

Memo to the Arizona Federal Delegation

To:

The Honorable Mark Kelly, U.S. Senator for Arizona
The Honorable Ruben Gallego, U.S. Senator for Arizona
The Honorable Adelita Grijalva, U.S. Representative, Arizona's 7th Congressional District

From: Bryan Sanders, homeowner, 344 W. 35th Street, Tucson, AZ 85713 · (520) 891-0610 · bransan@gmail.com

Re: Procedural concerns regarding South Tucson Board of Adjustment Case BOA 25-01 — 70-ft wireless variance authorized in Hispanic-majority municipality with apparent due-process and floodplain-jurisdiction failures

Date: May 5, 2026

Executive summary

On February 25, 2026, the South Tucson Board of Adjustment approved a setback variance authorizing a 70-foot Verizon wireless facility at 2425 S. 10th Avenue, immediately across the alley from my home. After listening to the entire 33:46 hearing audio and reviewing the official record, five distinct procedural defects appear on the public record. As of today, May 5, 2026, the Pima County Regional Flood Control District has issued a written determination — signed by the Chief Engineer's office — that directly contradicts the basis on which the variance was granted. A neighbor and practicing Arizona-licensed attorney has documented through door-to-door investigation that approximately 60 percent of the listed property owners she reached reported they never received the City's mailed notice of the hearing.

Comprehensive memo packages with primary documentary evidence have been delivered today to the South Tucson Mayor and Council and to Pima County Supervisor Matt Heinz (District 2). I am writing to the federal delegation now because the pattern of facts — in a small, ~83 percent Hispanic-majority municipality with limited regulatory staff — raises questions of federal interest that exceed any single defect. I am not asking for federal intervention in local zoning. I am asking that staff be aware of the matter, that the available federal tools for civil-rights, floodplain, and infrastructure review be considered, and that the delegation use its convening voice if appropriate.

I. Who I am and what this is

I am the homeowner at 344 W. 35th Street in the City of South Tucson, an enclave municipality entirely surrounded by the City of Tucson. My back property line is an alley. The alley's north side is the 1.7-acre Magnum Paving parcel at 2425 S. 10th Avenue, where the South Tucson Board of Adjustment, on February 25, 2026, voted 4–0 in Case **BOA 25-01** to authorize a 70-foot Verizon wireless facility (65-foot pole with a

5-foot palm-canopy stealth cap), as a setback variance under § 24-21 of the South Tucson Zoning Code, citing § 24-387(b)(12) — an SB-2 enumeration provision drafted in the 1970s for “radio broadcasting stations, towers and studios.”

I want to be precise about what this memo is and what it is not. **This is not a federally preempted radio-frequency or health challenge.** The Telecommunications Act of 1996, codified at 47 U.S.C. § 332(c)(7), expressly preempts that line of argument; the South Tucson City Attorney correctly applied that preemption at the hearing. **My case is procedural only.** Five distinct procedural defects appear on the official record.

II. The five procedural defects, in compressed form

Defect A — The seven mandatory variance findings of § 24-21(c) were not made

Section 24-21(c) of the South Tucson Zoning Code requires the Board to make seven affirmative findings before granting any variance — including no self-imposed hardship, no grant of special privileges, and no detriment to public welfare. Across the entire 33:46 hearing audio, no member of the Board, no staff member, and no applicant representative addressed any of those seven findings. This is independently a violation of 47 U.S.C. § 332(c)(7)(B)(iii), which requires that any decision regarding the placement of a personal wireless service facility “be in writing and supported by substantial evidence contained in a written record.”

Defect B — Notice was substantially incomplete

At the hearing, the City Planner affirmatively represented to the Board that mailed notice had gone to every property owner within the 300-foot radius. **Karen Karl** — a neighbor and practicing Arizona-licensed attorney — has since conducted independent door-to-door investigation working from the City’s own list of property owners. Of approximately ten listed property owners she was able to reach in person, approximately six reported they had received no notice. That is a roughly 60 percent non-receipt rate among sampled property owners, against a background representation of universal mailing. My own household, which is plainly within the 300-foot radius, also received nothing. The Public Records Request I hand-delivered on May 1, 2026 (42 items, items 12–18 specifically) seeks the City’s mailing list, the actual mailed notice, and proof of mailing — which will allow direct comparison.

Defect C — The use authorization rests on a contested 1970s-era enumeration

The City interpreted § 24-387(b)(12)’s phrase “radio broadcasting stations, towers and studios” — drafted before consumer cellular service existed in the United States — to encompass a 2026 cellular facility. Federal law (47 U.S.C. § 301 et seq. for broadcasting; 47 U.S.C. § 332 for personal wireless services) treats those as distinct regulatory categories. Section 24-2(c) of the South Tucson Code prohibits any use not affirmatively enumerated, and § 24-21(a) bars the Board of Adjustment from granting use variances. If § 24-387(b)(12) does not reach a cellular tower, the proper remedy is a zoning text amendment by the City Council under § 24-43 — not a setback variance from the Board of Adjustment.

Defect D — No floodplain use permit was obtained, and the BoA had no jurisdiction over Title 16

South Tucson Chapter 22 incorporates Pima County Title 16, the Floodplain and Erosion Hazard Management Ordinance, administered by the Chief Engineer of the Pima County Regional Flood Control District (PCRFCDD). At hearing 30:08–30:31, the applicant’s representative characterized the parcel north of the project site — across which a regulatory wash runs — as “*open space greenbelt*.”

Today, May 5, 2026, the PCRFCDD returned a same-day determination on my Flood Hazard Information Form for APN 118-24-2280, signed by Rachel Forney of the Chief Engineer’s office. The determination establishes:

- A regulatory **Local Floodplain** (Special Study #107) covers a portion of the parcel itself, under § 16.20.050. “*Avoidance of the local floodplain is required if feasible.*”
- A regulatory **Erosion Hazard Area** covers a portion of the parcel, with the wash **directly north of the parcel**, requiring a **25-foot setback** from the bank of the wash under § 16.28.030. “*Structures and septic systems are not allowed within the erosion hazard area without engineering justification.*”

The “open space greenbelt” representation made to the Board is now contradicted in writing by the County’s own Chief Engineer’s office. The 70-foot tower base would be a structure under § 16.28.030; no engineering justification was presented to the BoA. Floodway-related variances under § 16.24.050 are reserved to the Pima County Flood Control District Board of Directors, not to the city BoA. Approval under Chapter 24 zoning does not substitute for approval under Chapter 22 / Title 16.

Defect E — The Chapter 24 wireless framework appears to have been quietly amended

A side-by-side comparison of the August 2025 Munipodes archive of South Tucson Chapter 24 against the version published on the City website in April 2026 shows that **seven wireless-related defined terms — Antenna, Collocation, Communication-commercial-wireless, Communications, Communications-facility-wireless, Conceal, and Disguise — have been removed from § 24-1.** The window of the change (August 5, 2025 through April 27, 2026) includes the BoA hearing date. Chapter 24 amendments are required by § 24-43 to proceed through Planning Commission review and Council adoption with public hearing. I do not yet have the ordinance number, the adoption date, or the Planning Commission record. That is currently the subject of follow-up records inquiry. The diff itself is documented.

III. The variance-abuse framing — a self-imposed dimensional shortfall

A.R.S. § 9-462.06(G)(2) and § 24-21(c) both require that any hardship supporting a variance arise from physical conditions of the property and not be self-imposed. The 1.7-acre Magnum Paving parcel is rectangular and not unusually shaped, small, or topographically constrained. The reason setback relief was sought is not that the property cannot accommodate development — it is that a 70-foot tower as designed does not fit within the buffers that ordinarily protect neighboring properties. That is the textbook definition of self-imposed dimensional shortfall: an applicant choosing dimensions that physically cannot fit on the parcel under normal rules. The proper remedy is a smaller facility, a different parcel, or co-location on existing FCC-

registered infrastructure (a Sun State Towers monopole at 2675 S. Santa Cruz Lane, FCC ASR 1325714, 80 ft, sits 0.6 mile WSW of the subject site). The remedy is not to relax the buffer between a 70-foot tower and a documented active wash in a residential block.

IV. Why this matter rises to federal interest

South Tucson is approximately 83 percent Hispanic per the 2020 Census. It is a small municipality with limited regulatory staff. The pattern of facts on this single application matters cumulatively:

- An approximately 60 percent neighbor non-receipt rate of statutorily represented mailed notice in a residential, Spanish-speaking neighborhood
- A quasi-judicial body granting a variance without making any of the seven findings the local code requires, and without the written record the federal Telecommunications Act requires
- A use authorization stretched to fit a 1970s “radio broadcasting” provision the federal regulatory taxonomy treats as a distinct service from personal wireless services
- A simultaneous, uncodified amendment removing wireless protections from the very chapter under which the application proceeded
- A written County Chief Engineer determination, returned today, identifying regulatory floodplain and erosion hazard conditions that the city BoA had no jurisdiction over and that the applicant did not disclose

I am not asking the federal delegation to substitute its judgment for local zoning. I am noting that this set of facts, in this demographic context, fits the pattern of regulatory failure that federal civil-rights and infrastructure offices exist to review. A 70-foot tower at the alley line of a Hispanic-majority residential block, approved without findings, against an active wash, in a municipality where most listed property owners report no notice — that is not a routine variance.

V. What I am asking

1. Awareness. That delegation staff log this matter and review the documentary record I have available, so the delegation is not surprised if it surfaces in regional press.

2. Constituent-services pressure where appropriate. Specifically, that staff communicate the seriousness of the procedural concerns to the City of South Tucson Mayor and Council, and that staff coordinate with PCRFCDD’s Chief Engineer’s office regarding floodplain-jurisdiction enforcement on this parcel. Constituent inquiries from a Senate or House office reliably accelerate municipal response in a way an individual homeowner’s letter does not.

3. Consideration of federal-tool referrals, where the legal predicate fits. I am not in a position to assess these myself; I flag them for staff judgment.

- **U.S. Department of Justice, Civil Rights Division.** Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) prohibits discrimination on the basis of national origin in any program receiving

federal financial assistance. To the extent that the City of South Tucson administers any federally funded program (CDBG, transportation, public safety), procedural failures of this kind in a Hispanic-majority municipality fall within the inquiry that office routinely conducts.

- **U.S. Department of Housing and Urban Development.** Same Title VI predicate; HUD Office of Fair Housing and Equal Opportunity is the customary referral channel for jurisdictions receiving CDBG.
- **FEMA Region IX, Floodplain Management Branch.** Coordinated review with PCRFCDD on whether the regulatory-floodplain finding triggers any Community Rating System or NFIP compliance follow-up for South Tucson.
- **Federal Communications Commission, Wireless Telecommunications Bureau.** The FCC does not adjudicate local zoning, but it tracks siting practices and is statutorily charged with the federal half of § 332. A delegation inquiry asking what oversight exists when local procedures appear to break down without crossing into preempted territory may be worth the staff hour.

4. Public voice, if appropriate. A statement from any of the three offices — particularly Representative Grijalva, whose district this is and who launched her September 2025 victory rally in South Tucson — that procedural fairness in small Hispanic-majority municipalities is a federal interest, would carry weight far beyond the local record.

VI. Documentary record I can provide on request

- The full 33:46 audio of the February 25, 2026 BOA hearing (48 MB MP3) and a timestamped transcript
- The official BOA 25-01 agenda, public hearing notice, and roll call sheet
- The PCRFCDD Flood Hazard Information Form determination signed today (May 5, 2026), submission ID `be7b343e-bbd4-412b-b87c-ed596489a9b7`, with the 090 Flood Hazards Map
- The Karen Karl statement on the door-to-door notice investigation (verbatim, with identifying methodology)
- The Munipodes August 2025 archive of Chapter 24 and the April 2026 city version, side-by-side, for the Defect E diff
- EXIF/GPS-locked photographic evidence at the same parcel boundary across three flood events: August 21, 2024 (12 photos, 7:13–7:24 AM), October 12, 2025 (photo + video), and May 5, 2026 7:02 AM (3 photos, this morning, after a routine spring rain — standing water in the regulatory wash)
- The 42-item Public Records Request hand-delivered to the South Tucson City Clerk on May 1, 2026, with stamped receipt
- The full memo packages (~9 pages each, with photo exhibits) delivered today to South Tucson Mayor and Council and to Pima County Supervisor Heinz

VII. What is happening locally on parallel tracks

- The City of South Tucson Mayor and Council have received the procedural-review request package today; tonight's regular meeting (May 5, 6:00 PM, 1601 S. 6th Avenue) is the first agendization opportunity.
 - Pima County Supervisor Matt Heinz (District 2) has received his package today, with the PCRFCFCD findings as the centerpiece.
 - The PCRFCFCD second submission (for APN 118-24-1200, the parcel directly north of Magnum and the floodway corridor itself) is in process.
 - The South Tucson PRR runs to ~May 31 under the 30-day formal-response window of A.R.S. § 39-121.01.
 - The 30-day appeal clock to Pima County Superior Court under A.R.S. § 9-462.06(K) runs from the date the BoA's written decision was filed in the office of the Board, a date currently the subject of PRR Items 24–26.
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Thank you for the seriousness of your time. I am one homeowner; the documentary record is comprehensive; the pattern is what matters most. I am available at (520) 891-0610 or bransan@gmail.com for any staff member who wants the full package or a site walkthrough.

Respectfully,

Bryan Sanders

344 W. 35th Street

Tucson, AZ 85713

cc. Karen Karl, Esq. (neighbor and door-to-door investigator) · File · Drive folder reference: *Magnum Paving / memos*