

**MINUTES OF THE REGULAR MEETING**  
**OF THE**  
**PLANNING AND ZONING COMMISSION**

May 13, 2021  
9:35 a.m.

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Phoenix, Arizona

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**MEMBERS PRESENT:**

Mr. Greg Arnett, Chairman  
Mr. Jay Swart, Vice Chairman  
Mr. Nathan Andersen  
Mr. Kevin Danzeisen (left at 11:25 a.m.)  
Mr. Matt Gress (left early - time not stated)  
Mr. Erik Hernandez  
Mr. Jimmy Lindblom (left early - time not stated)  
Ms. Kate McGee  
Ms. Francisca Montoya (left early - time not stated)  
Mr. Lucas Schlosser

**STAFF PRESENT:**

Mr. Darren Gerard, Planning Services Manager  
Ms. Rachel Applegate, Senior Planner  
Mr. Warren Rivera, Planner  
Mr. Sean Watkins, Planner  
Ms. Rosalie Pinney, Recording Secretary

**COUNTY AGENCIES:**

Mr. Wayne Peck, County Attorney  
Mr. David Anderson, Business Engagement Manager, OET  
Ms. Erin Novotny, Management Assistant

**CONSENT:**

**CPA2021004, Z2020069, Z2021018**

**REGULAR:**

**Z2021011, Z2020093**

Chairman Arnett made the standard announcements, and asked if there were any changes or comments to the minutes for March 25. None.

**COMMISSION ACTION: Chairman Arnett approved the March 25, 2021 minutes as written.**

Mr. Gerard said Item #3 – Z2021011 is being moved to the regular agenda due to opposition received.

**CONSENT AGENDA**

**Comprehensive Plan Amendment - CPA2021004**

**District 4**

Project name: **Luke Land 58**

Applicant: Jack Gilmore, Gilmore Planning and Landscape Architecture

Request: Modification to Condition 'f' of CPA2015001 regarding status report approvals  
Location: Approximately the northwest corner of Glendale Ave. and the 127<sup>th</sup> Ave alignment in the Glendale area

**Special Use Permit - Z2020069**

**District 3**

Project name: **Arizona Natural Concepts**  
Applicant: Michelle Green, Lazarus & Silvyn P.C.  
Request: Special Use Permit for the expansion of an existing marijuana dispensary to allow on-site marijuana cultivation for export in a separate building on the same property  
Location: Generally located 1,740' east of the southeast corner of Carefree Hwy. and 7<sup>th</sup> Street in the Desert Hills area

**Zoning - Z2021018**

**District 2**

Project name: **Akron Lot Split**  
Applicant: Ephrem Jando  
Request: Rezone from R1-8 to R1-8 RUPD  
Location: Generally located 135' east of the intersection of Crimson Rd. and Akron St. in the Mesa area

Mr. Gerard presented the consent agenda.

**COMMISSION ACTION: Commissioner Montoya motioned to approve the consent agenda, CPA2021004 with conditions 'a'-'f', Z2020069 with conditions 'a'-'g', and Z2021018 with conditions 'a'-'f'. Vice Chair Swart second. Approved 10-0.**

**CPA2021004 conditions:**

- a. Development and use of the site shall comply with the narrative report entitled, "A Comprehensive General Plan Amendment for Luke Land 58", including all exhibits dated revised February 19, 2015, and stamped received February 20, 2015, except as modified by the following conditions.
- b. If the Board takes action to amend or revert/rescind subsequent zoning, this land use plan shall be considered for amendment to change the land use designation back to the prior Mixed Use Employment.
- c. The total number of residential units shall not exceed 274 dwelling units.
- d. Prior to initial Final Plat approval or initial precise plan of development, the applicant shall submit to the Maricopa County Planning and Development Department a "will serve" letter and verification of approval of a Maricopa Association of Governments (MAG 208) amendment from Liberty Utilities.
- e. The following Luke Air Force Base condition shall apply:

Luke Land 58 shall notify future occupants/tenants that they are located near a military airport with the following language:

“You are locating in a residential dwelling inside the State Statute defined “territory in the vicinity of a military airport,” which means that aircraft flying in this area are authorized to fly as low as 1,500 feet above the ground. You will be subject to direct overflights and noise by Luke Air Force Base jet aircraft in the vicinity.

Luke Air Force Base executes an average of approximately 165 overflights per day. Although Luke's primary flight paths are located within 20 miles from the base, jet noise will be apparent throughout the area as aircraft transient to and from the Barry M. Goldwater Gunnery Range and other flight areas.

Luke Air Force Base may launch and recover aircraft in either direction off its runways oriented to the southwest and northeast. Noise will be more noticeable during overcast sky conditions due to noise reflections off the clouds.

Luke Air Force Base's normal flying hours extend from 7:00 a.m. until approximately midnight, Monday through Friday, but some limited flying will occur outside these hours and during most weekends.

For further information, please check the Luke Air Force Base website at [www.luke.af.mil/urbandevelopment](http://www.luke.af.mil/urbandevelopment) or contact the Maricopa County Planning and Development Department.”

Such notification shall be permanently posted on not less than a 3 foot by 5 foot sign in front of all leasing offices and be permanently posted on the front door of all leasing offices on not less than 8½ inch by 11 inch sign.

- f. The granting of this change in use of the property has been at the request of the applicant, with the consent of the landowner. The granting of this approval allows the property owner to enjoy uses in excess of those permitted by the land use existing on the date of application, subject to conditions. In the event of the failure to comply with any condition of approval, the property shall change to the land use designation that existed on the date of application. It is, therefore, stipulated and agreed that revocation due to the failure to comply with any conditions does not reduce any rights that existed on the date of application to use, divide, sell or possess the property and that there would be no diminution in value of the property from the value it held on the date of application due to such revocation. The Comprehensive Plan Amendment enhances the value of the property above its value as of the date the Comprehensive Plan Amendment is granted and changing to the prior land use designation results in the same value of the property as if the Comprehensive Plan Amendment had never been granted.

**Z2020069 conditions:**

- a. Development of the site shall be in substantial conformance with the Site Plan entitled "ANC Dispensary", consisting of three full-size sheets, dated March 26, 2021, and stamped received April 6, 2021, except as modified by the following conditions.
- b. Development of the site shall be in substantial conformance with the Narrative Report entitled "Arizona Natural Concepts (ANC)", consisting of five pages, dated April 2, 2021, and stamped received April 6, 2021, except as modified by the following conditions.
- c. The following Planning Engineering conditions shall apply:
  1. The SUP does not appear to have any changes to the existing POD. If the site will have Building Permits that do not reflect the existing POD, provide Engineered Grading and Drainage Plans for the updated POD.
  2. The property is within FEMA Zone AE Floodway and FEMA Zone AE Floodplain. Any work on the site will require a Flood Use Permit.
  3. Any construction (driveway, utilities, etc.) within Carefree Highway Right-of-Way will require a Maricopa County Department of Transportation (MCDOT) Right-of-Way Permit.
  4. No modification to the existing building exterior without an Engineered Grading & Drainage Plan and an updated POD.
  5. Without the submittal of a precise plan of development, no new or existing development approval is inferred by this review, including, but not limited to drainage design, access and roadway alignments. These items will be addressed as development plans progress and are submitted to the County for further review and/or entitlement.
  6. All development and engineering design shall be in conformance with Section 1205 of the Maricopa County Zoning Ordinance; Drainage Policies and Standards; Floodplain Regulations for Maricopa County; MCDOT Roadway Design Manual; and current engineering policies, standards and best practices at the time of application for construction.
  7. Engineering review of planning and/or zoning cases is for conceptual design only and does not represent final design approval nor shall it entitle applicants to future designs that are not in conformance with Section 1205 of the Maricopa County Zoning Ordinance and Drainage Policies and Standards; Floodplain Regulations for Maricopa County; and the MCDOT Roadway Design Manual.

- d. This special use permit is valid for a period of ten (10) years and shall expire on **June 9, 2031**, or upon termination of the use for a period of 90 or more days, whichever occurs first. All site improvements associated with the special use permit shall be removed within 90 days of such expiration or termination of use.
- e. Prior to occupying the existing structure or any portion thereof for any use associated with the Special Use Permit, the applicant shall obtain a Certificate of Occupancy for the retrofitted building prior to occupancy.
- f. Noncompliance with any Maricopa County Regulation shall be grounds for initiating a revocation of this Special Use Permit as set forth in the Maricopa County Zoning Ordinance.
- g. The granting of this change in use of the property has been at the request of the applicant, with the consent of the landowner. The granting of this approval allows the property to enjoy uses in excess of those permitted by the zoning existing on the date of application, subject to conditions. In the event of the failure to comply with any condition, and at the time of expiration of the Special Use Permit, the property shall revert to the zoning that existed on the date of application. It is, therefore, stipulated and agreed that either revocation due to the failure to comply with any conditions, or the expiration of the Special Use Permit, does not reduce any rights that existed on the date of application to use, divide, sell or possess the property and that there would be no diminution in value of the property from the value it held on the date of application due to such revocation or expiration of the Special Use Permit. The Special Use Permit enhances the value of the property above its value as of the date the Special Use Permit is granted and reverting to the prior zoning results in the same value of the property as if the Special Use Permit had never been granted.

**Z2021018 conditions;**

- a. Development of the site shall be in substantial conformance with the Narrative Report consisting of 3 pages, stamped received March 20, 2021.
- b. The following Planning Engineering conditions shall apply:
  - 1. Driveway access to Akron Street must be paved and will require a permit from MCDOT issued concurrent with building permit(s) required for site development. Drainage flow along the roadway must be maintained.
  - 2. Engineering review of re-zone cases is conceptual in nature. All development and engineering design shall be in conformance with Section 1205 of the Maricopa County Zoning Ordinance; Drainage Policies and Standards; Floodplain Regulations for Maricopa County; MCDOT Roadway Design Manual; and current engineering policies, standards and best practices at the time of application for construction.

- c. The following R1-8 RUPD standards shall apply:
  - i. Height: 30 feet
  - ii. Rear yard: 25 feet
  - iii. Lot Area: 8,000 square feet
  - iv. Lot Width: 64 feet.
- d. Noncompliance with any Maricopa County Regulation shall be grounds for initiating a revocation of this Zone Change as set forth in the Maricopa County Zoning Ordinance.
- e. The property owner/s and their successors waive claim for diminution in value if the County takes action to rescind approval due to noncompliance with conditions.
- f. The granting of this change in use of the property has been at the request of the applicant, with the consent of the landowner. The granting of this approval allows the property to enjoy uses in excess of those permitted by the zoning existing on the date of application, subject to conditions. In the event of the failure to comply with any condition, the property shall revert to the zoning that existed on the date of application. It is, therefore, stipulated and agreed that either revocation due to the failure to comply with any conditions, does not reduce any rights that existed on the date of application to use, divide, sell or possess the property and that there would be no diminution in value of the property from the value it held on the date of application due to such revocation of the Zone Change. The Zone Change enhances the value of the property above its value as of the date the Zone Change is granted and reverting to the prior zoning results in the same value of the property as if the Zone Change had never been granted.

**REGULAR AGENDA**

**Zoning - Z2021011**

**District 5**

Project name:	<b>Ed Pastor &amp; Baseline</b>
Applicant:	William F. Allison, Withey Morris, PLC
Request:	Modification of Zone Change case Z2015074 to add condition "g" to permit billboard at 0' setback and with increased height and size
Location:	Generally located at northwest corner of Baseline Rd. and 61 <sup>st</sup> Ave. alignment in the Phoenix area

Mr. Rivera presented Z2021011 and noted the applicant is requesting a setback of 0' from the eastern property boundary adjacent to the Loop 202 Freeway, an increase in maximum sign area to 678 square feet per sign face, an increase to maximum height of 70 feet. Opposition received May 12. Staff recommendation is to approve with conditions.

Commissioner Schlosser said the location printed on the agenda and staff reports read 161<sup>st</sup> Drive, which is incorrect; it is located on 61<sup>st</sup> Avenue.

Mr. Bill Allison with Withey Morris said he is representing the property owner LGE Enterprises and the billboard company Lamar. He received opposition this morning and he did not have enough time to review to address during his presentation. Their request is to have modifications approved on a 2015 zoning case to allow condition 'g' to permit billboard at a 0 ft. setback, and allow a billboard with a height of 70 ft., and increase of size to 672 sq. ft., with no wall or screening required on site to occur when property is developed. The height was set at a level that will make the sign readable from traffic that is coming from the south going north. With the standard height, it makes the sign non-functional; it needs to be legible for freeway traffic. The setback request is 0 feet, but there is 155 feet from the sign to the edge of the off-ramp and well over 200 feet to the travel lane of the freeway. There is really no purpose to have the sign 10 feet from the Rural-43 property line because that property is ADOT and part of the freeway system. The wall and screening would make more sense when the property is developed. There are no plans to put a cell tower on top of the sign. He asked the Commission for approval with conditions recommended by staff.

Vice Chair Swart asked, they just received the opposition letter this morning. Mr. Allison said yes. Vice Chair Swart said, so you had no time to go through their letter, and he could not believe they submitted a letter the morning of the hearing.

Mr. Allison said they did speak at the Laveen Planning Committee (LPC) meeting a week ago Monday, and did not receive any documentation as a follow-up to the meeting until this morning.

Chairman Arnett asked where the opposition is coming from in proximity to the property. Mr. Allison said the Laveen Planning Committee, is a group that is in opposition. Beyond that, he does not know of an exact location.

Commissioner McGee asked the purpose of the sign, is it to generate income or advertise potential future development. Could we add a stipulation that says no cell tower to address some of the concerns? Mr. Peck said the content of the sign is irrelevant; you have to decide whether a sign goes there, and they decide what the content is. They could not put up a cell tower without getting entitlements. They could put a small cell wireless box for 5G on the sign, by state statute it gives them right to do that.

Commissioner Montoya asked how common to receive letters and notices the day and the morning of these meetings. Mr. Gerard said this is a public hearing, we expect there to be comments presented that we may not have heard before. If somebody submits a volume of information, it is unlikely to digest that to your satisfaction. Sometimes people do not get word of what is happening until late into the process.

Chairman Arnett said there could be people waiting to oppose the day of the hearing, so it is not uncommon for same day opposition. We are here to find out if it is the appropriate use and it falls within the appropriate guidelines. By right, they could put a billboard on that site, there is nothing saying they can or cannot do that, but if you want it to be taller and wider, that is what we are deciding on today.

Mr. Allison said this would be off premise advertising like most billboards.

Commissioner Schlosser said this is also the South Mountain Freeway at the intersection of Baseline Road, which is the longest major arterial we have in the city. This is ground zero in the Laveen area. The surrounding development to the southeast corner of that whole diamond interchange there is a Sprout's and other new businesses. There are views of farmland and the Estrella Mountains to the southwest exactly where he grew up. There is 24 acres of land on the southwest corner of Baseline Road owned by Banner Hospital, and he believes that is where a new hospital will be located. He wanted to give a description for those not familiar with the area.

Commissioner Lindblom asked about the two signs in the photo and wondered why this one needs to be higher. Mr. Allison said the other sign is 1,000 north of the sign we are talking about. We do not have an issue with the readability of the sign when traveling south. The issue is when you are traveling north because of the overpass over Baseline Road.

Mr. Daniel Penton said in 2015 this case came before the Laveen Planning Committee, and a number of the stipulations were drafted, and one of the requirements was to return to the LPC for comment and review with a Plan of Development or sign plans. The applicant did not make that attempt, so we reached out to them recently. He apologized for that timeliness. They spoke with the applicant during their meeting a week ago, and addressed some of the issues with the setbacks, and the potential user of the sign, and whether a billboard of this size is appropriate for this area. The Board of Supervisors adopted the Laveen Area Plan, and there is a number of provisions that limit the height and size of signs. This area of Laveen is one of the last areas in the valley that retains its views; we have beautiful views of South Mountain and Estrella Mountains to the southwest. Then you have a 70-foot billboard sitting on top of the Estrella's like a Christmas tree topper, and a short billboard that is now a blighted feature tagged by graffiti. This is visual clutter and blight and a detriment to the scenic beauty of this area. That is why we are opposed to this. We are not opposed to them erecting a billboard, but it needs to be done responsibly. It should be no higher than the proposed 48 feet. It should not be at a height that is greater than the one to the north, and to be 70 feet tall will make the billboard the dominating feature of the area. At Southern and the 202, the Danzeisen billboard is 57 feet and you can see that perfectly, it's not at 70 feet and it is well placed and there is no issue with that one. So why 70 feet? They possibly want theirs to be taller than the one in front of them, and how does this improve the quality of life, and how is this not a detriment to the area? We are requesting a 30-foot setback. The base of a billboard should be fenced-off; it becomes overgrown with shrubs, brush and trash. We are asking it to be screened if this is approved, to be a visual enhancement of the area. The lighting needs to be down-lit and shielded, and be no greater than 48 feet and a 300 square foot sign face, and no sign face facing west. Not be illuminated later than 11 p.m., and not converted to digital.

Commissioner Danzeisen said he has a sign a mile away and he feels it is appropriate to abstain from voting.

Chairman Arnett said we have an opposition letter from Lisa Perez, she is not able to attend the hearing today.



Mr. Allison said they have demonstrated the size and height they are requesting is not excessive and is necessary for this billboard to function. It is not possible for this sign to be digital in the County today. If this property were to be annexed, they would have to go through a public hearing process before the sign could be transformed into digital. There was discussion of a text amendment in the County two or three years ago, and this would not be appropriate to stipulate it would never be digital if the County decides there is a process that will allow digital. The plan is to have the sign down-lighted so the light will not go into the sky, and it is well separated with the existing residential to the west and north.

Chairman Arnett asked if anyone else from the public that wished to speak. None.

Commissioner Montoya asked is there a stakeholder meeting that is taking place May 21, and is the purpose to discuss changes to the zoning ordinance as it pertains to advertising and billboards. Mr. Gerard said there is a public stakeholder meeting for text amendment TA2018001; it has been on hold for a couple years. The applicant, Becker Board's wants to move this forward with changes to billboard development standards in the commercial and industrial zoning districts.

Commissioner Lindblom asked is this the same text amendment from several years ago where we had several ZIPPOR meetings? Mr. Gerard said that is correct.

Commissioner Montoya asked were any of the Laveen Planning Committee recommendations considered in drafting the recommendations for the Commission today. Mr. Gerard said the LPC had references made to stipulations in a case for 2016, but none of those recommendations memorialized in conditions of the C-2 CUPD zoning approval. He does not know if Mr. Rivera included comments from Laveen, because the Laveen meeting would have been at the time the staff report were drafted and published.

Mr. Rivera said the Laveen Planning Committee documentation was provided yesterday. They drafted the conditions after their meeting with the applicant on May 3, and they were not available to him at the time of writing the staff report. Some are elements we cannot enforce as a jurisdiction.

Commissioner Montoya asked which recommendations could be considered. Mr. Rivera said the lighting, height, sign face area, but they cannot enforce enhanced landscaping.

Commissioner Lindblom said we had many conversations in the past with lighting and digital billboards. He has an issue adding a restriction on this billboard not to be digital based on a future potential use. There will be other processes in the future.

Commissioner Andersen asked was it part of a requirement for the applicant to work with the LPC. Mr. Gerard said the Laveen Planning Committee is a recognized community group similar to New River/Desert Hills Community Association where we have these groups throughout the County. As part of rezoning cases and zoning amendment cases,

we will ask applicants as part of their public outreach to include those groups in their efforts. It is not a requirement, but to be a better neighbor with good public outreach.

Commissioner Andersen said if the applicant met with the LPC a week ago, they are fully aware of their concerns and they had plenty of time to address them.

Chairman Arnett said Laveen had some great points and this is their area and it is passionate to them. He does not have any problems with the setbacks. There could be problems with upkeep and be a blighted property if they put all of the value in the billboard itself. Where there is a freeway it creates these billboards, and when they are that big and tall it could change the area.

Commissioner Montoya said she has a concern and issue with the sign area. The standard is 300 square feet and they want more than double at 672 square feet. She would not support this.

Commissioner Gress said this meeting was just a week ago and it could take months to work out some of these issues to satisfy all parties. It seems like this is the last minute effort to appease community groups, and he is concerned about this approach. Maybe there could be a mutual agreement from all sides, and possibly continue this if more work needs to be done with the community.

Commissioner Schlosser said he supports a continuance where the LPC can work on it further with the applicant.

Commissioner Montoya said one opposition letter did ask for a continuance, and there is a meeting next week discussing an upcoming text amendment for billboards. She supports continuing this so there will be more communication between both sides to come up with a mutual agreement.

Chair Arnett asked what concerns could be resolved with a continuance. Commissioner Montoya said she has concerns with the lighting and sign area, and there is going to be a broader discussion on billboards in the County.

Commissioner Lindblom said the billboard that is 1,000 feet away seems to be bigger than the standard 300 square feet, and asked did that applicant have to go through a process to get it approved through the County or another body? Mr. Gerard said any sign greater than 300 square feet sign area in the county had to go through some type of UPD overlay as part of a zoning case through this body or a variance through the Board of Adjustment. There is potential for the Commission to discuss the billboard text amendment as early as June depending upon what happens at the stakeholder meeting.

Chair Arnett asked is the other sign another jurisdiction. Mr. Gerard said he believes it is County.

Commissioner Lindblom said they have supported these type of projects in the past, and he is in support of this case.

Commissioner McGee said they have the right to do this, and we are being asked to approve this if it can be bigger and taller. Mr. Peck said yes, you are being asked to deviate from the underlining standards that apply to a commercial zoning district.

Chairman Arnett said this is right on the freeway, and landowners have rights to do this. It is not fair to the applicant to drag this out if there is not going to be any resolution. Commissioner Montoya said she understands landowners have rights, and this is next to the freeway and with development comes change. She has lived in this area for the past 25 years, her concerns is the sign area deviating from 300 square feet to 672 doubling the size. This is an area with natural beauty of the Estrella Mountains and South Mountains.

Mr. Allison said if the Commission would like them to discuss this further with the LPC, they would be happy to do that. There is not much of an area to maneuver on this because they have an existing condition they are trying address, and he doesn't know what the common ground is after having a discussion 10 days ago. He does not think the text amendment really has much sway on this application. The last meeting was two or three years ago and he is not sure if it has much traction right now. Waiting for this text amendment is not fair to his client or the landowner. The 300 square feet sign area is not a standard size billboard, the ones you see along the freeways are 672 square feet. The County has often approved these through variances with deviations in standards, and it is not an unusual request.

Commissioner Montoya asked is the comment he made on industry standards correct. Mr. Gerard said with the industry standard that we see throughout the valley is 672 square feet. Several jurisdictions prohibit off-site advertising signs. Most of the jurisdictions that permit billboards the industry erects 672 square feet. In the County, they are limited to 300 square feet unless they get some type of special entitlement.

Commissioner Montoya asked how staff recommended going from 300 to 672 square feet. Mr. Gerard said there have been numerous cases when approximate to freeways we have supported development standards for larger signs consistent with some of the other jurisdictions. He does not believe that recommendation has been made for arterials, just along freeways.

Chairman Arnett said the case before us the billboard is against a freeway, which would be different if it was in a neighborhood.

Commissioner Lindblom said the area he lives in has changed, and recently approved some billboards with very high heights, which he was reluctant to approve. They have since been built and he has no concerns how they changed the scenery. He is happy with what they approved in the past along our freeways; this sign is consistent with that.

Commissioner Gress said he supports a continuance and more dialogue with the Laveen Planning Committee is warranted. This is fair especially for a sign that will be up for a long time.

Commissioner McGee said she defers with Commissioner Montoya to see what they will come back with.

**COMMISSION ACTION: Commissioner Montoya motioned to continue Z2021011 to the June 17, 2021 hearing. Commissioner Schlosser second. Continued 6-3-1.**

**Zoning - Z2020093**

**District 4**

Project name: **AES Westwing Battery Storage**  
Applicant: Manish Kumar, AES Energy Storage LLC  
Request: Zone Change from Rural-43 to IND-2 IUPD  
Location: Parcels 503-53-007 and 503-53-009A, located approx. 600' east and south (respectively) of the SEC of Happy Valley Road and El Mirage Road, in the Peoria area

Mr. Watkins presented Z2020093 and noted the request is for a new utility scale, battery energy storage system (BESS) facility. The project will store up to 200 megawatts of electricity when there is surplus energy available on the grid, and it will discharge electricity back into the grid at times of high demand. AES Energy Storage LLC will provide this service through a power purchase agreement with Arizona Public Service. The project is anticipated to have a useful life up to 25 years and upon completion of operations most of the projects electrical equipment will be recycled and the equipment pads will be removed. Approval of Plan of Development is required for each parcel prior to building permit approval. The battery storage cubes are each 7'x8'x9'foot tall building containing batteries, fire detection and suppression equipment, controls and cooling units. The facility will include other utility equipment and enclosures with a total lot coverage of approximately 17 percent. Perimeter screening, and security walls, storm water retention system and fire access road will also be provided. APS will manage certain electrical transmission line modifications subject to approval by the Arizona Corporation Commission, along with structures and activities exempt from County review. Half of the 10-acre parcels are encumbered by 330-foot wide utility easements. AES has obliged to provide 200 megawatts of energy storage capacity to APS with the proposed project. Because the energy storage capacity of the project is related to the number of battery cubes it comprises, each battery cube is a certain minimum size. The maximum potential capacity of the project is directly related to the area it occupies. Since half of those subject parcels are encumbered by utility easements, the project must optimize the remaining area available on each parcel in order to provide the minimum energy storage capacity required by APS. The first request is to decrease the front 25-foot open space setback requirement to 15-feet on parcel 503-53-007 on Happy Valley Road, and 10-feet on parcel 503-53-009A is at the west on a section line associated with the El Mirage Road future road alignment. The reductions are specifically to the 25-foot landscape strip required between the ultimate edge of fronting streets and proposed screening security wall. The proposed buildings will meet or exceed all IND-2 required setbacks. Eight-foot tall solid block security screened walls will surround on all sides. An additional infrared beam intrusion detection system will be located on top of the 8-foot walls. The requests are for 15-foot sight visibility triangles on both sides of the eastern driveway and the east side of the western driveway, and a 5-foot visibility triangle on the west side of the western driveway. This will generate minimal traffic because it will be operated remotely with occasional visits by maintenance staff visiting twice a month. The driveway may not provide a turnaround for vehicles that cannot gain entry at the gate requiring a reverse motion into the right-of-way, and is to allow crushed gravel to be used for internal driveways and parking spaces where pavement is required. The applicant

complied with the citizen review process with the required posting of the site and mailed notices to property owner's 300 feet from the site. Staff is aware of two opposition comments with concerns of the zone change, with impacts of nearby properties, danger to the public by the nature of the project, and fears other industrial uses maybe established with the proposed zone change. Staff did not receive any correspondence from reviewing agencies, nor opposition including the City of Peoria. MCDOT approved the traffic impact study waiver for the project with two stipulations regarding the two driveways proposed on Happy Valley Road. Staff finds the zone change and overlay to be appropriate for the area and consistent with the surrounding land uses and development patterns. The nearest existing residential uses are approximately 200 feet north. The project is unlikely to produce noise, smoke or substantial visual impacts because the facility will be well screened, and the appearance is non-obtrusive and to be fully enclosed in 9-foot tall buildings. This will be connected to the existing electrical infrastructure located south of the subject parcels. The increased size in screen walls is necessary to enhance the security to this project. Staff recommends approval subject to the conditions 'a'-'g'.

Commissioner Schlosser asked what fire district is in this area. Mr. Gerard said the Arizona Fire and Medical Authority under the North County Fire District. Mr. Watkins said they were notified of the project and staff has not received any comment from them.

Mr. Ben Graff said he is from Quarles & Brady, representing AES Corporation. They are a global energy company with the focus of accelerating the future of energy. The battery facility will store solar energy and other energy generated by Arizona Public Services (APS). This will be a 100-megawatt (MW) facility on the northern parcel to provide up to 4-hours of additional energy in the peak hours. This is linked into the grid through transmission lines planned by APS, and a new substation is planned for this site. The battery use is a stand-alone use, and will be a long-term use, low intensity use. There will be adequate buffering and landscaping. The zoning request is to IND-2 and Industrial Unit Plan of Development (IUPD) overlay to make minimum adjustments to the development standards and tailor this site to this use. The stand-alone battery system utilizes a lithium ion battery, and correlated control systems. The entire purpose is to move towards renewable energy that might otherwise be lost. APS target is to deploy up to 850 MW of energy storage by 2025. There were two concern letters of the project from a married couple in January and one e-mail requesting more information. He did reach out and offered information about the project and did not hear back, and they did address the citizen concerns. Phase 1 is approximately 5.7 acres of the northern 10-acre parcel where you would see rows of battery cores. The BESS will consist of thirty-seven battery storage cores, and approximately 24 battery cubes within each of these cores. Each cube is 7'x 8' x 9' self-contained enclosure which houses its own batteries. These cubes have state-of-the-art fire detection and suppression systems, controls, and cooling chiller units. They have had extensive outreach with fire representatives on this facility. An 8' wall and an infrared intrusion system will screen the site. The infrared system keeps them from having to put up barbwire. No battery will be closer than 280-feet away from the nearest single-family home. The wall will be 250 feet away from any home, and be setback with landscaping with a 15-foot buffer; the batteries are at a minimum setback of 30 feet from the property line. Once the facility is constructed, it is unmanned and the trip generation is very low with occasional maintenance. This is a clean energy resource,

and the batteries do not use water or emit noise, dust, odor or any type of gas, and pollution free. Fire and fire safety next to neighborhood safety is the most important to this applicant and APS. They met with Arizona Fire and Medical Authority fire marshal, and multiple meetings with the City of Peoria, and the Peoria deputy fire chief. It is always possible to have a fire with these type of facilities where they have taken multiple precautions. If there is a fire, the first responder station allows the first responders to come to the station outside of the facility to access the health of the system. It does not require the firefighters to come into the interior of the facility to keep them at a distance from the fire. We have firewater loops with hydrants that meet all codes and hazard mitigation. No first responder can walk into or be within a battery cube, this system allows them to respond in a safer way. We have continued to work on an Emergency Response Plan (ERP), and have had numerous proactive meetings. The safety and design features of the cube has a ground fault detection, which creates an electrical isolation monitoring device on a DC battery to detect faults and disconnect the system before a serious problem occurs. No entry is necessary; the cube is filled with equipment and no ability or need to enter the container. In the event of a fire a non-propagation system is in place, the cube will electrically isolate itself to contain the fire and prevent the spread of fire. In case of an event, an individual cube can be removed and replaced, so it allows quick repair to make the site very safe.

Commissioner Schlosser asked if they received anything in writing from the Arizona Fire and Medical Authority or the City of Peoria that they are fine with this facility. Mr. Graff said he is not aware of a written response, but we have gone above and beyond the outreach contacting not only the neighbors but the fire community. The AFMA is in the process of reviewing what we provided to them, and they will be a part of approving specific plans, and the POD review. He is confident they are part of the discussion and will continue to provide comments during this process.

Commissioner Schlosser said he has concerns because of an incident that happened a few years ago with an APS battery that exploded and almost killed four Peoria firefighters. He would feel more comfortable getting feedback from these fire departments before moving forward. If one of these catches fire, we need to be certain the first responders are fully protected along with the homes close to the site. Mr. Graff said APS is fully aware of that incident. They had to go through a separate process of evaluating whether AES batteries and system will be safe from the firefighting standpoint as well. That change to the battery cores where you can no longer walk into the cubes is a safety features that came from that accident, and it has been recommended for future battery storage facilities. If the commission recommends approval, the fire agencies will be directly involved with the review of the POD, and fire approval is required for the building permit process. They have been meeting with all of the specific fire entities, and they are not aware of any issues that have been brought up to prevent the County from moving forward with this.

Commissioner Schlosser said as part of our due diligence, he cannot support this without knowing AFMA and the City of Peoria and City of Surprise are okay with this.

Chairman Arnett said what we are looking at today is a zone change from Rural 43 to Industrial. The battery storage facility would be the next phase in the process. Mr. Watkins

said the next step after approval - the plan of development would be required for each property and it is an administrative process. Upon approval of the POD, then building permits would be required and a will-serve letter will be required as part of the building permit process. This facility will not be built without will-serve letters for fire protection.

Mr. Peck said the chair is correct this is a land use case, but you are being asked to change from residential to industrial. The general question is, is there sufficient fire service to serve this area industrially, not this particular project. You cannot stipulate to a specific project in a rezoning. Part of the POD and building permit requirements are a will-serve letter and that would take care of the fire needs of the specific project. Right now, you are being asked to rezone the property.

Commissioner McGee said she is comfortable moving forward. She did have concerns regarding fire safety, and how to prevent a fire from happening. Everything is in place to do that, and she believes they have enough to move forward on this aspect of the project.

Commissioner Schlosser asked who issues the will-serve letter. Mr. Gerard said the fire marshal from the fire district, not the County.

Commissioner Schlosser said he would like a commitment from the applicant that they are going to continue to work with the fire departments. He does not have a problem with the location or the use, he wants to make certain these respective fire departments sign off on everything and not just Arizona Fire and Medical Authority. Mr. Graff said fire concerns have been the utmost importance, and they are making that commitment to outreach each of the fire departments not just AFMA, but also the City of Peoria and City of Surprise so everyone is onboard and aware of the fire safety. There is already a substation and significant power line use south of the property, which could potentially have electrical fires. This area is already targeted for that appropriate type of response.

Commissioner Schlosser said if they could get a letter from each agency, they are fine with this new technology and send him a copy prior to the Board of Supervisors meeting. Mr. Graff said he would stay in touch as they continue to have discussions, and he will find out what form would be appropriate to provide these confirmations and support.

Mr. Manish Kumar said he is representing the AES Corporation and is the managing director leading the battery energy storage group. This project is extremely important with a cleaner energy mix to Arizona with reliability and resiliency off the grid itself. They have taken very proactive measures for multiple levels of safety including fire suppression, which by itself would prevent a fire from erupting. Also, gas detection where the system would automatically detect it and shuts itself off. We deployed a first responder station on the outside of the facility so no responder would need to go in harm's way. As we go through the permit phase, we will have the approval of the fire marshal and other departments. There is also a fire station not too far away from the site. Because power lines and substations heavily encumber it, we believe there is adequate fire response in the event of an emergency with the grid, their lines or the project.

Chairman Arnett asked if anyone else from the public that wished to speak. None.

Vice Chair Swart said first responders are put in a situation all the time where they deploy into these unknown circumstances. He has concerns the emergency response plan is still in progress. If it was completed then they would have the ability to ask questions based on that. He gets nervous when somebody builds a facility like this, but do not have an emergency response plan, especially if they build these globally. It should have been done before it came to the commission. He is unaware if any of these departments are equipped to go to an industrial fire, even Phoenix Fire has found out they did not have the adequate equipment when deployed to high rise fires and some of these industrial type fires. This needs to be known ahead of time, because some have lost their lives and been seriously injured. Nothing has been identified that indicated these departments have that equipment and chemicals to suppress the fire.

Commissioner Schlosser asked if this is approved when would this case be schedule for the Board of Supervisors. Mr. Gerard said it would go to the Board in one month.

Mr. Gerard said separate from the industrial zoning, much of this discussion has been about the site plan and the proposed use. The Plan of Development will be following and under technical review.

Commissioner Schlosser said with the applicant's commitment to continue to communicate with him, he does not have a problem with this moving forward.

**COMMISSION ACTION: Commissioner Schlosser motioned to approve Z2020093 with conditions 'a'-'g'. Commissioner Hernandez second. Approved 6-0.**

- a. Development of the site shall be in substantial conformance with the Zoning Exhibit entitled "AES Westwing Energy Storage", consisting of 1 full-size sheet, dated January 22, 2021, and stamped received April 6, 2021, except as modified by the following conditions.
- b. Development of the site shall be in substantial conformance with the Narrative Report entitled "AES Westwing Energy Storage Project", consisting of 7 pages, dated March 15, 2021, and stamped received March 16, 2021 except as modified by the following conditions.
- c. The following IND-2 IUPD standards shall apply to both subject parcels 503-53-007 & 503-53-009A, or to the parcel specifically identified:
  1. Front Yard Setback: 15 ft. (503-53-007) and 10 ft. (503-53-009A).
  2. 14 ft. tall total height perimeter fence (8 ft. solid screen walls with 6 ft. intrusion detection system).
  3. Sight Visibility Triangles: 15 ft. both sides of eastern driveway and east side of western driveway, 5 ft. west side of western driveway (503-53-007).
  4. Reverse motion of vehicle into ROW allowed.
  5. AB gravel surface for internal driveways and parking spaces.
- d. The following Planning Engineering condition shall apply:



1. Engineering review of re-zone cases is conceptual in nature. All development and engineering design shall be in conformance with Section 1205 of the Maricopa County Zoning Ordinance; Drainage Policies and Standards; Floodplain Regulations for Maricopa County; MCDOT Roadway Design Manual; and current engineering policies, standards and best practices at the time of application for construction.
- e. Noncompliance with any Maricopa County Regulation shall be grounds for initiating a revocation of this Zone Change as set forth in the Maricopa County Zoning Ordinance.
- f. The property owner/s and their successors waive claim for diminution in value if the County takes action to rescind approval due to noncompliance with conditions.
- g. The granting of this change in use of the property has been at the request of the applicant, with the consent of the landowner. The granting of this approval allows the property to enjoy uses in excess of those permitted by the zoning existing on the date of application, subject to conditions. In the event of the failure to comply with any condition, the property shall revert to the zoning that existed on the date of application. It is, therefore, stipulated and agreed that either revocation due to the failure to comply with any conditions, does not reduce any rights that existed on the date of application to use, divide, sell or possess the property and that there would be no diminution in value of the property from the value it held on the date of application due to such revocation of the Zone Change. The Zone Change enhances the value of the property above its value as of the date the Zone Change is granted and reverting to the prior zoning results in the same value of the property as if the Zone Change had never been granted.

Chairman Arnett adjourned the meeting at 12:10 p.m.

Prepared by Rosalie Pinney  
Recording Secretary  
May 13, 2021