



REQUEST FOR CITY COUNCIL ACTION

MEETING DATE:

August 1, 2018

DEPARTMENT:

Community Development

DIVISION:

Community Planning

- ☐ Motion
☐ Resolution
☐ Ordinance - Introduction
☒ Ordinance - Adoption
☐ Public Hearing

TITLE:

Rezoning of Property: Located at the southeast corner of W. 8th Place and 13th Avenue; and at 887 S. 13th Avenue

SUMMARY RECOMMENDATION:

Rezone two parcels with a total area of approximately 23,315 square feet, from the Heavy Industrial (H-I) District to the Low Density Single Family (R-1-5) District, while maintaining the existing Infill Overlay (IO) District, for the properties located at the southeast corner of W. 8th Place and 13th Avenue; and at 887 S. 13th Avenue, Yuma, AZ (ZONE-21751-2018) (supermajority per A.R.S. § 9-462.04(H)) (Community Development/Community Planning) (Laurie Lineberry)

REPORT:

On June 11, 2018, the Planning and Zoning Commission voted to recommend **APPROVAL** of the request to rezone two parcels with a total area of approximately 23,315 square feet, from the Heavy Industrial (H-I) District to the Low Density Single Family (R-1-5) District, while maintaining the existing Infill Overlay (IO) District, subject to the following conditions:

1. The conditions listed below are in addition to City codes, rules, fees and regulations that are applicable to this action.
2. The Owner shall submit to the City of Yuma, for recordation, a signed and notarized "Waiver of Claims under the Private Property Rights Protection Act." The Waiver shall be submitted prior to the issuance of any building permit, Certificate of Occupancy, or City of Yuma Business License for this property.
3. The Owner shall submit to the City of Yuma, for recordation, a signed and notarized Avigation Easement on the property acknowledging potential noise and overflight of aircraft from both daily and special operations of the Marine Corps Air Station and the Yuma International Airport.
4. The Owner will dedicate to the City of Yuma via Warranty Deed or plat, a corner site triangle with 21 foot long legs at the Northwest corner of the property located adjacent to 13th Avenue & 8th Place.

5. The Owner will dedicate to the City of Yuma via Warranty Deed or plat, a corner site triangle with 21 foot long legs at the Southwest corner of the property adjacent to 13th Avenue & 9th Street.
6. The Owner will dedicate to the City of Yuma via easement or plat, a 1 foot non-access easement over the corner triangle locations per City of Yuma Construction Standard 2-096.
7. The Owner will dedicate to the City of Yuma via easement or plat, a new sewer easement totaling 20 feet in width centered along the now common South property line of Lots 1 and 2, and the North property line of Lots 11 and 12, all in Block 6, Timmon's Addition, recorded in Book 1 of Plats, Page 12. A smaller 10 foot wide alley had been abandoned, and a 10 foot wide easement previously retained under City Ordinance 1914, recorded in Docket 1157, Page 593, Yuma County Records. (This 10 foot wide alley is explained on Page 4 of this report, paragraphs 1-4).
8. The Owner/Developer will notify the City of Yuma Utilities Department, in writing, a minimum of 90 days prior to the start of any housing construction on the two subject lots, allowing time to evaluate the development's impact to servicing the existing sanitary sewer manhole. This time frame will allow City crews to determine the extent of the sanitary sewer manhole repairs needed, and allow maintenance/replacement while the manhole is still accessible and not impacted by other construction activities on the property. Address notification to:

Utilities Director, City of Yuma Utilities Department
155 W. 14th Street
Yuma, AZ 85364
9. The Owner shall submit to the City of Yuma, for recordation, a signed and notarized Noise Disclosure Statement on the property acknowledging, accepting, and recognizing the potential for noise related to the adjacent industrial activities and uses.
10. Each of the conditions listed above shall be completed within two (2) years of the effective date of the rezoning ordinance or prior to the issuance of a Building Permit, Certificate of Occupancy or City of Yuma Business License for this site, whichever occurs first. If the conditions of approval are not completed within the above timeframe then the rezone shall be subject to ARS § 9-462.01.

PUBLIC NOTICE AND OPPOSITION INFORMATION PARTICULAR TO THIS CASE:

Arizona Revised Statutes (A.R.S.) and the Yuma City Code (YCC) set forth regulations for rezoning of property. Those regulations include certain public outreach, including notification by mail to neighboring properties within 300 feet, posting of the upcoming hearing dates, and neighborhood meetings prior to the public hearing. See A.R.S. § 9-462.03 and § 9-462.04; YCC § 154-03.01 (Citizen Review Process); and YCC § 154-03.02 (Notification of Public Hearings). The purpose of these state statutes and local codes is to provide the neighboring public notice of rezones and to receive public input from citizens.

The statutes also provide adjacent landowners an opportunity to voice opposition to the rezone in writing. If there is significant written opposition to the rezone by adjacent landowners within, A.R.S. § 9-462.04(H) requires approval of the rezone by a three-fourths (3/4) supermajority of the legislative body. In 2017, the state legislature amended this statute to confirm that five (5) members of a seven-member city council would need to vote in the affirmative to meet the supermajority. Before these 2017 amendments, an affirmative vote of six (6) members of a seven-member city council would have been required to meet the supermajority.

The provisions of A.R.S. § 9-462.04(H) are triggered when 20% or more of the property by area and number of lots within 150 feet of the subject property file written protests against a proposed rezoning. The area within 150 feet includes the subject property and all rights-of-way within 150 feet. Application of A.R.S. § 9-462.04(H) is jurisdictional and the statute would control even if staff or the legislative body does not consider operation of the statute in its decision. Under subsection H, a simple majority approval of a rezone that failed to garner an affirmative vote of a supermajority of the legislative body is forever void and does not and cannot become valid with the passage of time.

In this rezone application, there are 15 lots within 150 feet of the proposed rezoning. The owners of three lots are in opposition and have submitted their opposition in writing (see Exhibit A attached to this Request for City Council Action). The percentage of lots opposed is 20%. The total square footage of all land within 150 feet of the proposed rezoning (including the subject property and all rights-of-way) is 200,126.34 square feet. The square footage within 150 feet in opposition is 39,729.87 square feet. The percentage of square feet of land opposed is 19.8%. These totals are current as of the date of this report. Approval of this rezoning will require five affirmative votes of City Council as required by A.R.S. § 9-462.04(H).

PUBLIC COMMENTS - EXCERPT FROM PLANNING AND ZONING COMMISSION MEETING MINUTES:

Robert Blevins, Principal Planner, summarized the staff report recommending **APPROVAL**.

QUESTIONS FOR STAFF

Christopher Hamel – Chairman, Planning and Zoning Commission asked if this request included the approval of the proposed homes on the subject properties. **Blevins** said no and explained this was the rezone request. **Blevins** added the applicant provided a conceptual drawing of the proposed residential homes that would be constructed on the properties. **Hamel** asked if there were residential homes on the properties to the east of the subject properties. **Blevins** said no.

Tyrone Jones – Planning and Zoning Commissioner, asked for clarification on what it meant to maintain the Infill Overlay (IO) District. **Blevins** explained that staff was not removing the Infill Overlay (IO) District with this request. He added that the properties would be rezoned to the Low Density Single Family (R-1-5) District, while maintaining the Infill Overlay (IO) District.

Jones asked if the zoning on the surrounding properties would be inconsistent because of the Infill Overlay (IO) District. **Blevins** explained the General Plan Zoning Designation for this property was residential. **Laurie Lineberry, Director of Community Development** added if the surrounding properties wanted to rezone, they would need to rezone to residential.

Jones stated that surrounding property owners were opposed to this rezone request. He added that there would continue to be opposition if the surrounding properties were rezoned to residential. **Lineberry** explained that all rezone requests needed to be consistent with the General Plan. **Lineberry** added that the Infill Overlay District was to encourage development on lots that have been vacant for various reasons and allowed staff to look at each lot individually.

Lineberry added as a Condition of Approval, homeowners would be required to submit a signed and notarized Noise Disclosure Statement that would be recorded against the property. She added that the document was a Disclosure to protect the industrial uses and the potential homebuyers to acknowledge the potential for noise related to the adjacent industrial activities and uses.

APPLICANT / APPLICANT'S REPRESENTATIVE

Juan Luna, 7296 E. 26th Place, Yuma, AZ, was available for questions.

Hamel thanked the contractor for providing a conceptual drawing of the proposed residential homes.

PUBLIC COMMENT

Bryanne Olsen, 12573 E. Del Ray Drive, Yuma, AZ, said her corporate office was adjacent to the subject properties. **Olsen** said she appreciated the City trying to improve the area, but her commercial property had been there for 60 years. **Olsen** said the proposed homes would be looking right into the loading dock. **Olsen** added that the Noise Disclosure Statement would not prevent homeowners from complaining of the noise related to industrial activities. **Olsen** said there was a seasonal produce cooler on her property and added that trucks come in and out of the property throughout the day and night.

Hamel asked if the loading dock was facing south into the northern subject properties. **Olsen** said yes. **Hamel** asked if local traffic would impede commercial traffic with the approval of this request. **Olsen** said yes.

Jones asked if 8th Place was wide enough to allow on-street parking and trucks to maneuver in and out of the loading dock. **Blevins** said 8th Place was 66' wide and was considered a Local Street. **Jones** asked if on-street parking could be addressed. **Blevins** said the Infill Overlay (IO) District encouraged on-street parking.

Jones asked if there have been any noise complaints from surrounding property owners. **Olsen** said no.

Gregory Counts – Planning and Zoning Commissioner asked for clarification on the hours of operation of the seasonal produce cooler. **Olsen** said the produce cooler was in use 24/7 during the produce season. **Hamel** asked for clarification on where the produce cooler was located. **Olsen** said the produce was to the east of the loading dock.

Luna stated that the loading dock was not directly in front of the proposed homes. He added that proposed homes would not impact the trucks going in and out of the commercial property.

MOTION

Motion by Jones, second by Counts, to APPROVE Case Number ZONE-21751-2018. Motion carried unanimously (5-0).

FISCAL REQUIREMENTS	CITY FUNDS:	\$0.00	BUDGETED:	\$0.00
	STATE FUNDS:	\$0.00	AVAILABLE TO TRANSFER:	\$0.00
	FEDERAL FUNDS:	\$0.00	IN CONTINGENCY:	\$0.00
	OTHER SOURCES:	\$0.00 \$0.00 \$0.00	FUNDING FOR THIS ITEM IS FOUND IN THE FOLLOWING ACCOUNT / FUND / CIP:	
	TOTAL:	\$0.00		
	FISCAL IMPACT STATEMENT:			
ADDITIONAL INFORMATION	SUPPORTING INFORMATION NOT ATTACHED TO THE CITY COUNCIL ACTION FORM THAT IS ON FILE IN THE OFFICE OF THE CITY CLERK:			
	1. 2. 3. 4. 5. IF CITY COUNCIL ACTION INCLUDES A CONTRACT, LEASE OR AGREEMENT, WHO WILL BE RESPONSIBLE FOR ROUTING THE DOCUMENT FOR SIGNATURE AFTER CITY COUNCIL APPROVAL? <input type="radio"/> Department <input type="radio"/> City Clerk's Office <input type="checkbox"/> Document to be recorded <input type="checkbox"/> Document to be codified			
SIGNATURES	CITY ADMINISTRATOR:		DATE:	
	Gregory K. Wilkinson		7/10/2018	
	REVIEWED BY CITY ATTORNEY:		DATE:	
	Richard W. Files		7/9/2018	
	RECOMMENDED BY (DEPT/DIV HEAD):		DATE:	
Laurie Lineberry		7/2/2018		
WRITTEN/SUBMITTED BY:		DATE:		
Robert M. Blevins		7/2/2018		