MEMORANDUM

DATE: January 3, 2019

FROM: KAY MACUIL, CITY ATTORNEY

TO: JOSE A. GUZMAN, DIRECTOR OF PLANNING AND ZONING

RE: GENERAL PLAN AMENDMENT REQUEST FOR CASE NO. 2018-0682

A request has been made by Vega & Vega Engineering, PLC, on behalf of Sam Group Investment Company LTD Partnership, owner, to amend the 2020 General Plan by changing the Land Use Designation of 18.74 acres from Business to Neighborhood. A portion of Assessor Parcel ID #227-15-019 located on the southeast corner of Avenue E ½ and County 24th Street, San Luis, Arizona. This request is made on a larger parcel that is currently planned for non-residential use. As stated in the City of San Luis General Plan 2020:

> "The Arizona Revised Statutes define Major Amendments as (Section 9-461.06 Sub Section C & Section 11-824 Subsection C):
>
> A substantial alteration of the municipality's/county's land use mixture or balance as established in the agency's general/comprehensive plan land use element. The agency's general/comprehensive plan shall define the criteria to determine if a proposed amendment to the plan effects a substantial alteration."
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> City Code §152.047(D) states:
>
> (1) A "major amendment" to the General Plan must be filed prior to June 15th of every year to be heard at the one City Council hearing designated each year to review major amendments to the General Plan. Major Amendments shall require an affirmative vote of at least two-thirds of the City Council.
> (2) A "minor amendment" to the General Plan may be processed throughout the year and/or in conjunction with a development application.

The City of San Luis General Plan 2020 sets out the criteria for major plan amendments at page 106. Here it states in applicable part:

> By State law, Major Amendments may only occur once per calendar year. The following criteria are to be used to determine whether a proposed amendment to the Land Use Element of the City of San Luis General Plan substantially alters the mixture or balance of land uses. A Major Amendment is any proposal that meets any one of these criteria:

> 1. Any change in a residential land use categories of 40 or more contiguous acres within the Planning Area to either another residential land use category or a non-residential land use category.
>
> **2. Any change in a non-residential land use category of 20 or more contiguous acres to a residential land use category.**
>
> 3. Any proposal that would amend the land use category of more than 80 acres within the Planning Area.
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> 4. A General Plan text amendment, or modification or elimination or one or more of the goals or objectives contained in the Land Use Element of this General Plan that changes any goal or objective regarding residential densities, intensities or major roadway locations. [Emphasis added.]

By only requesting 18.74 acres of the larger parcel, it would appear that the applicant is trying to avoid the matter being processed as a major plan amendment, so as to avail itself of the minor plan amendment procedure. Major plan amendments can only be processed once a year. Minor amendments can proceed at any time. The concern is whether the applicant is trying to avoid the requirements and process of a major amendment by the subterfuge of several amendments of land less than 20 acres in size. If no further amendment of the larger parcel is ever requested, then no "subterfuge" of evading the purpose and requirements of ARS §9-461.06, in particular, A.R.S. §§9-461.06(D) and (E), the City Code, or the General Plan 2020 would occur. But if the amendment of the 18.74 acres is followed by a requested amendment of more land of the larger parcel, it would seem that such multiple requests for amendment are being done to evade or avoid the major plan amendment process.

The concept of "major plan amendment" and "minor plan amendment" with major plan amendments occurring only once a year and involving a special process was added to the Arizona Revised Statutes by a ballot measure known as "Growing Smarter" as put on the ballot by the Arizona State Legislature in the late 1990's. Arizona has always had in its law the requirement that zoning amendments must conform to the general plan. (A.R.S. §9-462.01(F)). However, occurring before Growing Smarter was what was derisively called the "Scottsdale Solution," i.e., first was an item on the agenda amending the general plan immediately followed by an item the rezoning the subject property. As a result, by such process, planning was reduced to being a meaningless matter. The purpose of allowing major amendments to occur only once a year was to make change difficult and give planning some true meaning and impact. As stated by the Arizona Legislature, one of the legislative purposes of Growing Smarter was; "that rezoning actions shall be more effectively guided by a community's general and

comprehensive plans." (URBAN PLANNING—GROWING SMARTER ACT, 1998 Ariz. Legis. Serv. Ch. 204 (H.B. 2361) (WEST).

It is important to note that while A.R.S. §9-461.06 limits the ability of a city to consider major plan amendments to a single annual occurrence, what is a "major amendment" versus a "minor amendment" is left to local regulation. Hence, the size differential of 20 acres was a 'line in the sand' established by City Council, not the State of Arizona. However, changing that text of the general plan would, itself, require a major plan amendment.

Arizona courts, as a matter of public policy, have long been critical of attempts to try and cleverly get around requirements of regulation. If something is considered a "subterfuge," it is illegal. For Arizona examples see SAL Leasing, Inc. v. State ex rel. Napolitano, 10 P.3d 1221 (Ariz. App. 1st Div. 2000) (sale/leaseback of vehicles subterfuge of laws providing consumer protection and were illegal); State ex rel. Goddard v. Phoenix Union High Sch. Dist. No. 210, 96 P.3d 220, 223 (Ariz. App. 1st Div. 2004) (school district early retirement plan not a subterfuge of ERISA); Schwarz v. City of Glendale, 950 P.2d 167, 170 (Ariz. App. 1st Div. 1997) (buying land to create a buffer zone not a subterfuge of zoning regulations); Molnar v. Indus. Commn. of Arizona, 687 P.2d 1285, 1288 (Ariz. App. 1st Div. 1984) (use of independent contractor's agreement an illegal subterfuge of workman's compensation contribution requirements) . Rathkopf's The Law of Zoning and Planning lists examples of where, in the planning and zoning context, courts have held as illegal, subterfuges where ". . . the rezoning of two or more parcels was merely a subterfuge to obscure the actual purpose of according special treatment to one particular landowner." § 41:7.Size and number of rezoned parcels—Number of parcels, 3 Rathkopf's The Law of Zoning and Planning § 41:7 (4th ed.).

If the intent is to pursue a residential use of a land 20 acres or more, but simply applying in multiple applications to evade or avoid the requirements surrounding major amendments to a general plan as required by Growing Smarter, then any such plan amendment and subsequent rezoning would be invalid. However, one will not know that unless multiple applications are, in fact, attempted. Today that has not yet occurred.

CONCLUSION

The present application for minor plan amendment qualifies under the standards for minor plan amendment since it is for a size less than 20 acres. But if more land from that larger parcel is requested by a subsequent application, any subsequent application

can only proceed as a major plan amendment since otherwise, the use of multiple applications would be an attempted subterfuge of the requirements of state and local regulation.