

The Investigation We Are Calling For

*South Tucson Board of Adjustment Case 25-01 — 70-foot commercial wireless tower, 2425 S. 10th Avenue. Version 2, July 27, 2026.
Prepared by Bryan Sanders.*

What this is. Direct successor to the eleven questions put on the public record June 16, 2026. This version exists because the landscape changed: the City’s investigation came back June 23 addressing *public notice only*; state-law authority was identified (A.R.S. § 9-462.06 and *Pawn 1st*); a new expiration and design-review defect was found (§§ 24-107, 24-115, 24-132); and three public records requests were constructively denied July 22.

This is a separate document from the Response to the Findings Report. The Response rebuts what the City did. This specifies what the City must still do. Everything here rests on the public record. It does not contain legal advice.

Hard locks — non-negotiable conditions of any investigation

These are conditions precedent, not preferences. An investigation that does not meet all five is not one the community can accept, and the City should not represent its result as resolving anything. Each lock exists because of a specific, documented failure of the June 23, 2026 review.

LOCK 1 — Full results published. Not summaries.

The complete report, in full text, published to the public — not a summary, not a verbal characterization at a meeting, not a cover memo describing what the report supposedly found.

Prevents: what happened on **July 7, 2026**. The Council had received the report on **June 24**; it was still not public. Asked for “a brief verbal overview of the investigation findings,” the City Attorney stated: “*The report came back, the findings were as the [Vice Mayor] stated, that the process used for the procedural process that there were no irregularities and that all the proper procedures w[ere] follow[ed]*” [00:27:26]. The Vice Mayor had described the report as stating “*the city staff followed proper procedures in connection with the Board of Adjustment hearing*” [00:25:10]. **Neither characterization disclosed that the review examined only whether notice was given.** The public heard “no irregularities” and “all the proper procedures” — general and unqualified — describing a review whose own stated scope was a single question.

LOCK 2 — Full process description published, including everything excluded.

The report must state explicitly: who set the scope and when; what questions were asked; **what questions were NOT asked**; what sources were consulted; **what sources were NOT consulted, and why**; who was interviewed; **who was not interviewed**; and what the investigator was instructed not to examine.

Prevents: the central defect of the June 23 review — its scope was never publicly defined, it was confined to notice without that limitation being disclosed, and it was then described to the public in general terms as finding “*no irregularities*” in “*the process*” (July 7, 2026 [00:27:26]). **Undisclosed narrowing is the failure mode. This lock closes it.** Note also that on July 7 a Council member asked “*who is running this investigation, is it independent*” [00:24:13]; the answer given addressed only when the report would be published, not who set its scope.

LOCK 3 — Full source map for every substantive claim.

Every factual assertion in the report must be traceable to an identified source document, recording, or interview — indexed claim by claim. A conclusion without a traceable source is not a finding.

Prevents: unverifiable assertion. The June 23 report states the 50-foot standard “*was never codified*” — a claim contradicted by the published August 5, 2025 text. A source map makes that kind of error visible on the page instead of load-bearing.

LOCK 4 — Full access to, and engagement with, all relevant parties.

Including, at minimum: **every Council member; every Board of Adjustment member who sat on this matter; the City Attorney; the City Manager / Clerk; Planning Director Josué Licea and every staff member involved at any stage**; the applicant and any carrier or siting agent; **and the impacted neighborhood population — including Bryan Sanders, Karen Karl, and every affected neighbor.**

Prevents: a staff-interview-only record. The people who were not noticed, who watched the hearing, and who live with the outcome are witnesses to the facts under investigation. An investigation that talks only to the institution being investigated cannot find institutional failure.

LOCK 5 — Full access to all systems and backend processes legally available.

Including, for instance, **complete audit logs for Municode and for the City’s own website and CMS** — showing who changed what, when, and on whose instruction — plus vendor correspondence, version history, permissions records, and the email systems of the offices involved.

Prevents: the code-change question being answered by assertion. The published Chapter 24 lost the 50-foot cap, the 2× setback, § 24-529 in full, and ten definitions. Whether that was ordinance, error, or instruction is a question the **logs answer directly** — and only the logs answer.

⚠ The overlap that explains the delay

The records being withheld and the evidence this investigation requires are substantially the same documents.

The three outstanding public records requests (78 items, filed May 1 / May 14 / May 15, 2026, constructively denied July 22) seek the notice mailing list and proof of mailing; the Chapter 24 legislative record and adopting ordinances; the code-publishing and vendor record; and the City-to-applicant correspondence. **Those are precisely the materials Questions 4–7, 13, and 15 depend on.**

1. **The delay is not incidental to the investigation — it is coextensive with it.** The same documents that would answer the public’s questions are the documents that have not been produced for eleven weeks.
2. **An investigation cannot be completed while its own evidence is withheld from the public.** Production must run **in parallel**, not be deferred pending the investigation’s outcome — otherwise the investigation becomes the reason the records stay dark, and its report becomes the only account of documents nobody else is permitted to see.
3. **Lock 3 is what makes this survivable.** If every substantive claim carries a source, the public can verify the report against the records when they arrive, and any divergence is visible.

The City should not be permitted to use the investigation as grounds to continue withholding, or to substitute the investigator’s characterization of a document for the document itself.

Part 0 — Documented deficiencies of the June 23 review

Each item below is drawn from the Findings Report itself, the published Code, or the underlying record. No motive is alleged. A fully sourced, item-by-item version is provided as a companion document.

A. Methodological

A1. The sources are the subjects. The report is built on interviews with **Planning Director Josué Licea** — whose conduct is under review — **City Attorney Jon Paladini**, who advised the Board at the hearing and later opposed rescission, and **Zoning Administrator Greg Hitt**.

A2. The subject curated the complaint evidence. *“Planning Director Licea has provided me with emails from residents...”* The official being reviewed selected which resident communications the investigator saw.

A3. No independent proof of mailing. Mailing is confirmed solely from Licea’s interview and two lists Licea produced (Report Ex. 3, pp. 48–49). **No certificate of mailing, no affidavit, no returned-mail review.** Karen Karl’s complaint of record is that the representation that 300 feet was notified *“is not true.”*

A4. The radius discrepancy is unremarked. The Board’s own Rules define “parties in interest” as owners within **200 feet**; Licea says he mailed to **300 feet**.

A5. No affected resident was interviewed.

B. Factual and analytical

B1. The “never codified” finding is contradicted by the published Code. The report concludes the 2006 ordinance provisions *“were never ‘codified’”* — but the 50-foot cap appears verbatim in the **August 5, 2025**

published edition at § 24-387(b)(12)(f), and was removed before the April 27, 2026 edition.

B2. The limitations argument presupposes the unexamined question. The report relies on § 24-131's 15-day window (*"This time-limit has passed"*). That clock governs appeals of decisions the Board **had power to make** — the very question the report never reaches.

B3. It ignores the Council's own rescission of May 19, 2026 in that analysis.

B4. The publication arithmetic does not match its own standard. The report states notice must publish *"not less than 15... days prior,"* then gives the window as *"between 1/26/2026 and 2/11/2026."* Fifteen days before February 25 is **February 10**; publication occurred **February 11**.

B5. The open-meeting statute is miscited throughout as *"A.R.S. § 38-341.02."* The correct statute is **§ 38-431.02** — which the City's own mailed notice quotes correctly.

C. Omissions

Never cited or examined: **§ 24-21(a)** (board may not grant use variances) · **A.R.S. § 9-462.06** and *Pawn 1st* · **§ 24-134** (conditional uses = swap meets only), despite the report building its conditional-use theory on Division 7 · **§ 24-21(c)** (the seven required findings) · **the Pima County floodplain determination**, issued May 5, 2026 · **§ 24-107** (design review) · **whether the code changes were lawfully adopted by ordinance** · and **why Ordinance 06-09 was not codified while Ordinance 10-03 was**, or who was responsible.

D. The contradiction the report creates against itself

The notice it validates describes a **variance** (published and mailed); the report's own witnesses say the Board *"only approved the conditional use... and did not approve a variance."* **Notice that mischaracterizes the nature of the action is a notice defect — inside the review's own stated scope — and it is not addressed.**

E. What it confirms — against the City

Not in dispute: **(1)** the 50-foot cap is binding and the approved tower exceeds it; **(2)** the Planning Director did not know the governing ordinance existed; **(3)** the published Chapter 24 does not contain binding law.

Why a second investigation is necessary

On May 19, 2026 the Council rescinded BOA 25-01 **"pending results of investigation"** into the application and the process that produced it. What came back on June 23 was a review of the **hearing notice** — its stated scope was *"whether City of South Tucson staff complied with applicable policy and law in providing public notice,"* and its conclusion is limited to notice.

Of the eleven questions put on the record June 16, the Findings Report reached one — notice — and only partially. Ten remain unanswered, and several new ones have arisen since. Until they are answered the City cannot know whether the underlying decision was lawful, cannot defend it if challenged, and cannot responsibly reinstate it.

Part 1 — Questions carried forward from June 16 (still unanswered)

1. What kind of decision was this, legally? The City has called it a variance, a setback variance, a use variance, and a use permit — four characterizations from four sources, two of them inside the same February 25 hearing.

Which was it, and under exactly which section of the Code was it decided?

2. Why were none of the seven findings required by § 24-21(c) made on the record? All seven are required before any variance is granted. The roughly 33-minute hearing contains none. How was an approval issued without a single required finding?

3. Who decided a 70-foot tower was permissible when the wireless code caps these towers at 50 feet? Staff told the Board the tower was “under the allowable zoning height” by measuring against the general 75-foot SB-2 building height rather than the wireless-specific cap in § 24-387(b)(12)(f). Who decided the 50-foot cap did not apply? (*The City’s own June 23 report now confirms the 50-foot requirement is binding.*)

4. Who rewrote Chapter 24, and on whose authority? Between the August 5, 2025 and April 27, 2026 published editions the code lost the 50-foot height cap, the 2× residential setback, § 24-529 in its entirety (including the one-mile tower separation and the antenna-removal provision), § 24-23, ten wireless definitions, and key notice and protest provisions. Who authored those deletions?

5. Was there ever an ordinance lawfully adopting those changes? Arizona law requires the Council to amend zoning by ordinance (A.R.S. § 9-462.01; §§ 24-36(b), 24-41). If no such ordinance exists, on what authority was the published code changed?

6. Did those code changes track this specific application? They occurred in the same window this tower was filed and approved. Was the code altered in a way that made this particular tower possible — and if so, at whose request?

7. Was the legally required notice actually given? Produce the 300-foot notification list, the proof of mailing, and any returned mail. Multiple owners within the radius state they received nothing.

8. Why did this proceed over the County floodplain and erosion-hazard determination? (*See Part 2 for the corrected, precise framing.*)

9. Was the legal advice to the Board and to the Council consistent and correct? The City Attorney told the Board its role was “very limited” — objective compliance only — then told the Council there was “no authority” to rescind. Were both statements accurate, and were the Board’s actual legal limits ever explained to it?

10. Who is running the investigation, and is it independent? Who is the investigator, what is the scope, who set it, when do they report, and will the findings be public?

11. Why was Chapter 24 unavailable on the City’s published code library? As of June 16, 2026 the operative zoning chapter showed only “Chapter 24 is currently being updated and will post online soon.” What is the authoritative text, and when is it restored to public view?

Part 2 — Sharpened and corrected since June 16

2A. The floodplain and erosion-hazard question — precise version

Accuracy correction to the June 16 phrasing. The Pima County Regional Flood Control District *Flood Hazard Information Form* for Tax Code 118242280 (2425 S. 10th Ave), completed by Rachel Forney and dated **May 5, 2026**, states:

- **Item 4 — Impacted by a Local Floodplain: “Yes, portion of parcel.”** Special Study #107 City of South Tucson. “Avoidance of the local floodplain is required if feasible (16.20.050).”

- **Item 5 — Impacted by an Erosion Hazard Area: “Yes, portion of parcel.”** Location of wash: **north of parcel**; setback from bank of wash: **25 ft.** *“Structures and septic systems are not allowed within the erosion hazard area without engineering justification (16.28.030).”*
- FEMA Floodway, FEMA SFHA, FEMA Shaded Zone X, subdivision-plat floodplain, extreme or uncertain hazards, and riparian habitat: **all “No.”**

The correct question is therefore narrower — and stronger — than “structures are not permitted”:

8(a) Does the **tower base and its associated equipment fall within** the mapped local floodplain or the erosion hazard area — within 25 feet of the bank of the wash north of the parcel? This is answerable by overlaying the site plan on the County flood hazards map.

8(b) If any portion does, was the **engineering justification** required by Pima County Code 16.28.030 ever prepared, submitted, or reviewed?

8(c) Was the County determination, or any floodplain analysis, **ever before the Board of Adjustment** on February 25, 2026?

8(d) Did the City require a **Floodplain Use Permit** or coordinate with the District at any point?

8(e) The parcel is subject to South Tucson’s own **Chapter 22 (Floodplain)**. Was Chapter 22 applied to this application at all?

Why this is not academic — the applicant’s own numbers. The Letter of Intent states: *“Sun State is requesting the City of South Tucson to allow reduced setback from the north & east property lines that abut El Paso & Southwestern Greenway Park”* [typographical errors in original], and gives the setbacks to adjacent property lines as **“12’-3” to the north.”** The County places the wash **north of the parcel** and requires a **25-foot setback from its bank**. The applicant therefore requested — and the Board approved — a structure **12 feet 3 inches** from the north line, against a County erosion-hazard setback of 25 feet measured from the bank of the wash on that same side.

Stated as a question, not a finding: the erosion-hazard setback runs from the *bank of the wash*, whose position relative to the north property line is not documented in anything reviewed. Whether the structure falls inside the erosion hazard area is answerable from the site plan and the County flood hazards map. **Nothing in the record shows the question was ever asked.**

2B. The authority question is now a state-law question, not a code-reading question

- **A.R.S. § 9-462.06** — a municipal board of adjustment **“may not make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the zoning ordinance.”**
- ***Pawn 1st, LLC v. City of Phoenix*, 242 Ariz. 547 (2017)** — the Arizona Supreme Court: boards of adjustment may grant **area** variances only, never **use** variances; “special circumstances” means physical attributes of the property, not the owner’s desired use; self-imposed circumstances cannot support a variance.
- Chapter 24 § 24-21(a) restates the same bar; § 24-2(c) makes enumeration a prohibition; § 24-134 designates only *“swap meets or open-air market places”* as conditional uses.

Question 12: Given § 9-462.06 and *Pawn 1st*, did the Board of Adjustment have **any** lawful power to authorize this use — and if not, what is the legal status of its February 25, 2026 action, and what follows for the City?

Part 3 — New questions arising since June 16

13. Design review — a mandatory precondition nobody has addressed

§ 24-107 (identical in both code editions) requires design review board approval for “*all new commercial structures,*” and provides that “**no zoning certification or building permit ... shall be issued unless**” the site plan and submittals have been **reviewed and signed by the members of the design review board**, and “**shall be issued until**” the drawings have been **approved by** that board. The board consists of the **city manager, building inspector, city planner, community development director, and city engineer** (§ 24-106).

13(a) Did the design review board ever review, sign, and approve drawings for this facility? On what date?
Produce the file.

13(b) If it did not, on what basis was the matter advanced to the Board of Adjustment and treated as approvable, given that no permit could lawfully issue without it?

13(c) If it did, has the **§ 24-115 six-month lapse period** run? (*Design approval “shall lapse and be void six (6) months following the date upon which the drawings were approved, unless prior to the expiration a building permit is issued and construction is commenced and diligently pursued toward completion.”*)

14. What is the current status of the approval and the application?

14(a) Which expiration provision does the City contend governs its own approval — **§ 24-132** (conditional use, one year from “*the date the director’s decision becomes final*”), **§ 24-115** (design review, six months), or none (there is **no expiration provision for variances** anywhere in Chapter 24)?

14(b) If the City relies on § 24-132, identify the **Planning Director decision** from which that one-year period runs. The Board acted directly; the record shows no such decision.

14(c) Has **any** building permit or zoning certification been issued or applied for at any time? (*Every one of these clocks is stopped only by obtaining a building permit — and the approval was rescinded May 19, 2026.*)

14(d) What is the City’s position on the status of the **underlying application** today — pending, expired, withdrawn, or dead?

15. The scope of the June 23 review itself

15(a) **Who set the scope**, when, and in what form? Was the Council or the public ever told the review would be confined to notice?

15(b) Was the investigator asked to examine authority, height, the floodplain, or the code changes — and if so, why were those excluded from the report?

15(c) The report states the 50-foot standard “*was never codified.*” **Reconcile that with the August 5, 2025 published text**, which contains it verbatim at § 24-387(b)(12)(f).

16. Records still being withheld

Three public records requests (78 items; filed May 1, May 14, and May 15, 2026) stand **constructively denied** as of July 22, 2026. The investigation cannot be completed without them, and they should be produced in parallel rather than held pending its outcome.

Part 4 — How the investigation must be structured

1. **An outside investigator with municipal land-use expertise**, retained by and reporting to the **Mayor and Council** — not to staff and not through the City Attorney’s office, both of whose conduct is within scope.
2. **No prior involvement** in BOA 25-01.
3. **Written scope published at the outset**.
4. **Access** to all City files, emails, the code-publishing vendor record, the design review board file, and staff interviews.
5. **A public report to the Council in open session**, addressing each question by number with an answer or an express statement that it could not be answered and why.
6. **Documentary appendix**: application file, staff reports, notice record with proof of mailing, both code editions, the adopting-ordinance record (or a finding that none exists), the vendor and publishing record, the County flood determination and any engineering justification, the design review file, and the City–applicant correspondence.
7. **A legal-status conclusion** on whether the Board had authority to grant the relief it granted.
8. **Timeline**: scope published within 14 days; status report at 30 days; **public report within 60 days**. Budget stated publicly; any expansion requires a Council vote in open session.

Part 5 — The motion the Council would adopt

Motion: To authorize an independent investigation of Board of Adjustment Case 25-01, retained by and reporting to the Mayor and Council, **conducted subject to the five conditions that (1) the full report be published rather than summarized, (2) the full process be described including all questions, sources, and persons excluded, (3) every substantive claim be source-mapped, (4) all relevant parties be engaged including Council members, Board members, the City Attorney, the City Manager, all involved staff, and affected neighborhood residents, and (5) the investigator have full access to all legally available systems and backend records including Municode and City website audit logs;** with a written scope published within 14 days and a public report delivered within 60 days; with production of the outstanding public records to proceed in parallel and not be deferred pending the investigation; addressing:

(1) the Board’s legal authority to grant the relief it granted, under A.R.S. § 9-462.06 and Chapter 24; (2) compliance with the applicable height and setback standards; (3) the floodplain and erosion-hazard determination and whether Chapter 22 and Pima County Code 16.28.030 were applied; (4) whether design review under § 24-107 occurred, and the current status of the approval and application under §§ 24-115 and 24-132; (5) the adequacy of staff review and legal advice; (6) the complete legislative and publishing record of the Chapter 24 amendments affecting wireless facilities; (7) the outstanding notice questions and production of the withheld public records; and (8) the scope and authorization of the June 23, 2026 review.

Sourcing

Every question rests on the public record: the June 23, 2026 Findings Report; both published editions of Chapter 24, extracted verbatim; the Pima County Flood Hazard Information Form dated May 5, 2026; the December 11, 2025 application; the February

25, 2026 hearing recording; the May 5 and May 19, 2026 Council recordings; the three public records requests and the July 15 demand and July 23 notice; Arizona Revised Statutes; and published Arizona case law.

This document describes the documentary record. It does not contain legal advice.