

Response to the Investigation

An item-by-item examination of the June 23, 2026 Findings Report on South Tucson Board of Adjustment Case 25-01 — every entry sourced to the documentary record. Prepared July 27, 2026 by Bryan Sanders.

What this is. A verifiable, item-by-item list. Every entry is a **verbatim quotation from a primary document**, followed by **what it establishes** — and nothing more. **No motive is alleged. No intent is imputed. No characterization is offered beyond what the quoted text supports.** Inferences are labeled **INFERENCE**. Unresolved matters are labeled **OPEN**.

Sources: the City’s June 23, 2026 Findings Report; the published Chapter 24 (August 5, 2025 and April 27, 2026 editions, extracted verbatim); the December 11, 2025 application and the applicant’s Letter of Intent; the Pima County Flood Hazard Information Form (May 5, 2026); the published and mailed notices; the February 25, 2026 hearing recording; and the May 5, May 19, and **July 7, 2026** Council recordings.

At a glance — eleven deficiencies

Each line is established by the numbered items shown. Nothing here is characterization; every underlying item is a quotation from the City’s own report, its published Code, its own meeting recordings, or the applicant’s own filings.

- 1. It answered a question the Council did not ask.** The review examined public notice only; the Council rescinded pending an investigation of the decision and the process. **Items 1–3**
- 2. It was described to the public without that limitation.** On July 7 the report was summarized as finding “no irregularities” and that “all the proper procedures w[ere] follow[ed]” — general and unqualified. Neither the City Attorney’s nor the Vice Mayor’s description contains the word “notice.” **Items 43–45**
- 3. A central finding is contradicted by the published Code.** The review concluded the 50-foot cap was “never codified.” It appears verbatim in the August 5, 2025 published Chapter 24 and is absent from the April 27, 2026 edition. **Items 8–12**
- 4. Its sources were its subjects.** Built on interviews with the Planning Director under review, the City Attorney who advised the Board, and the Zoning Administrator. **Item 15**
- 5. The evidence was curated by the official under review.** “Planning Director Licea has provided me with emails from residents...” **Item 13**
- 6. There is no independent proof of mailing.** Mailing rests on that official’s account and two lists he produced. No certificate, no affidavit, no returned-mail review. No affected resident was interviewed. **Items 14–17**
- 7. It validated a notice describing a different action than the one the City defends.** The published and mailed notices say “variance”; the review’s own witnesses say the Board “did not approve a variance.” **Items 18–22**
- 8. It never cites the provisions that determine authority.** § 24-21(a), § 24-134, and A.R.S. § 9-462.06 appear nowhere in a review concluding staff complied with applicable law. **Items 23–25**
- 9. It never examined the seven required findings, design review, or the County flood determination.** **Items 26–28**
- 10. Its limitations argument presupposes the question it did not ask.** It applies a 15-day appeal deadline without examining whether the Board had power to act, and does not address the Council’s own rescission.

11. It contains precision defects. The governing open-meeting statute is miscited throughout (§ 38-341.02 for § 38-431.02), and the report’s own publication window does not match its own stated standard. [Items 31–32](#)

Two further matters of record: the report was held thirteen days without publication despite a prior promise to release it and no assertion of privilege [Items 39–42](#) ; and the records that would independently verify its central findings remain unproduced [Items 48–52](#) .

What the review confirms — against the City

These are the report’s own findings and are not in dispute:

1. The **50-foot height cap is binding** and the approved 70-foot tower exceeds it. [Items 4–5](#)
2. The **Planning Director did not know the governing ordinance existed** — the same official who accepted, processed, scheduled, and noticed the application. [Items 6–7](#)
3. The **published Chapter 24 does not contain binding law** — meaning the application was decided against a code text omitting the governing standard. [Items 8–12](#)

I. The review answered a question the Council did not ask

1. The review’s own stated scope was notice, and only notice.

“At issue is whether City of South Tucson staff complied with applicable policy and law in providing public notice regarding a hearing by the City of South Tucson Board of Adjustment that took place on 2/25/2026.” — Findings Report, Issue Under Review

2. Its conclusion is limited to notice.

“It is my conclusion that the City of South Tucson staff complied with both law and policy in providing notice to the public body of the hearing that was conducted by the Board of Adjustment on 2/25/2026.” — Findings Report, Conclusion

3. The Council’s motion was not limited to notice.

“Motion to rescind the decision from Board of Adjustment pending results of investigation.” — May 19, 2026 Council recording; adopted 4–1–1

Establishes: The Council rescinded pending an investigation of the decision and the process. The review examined the hearing notice. The scope of the review and the scope of the Council’s motion are not the same.

II. What the review confirmed — against the City

4. The City’s Zoning Administrator stated the 50-foot cap is binding.

“An ordinance that was enacted in 2006 (06-09) provides restrictions on communications towers to include that they cannot exceed 50 feet in height... the builder would have to apply for a variance in order to exceed that height...” — Greg Hitt, quoted in the Findings Report

5. The investigator adopted that conclusion.

“It appears these requirements are binding and will limit the proposed cell tower height to 50 feet even though the application shows the design height of the proposed tower as 70 feet.” — Findings Report, Observation 4

6. The Planning Director did not know the governing ordinance existed.

Licea “had not previously been aware of this Ordinance but opined that it appears to be binding...” — Findings Report

7. The same Planning Director accepted the application.

“Accepted by Josue Licea” — Application to Board of Adjustment, filed 12/11/25, Case No. BOA 25-01, on the form’s face

Establishes: The City’s own review confirms the approved tower exceeds a height limit the City’s own officials describe as binding — and that the official who accepted, processed, scheduled, and noticed the application was unaware of that limit until this review.

III. A finding contradicted by the published Code

8. The review found the 50-foot standard was never codified.

“I have determined that none of the provisions that were enacted by this Ordinance in 2006 appear in the current version of the Zoning Code, confirming Mr. Licea’s assertion that the provisions of this ordinance were never ‘codified.’” — Findings Report

9. The 50-foot cap appears verbatim in the published Chapter 24 as of August 5, 2025.

“f. The tower is fifty (50) feet or less in height; and” — § 24-387(b)(12), August 5, 2025 Municode edition (*confirmed present at three locations in the extracted text*)

10. The same provision is absent from the April 27, 2026 published edition.

§ 24-387(b)(12), April 27, 2026 edition, in full: “Public utility uses such as radio broadcasting stations, towers and studios when authorized by the board of adjustment and under such conditions and with such safeguards as the board of adjustment may deem proper and adequate for the appropriate development of adjoining areas in each case.”

11. The companion residential setback was also removed.

“e. The tower is set back at least two (2) times the height of the tower structure from the boundary of any other property zoned residential or office.” — present August 5, 2025; absent April 27, 2026

12. Section 24-529 was deleted in its entirety, including the tower-removal provision: “Any antennae or tower for which the use is discontinued for six (6) months or more shall be...” — present August 5, 2025; the entire section absent April 27, 2026.

Establishes: The provision the review states was “never codified” **was in the published Code within the year preceding the hearing, and was removed.**

INFERENCE The review appears to have examined only a post-removal edition and adopted the interviewee’s

characterization without checking the prior published text.

OPEN Who removed it, when, and on what authority is not addressed anywhere in the review.

IV. The review's sources were its subjects

13. The evidence of resident complaints was selected by the official under review.

"Planning Director Licea has provided me with emails from residents..." — Findings Report

14. Proof of mailing rests on the same official's account and his own lists. The review confirms mailing from Licea's interview and two lists Licea produced — a "before refined" list and one "refined for printing" (Report Ex. 3, pp. 48–49). No certificate of mailing, affidavit of mailing, or returned-mail review appears in the report.

15. No affected resident was interviewed. The report reflects interviews with Planning Director Licea, City Attorney Paladini, and Zoning Administrator Hitt. It reflects no interview of any resident who states they did not receive notice.

16. A documented factual dispute was resolved on staff account. Karen Karl's complaint of record is that residents did not receive notice and that the representation that 300 feet was notified "is not true." The review resolves this by reference to the records produced by the official under review.

17. The radius discrepancy is noted but not examined. The Board of Adjustment's Rules define "parties in interest" as owners within **200 feet**; Licea states he pulled and mailed to **300 feet**.

Establishes: On the single question the review examined, the evidence was supplied and curated by the official whose conduct was being examined, and the contrary account was not independently tested.

V. The notice the review validated describes a different action than the one the City defends

18. The published notice said "variance."

"REGARDING A VARIANCE TO ERECT A NEW WIRELESS COMMUNICATION FACILITY (TOWER) AS REQUIRED BY CITY CODE 24-387(12)..." — Tucson Daily Territorial, published 2/11/2026 (reproduced at Report Ex. 3)

19. The mailed notice said "variance."

"to consider proposal for a variance as indicated below" — mailed notice (Report Ex. 3)

20. The review's own witnesses say it was not a variance.

The decision "only approved the conditional use... and did not approve a variance." — Hitt and Licea, quoted in the Findings Report

21. The contradiction also occurred inside the hearing itself. The agenda was read aloud as a "variance" [≈03:48]; the City Attorney, advising minutes later, described "issuing this use permit" [≈26:53]. — February 25, 2026 hearing recording

22. The applicant's own filing used the heading "Variance."

"Variance: The property is zoned SB-2 and the zoning code doesn't allow a cell tower as a standalone use. It would be considered a public utility use and requires Board of Adjustment approval, height would be restricted to under 80'." — Application, attached statement

Establishes: The public was noticed for a **variance**. The City defends a **conditional use**. Whether the notice accurately described the action being taken is a **notice question** — inside the review’s own stated scope — and it is not addressed.

VI. Sections the review never cites

23. § 24-21(a) — never cited. “The board may not grant variances from the provisions of this chapter governing the use of land.” — identical in both published editions

24. § 24-134 — never cited, though the review builds its conditional-use theory on Division 7 (§§ 24-126, 24-127, 24-131). “The following uses are permitted as conditional uses: (1) Swap meets or open-air market places...” — the complete list, identical in both editions

25. A.R.S. § 9-462.06 — never cited. A 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.”

26. § 24-21(c) (the seven required findings) — not examined. The recording of the roughly 33-minute February 25 hearing contains no statement of any of the seven.

27. § 24-107 (design review) — never mentioned, though it provides that “no zoning certification or building permit... shall be issued unless” the design review board has reviewed and signed the submittals.

28. The Pima County floodplain determination — never mentioned, though it issued May 5, 2026 and was transmitted to the City.

Establishes: The provisions that determine whether the Board had authority to act at all are absent from a review that concluded staff complied with applicable law.

VII. The limitations argument presupposes the unexamined question

29. The review argues the objection is time-barred. § 24-131 requires a Superior Court special action within 15 days; “This time-limit has passed”; whether the objectors are proper parties “appears to be moot given the fact the time limit for filing a special action appeal has long passed.” — Findings Report, Observation 4

30. The review does not address the Council’s rescission of May 19, 2026 in that analysis.

Establishes: A limitations period governs appeals of decisions a body had power to make. The review applies that period without examining whether the Board had that power — the question raised by items 23–25.

INFERENCE The argument therefore assumes the answer to the question the review did not ask.

VIII. Precision and citation defects

31. The open-meeting statute is miscited throughout. The report repeatedly cites “A.R.S. § 38-341.02.” The Arizona open-meeting notice statute is **A.R.S. § 38-431.02** — which the City’s own mailed notice quotes correctly.

32. The report’s stated publication window does not match its stated standard. The report states notice must publish “not less than 15 nor more than 30 calendar days prior to the hearing date,” 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**. **OPEN** The exact count — including whether the rule counts inclusively — should be confirmed; but the report’s own standard and its own window do not agree.

IX. Matters outside the review entirely

33. The applicant requested a reduced north setback.

“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...” — Letter of Intent (*typographical errors in original*)

34. The requested north setback is 12 feet 3 inches.

“The setbacks to adjacent property lines are: 12'-3" to the north...” — Letter of Intent

35. Pima County places a wash north of the parcel with a 25-foot setback. 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. — Pima County Flood Hazard Information Form, 5/5/2026

36. County rule on structures in that area. “Structures and septic systems are not allowed within the erosion hazard area without engineering justification (16.28.030).” — same form

37. A portion of the parcel is in a local floodplain. Item 4, “Impacted by a Local Floodplain — Yes, portion of parcel”; Special Study “#107 City of South Tucson” — same form

38. The nearest residence is 130 feet; the deleted setback standard would have required 140. “130' to the south” — Letter of Intent. The August 5, 2025 standard required “two (2) times the height of the tower structure” — 140 feet for a 70-foot tower.

OPEN **Stated as a question, not a finding:** Whether the structure falls within the erosion hazard area depends on the position of the bank of the wash relative to the north property line, which is not documented in anything reviewed. It is answerable from the site plan and the County flood hazards map. **Nothing in the record indicates the question was asked.**

X. How the report was described to the public — July 7, 2026

All quotations from the transcript of the July 7, 2026 South Tucson regular Council meeting (recording REGULARMTG070726). Timestamps as marked. The transcript is machine-generated; obvious transcription artifacts are corrected in square brackets.

39. The Council received the report on June 24 and it was not yet public on July 7.

Vice Mayor: “Mr. City Attorney, thank you for sending the counsel [council] the investigator’s final report regarding the investigation about the cell phone tower... **We received it on June 24....** I would like to know when we can expect for this to be made public” [00:25:04–00:25:28]

40. The Council had previously promised to release it.

“because **at previous meetings, the council had promised to share the final investigation once it was received.**” [00:25:28]

41. No privilege was asserted over the report.

City Attorney: “I believe it’s always been the council’s intent to make the report public... **So there is no need to have any kind of decision on waiving privilege,** because I think that was the intent from the beginning.” [00:26:20–00:26:50]

42. The City Manager confirmed it could be posted immediately.

Mayor: “Can we do that tonight, tomorrow? Is that easy to do?” — City Manager: “Yes, Mayor. We can post on the website tomorrow.” [00:26:02–00:26:10]

43. The Vice Mayor described the report as a general finding about procedure.

“The investigation that also states that **the city staff followed proper procedures in connection with the Board of Adjustment hearing** regarding the cell phone tower.” [00:25:10]

44. The City Attorney’s verbal overview described it the same way.

“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]

45. Neither characterization stated that the review examined only notice. Neither the Vice Mayor’s description [00:25:10] nor the City Attorney’s overview [00:27:26] contains the word “notice,” or any statement limiting the finding to the giving of notice. Compare the report’s own stated scope at item 1 above.

46. The question of who set the scope was asked and not answered. Public comment read into the record included: “ten, **who is running this investigation? Is [it] independent and will the findings be made public?**” [00:24:13–00:24:18]. The ensuing discussion addressed publication only. No answer was given identifying who set the scope of the review or what it was.

47. The Mayor initially preferred the matter be agendized rather than summarized.

“I rather it be agendized, but please do a quick overview.” [00:27:08]

Establishes: The report was in the Council’s hands for thirteen days without being published, notwithstanding a prior promise to release it and no assertion of privilege. When it was described to the public, it was described in **general, unqualified terms** — “no irregularities,” “all the proper procedures” — with no statement that the review had examined only whether notice was given. **A member of the public asked who was running the investigation and whether it was independent; that question was not answered.**

XI. The records that would answer these questions have not been produced

48. Three public records requests (78 items) were filed **May 1, May 14, and May 15, 2026**, seeking the notice record and proof of mailing, the Chapter 24 legislative record and adopting ordinances, the code-publishing and vendor record, and the City-to-applicant correspondence.

49. A written demand was served **July 15, 2026** requiring, within five business days, production or an item-by-item schedule with a privilege log. **50.** The Clerk acknowledged the demand the same day and produced no records, no schedule, and no privilege log. **51.** The window closed **July 22, 2026**. **52.** A written Notice of Constructive Denial was served on the Clerk and full Council **July 23** and hand-delivered with a timestamped receipt **July 24**.

Establishes: The documents that would independently verify or refute the review’s central findings — particularly items 13–17 and 8–12 — remain unproduced to the public.