analysis was correct. I wanted to find out what was going on. There had been a lot of discussion and talk about it. And I wanted to see what it was and who it was and what they were talking about because I'm curious.

Your interpretation of my being there is erroneous, and you assume you can read my mind or know why I was there. I was there to listen. I was not there to talk. It wasn't appropriate for a Councilmember, I didn't think, to speak when the citizens were trying to say what they were thinking and what their opinions were. I was there to listen to them, whether I agreed with them or not. And some I agreed with, some I did not.

There was a great deal of discussion in the group. Many people were there. It was a filled room. And a lot of people said things that contradicted each other. That's fine. I listened. That's why I was there. I was not there to express my own opinions, nor was I there to bombast anybody who was expressing their opinions.

The idea is to have, for this group, an open and nonpartisan discussion on items that affect the citizens of Scottsdale. That's what I was listening for. And that's what I heard. People have a right to say what they want. That was the purpose of this group. It's not appropriate for me as a Councilmember, I didn't think, to step in and tell someone they shouldn't have that opinion. It's wrong. No. They have, this is supposed to be an unbiased forum where people can express themselves openly. And that's what I heard. I wasn't going to step up and say, well, I disagree with you, so therefore, you can't say that. That defeats the entire purpose of the group. So that's a response to that, and it's something that I believe in, open and honest discussions.

Whether you agree with what people say or don't is immaterial to the discussion. Thank you.

**MINUTES**

[Time: 00:33:51]

Mayor Ortega: Thank you. Next, we have approval of the Minutes. The Minutes on the table include, and I would ask for a motion to approve Regular Meeting and Work Study Session Minutes of November 20, 2023, Regular Meeting Minutes of December 4, 2023, Executive Session Minutes of December 4, 2023. Do I have a motion?

Councilwoman Janik: So moved.

Vice Mayor Whitehead: Second.

Mayor Ortega: A motion and a second. Please record your vote. Thank you. That is unanimous.

**CONSENT AGENDA**

[Time: 00:34:26]

Next, we are moving on to Consent Agenda Items 1 through 18. All items are duly posted and have accompanying files that are available for review. At this point, I have, we have an opportunity to see if there are any questions from the public. There's an opportunity for the public to speak on Consent Agenda items, however, I want to be clear that Councilwoman Janik is requesting that Items 3, 4, 5, and 6 on the Consent Agenda Items be brought with a full presentation on the Regular Agenda. So thank you for notifying me.

Councilwoman Janik: Thank you, Mayor.

Mayor Ortega: And we will move those. At this point, however, we do have the remaining Consent Agenda Items and those are open for any question from Council. I see the public has not requested any, to speak on items. There is a request for Item Number 3. So that item will come forward in the Regular Agenda. At this point, I'm being asked by Councilwoman Littlefield, did you have a question on any of the Consent Agenda Items.

[Time: 00:35:46]

Councilwoman Littlefield: Yes, Mayor I have a question on one, number 18.

Mayor Ortega: Sure.

**ITEM 18 – HUMAN RESOURCES MANAGEMENT CODE AMENDMENT**

[Time: 00:35:58]

Councilwoman Littlefield: It has something in here that says insurance, employee group insurance to provide for employer contributions to the post-employment health plan. Is there someone here who can discuss what that is entailing? Because I remember several years ago to there was a big to do about post-employment health plans and I'd like to know what the clarifications is. Thank you.

Mayor Ortega: Sure. Fortunately, we do have the Human Resource Director. But let me ask whether the City Manager would like to answer that question or defer to Ms. Boyd?

[Time: 00:36:13]

City Manager Jim Thompson: Thank you, Mr. Mayor, members of Council, Councilwoman Littlefield, the Item before you this evening is to allow us to make an amendment to the policy to provide for the post-retirement medical, a minor amount that we've discussed previously, we just haven't got there to remain competitive in the marketplace, compared to what others are doing. We are not going back and reinstating post-retirement medical. It has, which has occurred in a few other cities. What we are doing is providing a very small stipend, \$10 a month for employees for a post-retirement savings account is what we are actually opening the door for us to do, and we reconsider it every year during our class and comp study and during the budget process. We did budget for this Item accordingly it's just taken time to put it in the proper form. And this is the amendment to allow us to go down that direction.

Councilwoman Littlefield: Thank you, Jim. I wanted to make sure that people understood that, that it was not full health benefit. Thank you.

City Manager Jim Thompson: You're welcome.

Mayor Ortega: Very good. Thank you. Next, we have Vice Mayor Whitehead.

[Time: 00:37:41]

Vice Mayor Whitehead: Mayor, I want to motion to approve Consent Agenda Items 1 through 18 with the exception of items 3, 4, and 6.

Mayor Ortega: Okay. So the motion and do I have a second? I will second that. So that would be to approve Consent Agenda Items 1 and 2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 through 18. Any other discussion? Seeing none.

Councilwoman Janik: Real quick, I thought we said we would exclude six.

Mayor Ortega: Yes, we are excluding 3, 4, 5 and 6.

Councilwoman Janik: Okay. Good

Mayor Ortega: So, I don't see any discussion. Please record your vote. Very good. Those are passed unanimously. Next, we will go into the discussion, which will require a presentation by staff and many cases, these have similar content and relate to abandonments and specified subdivisions within Scottsdale.

**REGULAR AGENDA**

**ITEM 3, 4, 5, AND 6 – SERENO CANTON PHASE 2AA ABANDONMENT (4-AB-2018#2), PRESERVE IV ABANDONMENT (8-AB-2022), PRESERVE IV SUBDIVISION FINAL PLAT (4-PP-2022), AND TROON HIGHLANDS ESTATES ABANDONMENT (10-AB-2022) AND USE RESTRICTION AGREEMENT**

[Time: 00:38:47]

Item Number 3 is regarding Sereno Canyon, Phase 2AA, Item Number 4 the Preserve IV Abandonment, Item Number 5 is Preserve IV Subdivision. So, although we, and then Item 6 is also an abandonment. We have Mr. Murillo, if you could speak to generally each of them as they relate to one another, and I appreciate you being here.

Jesus Murillo: Thank you Mayor Ortega, good evening to you and members of the Council. Yes, if it pleases the Council, I did consolidate those four presentations into one and so I will do my best to be brief, but also provide the information requested.

So as you can see here there is one plat and you stated, that's Preserve IV Abandonment and then there's three abandonments also on the case. Two of those abandonments are related by relationship and the other one by proximity but also was important to have it on here to complete the full transportation analysis that was to be done on those.

So please forgive the slide. I know it's busy, but I think it needed to be the information. I will let your eyes adjust to the screen and I will go through these little, provide a little bit of history and also it will include what's being proposed today.

So the area that you see there in the orange is Sereno Canyon Resort Community. When that first came through as an NAOS (Natural Area Open Space) density incentive community. There were some questions about what the transportation would look like. It was decided at that point in time, that instead of a complete dedication of Alameda Road from 122<sup>nd</sup> Street over to 128<sup>th</sup>, the developer at that time received the portions of East Happy Valley Road and East Ranch Gate Road that you see here in the topped dashed orange and dashed green.

At the time that this community came through and received a rezoning, there were some satellite sites located around it. One was known as the McDowell Mountain Manor which you

see here in green. The second one was known as T.R. Estates which eventually became Esteria Highlands, down in the south there were some 40 acres called Sonoran Sky. There was some 18 acres used to be known as Bilimoria and you see the plat that's coming here tonight which is Preserve IV.

[Time: 00:41:20]

Now, with each one of these properties, I tried to delineate what the axis looked like at the time that that property came in for a rezoning. As you can see the McDowell Mountain Manor was going to access through East Happy Valley Road down East Ranch Gate and then enter under approximately the 126<sup>th</sup> Street into this development.

Asteria Highlands was going to remain coming off of 128<sup>th</sup>. Sonoran Sky which you see, forgive me, I lost my mouse, which is the yellow dashed line that went from Happy Valley to 118<sup>th</sup> through Alameda, down 119<sup>th</sup> Street over Casitas Del Rio, continuing over Paradiso, and then north into the Sonoran Sky subdivision itself.

And the Preserve IV subdivision at this time did not have this name. Was also to come in off Alameda and then where it intersects with 122<sup>nd</sup> Street, it was going to go south into that subdivision, at least into those 40 acres. They had not been subdivided at the time.

Now the Sereno Canyon, when the City Council approved the rezoning of that, as you can see, there was two accesses being proposed at the time, the main one being off of 125<sup>th</sup> Street on the north side there, off East Ranch Gate Road, and then once the resort itself was completed, and 128<sup>th</sup> Street was developed to its full design, there would be a secondary access off 128<sup>th</sup> Street was developed to its full design, there would be a secondary access off of 128<sup>th</sup> Street. I will go into the next slide to complete that thought.

[Time: 00:42:48]

So what I have done here, I tried to compile the more recent and more relevant abandonments that have occurred on the site and then including the ones begin heard here tonight. So those abandonments that you see in the blue are the one that have been approved. So last year, the City Council approved an abandonment for McDowell Mountain Manor and that was the old Goldie Brown easements that you find surrounding the 40 acres. There were some internal abandonments to the Sereno Canyon, the one that is notable here is the 27-AB-2006, with that did, that abandoned Alameda again from going all the way through from 122<sup>nd</sup> to 128<sup>th</sup>. And as part of that, the community required and requested from the, both the applicant and the City Council, to have Alameda be an emergency access only as an entrance and exit for Sereno Canyon. So that was a third access point, but it was only designed to be there for emergency purposes.

And then down at the south, you see that 1-AB next to the Sonoran Sky, again that was those

surrounding, the easements that surrounded that property being abandoned and then tonight I will go through more specifically the other abandonments.

What these abandonments did, as it allowed here in the north area, the McDowell Mountain Manor subdivision to enter through the 125<sup>th</sup> Street connection from Sereno Canyon and removed the driveway that would have been found off of East Ranch Gate Road. Asteria Highlands remains the same.

And then another abandonment heard last year, down at the bottom, you see the Sonoran Sky. With that abandonment, that allowed the Sonoran Sky subdivision to now access the property through the Sereno Canyon subdivision. Please forgive me the mouse, if you go over to the Preserve IV subdivision portion, the part of two of the abandonments tonight, if approved, would now allow the Preserve IV subdivision to also access through Sereno Canyon.

[Time: 00:44:56]

Now about three or four years ago, the Sonoran Crest subdivision came through and they asked to abandon 122<sup>nd</sup> Street, at the time staff said we do not support that abandonment because 122<sup>nd</sup> Street was the only access point to those 40 acres that we now know as Preserve IV. And so since then, the Sereno Canyon property has also acquired those 40 acres and now proposing instead of having a single entrance off 122<sup>nd</sup>, having the single entrance through the 125<sup>th</sup> main entrance into the Sereno Canyon subdivision.

Now, that area that you see in purple is also part of the abandonment request tonight. Those 40 acres were known back in the early 2000s as Bilimoria. Those were 5 lots that had been proposed and approved by the Development Review Board. Because of the economy that case didn't go anywhere. Since then, some owners from the Troon Highland Estates subdivision have purchased those. They are looking to abandon the rights-of-way which are also easements, and they are going to be providing a use restriction agreement to have those only be designated as natural area open space and those two tracts will be then amended and placed into the Troon Highland Estates subdivision. And so, I know I'm sharing a lot here, so I will get to some graphics that I think will simplify this a little more for you. But I thought the history was important.

So what you see on the screen today are the three main abandonments that you are considering tonight. The first one is that magenta pink area and that's the portion of 125<sup>th</sup> that is required to be abandoned in order for the Preserve IV subdivision to be tied into the Sereno Canyon subdivision. The area, the second abandonment that is being requested of you tonight, are those light blue areas, again, those are easements that are located around the subdivision that would be replaced by any internal streets, if you so approved the Preserve IV subdivision tonight.

Now, the one that's related in proximity and for the sake of making sure the street system was

completed, is the green area that you see there. That's why the Troon Highland Estates subdivision. And what that would do is that would remove those easements from that property and allow that to be dedicated as NAOS and again tied into the Troon Highland Estate subdivision that you see to the southwest. I do like this graphic because you see this large wash area? You will see with the plats that are being proposed with this, there will be trail easements located within those washes to complete the regional trail system in this part of the city that leads both to the northwest and to Tom's Thumb Trailhead.

So this is the plat that you see that's associated with part of the abandonment. The magenta shows the existing fee simple which means the city currently owns that pink area. That is requested to be abandoned to amend then the three lots and the tract to start to curve the existing Mariposa Grande to be able to connect into Sereno Canyon, I mean the Preserve IV subdivision. So this next plat identifies the blue areas, the areas to be abandoned. The orange line identifies how the existing trail will be modified to work within the new subdivision plan if so the Council approves it. Those yellow dashed areas that you see are the proposed trails will lead through the washes for part of the regional trail.

And then the last plat that you see here, those green areas are the Goldie Browns that left on the 18 acres, the yellow is the proposed trail easement that will be dedicated with the plat and then these two parcels now, 18 acres will no longer need access because they will one NAOS tract that's tied to the Troon Highland Estates subdivision.

[Time: 00:49:02]

So kind of a big picture of what that looks like. These are the two plats along with the green, blue, and magenta identifying those abandonments. And if those abandonments were to be approved, this is what that connection would look like now. Now the Troon Highlands Estates abandonment does not require the two northern abandonments to exist in order to be able to move forward on its own, but these two abandonments do rely on each other, to be able to complete the system.

So this is just a closer look of what that would look like and then what that trail easements look like. So key items for consideration, again that the final plats do rely on each other, both the plats and the abandonments and then staff did receive support from about 12 properties, 15 people from Sonoran Crest and surrounding areas and we did receive letters of opposition as you saw in your packet from one of the neighbors.

So, the action requested tonight, first of all, it's important to mention that the Development Review Board did approve the preliminary plat on September 15<sup>th</sup> with a vote of 5-0 and as part of that, the request is to approve the Preserve IV Final Plat again with the caveat, with the recordation of the abandonment resolution. For the second, and this is the pink highlighted area. So again, Planning Commission heard this on December 13<sup>th</sup>, recommended approval with a vote of 7-0 and so with this abandonment, the city is asking for the property owner to record

the Sereno Canyon plat plus the \$65,000 for compensation. With the blue area that you saw, that's the 8-AB, again this case was heard on December 13<sup>th</sup> by Planning Commission with recommending approval with a vote of 7-0.

This abandonment will also require the recordation of a final plat which is the Preserve IV subdivision. And then compensation of just under \$500,000 for the abandoned right-of-way. And then the last abandonment is the 10-AB and that's the Troon Highland Estates, the green one that you saw. And so that will require the plat to be recorded. The \$26,000, and that is a, that price was modified because of the use restriction that, well, for two reasons, the plat that will record that that as just natural area and remove the density that's currently on it and tie it to the Troon Highland Estates and then also the city will receive an additional use restriction agreement so that nothing can happen on those 18 acres other than the existing waterline, the trail easement, and natural area open space.

So that concludes my presentation. I do have other slides in case you want to get more specific with the plats or other elements of this. But staff is here to provide, answer any questions and I believe the applicant is also here in case there's any questions or a presentation themselves.

Mayor Ortega: Thank you Mr. Murillo. I do want to point out that there are two speakers who want to speak, and we can hear them speak. The item, the two speakers are Michael Husar and Beverly Effendi. And so, they were listed to speak on item, case number 3, if they are here or wish to come forward, you have three minutes. And please just state your place of residence. We're happy to hear that and then we will go on to Councilwoman Janik, as well as Vice Mayor Whitehead. So we are in public comment.

[Time: 00:52:48]

Michael Husar: Thank you very much for the opportunity to address the City Council and our Chairman, our Mayor. As a resident of this and as the H.O.A. President, okay, we have been involved in this Sereno Canyon abutment to Sonoran Crest, for probably 20 years now, trying to make sure that we preserve the property values and the quality of life in our neighborhoods. That's not just Sereno Canyon. It's the down ones that are the part of Troon Highlands and some of the other Troon developments further down Alameda are affected by what we do on 122<sup>nd</sup> Street and what we do on Alameda.

Alameda, right now, is pretty much, if you were to drive on it, it's pretty much, all it can handle for traffic on a normal basis. I don't see the need for another access road to come on to Alameda from the property in question. It was always the intent when we initially negotiated with Troon for the Sereno Canyon development that Alameda would be an emergency access only, because we did know that they need to get out. But to have any type of an ability to feed the Sereno Canyon people down to Alameda would be an absolute disaster. I mean the traffic that would go through there would be unbelievable. You would have to make another Ranch Gate Road to handle that traffic. So, we would ask that you approve the abandonment and

allow the road to go through the natural way it should be and attached into Sereno Canyon and exit through there. Any questions? Thank you.

Mayor Ortega: Thank you. Thank you, sir. Beverly Effendi.

[Time: 00:54:48]

Beverly Effendi: I just want, I live in HOA, along with Mike. I'm on the Board. The only thing if you haven't been down Alameda, the reason we say that, it's a very windy road. There's no sidewalks. So if you want to walk down there, there's constantly bicyclists. There's pedestrians down there. It would be dangerous, and you can't see around the curves. If there is a bike, you have to stop, you have to wait. To add more traffic down there I think would be to the detriment of the residents that live up there and also the wildlife that lives up there. I just wanted to give you a sense if you didn't drive down Alameda, why I think it would be dangerous to increase traffic down there to 122<sup>nd</sup> Street. So that's all I had to say. So thank you for your time.

Mayor Ortega: Thank you very much. Again, the applicants remain available and engineers as well. But let's go to Councilwoman Janik, then Vice Mayor Whitehead, myself.

[Time: 00:55:40]

Councilwoman Janik: Thank you, Jesus. I do have a couple of questions. I want to make a comment. These Items, and I didn't include 6, 1,001 pages of documentation. Do you really think most of us up here look at it and even understand it? And the problem I have seen in the past is that we see a little piece of puzzle and when I looked at this, it was about one inch square and it covered maybe one or two blocks in each direction. There is no way I could evaluate if this is a good process without the correct information. And again, 1,101 pages is a whole lot of data to take into account. When you do it piece-wise, when you see the whole puzzle, you go oh, my God, look at what I just did. There's going to be a huge traffic jam here or here or here because you have eliminated access points. I do not want that to happen here. This is an extremely important part of our city. It is a beautiful part of our city. I want everybody to know what's going on and to be happy with what's going on.

So a couple of specific questions. The ingress and egress, does it all go through the Sereno Canyon entry? Does each subdivision have at least two ingress and egress areas for safety and security? The NAOS, is that limited to the one area, the, if I can remember the name, the Troon Highlands or can other people access it? Nice trails. Are the trails available to the public or just to the people in that Troon area? Okay? It's just a whole lot of information. You did a great job, but it was a whole lot of information. So let's just kind of look at it piecemeal. I have questions from a person who is very knowledgeable on this, and we want to make sure it's done right before we proceed with more appropriations or with more approvals. So start with Sereno Canyon. Is that the will major or the only entrance and exit from all of those subdivisions?

[Time: 00:58:12]

Jesus Murillo: So Mayor Ortega and Councilwoman Janik, so Sereno Canyon itself, right now, just looking at the entire resort community itself has three points of access. The first one is on the north side of East Ranch Gate Road off of 125<sup>th</sup>. The second, now that the resort community has been built and the streets have been improved, now there's an access point off of 128<sup>th</sup> into that Sereno Canyon. And then the east Alameda Road, that is a physical ingress/egress gate, but that is only to be used for emergency purposes, not for daily travel.

So as far as the Preserve IV community, right now even without the abandonment, it has one point of ingress/egress, up 122<sup>nd</sup> Street to East Alameda because to the north is Sonoran Crest. To the west we have another piece of another subdivision and then a street and then to the south is a large wash and the 18 acres that now belong to the Troon Highland Estates. So, if the abandonment is proposed that would, currently it has one access point, and then it will continue to have one access point, only now instead of going north off of 122<sup>nd</sup> and then going west off of Alameda, you would go north through the Sereno Canyon subdivision and you could either go out to Pinnacle Peak Road to 128<sup>th</sup> or you could go to 125<sup>th</sup> Street off of Ranch Gate Road.

Now in case of an emergency, they would be able to use the east Alameda Road access point to be able to exit. The Sonoran Sky, at the time that it was approved would have had a point of access to the south and then through the Troon Highland Estates Community that you see here and then up 119<sup>th</sup> Way. That one at one point in time did have an emergency access that it could have gone through Sereno Canyon to use the Alameda Road but currently it only has, as approved has one access point and that's through Sereno Canyon. And then McDowell Mountain Manor also has one access point through East Ranch Gate Road off of 125<sup>th</sup>.

Councilwoman Janik: So we have a couple of communities, two or three that only have one ingress/egress?

Jesus Murillo: So if, specifically for the ones highlighted that are being, that are in relationship to Sereno Canyon, you are correct. Although because I have it on here, I want to make sure that I identify it. Asteria Highlands also only has one point of connection on 128<sup>th</sup> Street from the ones that I have here on this graphic.

Councilwoman Janik: And our police and fire are comfortable that they can access these neighborhoods in a reasonable time should there be an emergency with only one way in and out?

Jesus Murillo: So Councilwoman Janik, these abandonments and cases were reviewed by all departments and they all were in support of the abandonment, of the abandonments and the plat.

Councilwoman Janik: Okay. I was not on Council then. And unfortunately, there's so much data, it is so very easy to get things through that haven't been thoroughly reviewed. And I would hope we don't do that in the future. I really would, because at the end of the day, it just causes more dissension with the citizens of Scottsdale. I just don't like that. How many total units will be using the Ranch Gate Road, the Sereno Canyon exit? I had that it was just under 300, 296 units, total number of units that would be using that particular road.

[Time: 01:02:08]

Jesus Murillo: So Councilwoman Janik, I'm not the quickest at math, and in front of pressure, I'm sure I'm worse, let me give it a try. The Sereno Canyon subdivision was approved for 299 units. I think with the last plat, they only used, I say just, but nonetheless 295 units. There were 32 units approved for McDowell Mountain Manor. So that's probably 330 now.

Councilwoman Janik: 330 is good enough. Yeah. Can that exit handle the traffic from that many units? I mean?

Jesus Murillo: Councilwoman Janik, again our Transportation Department reviewed, both the Transportation Department and Fire Department reviewed the access points themselves. They felt comfortable supporting and recommending approval with the amount of exits and streets and width, et cetera there. The fire department also reviewed the site for meeting code requirements as well.

Councilwoman Janik: Okay, and then again, who has access to the acreage that Troon Highland's is dedicating as a NAOS? Is it just Troon Highlands residents and you pointed to pathways, who has access to those?

Jesus Murillo: That's a great question. This graphic probably identifies it better. So, the actual property is zoned and will be maintained as natural area open space from the Troon Highlands community. They are the ones that purchased it, they're the ones that want it to tie to their subdivision. Again, I think it's important to identify the use restriction, which means that the density will not be transferred throughout the subdivision, it will just be natural area open space. And then both the Preserve IV subdivision, dedicated this portion of trail easement, which connects to the existing trail easement. Troon Highland Estates has dedicated this portion here as a trail easement and then the Sonoran Sky, we already have received this portion of the trail easement and that's open to the public. Everything but motorized vehicles.

Councilwoman Janik: With motorized vehicles?

Jesus Murillo: Everything but motorized vehicles.

Councilwoman Janik: Oh good, thank you. I think that's it for my questions. Thank you.

Mayor Ortega: Thank you. Next, we have Vice Mayor Whitehead and then myself, and Councilmember Durham.

[Time: 01:04:31]

Vice Mayor Whitehead: Yeah, I'm not sure why Jesus left. So most of us were not on Council when all of this was approved and this, I spent a lot of time trying to sort through this just like Councilwoman Janik. We could have gotten together and shared the fun. How many, so most people, and I really appreciate the residents coming and explaining the concerns with Alameda, about the safety for pedestrians, the safety for wildlife. I really do appreciate that, but everybody is going to need to go more or less east and south, or west and south. So how I bothered that this McDowell Mountain Manor has to go in through another neighborhood and has only one exit. When I was previously involved in protecting my own neighborhood when a new neighborhood was getting built, I was told that every neighborhood has to have two exits. So, do you know offhand if there are rules, of how many houses you have where you only have one entrance and exit?

Jesus Murillo: So Mayor Ortega and Councilwoman, I'm sorry Vice Mayor Whitehead. I learned a lot through the analysis, so I'm sure there's someone here who has better expertise than I. But when we did the review, I know that the analysis was done and some time ago there was an update to the sprinkler ordinance and so I think there were discussions at the time. Even now the fire code is heavier on the sprinkler ordinance and I think when that ordinance went into effect, I think there was a discussion of whether a second entrance was going to be needed or not. And it was decided that with the new sprinkler ordinance, that there would not be an ordinance requirement of a second entrance into a subdivision. Again, that's the way I understand it, I believe someone here might be able to speak better than I but that's the general idea.

Vice Mayor Whitehead: So the neighborhood not on tonight's Agenda, Highlands down below, how many homes is that? It's next to it, adjacent to 128<sup>th</sup> Street.

Jesus Murillo: So Asteria Highlands. So that one has 32 lots.

Vice Mayor Whitehead: Okay, so they have, their only access is east to 128<sup>th</sup>, they have no access through Sereno Canyon to get out?

Jesus Murillo: That is correct.

Vice Mayor Whitehead: Okay. And then the, and I just want to confirm, you said it, but I want to confirm because you kind of broke it up into chunks. The entire trail that you showed is public?

Jesus Murillo: That is correct, Councilwoman Whitehead. As you can see, there's an existing public trail that goes along the 122<sup>nd</sup> Street alignment of Sereno Canyon and that will be

modified to safely cross the street. That trail will continue that you see there, along the eastern boundary of the Preserve IV and then the yellow that you see will be the additional trail easements that will be dedicated for, one, the community as you can see to be able to come from their homes into the trail system, and then it will continue south into the Troon Highland Estates plat which will dedicate the yellow that you see there which matches up with what's already there with the Sonoran Sky subdivision.

Vice Mayor Whitehead: Okay. So how many, how much length of trail are we gaining from this just out of curiosity? Do you have a ballpark?

Jesus Murillo: Ballpark, well, usually it's, if I'm remembering correctly, it should be 660 feet across one of the parcels.

Vice Mayor Whitehead: Don't worry about it. I just wanted to confirm.

[Time: 01:08:38]

Jesus Murillo: It's probably about a mile.

Vice Mayor Whitehead: Okay, you don't have to do any, you know, whatever. So it's fine. No geometry on my behalf. I do want to commend the neighborhood that purchased the land and is adding to the city's open space. I think that's terrific! I think that's also good for wildlife. I also just like Councilwoman Janik, bothered by the lack access west and south. These neighborhoods are all relying on a road that goes right into our Preserve, 128<sup>th</sup>. That is a very, talk about wanting to protect wildlife. I don't like that all of these neighborhoods are spilling out on to that and on to Ranch Gate. If you go back to that one overall picture again, I will just see if I have any other questions. Especially Sonoran Sky, so Pinnacle Peak dead ends at 122<sup>nd</sup>? Where does Pinnacle Peak go when you go west.

Jesus Murillo: Councilwoman, Pinnacle Peak does not exist as an actual street, just in easement form from between 119<sup>th</sup> and 128<sup>th</sup>. So it's on here as far as easements and paper, but the street is not actually in. So there is no Pinnacle Peak improvements from 119<sup>th</sup> to 128<sup>th</sup> Street. There are easements for trails and for people to be able to walk, but there's no actual street.

Vice Mayor Whitehead: Okay. So there is no street there and it's not going in?

Jesus Murillo: Correct.

Vice Mayor Whitehead: Okay. Alright. I, like Councilwoman Janik, I feel that the Council that approved all this could have, should have done a better job and I think it would have included fewer homes and more access, but that's water under the bridge and, again, I really appreciate the residents giving us their feedback on this and their support. So, and I'm glad that we're getting the added NAOS, added open space for our city so I really commend that neighborhood

for doing it. So with that, I have no further questions.

[Time: 01:10:57]

Mayor Ortega: Okay. I'm next and then Councilmember Durham. You know, at this point, it's important, there are different ownerships and applications may come in by different developers so to speak or completions of developments. And it's the city's job to coordinate that and see how the connectivity, especially, when we can connect trails that are designated and try not to cross those trail areas potentially and include some natural area space.

So it's important to point out that all of these linear grids that you see were basically originated from the government land office, okay? So the government land office actually at territorial days decided that they were going to place a grid across open lands and that grid is the result yellow lines that you see that don't make sense. So they were basically sections and each section was 640 acres. And each section was one square mile. And those sections were basically a way to find A and B, X and Y grid so they could sell the property and that's how the Government Land Office designated that.

They had two Provisos. One is that those grid lines would become access points or rights-of-way for those properties. Those grid lines didn't care if it went off a cliff. They didn't care if it went in a natural area. They didn't care if there was a natural spring there or an archaeological site. They were a way to establish ownership. And as the city, any city, annex properties, we had the obligation to observe whatever grid or empowerment access were in those properties.

And that's why those G.L.O. easements end up in our purview later when you can review basically how Sereno and all these others in our attempts would allow for NAOS, we are the only city that founded that and said these matter, and also for drainage problems and so forth. Now we have, if you move the clock forward, you'll see that some subdivisions may have been designed right on the grid and they didn't care what was there in any sensitive way.

The worst example is when you look at the unincorporated county areas such as Rio Verde and that area and that has no control. They have a right for access either one way, or around and through. So, all of that grid is accessible to any property within those grid areas, and they don't make sense in Scottsdale. They don't work in Scottsdale. They also allowed again, vested with the properties, utilities to run in there. So, the city has an interest, but we don't really necessarily own that land. We have right of use and public use, but we want to make sure if it ran into a patch of Saguaros that are 150 years old, we want to preserve them, right? So we, that's why we go through all of this effort, whether it's 500 pages, 200 pages.

And if you add up all of these, they all had to go through that effort to arrive at a point where we do have a connection to trails and now, by law every property has to have one accessible point. So, whether they would have to go around on a grid and come back this way, in the old days. Right, they had to a right to do it.

The other part of the purview is that Cox Cable, water, any utility also had a right to run their utilities on that grid or around that grid. That's what you see in the unincorporated areas. They don't need to care. They don't need to pave. They can run right through a Saguaro patch or an archaeological site, because nothing has been considered in that. We are very deliberate in that manner. We have seen, I saw this 24 years ago when I was a Councilmember. People said why are we giving up land? We are not. We're actually planning it better and we have signoff from everybody to do so.

So with that I see Councilmember Durham has a point to make but at this point, would like to make a motion to approve Items 3, 4, 5 and 6, and we can still continue the discussion. It's 3, 4, 5 and 6 that are on the table. Do I have a second?

Councilwoman Caputi: Second.

Mayor Ortega: You can still have discussion on the motion. I see Councilmember Durham has a question.

[Time: 01:16:30]

Councilmember Durham: Thank you. Could you just address the concerns about Alameda Road and two speakers here raised and sort of explained what additional traffic is going to be on there that they are concerned about.

Jesus Murillo: Definitely, Mayor Ortega and Councilmember Durham. The Sonoran Crest subdivision which you see here is in two parts to the north and to the south of Alameda. Originally as you see Preserve IV, because of it being the last piece to be developed in this area of the city, would have already had dedicated rights as existing to go up north on 122<sup>nd</sup> Street and then these 12 lots would have access through Alameda and out to either 118<sup>th</sup> Street or down further to Happy Valley. The Sonoran Crest subdivision would have preferred that these lots access through Sereno Canyon. And so, as such, instead of these 12 lots accessing through here, will come up through 118<sup>th</sup> Street, Happy Valley, down Ranch Gate Road and 125<sup>th</sup> and or if they so chose, they could go down to the access point on 128<sup>th</sup>.

Councilmember Durham: But where's that going to add traffic to Alameda?

Jesus Murillo: So the thought is that currently if the abandonments were not approved and the Preserve IV subdivision property was required access, it would have to go up 122<sup>nd</sup> Street and then head west on East Alameda, and so this traffic here will now be redirected towards East Happy Valley Road and Ranch Gate Road instead of coming down east Alameda. So the traffic will move from here to up here.

Councilmember Durham: All right. Thank you.

Mayor Ortega: Thank you and we have Vice Mayor Whitehead.

Vice Mayor Whitehead: Yeah, you know, I appreciate your question. It really does clarify this one abandonment that's bothering me. How many homes are in the light blue neighborhood, which I cannot read from here.

Jesus Murillo: The Preserve IV.

Vice Mayor Whitehead: Yes, Preserve IV.

Jesus Murillo: There will be 4 lots.

Vice Mayor Whitehead: So 4 lots.

Jesus Murillo: I'm sorry, forgive me, 12 lots.

Vice Mayor Whitehead: So 12 lots are going to be forced to drive up all the way up to Ranch Gate because 12 homes should not add to traffic on Alameda? That's it in a nutshell, correct?

Jesus Murillo: So Mayor Ortega and Councilwoman Whitehead, I think that the comment is true. I think what the intent and obviously the owner should probably answer the question. But at least the intent as stated to staff was that they wanted this to be a part of this community. And the owner is here if you would like to respond.

Vice Mayor Whitehead: So, this does really bother me. If we deny this abandonment, and 122<sup>nd</sup> goes to Alameda, the only additional traffic on that Alameda is from the 12 homes? Is that correct?

[Time: 01:19:52]

Colin Phipps: Yes, that is correct. My name is Colin Phipps with Toll Brothers 8767 E. Via de Ventura. The intent of Preserve IV to be incorporated into Sereno Canyon as part of that master plan. When we started preliminary platting process of that 40 acres we engaged with the neighbors, heard very clearly from them that they did not want traffic going up 122<sup>nd</sup> Street and over on Alameda. The logical approach to us was that we would incorporate that 40 acres into the existing master plan utilizing the existing infrastructure, existing roadways to provide access to those 12 lots. It just made sense. They could then share in the amenities at Sereno Canyon and enjoy the mountain resort facility, be part of that HOA, et cetera. And so that is the precipice for having it behind the gate, if you will, accessing through Sereno Canyon.

Vice Mayor Whitehead: Well, that's an excellent explanation because what you are saying is, yes, these 12 homes now have a crazy little drive just to get southwest, but as a trade, they are part of this community that has many amenities.

Colin Phipps: Exactly, again behind the gate where they get to enjoy the facilities and the lifestyle that's been created within Sereno Canyon.

Vice Mayor Whitehead: Okay. I don't normally like people driving northeast to go southwest.

Colin Phipps: It's a scenic drive.

Vice Mayor Whitehead: Okay, well, that really sells me. All right. I'm done. Thank you.

Mayor Ortega: Okay. Councilmember Graham.

[Time: 01:21:33]

Councilmember Graham: I was just going to ask colleague, Councilwoman Janik, do you want to entertain a continuance, or you just want to vote on this tonight? So, that's all I'm going to ask, if she thought about that.

Councilwoman Janik: I think I would like to get, yeah, let's vote on a continuance and then we will know if it goes down, it goes down. If I don't get a second and that means nobody wants that and then move on to the primary which was made. So -

Mayor Ortega: Well, the motion is for all four. So, your motion is to continue. Do I see a second?

Councilmember Graham: I'll second.

Mayor Ortega: I see a motion and a second. I would like the applicants or whatever they have an opportunity to speak to the continuance, I believe, according to our rules. I don't support a continuance. I will tell you some people I know like living at the very end of a subdivision. That might be the cranny that doesn't have the direct road going right into them. I'm just saying that. It's not necessarily a negative in their opinion of acquiring a property that has a little more isolation in a subdivision. So, I don't see why that would happen to have to be an objection and sometimes a straight road is the wrong turn that people make. And the way Scottsdale has had curves and slows people down in general respects, that's a good thing. But I believe that what we're clarifying that. Clerk, do you have, did I hear that right, the motion is for approval of all four of them, is it not?

City Clerk Ben Lane: Right Mayor, the applicant for Item 6 is here and would like to speak.

Mayor Ortega: Okay so the applicant is here, and we would like you to come forward and clarify about anything. Thank you.

Colin Phipps: And if at all possible, I would like to request the Council.

Mayor Ortega: So the applicant is allowed, with our rules, on a continuance and this case, they're part of the motion. And we will get a handheld. Hang on, sir. And I believe by our rules you're allowed five minutes.

[Time: 01:24:02]

Steve Rennekar: Jesus, could you put the 18 acres up for us, please? Mr. Mayor, Councilpeople, my name is Steve Rennekar, I live at 12132 East Casitas Del Rio Drive. And I live at this house right here. A year or so ago, I put together a group of neighbors to buy this 18 acres to preserve it as open space. We contributed our own money. We bought it. We are donating it to the HOA to become common area. We spent a lot of time negotiating with P&Z and we have a NAOS being imposed on it a use restriction agreement that will be recorded against it. So the HOA can't do anything with it. We are trying to preserve it as open space. We just want it to be natural desert. We did agree to dedicate the trail, which connected the two parcels. We were the last section to connect those two parcels. So there will be a trail and this is last step for us to be able to donate this into the HOA.

The HOA plat is tentatively approved for the amendments. We have amendments to the CC&Rs. We are all ready to go. We just needed these public right-of-ways to go away because that's public access onto the common area and I don't think the assessor's office will allow us to designate it as common area if the public has access to it. So I just ask Councilwoman Janik, would you please exclude Item Number 6 from your continuance motion. We don't have anything to do with Toll. We're not involved in the access. We're a built-out community. We're already going up 119<sup>th</sup> to get out to Happy Valley. We don't have anything to do with this. Toll has been very cooperative with us, and we have no issue with them, but, please just exclude us so we can go forward and get this dedicated and be done with this. So please exclude Item Number 6 from your continuance motion.

Vice Mayor Whitehead: Mayor, can I make a motion?

Mayor Ortega: Well, thank you. I am, were there any other applicants that wish to speak on the topic of continuance and, you know, there was a request to amend the continuance and we have to vote on that first. So go ahead and state your, excuse me. City Attorney, please explain.

City Attorney Sherry Scott: Thank you, Mayor. Mayor, I know there are two tables on the floor. I don't believe the applicant has had a chance to present and so rather than bifurcate it and ask if they want to present just on the continuance, perhaps we should be asking the applicant if they want to present on their Item.

Mayor Ortega: You're correct. Actually, we can and should have had each of the four applicants make their case for the particular ones. Although they were explained by staff at one point. So please, we will allow actually up to ten minutes per applicant on a presentation. We have four of them to be made and I thank you for calling that to attention. I will as a chair hold the

continuance in abeyance because we have to have a full presentation. Thank you, sir, explain your company, the parcel and we will go through each one individually. You have 10 minutes or less. Thank you.

[Time: 01:28:03]

Colin Phipps: Thank you, again, Colin Phipps with Toll Brothers, 8767 E. Via de Ventura. I will be very brief, again the question at hand is whether or not to abandon a portion of 122<sup>nd</sup> Street and the surrounding Goldie Brown easements and right-of-ways in order to allow a 12-lot subdivision to go forward with a roadway alignment and access that makes the most sense from a physical constraints standpoint from what the neighbors and surrounding community wants, and from what makes sense from a marketing standpoint. To continue the case, I don't know to what end that would accomplish. We have spent two years working on this project and have spent a lot of time and effort working with the community, working with our engineers, and we believe this is the right approach and this is the right solution for these 12 acres, or excuse me, these 12 lots. So, I would hope that the Council would consider that request to make a motion and decide one way or the other tonight.

Vice Mayor Whitehead: We are missing our Mayor.

Councilmember Graham: You are the presiding officer.

Vice Mayor Whitehead: Yeah, it looks like there are speakers so, Councilmember Graham.

Councilmember Graham: Thank you, Vice Mayor. The only reason I, well the reason I supported the motion, is just because there seemed to be confusion up here. It does seem like, the plan makes perfect sense to me. I do think if people want to live in that kind of, sort of nestled back in there, they feel more private, it's exclusive, but if the, Councilwoman Janik, if you wanted to withdraw your continuance motion, because the speakers gave a satisfactory explanation.

Councilwoman Janik: Sure, that's fine.

Councilmember Graham: Settled understanding about everything, I would withdraw my second. I wanted to make sure that we had our arms around the issue.

Councilwoman Janik: Exactly and that's what I wanted to make sure we understood what was going on and to make sure that the people who live in the area are comfortable with the ingress and egress. So, yeah, I'm comfortable. I will withdraw my motion.

Mayor Ortega: Thank you. Do we have another applicant to present their project? Please come forward.

Councilmember Graham: Point of order Mayor. There is a motion on the floor.

Mayor Ortega: Your point of order is I am holding the vote in abeyance because the applicants haven't had a right to present their project. I seemed to have overlooked that thinking that since the staff presented, it was in order, and the staff presented for all of them, rather than singularly. So, there is the right of each applicant to hear every case. If we choose to vote and then we'll get to the motion. So that's my call. So please state your name, company and where your lot is, and we want to hear the whole story.

[Time: 01:31:27]

Daniel Benson: Thank you, Mayor. So, Daniel Benson with Toll Brothers. We have multiple properties in this situation. I just wanted to thank Councilwoman Janik and I wanted to add one point to my point colleague Colin's response. So, we worked tirelessly over the two years with neighbors and in addition to that, the City of Scottsdale staff. So, between Jesus, between Eliana, I know this is a very complicated, complex, multi-layered project but it has been thoroughly vetted with your staff. I just wanted to take an opportunity to commend them. And it's been a collaborative effort amongst all parties, between the neighborhood, staff, as well as the developer. It doesn't always happen that way and I'm proud to be part of that project. So, thank you.

Mayor Ortega: Thank you. Next applicant? Did you have anything else to add sir because you were speaking? I do understand that the continuance has been removed. We have a motion to approve the three, four cases, 3, 4, 5, and 6. Any further discussion? Okay, seeing none, please record your vote. Thank you. That's unanimous. We will move on to our Regular Agenda.

Councilmember Graham: The vote tally was not displayed.

Mayor Ortega: Did we burn something up? What happened? So that was unanimous and apparently. There we go. Let's vote again just to show it, but I did see, 7-0. Okay, unanimous 7-0. Thank you so much and, you know, I also will applaud staff and, again, when you consider that our open desert and our natural space is on a grid and that grid doesn't matter to us, we will make it work with the hillsides. We will make it work with, you know, our wildlife and we are very proud of the outcomes that we have as we move forward.

## **REGULAR AGENDA**

### **ITEM 19 – SWAGS REZONING (2-ZN-2023)**

[Time: 01:33:45]

Next, we will move into another Agenda item, Item 19, Swags Rezoning, Case #2-ZN-2023. We have Brian Cluff Planning and Development Area Manager.

[Time: 01:33:54]

Brian Cluff: Good evening and thank you, Mayor Ortega and Councilmembers. I'm going to give you a brief introduction of the Swags Zoning request this evening, Case 2-ZN-2023. Specifically, the request is regarding Ordinance 4610, approving a zoning district map amendment from C-2/P-3 DO to our downtown, Downtown Multiple Use Type 3 maintaining the P3 downtown overlay with amended development standards for a proposal of a new three-story restaurant on the .29 gross acre site. Also including adoption of Resolution 12938, the Swags amended development standards as a public record.

So this case was previously heard by the City Council on December 4<sup>th</sup> of last year. The Council after discussion continued the request to this evening. The direction provided to the applicant team was to work towards a private solution with the neighboring property owner, that was protesting regarding the land use of the property, and it was focused on the bar use. Additionally providing more information regarding the private parking agreement that the owner had entered in with a nearby property owner and being able to provide that for reference in the Council packet.

So some of the updates that have been made to the application since you previously heard it, we did receive the updated parking agreement for that private parking agreement for 14 spaces nearby to the west of the site. That is included in the packet for reference. It's a private agreement. The city is not a party to it. And it is for those 14 spaces beyond what the code requires, so it's also not required by ordinance.

We had not received any updates regarding the land use issue. So, the applicant can expand upon that. However, we, the owner has agreed to remove the bar from the third floor of the building. And has proposed a stipulation to that effect. The applicant can also go into more detail on that, and they have the specific language for that stipulation proposed. We also received some additional public comment in support of the request. One of those being from Coalition of Greater Scottsdale, C.O.G.S., and also another property owner within the entertainment district area. Those have also been included in the packet.

Another slide here is identifying the details regarding that private parking area. The subject site being here and the 14 spaces that the owners entered into a parking agreement for use of the spaces on this parking, this site here. I do have more slides going into detail on the requests that are the same presentation that was made last time. So, I can go into those slides if you would like, Mayor and Council, or we could turn it over to the applicant at this time for their presentation.

Mayor Ortega: Thank you. Let's go ahead with the applicant and also call to mind there are some requests from the public to speak. So, thank you very much.

[Time: 01:37:23]

Court Rich – Rose Law Group: Thank you. Good evening Mayor, members of the Council, my

name is Court Rich and I'm here today on behalf of the applicant. I want to start out by thanking each of you and thanking staff and even thanking our neighbor who we have quarreled with throughout the way because I think, as you are going to hear, we've worked hard, Mr. Wagner who is here with me tonight, has worked hard to make accommodations and I think we have a better project now than when we started which I suppose is the best result that we could have hoped for here. I'm going to tell you, I still think that is the right project in the right location and it's a restaurant in a downtown area, and it makes a lot of sense.

But let me jump into it. You are all familiar with the current building, objectively this is not a pretty building. We can do better. And what we are proposing is to do better. I think we can all agree, and we do have to go to DR so if there are elements that you like or don't like, that stuff gets hashed out there, but this is better. I think you've got some letters from landowners and from business operators saying that they want this, it is better.

Just for context, I know height and density are a big issue in Scottsdale, as they should be. This has neither. This is a three-story building, we're going to be 58 feet in context backing to a 90-foot parking garage and 141-foot hotel right across the street and a 64-foot apartment complex nearby in addition to other stuff with additional height planned on the horizon.

So let's get to it. The dealings with our neighbor over the last several months, I want to just recap and then tell you what's happened since the last meeting. Prior to the last Council meeting, before that, we had a three hour sit-down that was very productive. We hashed out some stipulations with them that we agreed to, and in exchange for those stipulations and proposing those stipulations to you, the neighbor agreed to remove the legal protest. We sent a letter to the City, here's a letter from Jennifer Hall, a planner in our office, and email and says the highlighted portion there, Mr. LaSota will be providing written notice to you that his client has withdrawn their legal protest and will be submitting a letter of support as well. That was in concurrence with our agreement. Mr. LaSota responded. My clients are withdrawing their formal protest. You will also receive a letter to this effect shortly.

Unfortunately, I'm standing here today because that didn't happen, and they didn't go through with the deal that they made with us. Nevertheless, since the last continuance, I talked on three or four different occasions with Mr. LaSota to try to work out an accommodation for the neighbor. And look, at the end of the day, they are demanding a deed restriction on the property about the use. And given that situation, a deed restriction creates a property right interest in a piece of property. And we just can't do that. There are all sorts of reasons let alone the neighbor is actually a competitor, but there's all sorts of legal issues and issues with financing. It's just not something that we can do, but we have done a lot.

And so, I want to take you through that. We have made numerous accommodations to limit noise already. We have the strictest noise stipulation of any restaurant in Scottsdale, even though we are located in the noisiest part of Scottsdale, we have agreed to the strictest noise stipulation for a restaurant in Scottsdale, limiting us to 68 decibels. And 68 decibels is in line

with indoor conversation, quieter than just normal background office noise.

[Time: 01:40:54]

So the next thing we have done, we have a stipulation that says all speakers have to point inward and angle downward. That's something the City has used before, and we are happy to accommodate it here in this situation as well. And there's that stipulation. It's in the packet already.

Now the next thing that we did since the last meeting is we, we are cognizant of these ideas that there's some issues in talking with all of you, whether this presents as a bar and how it this works and spoken with the Mayor and other Councilmembers about this, and knowing what the neighbors' interests are, we have agreed to remove the bar from the third floor. So there will be no bar facility on the third floor and we worked with your staff today on a stipulation that we would like to propose that reads, with the exception of drink preparation areas for waitstaff, there shall be no bar service area permitted on the third floor. And we are really hopeful this is something that we're doing for the neighbor and doing for you all and hoping that that really sort of drives home that this is a restaurant and I want to stress and take some time explaining how this is a restaurant and is not a bar.

First of all, there's that modification to the floor plan that I just mentioned. Next, we are not asking for, and we do not have, a bar conditional use permit. If we came back here for one, I would expect you to vote no on that. We are not asking for it. Mr. Wagner wants to operate a restaurant at this location. We don't have enough parking and cannot get enough parking for a bar. So we are not doing a bar. We can't do a bar. We couldn't transition into a bar. He doesn't have a series six liquor license that is required to operate a bar. And this design is consistent with other high-end restaurants that you see that have bars inside them but are not themselves bars.

I will give you some examples from right here in Scottsdale. Dominick's Steakhouse, you are probably familiar with it at the Quarter, you walk in, there's a big bar. On the rooftop, there's another bar. Dominick's is not a bar, right, it's very clearly a restaurant. Same for Ocean 44, they have a very big bar in the main room, they have a back room with another bar. I will just go sort of go through these to speed up, Maple and Ash is another example. Restaurants can have bars in them, that does not then make them a bar. And high-end restaurants. And when you see restaurants like this, I mean the best restaurants in the world, are incorporating significant bar space. Calla, in the area there. In fact, the owner of Calla wrote a letter of support for us on this they have a bar indoor and a bar outdoor. Mr. Wagner already started putting together the full restaurant menu. You see things on here like, you know, short ribs and oysters and caviar. This is not a quick sit down. This is not get a burger and go drink a beer. This is a high-end experiential restaurant. This is what we believe fits in the area.

Importantly, it complies with your parking code. The on sight there are 8 spaces. There are 18.49

P3 credits and I know that P3 credits are a source of discussion in the City as they should be. But I want to remind you, that we are not inventing those for this site. These are already on this site, and we are just utilizing them, so it's not an expansion of that in any way. And we have gone above and beyond, and secured extra spaces, physical spaces, through a lease with a neighbor and that's in your packet there.

[Time: 01:44:21]

This is a quick and I will speed up here so I don't run out of time. There's where the physical spaces are. There's 8 spaces on site. When you park that 14-space lot for valets, you can actually fit another nine spaces in there, and then the reality is we about a parking garage that has a tremendous amount of space available at times that its needed. So there's 200 valet weekend spaces in the Galleria that are available and 187 public spaces available there everyday.

And let me just skip through here. One of the things we are most proud of is the support we have in the community. And just about everyone we talked to that hears about this says gosh, this is great, a restaurant in an area where we are trying to stop the expansion of bars or a nice restaurant in an area where right now there's only sort of bar food. And so, these dots sort of depict where we've gotten signatures of support. I think we have a petition in the packet that has 30-some signatures in support from nearby residents and property and businesses owners. We have gotten some letters lately. I think staff mentioned those from Calla and then we really are appreciative of C.O.G.S. and their letter of support as well that we have received.

So I want to just conclude really quickly and mention a couple of things. You know, precedentially is important and obviously you are not here to do the same thing you have done before. But I want to remind the Council that just a few months ago in September, on consent, you all approved a roof, an expansion of the Goodwood Bar. It's a bar with a series six license use permit, you approved an expansion so they could put a rooftop bar on their property. And it was 200 feet away from this location and it was done without much discussion or without any discussion on consent.

The other thing I would like to point out, there's a lot of ironies in this case as some of you have pointed out to me as we have been discussing it. One the biggest ironies to me is the neighbor went through the process and got a similar project approved, Calle Rosa, not too long ago, that fronts on Camelback, right across the street from actual residents in their homes. It's a three-story restaurant with a bar. They have a speakeasy on top. They call it that themselves and the City is willing to call it a restaurant and there's a big controversy about this. So in any event, like I said, I think we are at a better place than when we started. I appreciate the opportunity that you gave us.

I'm sorry we couldn't work out a deal with the neighbor. But I think we have done all that we can. And the accommodations we've made, I hope will render and gather your support for what we think is a great project. It's a nice restaurant in downtown Scottsdale and that's what we are

hoping you will see when you look at all of this. Thank you so much for your time. Happy to answer any questions. Mr. Wagner is here and the rest of the team too.

Mayor Ortega: Thank you. And there may be some questions. So we will call you back, but at this point, we will open public comment. And we have Sonnie Kirtley and Louise Lamb. Louise has allocated her time to Sonnie. So that would be four minutes. And after that, we have Tim LaSota.

**PUBLIC COMMENT**

[Time: 01:47:47]

Sonnie Kirtley: Happy new year, Mayor, Vice Mayor, and Councilmembers, I'm Sonnie Kirtley, speaking for the COGS Board of Directors and we definitely support the Swags Fine Dining Restaurant which is 2-ZN-2023. We have nine reasons why. Court covered some of ours, but you will just hear them again because I'm ready.

First of all, there's a restaurant/bar in the current location. The bar-focused entertainment district should welcome a fine dining restaurant. That 3-story building at 58 feet 6 inches is far below the 84 feet that staff says could be allowed. That setback amendment they're asking for at 13 feet, 7 inches, simply matches the buildings nearby. The parking plan you saw here, I saw the numbers increase, I had 44.52 as provided, they only needed to provide 30.52. And as you saw the combination in your packet, it's a combination of eight on site, P3 rights in lieu option, and then they lease 14 spaces right nearby. And then of course they are going to valet that or if I go there, I can park there. Also remember the Galleria is right behind it. And he mentioned, there's lots of spaces there.

Now importantly, the opposition had one signature on all of its documents. The support, 32 of them, nearby businesses and residents support the project. COGS supports diverse ownership in the entertainment district. This is fine dining restaurant, and it's going to enhance the area and it supports our Downtown Character Area Plan.

Because of these reasons, COGS respectfully requests your super majority vote of approval on this project. Our Board of Directors are Marilyn Atkinson, Jim Davis, Howard Meyers, Stan Morgenstern, Copper Phillips, Chris Schaffner, Andrew Shank, and myself.

One more item I would like to share with you. As he pointed out, a couple years ago, this particular Yari Stockdale Group built this, or planned on this project that's under construction right now at 3743 East Camelback. It happens a lot, it has a lot of similarities to what you are considering tonight. You notice it has a third floor and as he said, it's described as speakeasy bar, open patio. Second floor, open patio. Music included. This is so similar to what Swags is asking for as fine dining. The name is changed is Calle Rosa but when COGS went to the Development Review Board, we challenged the original design on this. There was absolutely no concern by the

group building this project for the noise that was going to emulate from this across Camelback Road, to someone else's hotel. Not their hotel, someone else's, The Sun Dial Best Western. There are residents that live on Camelback. It is also going to impact Minnezona right behind the Best Western. And Villa Monterey was going to get the noise bleed.

So, what happened? To the chagrin of the group that was presenting for Stockdale Capital, they pushed back on our request to at least put up a barrier, a glass barrier, something to absorb the sound from this. We even went down to the Flint Restaurant, which is theirs, to see what was there and it had a barrier. Begrudgingly, they accepted the recommendation from the DRB and we looked at that, and then we saw this project and said, what gives if it's someone else's restaurant you don't worry about the noise? If it's your own, you do? Enough said. Thank you.

[Time: 01:52:33]

Tim LaSota: Thank you Mr. Mayor, members of the Council. I assume I'm up now. I couldn't remember if there was one other person first. Tim LaSota on behalf of Maya Hotel. I am going to talk fairly quickly. So, first of all, I wanted to talk about, I mean, the hotel that we were building, we can't move this hotel. It faces directly at the Swags Restaurant. It's been designed that way from the inception to avoid noise and we just, we're stuck with that configuration now. It's a significant investment. It's \$150 million and I guess this will surprise some people maybe, but we're not building it with cash. We have lenders. It's financed and we are under pressure to keep the noise down so this hotel is successful.

I think the response of the applicant has largely been to attack my client, rather than talk about the merits of the project which I think is unfortunate, but, you know, we've heard it's a turf battle, it's a monopoly, it's all of those things. Here's the bottom line. And one of these things was pointed out by Mr. Rich. Goodwood, no opposition. Casa Amigos another roof top bar in the area. No opposition from my client. No opposition ever from my client who supposedly only cares about his interest and keeping competitors off the playing field. We never opposed anything, and somebody comes and seeks an up zone and we object to it and all of a sudden we are just there about protecting our turf.

I think that is belied by all of those pointed. That look, we worked very hard, and we actually did come to an agreement with the applicant and I will get to this in a second. I take great umbrage that the notion we reneged on something. The staff did not like the stipulation, so it basically didn't fly. But there was never, we never said absent the stipulations that we are just going to withdraw our protest. That is just completely false.

So I think in terms of we have worked hard, unfortunately, we haven't been able to come to an agreement. I think this much touted stip that were gonna take the bar out of the third floor, I think it's kind of a mirage, because they will have a quote drink service area. So in other words you'll have a bar prep area with all the drinks and everything and instead of you sitting at the bar, and them serving you a drink there, they're going to bring the drink to you at a high top a

few feet away. I mean I think that's a pretty hollow concession. I don't think, at all, it deals with the points we've brought up, the concerns we've brought up that this will just create too much noise and it's going to negatively impact what we're building and, it's, that's the reason we oppose it, even though we worked very hard to try to get on the same page.

Lissa Druss is going to come up after me and talk a little bit about the supposedly direct comparison with Calle Rosa, it doesn't hold water when you put it up to scrutiny. But the bottom line is every project has to be measured on its own merits. Sometimes a project isn't opposed because even though it looks like another project, the fact is it doesn't negatively impact someone. That's why there was no opposition to Goodwood. That's why there's opposition to Casa Amigos. Oh well, it's the same use, it's the same everything. No, it's not because it's impact on others is different.

I think that the other half of the coin is when the applicant hasn't been attacking my client it's basically been complaining about Council, and Council's pandering because Council's asking questions. Council wants to know answers to this question, Council has concerns. That's not pandering. That's doing Council's job and that's what you should do and the applicant sort of takes offense at that.

Well, I think the bottom line is this, and as to the deed restriction, that was actually a staff suggestion. We asked to sit down with the applicant. We said, well, we can limit it in terms of time so it will not be a permanent restriction. We can do a lot of things that would be helpful. We got, essentially, they did not want to meet, or talk about it, nope, impossible. So, I think the bottom line here is we have worked hard and we have not been able to come up to an agreement and the applicant has not satisfied our concerns. So, we ask that you to vote no on this application.

Mayor Ortega: Okay, come forward. Lissa Druss. Three minutes.

[Time: 01:57:25]

Lissa Druss: Good evening, Mayor and members of City Council. Thank you very much, my address is on record. I, first of all, want to address the topic of Calle Rosa. The first floor is absolute parking, 100 % parking. It was created that way because we don't have enough parking in the area. The second floor is an enclosed, fully enclosed, high-end restaurant, five-star restaurant, and the third floor which is an open patio was mandated to increase the glass wall on Camelback up to 7 ft. and also with a mandate to have speakers pointed down. So we were addressing mitigation concerns about sound and I just wanted to clarify the facts or no facts about that. And lastly, the hotel across the street from us on Camelback was in support of Calle Rosa being built.

When it comes to Swags project, this boils down to three things. Vibrant tourism, investment in the entertainment district, and responsible development. This is a \$150 million investment of

this hotel in the entertainment district and it's not going to go away. We've spent hundreds of millions of dollars developing the entertainment district over the last 20 years. Combining these together and we are looking at responsible development. We are looking for a two-story full service, high-end restaurant as zoned. We welcome that wholeheartedly.

I want to talk about sound just for a second and echo what Tim had said. You know when you are in a restaurant and you're at a table and another table of six or eight people crack a joke and all of the sudden you hear ha, ha, ha and the laughter is jarring right? And you turn around and you look who it is. It's pretty loud. Well, imagine that on the third floor of a patio, open air, with the patio pointing directly towards half the hotel rooms. What is going to happen to those guests that were staying in hotel rooms? They are not going to come back. What's going to happen to the bed tax and the revenue from that? It is not going to come back. This hotel was designed to with no rooms facing east, learning a lesson from the W Hotel. So the majority of the rooms, half of them face south and now we have the concern of sound going right into these hotel rooms.

And lastly, I'm not a sound expert but I have an app and I have been monitoring the sound levels when everyone is speaking in this room. And right now, I'm speaking at 76 dbs. It's according to an app, it might not be a perfect app. But imagine 76 dbs. from one person, multiply it by 300 people that could be occupying that third floor and just think about that sound that will reverberate into the hotel rooms. Thank you and good evening.

Mayor Ortega: Okay. At this point, we have the opportunity from the applicant to address some of the concerns as well as any questions from the Council. So if you want to address some concerns please proceed.

[Time: 02:00:49]

Court Rich: Thank you, Mayor, members of the Council, I appreciate the opportunity to respond. First of all, I think I heard one thing that really sort of caught me off guard. Mr. LaSota explained how Mr. Yari's group did not oppose the Casa Amigos bar but they are part owners of that bar. So I think that is a little disingenuous to make that comparison. Look, they are building a hotel in the entertainment district downtown. This is not the Four Seasons up in some rural desert area. If they own all of that land around there, they own all of the different buildings. They have chosen to develop many loud things over the years. They don't own this property. We've made innumerable considerations and concessions. We have a requirement that the decibels escaping this property not exceed 69 decibels. That's the quietest stipulation. This is a restaurant in the entertainment district in Scottsdale that's been criticized for being noisy and out of control, the entertainment district. I don't believe it is that, but those are some of the criticisms and yet we are a restaurant with the narrowest and most restrictive decibel restriction of any restaurant in the city.

And so, we can't do a deed restriction. It doesn't work. We have done so much else. We want to

build a restaurant in this location. It's nonsensical to me that they said they are okay with a two-story restaurant that would have a patio on top. That doesn't seem to make a difference in the world to me whether the patio is on two or three stories. I think we have explained this before that the reason it needs to be three stories is because the footprint of this lot is so small, that if you are going to do a high-end establishment like Mr. Wagner wants to do, you need additional square footage to do it. And so, we needed the third floor to enable us to do that.

Mayor, members of the Council, I think this is a good project. It's in the right location. The restrictions are there to make sure it can't get out of control. That's not what we are trying to do in the first place and the restrictions are there to hold them honest. I really hope, we respect the neighbor. They are doing great things down there. We just want to be part of it. They built this great area. A really high-end restaurant fits perfectly, and we hope you allow this project to go forward. I'm sure you have some questions. I'm happy to answer them.

[Time: 02:03:22]

Mayor Ortega: Thank you. Well, I am up and I have two questions. So, for you. The first one is, because the Calle Rosa was brought up, are you aware whether that was up zoned or not?

Court Rich: Mr. Mayor, I'm not. My point is raising that issue was only to point out what I thought was sort of ironic that they would propose that while opposing this. It wasn't apples to apples, the city did this issue. It was more of their position I thought was ironic.

Mayor Ortega: I'm just asking you.

Court Rich: I don't know.

Mayor Ortega: Well, I will find out from staff next. That's my basic question first of all, and so whether or not a nearby restaurant that was brought up by Ms. Kirtley. So I'm just asking a fair question. You don't have that answer. I have a second question for you. But let me ask staff. Was that just a DRB case or was it an up zone?

[Time: 02:04:21]

Bryan Cluff: Mayor Ortega and Councilmembers, the Calle Rosa site was actually part of the collection rezoning case, the larger plan lot development so it was included in a zoning approval under that but the specific building design for the proposed restaurant was not included in the details of the zoning case but that was a DRB consideration.

Mayor Ortega: Thank you. And then second question, which probably you can answer as well. When there is an up zoning, doesn't the P3 usually go away or I'm just trying to go back to my architect files? Is that the case or what is the situation with P3 in a normal up zoning?

Bryan Cluff: Sure, Mayor Ortega, and Council, the P3 parking overlay district has language in it that describes the zoning districts that it may be combined with. So most of our existing P3 zoning overlay is in combination with a C2 or a C3 commercial zoning request and downtown would typically be going to the downtown d district. And the P3 does also allow it to be used in the downtown district. So, when the zoning application comes forward to change from the commercial district to the downtown district, it's at the Council's discretion and part of the action for that zoning case whether or not the P3 gets carried forward.

Mayor Ortega: Okay, but by definition, typically, the P3 as I understood it would go away, when you zone to a, it's kind of hard to trace where P3 are and were and I understand they are really an early iteration when these assembled lots, basically assembled their in parking P3 areas. So, again, I, it appears to show that this application requests an up zoning, and would also allow or request that a P3 that's usually only associated with deal or whatever go with it. Is that correct, that it continue with the up zoning?

Bryan Cluff: Yes, Mayor Ortega and Council, as part of the applicant's request for the zoning case includes carrying over the P3 district to the new downtown zoning.

Mayor Ortega: Which is a bit unusual, so to speak. In my opinion, because it's hard to account for these spaces and normally an up zoning would have enough benefits within it so that the P3 is not so-called an issue. But I thought I should clarify that in speaking about this issue as, again, you got file knowledge, but was a P3 consideration for the Calle Rosa for instance because I don't know that P3 exists after you up zone, typically.

Bryan Cluff: Mayor Ortega and Council, I don't know all the details of the Scottsdale Collection case larger plan block development. I know there were some P3 overlays included with the properties that were part of the zoning request. I don't believe the P3 was carried over but there was an associated development agreement that I think may have addressed some of the P3 credits as part of the development agreement.

[Time: 02:08:02]

Mayor Ortega: Sure. So parking and accessibility and whether P3 do exist or not, although they were added into this formula. Kind of in my opinion, I think that's a two-part sort of question that is embedded in this that I don't particularly like because no one can really trace down where P3 are. However, there was an attempt or a lease agreement for 18 spaces or real spaces that are part of this deal. So I'm not saying that I agree that P3 should ride with the land when there is an up zoning in this case. I want to make that pretty clear, so although it sounds like there's a lot of excess space, that's not necessarily taken for granted in this solution.

The other, that clarifies it for me in terms of now, as far as again the comparison was made to a Calle Rosa case by two people, and I'm just trying to clarify whether that rebuild of that one appears to be within the confines of a C2 DO overlay and I'm saying that because it was brought

up by others. I'm not relating it as part of the record of this situation. Is that true that it's basically, although it had amended zoning, excuse me, allowed zoning in a bundle or whatever it was, did it tend to exceed what the C2 criteria was and, you know, that is that the skeleton building that used to be, or is that another project? I don't know. Just explain that me, whether or not the envelope for C2 DO is conforming with a?

Bryan Cluff: Sure. Mayor Ortega and Council, off the top of my head and without checking the record, I don't know specifically the height of the building that was approved for Calle Rosa. I understand it's a three-story building.

Mayor Ortega: Yeah.

Bryan Cluff: And it, it was able to take advantage of the benefit of the rezoning to the downtown district that was approved for the Scottsdale Collection. Having said that, if it were the original zoning comparable to the current location of Swags, with a C2 downtown overlay, it would be limited to a building height of 36 feet plus some additional consideration for mechanical equipment and rooftop appurtenances. So I believe in 36 ft plus rooftop appurtenances you can certainly have a three-story building there. I'm not sure whether Calle Rosa was under that 36 feet or not.

Mayor Ortega: Okay and generally speaking appurtenances could be 10 to 15 feet according to our downtown overlay?

Bryan Cluff: Right, in that range, correct. And I will also clarify within the C2 commercial district those rooftop appurtenances that exceed the 36 ft in height are limited to 50% of the roof area. So it couldn't be for the entire building.

Mayor Ortega: Sure. And then finally, because yes, I see Councilmember Durham and Councilwoman Janik to speak. It appears there were substantial bars at each level when the application came forward at each floor as illustrated in the application. Maybe the smallest one was at the patio, or I mean the rooftop. But it appears as though the other two are pretty large doughnuts in that allow for seating and so forth. So those would be, if approved, in place in this application, just clarify that for me because it's still subject to seating, setup and so forth as to whether or not, well anyway, let me just think about that one myself because at this point the stipulation states they would remove the top one. Councilmember Durham, Councilwoman Janik.

[Time: 02:12:48]

Court Rich: Mr. Mayor, may I make a comment, a response to your comment?

Mayor Ortega: Yes, comment on that one.

Court Rich: Thank you. And maybe if we can pull this up here. But I wanted to note on the P3 discussion. The Maya Hotel itself, and maybe your staff can confirm, has over 200 P3 credits and I don't believe there is a single physical space associated directly with that hotel. Not necessarily relevant to this, but to your comments, I think it's important to note that that is something that our neighbor has relied on quite heavily as part of their application or their development. I wanted to show you and the Council just briefly where the P3 credits are in general concentrated in the downtown area. Because there are hundreds of landowners all types of businesses that rely on these for their everyday use.

So here, I will move away from the microphone. This is our location here. The Galleria Parking Garage is here. All of these businesses and properties through this area here and then if you come around here, all of these, and some around here, all rely and have the P3 credits. I'm sorry, it's the best I could do on short notice was to pull that out. But every one of those landowners, every one of those business owners, they can't do anything with their property, and they can't even have their property as it is today without those. So it is and I understand all the issues with it and appreciate all that but I wanted to drive home that this is not some unique thing that we are dealing with here in this instance, and I appreciate that and a chance to respond.

Mayor Ortega: Thank you very much. Moving on, Councilmember Durham and I'm sorry, Councilmember Durham and then Councilwoman Janik.

[Time: 02:14:27]

Councilmember Durham: Thank you. Thank you, Mayor. You mentioned that there's going to be, I think you called it a drink preparation area, which sounds like a bar in some ways. So can you elaborate a little bit on what this drink preparation area is going to be, what is going to be located there and how it will function that kind of thing?

Court Rich: Sure. Mr. Mayor, Councilmember Durham, yes. And I appreciate the opportunity. We're just trying to capture the notion that restaurants have ways that waiters get you a drink and bring it to you. I know Mr. LaSota said, oh my gosh, they are going to be sitting at tables and people will bring drinks to you them. But that's what a restaurant is. They bring food also. And so, we are trying to capture the idea that we are not having a customer-facing bar where people sit down and order a drink. It's so the waitstaff, this is a three-story building, has the ability to access and prepare drinks and bring them out from there to the extent that it's even needed. We just didn't want to not have that opportunity and if you need more information on that, I can allow the owner to come up and talk about what that looks like.

Councilmember Durham: But are the liquor bottles and so on going to be physically located on the third floor or are they going to be on a lower floor and then the drinks brought up?

Court Rich: I don't know the answer. If Mr. Wagner?

Councilmember Durham: Go up to the.

[Time: 02:15:59]

Aaron Wagner: Aaron Wagner, I don't think that's been discussed in details in terms of like, that exact question but I can just tell you from an operator standpoint, yeah, we will absolutely have to have liquor in bottles up in those stations.

So essentially what we are stipulating to is the neighbor's concern is having a bar up there and creating a whole bunch of noise. And typically, even as the Mayor suggested, that if you have a bar and kind of what happens around bars, is people are standing, they are getting louder, they are having shots, that kind of stuff. We are saying, hey, we won't do any of that up there, but if we are going to have 30 plus, 40 plus dining seats on the top floor, which is why we need the top floor, is to be able to have the seating, to be able to turn the covers, and the service, if you were sitting in a restaurant, one, as a customer, and you ordered your drink, if you don't get your drink within 6 or 7 minutes, and that's standard in the industry average, for a fine dining restaurant, your first round of cocktails, if you don't get it in that time period, you will be looking around and wondering why the heck haven't I gotten a drink? If a waitstaff, one, has to prepare a drink and then go downstairs to a separate level, and then pack that drink up the stairs with people coming up or through a dumbwaiter or an elevator, it's not practical in the restaurant business. You just can't do it. So absolutely, we have to have liquor there.

We will have to have a bartender preparing drinks and cocktails on that floor. We, they likely won't have the same liquor as like the main bars in the restaurant, with your high ends and all that kind of stuff, but for the easy stuff, for even a waitress or bartender to go grab a glass of wine or beer, or any of those things, we are definitely going to have to have liquor so it's accessible and it's practical to serve our patrons properly.

Councilmember Durham: So when you say no bar, what you're saying is there's no bar stools, no physical bar.

Aaron Wagner: Yeah, the way he worded in the stipulation was perfect. It essentially said no bar service. That's the exception, right? And that's really what everybody was concerned about. I felt like that was another give we could give in the final hour to help appease our opposition. It was another thing we could do to address, Mayor, in particular, and probably some of the other Council, of us masquerading as this nightclub. And so we have done that. And that's what any restaurant, like when people, like, Mr. LaSota even said and Court brought it up, but it was like, hey, you know, these guys could be making drinks and bringing them to the tables. That's what every restaurant on the planet does. You order a drink, somebody goes over and, makes it and brings it to your table. I mean, it's like, it's pretty laughable to even hear those kind of things.

Councilmember Durham: All right. Thank you.

Aaron Wagner: Thanks.

Mayor Ortega: Councilwoman Janik.

[Time: 02:18:52]

Councilwoman Janik: Thank you Mayor. First of all, you've agreed to the 69-decibel noise level, which is normal conversation, wonderful. We just had a discussion about a bar, and it's kind of like the difference between the kitchen and the dining room. I serve in the dining room but I prep in the kitchen. And that is a pretty good distinction between what you are talking about. You've accommodated the parking. I believe there will be a synergy with fine dining in the area that will enhance all the fine dining and there will be more business, not less. Sometimes competition is positive and it's good. And I certainly welcome the enhancement to the entertainment district. So, with that, I would like to propose a motion to adopt ordinance 4610, approving a zoning district map amendment from the central business parking downtown overlay, to downtown, downtown multi-use type 3 parking, downtown overlay with amended development standards for a new three-story restaurant and a plus/minus .29 gross acre site. Number two, adopt resolution number 12938, declaring the document titled "Swags amendments development standards" to be a public record. And I do appreciate COGS support of this establishment because they are a conservative group.

Vice Mayor Whitehead: Second.

Mayor Ortega: I see the City Attorney has input here.

[Time: 02:20:30]

City Attorney Sherry Scott: Yes. Just a point of clarification, Councilwoman Janik, did you intend to include the new stipulation regarding the bar service area because that needs to be added as part of the motion.

Councilwoman Janik: Yes, thank you. I do.

Vice Mayor Whitehead: Second.

Mayor Ortega: So we have a motion and a second. Would you like to speak to your second?

Vice Mayor Whitehead: Yeah, I'll speak to my second. So, I was on DRB for Calle Rosa and I can tell you if I had known that I could stipulate 68-decibels, I would have gone for it. I didn't think of that, so we settled for the glass and I'm very grateful that that was agreed upon. I can tell you that I was working with the general manager of the Sun Dial Hotel. He wasn't supporting it. He was grateful that you gave that to him. He has a lot on his hands with noise. So it's not Calle Rosa but it's just everything. I often see the comments that his guests leave about, are you

kidding me? This is so much noise. I will never come back. So that is a really off topic tragic situation. But I think that the 68 decibels is an incredible commitment to keep this a restaurant. I did confirm with our City Manager that even in the future if this owner/operator wants to seek a different liquor license and become a bar, the 68 decibels sticks with that property.

Also, and perhaps staff can jump in on this and confirm, we are looking to upgrade our noise ordinance and a lot of what we are doing is to tackle the incredible noise coming from the entertainment district that is disrupting neighborhoods quite far away. And when we do, hopefully, with my Council colleagues agree, I think they will, when we do update our noise ordinance, it will affect all property owners, including this one. So the noise restrictions should be getting stricter.

[Time: 02:23:04]

I think that the difference between preparing, yeah, I mean the guys will get their steps if they are running up and down the second floor to a grab a beer. But I think the difference between a bar and just being able to serve drinks, and I never thought about it that when you order a drink, you expect to get it kind of pretty soon, is that you don't have that party atmosphere where everybody is always standing around a bar. And always, and that's where that noise gets loud. So I think that was an important late 11<sup>th</sup> hour concession that really makes a difference for me.

And as far as the parking, you know, this is a project that meets Scottsdale's parking requirements and then exceeds it. So I think it's a dangerous path for anybody on this Council to vote against an application's request because they think it's still not enough because we have to be predictable and that's why we have ordinances. That's why we have code requirements. I will also point out as I think Sonnie pointed out, we try to maximize the use of every one of our parking spots because every parking spot we build, a, it's expensive and b, it takes away from a tree or a hotel or something else. So we do have a very large public parking garage behind this restaurant.

And finally, I just want to say this is a tiny little piece of property and we have given far less consideration, in my time on Council, to much larger projects that frankly, I voted against. So I would just encourage everybody on the Council to please consider this small restaurant, even if it turned into a bar, which would be so many hoops, I don't see that happening. It still frankly fits the area.

But I think the hotel guests at the Maya will be thrilled. If you go someplace and you walk down the stairs and all you see is like blighted buildings, you are not coming back. But a little bit of vibrancy and a cool restaurant that's not in the hotel, that will bring you back and people are used noise, especially if they are staying down there, I mean a certain level of noise.

So, I definitely support this project and I'm appreciative of all the parties because this is how we make projects better. So thank you and that is my speech for the second.

Mayor Ortega: Thank you. Councilwoman Caputi and then myself.

[Time: 02:25:46]

Councilwoman Caputi: So I just have two quick questions for staff and then I have a few minutes of comments please. I keep hearing about that they are going to be building lower than they could be building. I just want to reiterate, what is the current height that the property is allowed to build if with don't rezone it?

Bryan Cluff: Yes, Mayor Ortega, Councilmember Caputi and Council, the existing zoning C2 DO today is limited to 36 feet of height plus the rooftop mechanical appurtenances that I was mentioning before. The requested zoning would allow up to 84 feet.

Councilwoman Caputi: Okay, so I just want to reiterate for people because I think it's not clear that the applicant is asking to rezone the property. And then I've heard a lot too about, and I'm going to talk a bit about P3 parking credits, but P3 parking credits are not entitled by right, correct? It's always at the Council's discretion.

Bryan Cluff: Mayor Ortega, Councilmember Caputi, the P3 parking credits are associated with an overlay that was originally applied in this area of the city back in the '70s. So the P3 works with credits on the property that are in tandem with the on street parking in the area, so wherever you see P3 credits, there's also on street parking and also used in tandem with a P2 overlay which typically requires on-site parking to be located typically in the rear of the building accessing off of an alley. So the P3 credits are associated with parking that would be the on-street parking and also on-site parking that's required, but it is an overlay that is applicable to all properties in this area that already have P3 unless they have since zoned out of the P3.

Councilwoman Caputi: So this property already has a P3 is what you are saying.

Bryan Cluff: That's correct.

Councilwoman Caputi: Okay, so agreed, this tiny little project has taken up probably way too much of our time, but I still feel like I need to make a few comments. I have spent, like everyone else, months looking at it and speaking with all of the stakeholders on this project. In fact, I actually spent last Saturday night in the U and watched the property during the nighttime and I have seen it the daytime as well.

I was really hoping that this issue was going to be resolved between the parties on their own without having to come before us which is why I asked for the continuance and I'm glad that there have been some concessions. I was kind of hoping that we would be in a better place. I still have a couple of concerns. And echoing on what Councilmember Durham said, I feel a little taken aback about what you just said on the bar only because when I hear no bar on the third floor, I'm hearing, I didn't realize we were splitting hairs like that, like you are actually still going

to serve alcohol, it will be a party up there, but are not having a physical bar. So I appreciate though the gesture that that was. I'm 100% in favor of upscaling the entertainment district and I would love to see a high-end restaurant here. I think that the location is unbelievably challenging. Again, I walked it. You have the Maya Hotel on one side, looking at the back side of it and the back side of the Galleria Parking Garage and then you are across from a pizza joint. So again, this is a super challenging location.

[Time: 02:29:21]

I think that, you know, again, not my job. I hope that a high-end restaurant is successful here. But we don't pick winners and losers here that's sort of, you made the investment and I really hope that it can be successful. But again, I'm struggling a little bit. So, the bar has been removed from the third floor and I think that's great. But we still got speakers up there and we have got noise and we have got drinking and it's all happening on the third floor of a building, which is why I'm having a little bit of angst. Again, yes, there are other three-story buildings, I suppose somewhere in the downtown area, but really, none of the bars in the U are three-stories. Everything is much smaller than that, and so, you know, you are comparing the height to a parking garage and a hotel, which doesn't really compare, I think.

So you know, this whole others are doing it too, I'm struggling with that a little bit too right. We've worked a lot to try to make the downtown quieter. We're in the middle of doing a lot of that mitigation right now and I feel like saying, well, there's noise there already. Why would we want to add to it? I think our job is to try to make the downtown quieter, not necessarily make it more loud. So fine dining establishment, in my opinion, I'm picturing on the third floor, soft background music. If you are eating in a fine dining restaurant, why would you be shouting over loud music while you are eating. You would like the music to be soft and accommodating. I looked up a couple of statistics. Decibels mean nothing to me, I'm not an expert. So according to the EPA, 8 to 24-decibels is an appropriate level for conversation. Anything over 45 to 50 causes disruption to our neighborhood. I would love to see a two-story high-end restaurant here.

I just I'm struggling with that third story. I feel like if you go up to three stories, you know, maybe we just really are careful with those rooftop, I'm having a hard time with the rooftop speakers again on a project like Calle Rosa, we asked them to completely enclose. I just, I feel like maybe that maybe we're just overreaching with some of that noise on the top third floor. Just thoughts.

My other significant concern on this location is the parking and I can't not possibly not speak about it for just one minute. I speak to these local businesses in Old Town and I'm continually hearing that parking is a major concern. I think these P3 parking credits were a great idea when they were rolled out in the 1980s. I have spoken with Paul Basha about this a thousand times. They provided the flexibility for the small parcels just like this to develop. And they otherwise would have stayed vacant. So, it was awesome but I think this program has actually worked really well for decades and now it's sort of a victim of its own success. Those P3 credits and the

in lieu spaces as we all know, don't really exist, and the last few decades of redevelopment using those P3 credits, which you actually pointed out, have contributed now to a shortage.

Everyone has used them. That's exactly right and so now we do actually have a parking shortage in that particular section of our downtown. And I am a little bit worried about the future. I have said this before. This area is home to hundreds of small businesses and thousands of employees and residents and customers. I have spoken with many of them and the parking problem in this part of the city is a daytime problem. I'm worried that a restaurant is going to contribute to that problem. Again, you are a restaurant, not a bar so there's a daytime parking problem in this district.

You are going to need parking for guests, you need parking for employees, 31 spaces are required, 8 are on site and 14 are going to be leased after hours remotely. Leases can be terminated at any time and 22 are phantom spots. This is why we need to build a parking structure in this quadrant of the city. Without it, parcels like this are going to struggle forever. So try to redevelop and they will continue to deteriorate.

Again, my angst is that with the redevelopment that we have seen in this section over the last few years, and you have mentioned a couple of them. And this desperate need for improvement to a lot of these existing properties, I think we're cannibalizing the parking here even further and that is concerning to me. We need to have a plan in place to build more parking in this district of our city. I can't think of a better textbook example to show that point where it's most needed, exactly if we want to have projects like succeed.

So again, I'm struggling. I think that blasting music from a top, having music on a top floor like that, if indeed you are a fine dining restaurant, I just don't know why we would contribute to that and saying, again, well, the other guys are doing it, why shouldn't we? I mean, again, we have spent so much time trying to mitigate the noise problem in our Old Town. Why would we want to bring it farther out from the U and then still have more noise? I just, I don't know.

Would you be willing to enclose, so you are going to, so we are stipulating that you are not going to have an actual bar on the top floor, but you are still serving alcohol until 2:00 in the morning. You are going to point the speakers down. Decibels are going to still be 68, which, again, I'm a little squeamish with, but is there anything else you can to mitigate some of the sound up there? Would you be willing to Would you enclose it in plexiglass like we insisted with Calle Rosa? I mean I don't know, but I'm struggling.

[Time: 02:35:26]

Court Rich: Mr. Mayor, Councilwoman Caputi, I appreciate your letting us know where you are stand and what you are thought are and your concerns. And so I guess, one, I would ask, I don't know the decibel numbers that you got. We researched this a lot and the 68 decibels is like conversation level decibels. We've looked at, I was looking at the Hearing Health Foundation has

a sort of bar graph on this. Normal inside of a busy restaurant is up at 85. So we're talking significantly lower than that. And, you know, I think, I mean this will be the quietest restaurant anyone has ever heard of, right?

And so, I mean if you have ideas, we will certainly talk about them. I know we have to go through the DR process and all that. It's something I'm sure our neighbor will continue to be engaged on but as far as, you know, service, it is going to be a restaurant upstairs and that includes food and drink as you mentioned. But, again, we really feel like we've tried to be accommodating with these stipulations and that 68 decibels, really it's hard to commit to that, right? That's a really low number. You know, the average indoor office noise is 70 decibels is what the Hearing Health Foundation says. So we are trying to make a concerted effort to be the quietest.

Councilwoman Caputi: It's just so hard to think about a fine dining restaurant and going up to the third floor and sitting in the open area. I just can't think of anyone else who is actually?

Court Rich: And I will say for the record, for example, like STK right across street from my office, they have downstairs with a patio, they have upstairs with a patio. That's fine dining, that's clearly not a bar, that is a restaurant. I think there are a lot of examples of that, the upstairs of Dominick's is actually open. So there's, I guess my point is that new restaurants of this type, that's pretty consistent we think with what that sort of brand and feel is.

Councilwoman Caputi: I'm not used to this Council wanting to stack up three floors on such a tiny little postage. It's just an odd project to me. That's all. I'm struggling with it, that's all.

Court Rich: The other side of the situation Mr. Mayor, Councilwoman Caputi, is if you don't this, the site is left without these stipulation on noise and can develop as of right without any of those limitations. You are not going to get fine dining because you can't make it work without greater square footage and more tables. So you are going to get a lower, if you get anything, you will have a crummy building that stays there without these stipulations or a lower quality project without these stipulations because they don't need zoning. We think this really is a win/win at the end of the day to get you to a place that has greater protections for the neighbor then are there today and a building significantly better than what the city has. And I know that you all have considered lots of complicated development projects. This is not one of them. So I'm hoping we can figure out a way to get to approval. Thank you.

Councilwoman Caputi: I'm curious to hear from my colleagues as well. So, I will take a step back for a moment. Thank you.

[Time: 02:38:59]

Mayor Ortega: Okay, at this point, there's only one other clarification. Because Scottsdale's noise ordinance, and I have been through a couple of those meetings, specifically excludes, in

the downtown area, excludes special events, does it not? In other words, that means whatever decibel reading is adhered to, and so maybe staff can answer that. How many special events you can have per year on a property that are basically exempt from the noise ordinance, go ahead.

Bryan Cluff: Yes, Mayor Ortega and Council, you are correct. The noise ordinance does exclude special events. Based on my recollection of the noise ordinance, the number of events is around 12 annually.

Mayor Ortega: That's what I kind of remember as well, 11 or 12. Okay. So quick points and then we have other, we have Councilwoman Janik, Whitehead, and Littlefield. I just want to mention that because that's a contradiction when we have New Year's and this and that. People can have a band and noise on a terrace is excluded from that, from that enforcement picture.

Secondly, is we are not here really looking at a use. Both a bar and a restaurant are permitted under the C2 criteria. Whether this is up zoned or not. They just have to meet parking requirements and so forth. The concern I have is, well, what is on the table is the up zoning. That's what's on the table. And when a zoning is changed it runs with the land and that zoning usually is done so that whatever benefit you have in that up zoning, is reflected by the developer, user, and it makes sense to everybody.

One of the problems that I see with this is yes, you are asking for an up zoning, but then amended standards which are in opposition to what the objective of the up zoning was to begin with. And I see a lot of amended standards in the zoning case. Now, that's speak ease saying the zoning case if we're looking for an up zoning and yet violating the setbacks that had in that up zoning, it's sort of contrary to what the whole objective is to begin with because it's saying that the rules within the up zoning, well they don't even apply, even though the up zoning was granted.

So that's the philosophical problem that I have with this case. It's a problem I have and I'm not going to go discussing about what hotels were approved and how these setbacks got ruined because they got ruined when the up zoning occurred and then the exceptions were made, oh, but you can go ahead and not adhere to step backs. So when part of the motion that says and amended standards, that's basically contradicting the purpose of what I see from a pragmatic standpoint.

[Time: 02:42:36]

So the noise could still be a noise problem, whatever is stipulated, and because of the amended standards, I have to be pretty pragmatic about it. And I can't support the amended standard portion of this, therefore, I can't, I have seen other examples which can be built nearby with quality and so forth. And I just, as it was, I can't get out of my mind that when it was first presented, it had three bars, one at each level, and that's how I read it, because I've seen a lot of restaurants and I know bars, so I interpreted that as three bars, one bar at the ground, one in

the middle, and one at the top.

I know that's been amended and you are making a case for that. But what's on the table is an up zoning case and in my opinion, I'm not going to up zone something when then it contradicts the rules within the up zoning. That's kind of the way I see it. Now, I see Councilwoman Littlefield and Councilmember Durham and Councilwoman Janik. So Councilwoman Littlefield, Durham and Janik.

[Time: 02:43:51]

Councilwoman Littlefield: Thank you Mayor. This case has created a bunch of stress, if nothing else, going over it and looking at it. I have to say that I'm primarily aligned with Councilwoman Caputi's comments regarding my concerns on this project. I have real issues with this kind of situation that's so open and when the zoning is changed to accommodate a project and then they change the project so that it's not accommodating anymore. It makes it very difficult to figure out why we are doing this.

I also have a real major problem with the parking on this project. And I know they have found parking spaces that don't exist that they can count, and they can have all of these other things, but if you have a car and you want to park it, you have to have space to park it. And it has to be real space, where you can put your real car and to me, they don't have that yet. I'm not happy with this because it's not completed yet. They need to work on it.

The drinking on the third floor, the bar, there is going to be a bar there. It's openly now been admitted. They are not going to take the bar down. There will be a bar on the third floor so that they can make the drinks and pass them out which I understand. But that's not what was coming before us before. So all this stuff is changing as we sit here and the concerns I have with the parking, with the noise, with the lights, I don't see that it's actually been addressed adequately. And so that's my real concern right now with all of this.

Court Rich: Is there an opportunity to respond Mr. Mayor?

Mayor Ortega: We are next going to Councilmember Durham. But yes, why don't we just get a few more and then response. So Councilmember Durham and then Councilwoman Janik and then certainly respond.

[Time: 02:46:14]

Councilmember Durham: Well, my comment was going to what Councilmember Littlefield just said. I don't want anyone to misconstrue my remarks about this being a bar on the third floor because I don't really think it is. The problem with a bar, as anybody who has been to a bar knows, people stand around the bar, they may be dancing a little bit. They are leaning up to the bar, drinking one drink after another, and it creates a loud and more ruckus situation when you

have people standing at the bar like that. This is not going to be that situation. This is going to be people seated at tables, eating good food, probably trying to have good conversation. And there aren't going to be people standing around or dancing or doing any of that. This is going to be people sitting and my guess is they are not going to want a lot of loud music if they are sitting, having a good meal, trying to talk to each other. It's not going to be the bar situation where people like loud music.

So, it seems to me that you will naturally keep the level of the music or whatever it is down relatively low, because it's not going to fit with the atmosphere. Councilwoman Caputi was saying, gee, how can you have fine dining under these circumstances? And I think the answer is you're not going to have those circumstances. You are going to create the condition of a fine dining restaurant. And that's what you want, and I think that you are going to create those conditions on the third floor and so it's not going to resemble a bar in anyway, it is going to resemble the fine dining that you want. So, for those reasons I don't think the sound is problematic.

The parking, you know, these are our rules and you have satisfied those rules. And for us to say we don't like that rule and we are just ignore it, doesn't make any sense to me. We all have to play by the same rules and so the parking is satisfactory under those conditions, and I'm satisfied with the change on the third floor. I think that is very helpful so I will be supporting this.

Mayor Ortega: Thank you. Councilwoman Janik.

[Time: 02:48:59]

Councilwoman Janik: Thank you, Mayor. I'm pretty frustrated with this conversation because people have quoted things as if they were facts, when they weren't facts. I do know about decibels. I'm a scientist. I just looked it up, 68 decibels is normal conversation. I'm not sure where the other Councilmember came up with 40. That is totally inaccurate. I will pull it up on my phone now.

Second of all, we can look up the definition of a bar in the dictionary and a bar is a physical structure that has bar seats around it where people drink. That is not what we are going to be having here. And I think that we are splitting hairs and trying to come up with reasons why maybe we don't want this. And I think the real reason is there's competition between David and Goliath and people are lining up with certain sides that they perceive that they have more power and that bothers me a lot. And I have a whole lot to say about that, but maybe I will wait until I'm not on Council anymore.

Alright, last thing, what the heck is the difference between giving Optum an up zone and then giving them bonuses. That's kind of what they are asking for. They are asking for an up zone and then they are asking for reduced setbacks. Well, you know, Optum got an up zone, a big up zone, and then they got bonuses. I don't see that there's a whole big difference. Maybe you do.

That's fine, I don't. Thank you.

Mayor Ortega: Okay. Vice Mayor Whitehead.

[Time: 02:50:29]

Vice Mayor Whitehead: Yeah, I have to agree. If this City Council can't require the same rules of every applicant, then the legislature, which is right now in session and ready to go and take away our zoning authority, and they sure as heck tried last year. They have, we've fed them exactly what they need to say City Councils are not capable of honoring private property rights and applying zoning cases equally without prejudice. So I'm stunned. Do I think there's a parking problem in the area? Sure. Actually, I do. This seems more like a battle of where do we put the parking structure. That's a popular argument that we like to have. But that's not pertinent to this case. This is a restaurant.

I personally I suppose there are states or counties where you have fine dining without wine. Arizona and the bar district specifically are not one of them. So I would expect to have wine if I'm having dinner. And we all know that infill lots require some, we have to be a little bit more creative. So now we're going to apply some strict rule to this tiny little lot that we didn't apply to, again, these large development projects that, you know, that really asked for so much more and had such a phenomenal impact on the city. I think positive in many cases, but this is a small corner, you know, restaurant tucked next to a parking garage.

And let me tell you, I'm not in the restaurant business either, but I bet he could make a lot more money selling hot dogs to all the young drunks that come to our bar district and that is not going to be good for the Maya Hotel. I mean, open a hot dog stand if you don't get your restaurant, because that's what we're trying to get away from. We're trying to get away from just the low-end bad quality pizza, you know, grab a pizza slice and go. And I don't think you can do that on a small lot without some creative zoning changes to make it work. So this isn't some guy who is trying to get away with something, it's a guy who's trying to fill a very difficult little corner of our city, which frankly isn't that pretty.

Mayor Ortega: Okay. Thank you. Any follow-up and I will get back to the applicant and the respond, anyway as we said.

[Time: 02:53:30]

Court Rich: Thank you, Mr. Mayor and thank you members of Council for all of your passionate comments there. I guess I just wanted to zero in on a couple of them briefly. Mr. Mayor I appreciate the comment about the amended development standards. I think you have heard some of the responses I would like to echo. But this is a challenging site. The predominant issue that we are asking for the accommodation on is to match the, we are just going to match the current property line, or building line, that the existing building matches. So when we build the

front wall of that building it's going to be in the same place it is today. Otherwise, we would have to move it back, which makes this challenging parcel even more challenging.

I understand we are asking for what I would consider a very small accommodation on the step backs. Again, if we didn't have to we wouldn't be here asking for it. We are doing that because there's economics involved. This is a business ultimately that we are trying to make work and there needs to be a certain amount of room at that top floor. And so, at the end of the day, it will match the property line of the adjacent buildings, or the building line of the adjacent buildings. In exchange, the city is getting wider sidewalks in the area, it's getting a nicer building, it's getting more tax revenue, it's getting more jobs. And we believe, and obviously you will have your own opinion when it comes time to vote, but we believe this is a benefit to the city at the end of the day and these accommodations are necessary to make this work. Yes, you can build a building in different shapes there, but it won't work, they won't have enough space to do what they need to do.

And then Councilwoman Littlefield, I appreciate your comments on parking. I just want to try to drive home that we comply with the parking ordinance. If you are saying no here, then you have to say no to every single other project and maybe that's anyone else that uses P3 is going to have the exact same issue. And when I showed on that map, that's hundreds of businesses, small businesses who I have talked to. We have been in their offices, my office, to say do you support this, and we talk about it. They all say, yes, they do. If any of them ever want to remodel, not the to do a bar or a controversial restaurant, but just to remodel or change the size or something, and they need approval from this Council, I mean, maybe you say yes to them and no to us. We comply with the ordinance and then we got more actual physical spaces. So I'm hoping you will consider that. I don't know what else I can say but just reflect on this is a restaurant in downtown Scottsdale. This is, I just hope that there's support for this. Thank you.

Mayor Ortega: Thank you. Councilwoman Caputi.

[Time: 02:56:01]

Councilwoman Caputi: Just really quick. You know, we try to judge every project based on its merit. And so I think my colleagues have brought up some interesting points. But I just want everyone to remember that if comparing a large project that's along the 101 Freeway with a small project that's being squeezed in, you know directly across from people sleeping and, again, I have watched this site. There's apartments diagonal to it. So again, I think the angst is over contributing to the noise in this already noisy area. We are going to be bringing the noise level out farther. Throwing it out from 60 feet up into the residential neighborhood that surrounds it.

And again, I don't know if you have been to the actual site, Councilman Durham but you're fine dining between the back of a parking garage and the back of a hotel, across from a take-out pizza place. And again, I want this restaurant to succeed and I'm still sitting here struggling

because everyone has made some great points. But I would love this restaurant to succeed. I would like nothing more than to see a fine dining establishment succeed in this particular section of our city, I just, I'm just not seeing it. Again, comparing every project has to be looked at in its own, for its own merit and own place.

Final point and then I will just, let's call the evening to a close. Again, textbook example of why the P3 parking credits which were an amazing idea have now sort of used up their goodness and we are absolutely starting to cannibalize spots and whether or not we approve this project, it just underscores the fact there is a desperate need for more parking in this particular quadrant of our city. Again, I can't think of a better example of why, because we are robbing from Peter to pay for Paul and using phantom spots and it all sounds great but at some point we are going to run out and that point is not far away. Thank you.

Mayor Ortega: Okay. I see no further comments. Therefore, we can close and take a vote. Please record your vote and. The vote is 3-4. And the motion did not pass. I have to add that everyone that comes through the door with a project is given fair and complete consideration and that's how, what guided my concern. So with that, that matter is closed. I believe that they can have a very successful restaurant at that location. And we hope that they will come back accordingly.

[Time: 02:59:13]

#### **PUBLIC COMMENT**

Next, we will go to, we completed with our Regular Agenda, and we will go on with Public Comment. Public Comment is an opportunity for anyone to speak about an item not on the Agenda. Seeing none, I will close Public Comment.

[Time: 02:59:34]

#### **CITIZEN PETITION**

The next Item, Number 20 would allow us to consider a receipt of a Citizen Petition. If no Citizen Petition has been provided, we are moving on. I will close that Item.

#### **ITEM 21 – MAYOR AND COUNCIL**

[Time: 02:59:48]

The next item, it was to initiate City Council review, Development Review Board, that was the December 7<sup>th</sup> decision. I had requested that item because of, for the reasons stated and the applicant went back and made some modifications which were presented to staff and approved by staff and certainly also appeared to show they took care of the concerns that I had. Therefore, I will not, repeat, not be making a motion on Item Number 21.

And we will move on to the final Item, which is the, I have a motion to adjourn.

Vice Mayor Whitehead: So moved.

Mayor Ortega: We have a motion and a second. Please record your vote.

**ADJOURNMENT**

[Time: 03:00:58]