

CITY COUNCIL MEETING OF
October 15, 2008
COMBINED VERBATIM TRANSCRIPT – ITEMS 96-98

1 **VAR-28497 - VARIANCE - PUBLIC HEARING - APPLICANT: INSITE TOWERS, LLC**
2 **- OWNER: VITALY V. SCHERBO - Request for a Variance TO ALLOW A**
3 **RESIDENTIAL ADJACENCY SETBACK OF 152 FEET WHERE 240 FEET IS**
4 **REQUIRED FOR A PROPOSED WIRELESS COMMUNICATION FACILITY,**
5 **STEALTH DESIGN on 1.17 acres at 3250 North Bronco Street (APN 138-11-804-021), C-1**
6 **(Limited Commercial) Zone, Ward 6 (Ross).**

7 **SUP-28496 - SPECIAL USE PERMIT RELATED TO VAR-28497 - PUBLIC HEARING -**
8 **APPLICANT: INSITE TOWERS, LLC - OWNER: VITALY V. SCHERBO - Request for**
9 **a Special Use Permit FOR A PROPOSED 80-FOOT WIRELESS COMMUNICATION**
10 **FACILITY, STEALTH DESIGN at 3250 North Bronco Street (APN 138-11-804-021), C-1**
11 **(Limited Commercial) Zone, Ward 6 (Ross).**

12 **SDR-28498 - SITE DEVELOPMENT PLAN REVIEW RELATED TO VAR-28497 AND**
13 **SUP-28496 - PUBLIC HEARING - APPLICANT: INSITE TOWERS, LLC - OWNER:**
14 **VITALY V. SCHERBO - Request for a Major Amendment to an approved Site**
15 **Development Plan Review (Z-0011-98) TO ALLOW A ZERO-FOOT REAR LANDSCAPE**
16 **BUFFER WHERE A 21-FOOT LANDSCAPE BUFFER WAS APPROVED on 1.17 acres**
17 **at 3250 North Bronco Street (APN 138-11-804-021), C-1 (Limited Commercial) Zone,**
18 **Ward 6 (Ross).**

19

20 **Appearance List:**

21 OSCAR GOODMAN, Mayor

22 JASON FRAYER, on behalf of the applicant, 320 East Warm Springs Road

23 GARY REESE, Councilman

24 BRYAN SCOTT, Assistant City Attorney

25 STEVEN D. ROSS, Councilman

26

27 6 minutes

28 Typed by: Gabriela Portillo-Brenner

29 Proofed by: Lean Coleman

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30 **MAYOR GOODMAN**

31 Okay. Items 96, 97, and 98. Ninety-six is VAR-28497. The applicant is Insite Towers, LLC. The
32 owner is Vitaly V. Scherbo. Request for a Variance to allow a residential adjacency setback of
33 152 feet where 240 feet is required for a proposed wireless communication facility, stealth
34 design on 1.17 acres at 3250 North Bronco Street.

35 Item No. 97 is SUP-28496. The same applicant; the same owner. Request for a Special Use
36 Permit for a proposed 80-foot wireless communication facility, stealth design at 3250 North
37 Bronco Street.

38 Item No. 98 is SDR-24, 28498. The applicant is Insite Towers, LLC. The owner is Vitaly V.
39 Scherbo. Request for a major amendment to an approved Site Development Plan Review to
40 allow a zero-foot rear landscape buffer where a 21-foot landscape buffer was approved on 1.17
41 acres at 3250 North Bronco Street.

42 The staff recommends denial. The Planning Commission recommends approval for each of these
43 items. All the items are in Ward Six, and they're public hearings, which I now declare open.
44 Gentlemen.

45

46 **JASON FRAYER**

47 Good afternoon. Jason Frayer, on behalf of the applicant, 320 East Warm Springs Road. First of
48 all, I wanna thank Councilman Ross for meeting with us back in August to discuss this project.
49 We followed his conditions, met with the community members in the area, set up a community
50 meeting back in September. The Planning Commission did recommend approval, and we would
51 ask for that approval today.

52

53 **MAYOR GOODMAN**

54 Okay. Thank you. Are there any questions of the gentleman?

55

56 **COUNCILMAN REESE**

57 Not of the gentleman, just to staff. Do we have, staff, Bryan, do we have the ability to direct
58 which height we want in certain neighborhoods, on these towers?

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59 **BRYAN SCOTT**

60 You – have discretion on determining what height certain towers are based upon the topography
61 and based upon what’s currently developed around that particular tower.

62

63 **COUNCILMAN REESE**

64 And –

65

66 **BRYAN SCOTT**

67 You don’t have to go with the 80-foot height. I mean, I know, that’s what they’re requesting, but
68 you don’t have to go with that height, if you feel that something else would be more compatible
69 with the area, and still allow them to operate.

70

71 **COUNCILMAN REESE**

72 Okay. And, if we – allow variances on the distance requirements, okay; is there a distance
73 requirement that we have between these towers? Are they defensible in court?

74

75 **BRYAN SCOTT**

76 I think this is as to the residential setback adjacency; this isn’t as to – (inaudible) towers –

77

78 **COUNCILMAN REESE**

79 That’s (inaudible). Yeah.

80

81 **BRYAN SCOTT**

82 And that is something that’s within our Code that they are supposed to follow. Variances require,
83 if you look at 19.18.070 in our Code, there has to be certain conditions that they’re gonna need
84 to meet in order to – have a variance apply to this situation. And, I don’t think they put any proof
85 on that they meet that requirement, so, they have to show you that they do.

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86 **COUNCILMAN REESE**

87 Okay. And, if we allow a variance, as this one, okay, does that set precedent in other areas when
88 they ask for these same variances?

89

90 **BRYAN SCOTT**

91 Another applicant could come in and say, you allowed, you know, that particular cell tower user
92 to go in; why aren't you allowing me to go in at the same distance? But, that's not determinative
93 of – your decision-making. You can use it as a factor in making your decision that you allowed
94 another one to go in, but it's not always a determining factor, that – you allowed another one to
95 go in.

96

97 **COUNCILMAN REESE**

98 Well, I –

99

100 **BRYAN SCOTT**

101 Each project on (inaudible) its own merits.

102

103 **COUNCILMAN REESE**

104 I'm gonna yield to Councilman Ross, whose area this is in, but, the reason I – mention this is I
105 have been berated a little bit for my stance on these cell towers. And, I – feel it's our due
106 diligence to make sure that we do those things that our neighbors want. And, I don't have any
107 problem at all with the cell towers, as such. I know that they've, they come in they try to disguise
108 them. I – think that the palm – trees that they supposedly are trying to do, these pine trees, are
109 uglier than the, just the tower itself. I don't like those. But I – do have a problem, I guess, when
110 they – come in and start telling us that we don't have rights, that we have to allow this because
111 the federal government says that we have to allow 'em. I would hate to think that somebody
112 from Virginia is telling me where I gotta put a cell tower and where I can't, and I – have
113 heartburn over that.

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114 And so, I –, like I say, I will support Councilman Ross, because it is his ward, but I know that in
115 my area, now, I'm going to make sure that they meet all requirements, so they don't have to have
116 any variances, or applications for variances, or – whatever, in my ward.

117

118 **MAYOR GOODMAN**

119 Thank you.

120

121 **COUNCILMAN REESE**

122 Thank you.

123

124 **MAYOR GOODMAN**

125 All right, we closed the public hearing. Councilman Ross.

126

127 **COUNCILMAN ROSS**

128 Thank you, Your Honor. Thank you, Mayor Pro Tem. Those are definitely some important
129 issues to bring up, and I think as Councilmembers we have that ability, on a case-by-case basis,
130 to kind of review this. This site, however, in my opinion, is a little overbuilt. It's on a very busy
131 corner. The location of this tower is certainly not going to – create anymore unsightliness at this
132 corner that it doesn't already exist. They, the applicant did do what I asked him to do, met with
133 the neighbors. I think we did have three protests from the neighbors in the ranch estates areas
134 over there, in the County. But, overall, I think what you guys have done is everything I've asked,
135 and I think it's gonna fit in fine.

136 So, on agenda Item 96, Your Honor, I would **move to follow Planning Commission's**
137 **recommendation for approval, subject to all conditions.**

138

139 **MAYOR GOODMAN**

140 Okay. Please vote. Post. Motion carries. **(Motion carried unanimously.)**

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141 **COUNCILMAN ROSS**

142 And, likewise, Your Honor, **I would move to follow Planning Commission’s recommendation**
143 **for approval of agenda Item No. 97.**

144

145 **MAYOR GOODMAN**

146 All right, let’s vote everybody. Post, please. Motion carries. **(Motion carried unanimously.)**

147

148 **COUNCILMAN ROSS**

149 And agenda Item 98, I would also **move to follow Planning Commission’s recommendation**
150 **for approval.**

151

152 **MAYOR GOODMAN**

153 All right, let’s vote, please. Post. Motion carries. **(Motion carried unanimously.)**

154

155 **(END OF DISCUSSION)**

156 /gpb; lc