

MINUTES OF THE REGULAR MEETING
OF THE
PLANNING AND ZONING COMMISSION

July 25, 2019
9:30 a.m.

Board of Supervisors Auditorium
301 W. Jefferson Street
Phoenix, Arizona

MEMBERS PRESENT:

Mr. Jimmy Lindblom, Chairman
Ms. Francisca Montoya, Vice Chair (telephonically)
Mr. Nathan Andersen
Mr. Greg Arnett
Mr. Broc Hiatt
Ms. Jennifer Ruby

MEMBERS ABSENT:

Mr. Bruce Burrows
Mr. Michael Cowley
Mr. Lucas Schlosser
Mr. Robert Zamora

STAFF PRESENT:

Ms. Jen Pokorski, Planning & Development Director
Mr. Darren Gerard, Planning Services Manager
Ms. Rachel Applegate, Senior Planner
Mr. Ray Banker, Planner
Ms. Jaclyn Sarnowski, Planner
Mr. Eric Smith, Planner
Ms. Rosalie Pinney, Recording Secretary

COUNTY AGENCIES:

Mr. Wayne Peck, County Attorney

CONTINUANCE:

MCP2016007, TA2018002

CONSENT:

Z2019001, Z2019054, S2018025

REGULAR:

TA2018001, MCP2018003, MCP2018006

Chairman Lindblom called the meeting to order at 9:30 a.m.

Chairman Lindblom asked if there were any changes or comments to the May 16 minutes, none.

COMMISSION ACTION: Chairman Lindblom approved the May 16, 2019 minutes as written.

Chairman Lindblom said there's a change in the order of some of the agenda items. Item #5 - MCP2016007 and item #8 – TA2018002 is moving to the continuance agenda, and item #7 – TA2018001 is moving to the front of the regular agenda.

CONTINUANCE AGENDA

Military Compatibility Permit - MCP2016007

District 4

Applicant: Stephen C. Earl, Earl, Curley & Lagarde P.C.
Location: Generally located approximately 1,240' west of the southwest corner of Dysart Rd. and Olive Ave. in the Glendale area
Request: Modification of Conditions to a Military Compatibility Permit (MCP2012001) to amend condition 'f'– Olive and Dysart, LLC

Ms. Applegate presented MCP2016007 and noted the applicant requested a continuance to the September 12, 2019 hearing date in order to meet with staff on the stipulations. Staff is in agreement with the continuance.

COMMISSION ACTION: Commissioner Ruby motioned to continue MCP2016007 to the September 12, 2019 hearing. Commissioner Hiatt second. Continued 6-0.

Text Amendment - TA2018002

All Districts

Applicant: Earl, Curley & Lagarde / Rod Jarvis & Greg Loper
Location: Countywide
Request: Text Amendment to amend Chapter 2, Definitions; Section 501, Article 501.2.4; Section 601, Article 601.2.3; and Section 702, Article 702.2.5 of the Maricopa County zoning Ordinance (MCZO) relating to Group Homes

Ms. Applegate presented TA2018002 and noted the applicant requested a continuance to the August 22, 2019 Zoning, Implementation, Policy, Procedure and Ordinance Review (ZIPPOR) meeting. Staff is in agreement with the request.

Commissioner Arnett said he wants to confirm with the applicant that they're okay with the continuance and there's been discussion.

Mr. Rod Jarvis, the applicant said they would appreciate the opportunity to come before the Commission at a ZIPPOR meeting to work further on the stipulations and regulations. Staff has indicated preparing their own text amendment eventually, it's contrary to what they said a year ago. We want to make sure we discuss this with staff and the Commission, and that's why they are asking for a continuance to the next ZIPPOR meeting.

Commissioner Ruby said you specifically asked for a continuance to the next ZIPPOR meeting. Mr. Jarvis said that's correct.

Chairman Lindblom asked why ZIPPOR and not a regular Commission hearing. Mr. Jarvis said they would like the opportunity to discuss ideas with the Commissioners that can be

brought forward. This gives them the opportunity to have discussions that a normal hearing does not allow.

COMMISSION ACTION: Commissioner Andersen motioned to continue TA2018002 to the August 22, 2019 ZIPPOR meeting. Commissioner Ruby second. Continued 6-0.

CONSENT AGENDA

Special Use Permit - Z2019001 (Cont. from 6/13/19)

District 4

Applicant: Dennis Newcombe, Beus Gilbert, PLLC
Location: Generally located approximately 840' west of the southwest corner of Happy Valley Rd. and Vistancia Blvd. in the Peoria area
Request: Special Use Permit (SUP) for an RV Storage facility in the C-2 and R-3 zoning districts - Happy Valley RV Storage

Zoning - Z2019054

District 4

Applicant: Joe Cable, Bowman Consulting
Location: Generally located approximately 1,320' south of the southeast corner of Cotton Ln. and Olive Ave.
Request: Modification of Conditions to a Zone Change (Z2018116) to amend the R1-6 RUPD development standard for front yard setback – Northern Farms

Preliminary Plat - S2018025

District 4

Applicant: Jose Castillo, Richmond American
Location: Southwest corner of El Mirage Rd. and Maryland Ave. in the Glendale area
Request: Preliminary Plat consisting of 121 residential lots and 14 tracts in the R1-6 RUPD zoning district – Seasons at Riverside

Ms. Applegate presented the consent agenda.

COMMISSION ACTION: Commissioner Ruby motioned to approve Z2019001 with conditions 'a'-'h', Z2019054 with conditions 'a'-'i', and S2018025 with conditions 'a'-'r'. Commissioner Arnett second. Approved 6-0.

Z2019001 conditions;

- a. Development of the site shall be in substantial conformance with the Site Plan entitled "Happy Valley RV Storage", consisting of 3 full-size sheets, dated May 3, 2019, and stamped received May 14, 2019, except as modified by the following conditions. Within 30 days of Board of Supervisors approval, the applicant shall provide a revised site plan identifying the sight visibility triangles relocated along the edge of right-of-way.
- b. Development of the site shall be in substantial conformance with the Narrative Report entitled "Happy Valley RV Storage", consisting of 8

pages, stamped received May 14, 2019, except as modified by the following conditions.

- c. The following Planning Engineering conditions shall apply:
 - 1. Prior to issuance of any building permits associated with the SUP, the owner/applicant shall provide written approval from the affected utility company to allow retention within the utility easement shown on the plans according to (MCZO 1205.7.6.2.g).
 - 2. A signing and pavement-marking plan may be required for Happy Valley Road to address issues relating to this development in relation to the ongoing development to the east. Road improvements along Happy Valley Road must match the improvements required for the development to the east. Right-of-way permits will be required concurrent with building permits.
- d. This Special Use Permit shall expire 25 years from the date of approval by the Board of Supervisors. All of the site improvements shall be removed within 60 days of such termination or expiration.
- e. The applicant/property owner shall submit a 'will serve' letter for fire protection services for the project site. A copy of the 'will serve' letter shall be required as part of the initial construction permit submittal.
- f. 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.
- g. 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.
- h. 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 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.

Z2019054 conditions;

- a. Development and use of the site shall comply with the Narrative Report entitled "Northern Farms", consisting of 28 pages, dated stamped received on February 16, 2019, except as modified by the following conditions. Development of the site shall also be in conformance with the modification of conditions Narrative Report entitled, 'Northern Farms Zone Change Modification of Condition, consisting of 19 pages dated stamped received on June 5, 2019.
- b. Development and use of the site shall comply with the Zoning Exhibit entitled "Northern Farms", consisting of 2 sheets, dated stamped received on February 16, 2019, except as modified by the following conditions.
- c. The following Engineering condition shall apply:
 1. Right-of-way dedication along Cotton Lane (minimum half street width of 65' with additional width as required for turn lanes) will be required with the dedication of the final plat.
- d. The following R1-6 RUPD standards shall apply:
 1. Minimum Lot Area: 5,175 sq. ft.
 2. Minimum Lot Width: 45'
 3. Maximum Lot Coverage: 55%
 4. Minimum Rear Yard Setback: 15'
 5. Minimum front setback - 10'/18' (10' livable, porches, and side loaded garage, 18' for front facing garage)
- e. Zoning approval is conditional per Maricopa County Zoning Ordinance, Article 304.6, and ARS § 11-814 for five (5) years for the initial phase and an additional five (5) years for each subsequent phase, within which time the subdivision infrastructure permit or construction permit for each phase must be obtained.
- 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.

- g. All buildings are subject to noise attenuation as per ARS § 28-8482(B).
- h. The master developer shall notify future homeowners that they are located within the state-defined "territory in the vicinity of a military airport" with the following language:

"You are buying a home or property in the 'vicinity of a military airport' as described by State of Arizona statute ARS §28-8481. Your house should include sound attenuation measures as directed by State law. You will be subject to direct over flights and noise by Luke Air Force Base jet aircraft in the vicinity.

Luke Air Force Base executes over 200,000 flight operations per year, at an average of approximately 170 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 training 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.

Such notification shall be recorded on all Final Plats, be permanently posted on not less than a 3 foot by 5 foot sign in front of all home sales offices, be permanently posted on the front door of all home sales offices on not less than an 8½ inch by 11 inch sign, and be included in all covenants, conditions, and restrictions (CC&Rs) as well as the Public Report and conveyance documents.

For further information, please check the Luke Air Force Base website at www.luke.af.mil/urbandevelopment or contact the Maricopa County Planning and Development Department."

- i. Within two (2) years of from the date of the Board of Supervisors approval of Z2018116, and prior to issuance of any residential construction permits, the applicant shall provide the Maricopa County Planning and Development Department with an executed pre-annexation service agreement with the City of Glendale that identifies the detail for when the proposed project will be annexed and the provision of water and sewer service. In lieu of a pre-annexation service agreement, the applicant may provide a "will serve" letter and/or verification from a water and sewer service provider that demonstrates the site is within the provider's Certificate of Convenience & Necessity ("CC&N") for sewer service.

S2018025 conditions;

- a. The Final Plat shall be in substantial conformance with the Preliminary Plat entitled "Seasons at Riverside", consisting of 3 full-size sheets, dated July 16, 2019, and stamped received July 16, 2019, except as modified by the following conditions.
- b. Development and use of the site shall in substantial conformance with the Narrative Report entitled "Seasons at Riverside", consisting of 6 pages, dated May 30, 2019, and stamped received July 15, 2019, except as modified by the following conditions.
- c. Prior to Final Plat and Infrastructure Permit submittal, the applicant is required to attend a pre-submittal meeting in order to coordinate the permitting process for improvements, fees, and assurances associated with the subdivision. Intake of the Final Plat and Infrastructure permit shall be by appointment only.
- d. Concurrent with submittal of Final Plat, Improvement Plans shall be submitted to the Planning and Development Department.
- e. After Final Plat recordation and prior to any zoning clearance for building permits, the applicant shall obtain a final Grading and Drainage and Infrastructure permit from Maricopa County.
- f. Prior to Final Plat approval, Water and Wastewater Plans shall be submitted to and approved by the Maricopa County Department of Environmental Services (MCESD) subject to their procedures.
- g. The following conditions shall be the responsibilities of the sub-divider / homebuilder / developer and shall not be construed as a guarantee of disclosure by Maricopa County:
 1. The sub-divider / homebuilder / developer shall provide a separate written disclosure statement, for the signature of each buyer, acknowledging that this subdivision is located adjacent to or nearby a mining operation that may cause adverse noise, odors, dust, vibration and other externalities and that such uses are legal and should be expected to continue indefinitely. The disclosure shall be an exhibit or addendum to the "Purchase Contracts" and "CC&Rs." The disclosure shall be presented to prospective homebuyers on a separate, single form for them to read and sign prior to or simultaneously with executing a purchasing agreement. The above referenced information shall also be included with the Subdivision Public Report to be filed with the State of Arizona Department of Real Estate, as required by Arizona Revised Statute 28-8486 and Arizona Revised Statute 28-8464. This responsibility for notice rests with the subdivider / homebuilder / developer and shall not be construed as

an absolute guarantee by Maricopa County for receiving such notice.

2. The Final Plat shall contain the following statement on the cover sheet in a prominent location: "This property is adjacent to or nearby a mining operation that may cause adverse noise, odors, dust, vibration and other externalities. Such uses are legal and should be expected to continue indefinitely."
- h. An archeological survey shall be submitted to and approved by the Arizona State Historic Preservation Office prior to issuance of a grading permit or approval of a Final Plat. The applicant must contact the state office prior to initiating disturbance of the site. The applicant shall provide the Planning and Development Department with written proof of compliance with this condition.
- i. The following Planning Engineer conditions shall apply:
1. At the time of application for permits for the subdivision's infrastructure, the design for Basins 1 and 2 must be revised using a 0.95 runoff coefficient for El Mirage Road and Maryland Avenue.
 2. At the time of application for permits for the subdivision's infrastructure, the design for the collection and conveyance of the flows off El Mirage Road must be updated to ensure that the flow depth in El Mirage Road is less than 6 inches. This may require a series of catch basins or scuppers and/or a storm drain within the roadway.
 3. At the time of application for permits for the subdivision's infrastructure, the offsite drainage area contributing to the site from the north (El Mirage Road) must be re-analyzed and updated to include flow routing, pass through flows related to the Falcon View Subdivision and include flow attenuation only from BOS approved subdivisions.
 4. At the time of application for permits for the subdivision's infrastructure, the design for the channel conveying flows from Maryland Ridge Estates through the site must be sized for 158 cfs.
 5. The offsite flows from El Mirage Road will be commingled with onsite flows in Basin 2 due to grade and roadway constraints. The subdivision infrastructure plans and Final Plat must note increased HOA maintenance responsibilities to this effect. A Maintenance Plan for Basin 2 must be submitted with the Subdivision Infrastructure permit.
 6. Basin/channel side slope shall not begin closer than 2-ft from back of sidewalk.

7. All fencing across channels must clear span the width of the channel to the calculated freeboard elevation.
8. Any retention basin with a depth higher than 3-feet or side slopes steeper than 4:1 must have pool barrier fence around the perimeter.
9. **Flood Control District of Maricopa County** - The CLOMR application submitted to the Flood Control District must be approved and submitted to FEMA prior to the Final Plat approval.
10. **Maricopa County Department of Transportation** - Requirement due to the Traffic Impact Study are the following:
 - a. As part of the subdivision infrastructure, Maryland Ave. must be constructed to an Urban Major Collector Road cross-section along the site frontage with separate left and right-turn lanes at its intersection with El Mirage Road;
 - b. As part of the subdivision infrastructure, El Mirage Road must also be constructed with a new left-turn lane providing at least 160 ft. of storage length at Maryland Ave. and Marlette Ave.;
 - c. Ultimate half-width improvements will be required along the site's El Mirage Road frontage; and
 - d. The final plat shall include right-of-way dedications as follows:
El Mirage Road 65 feet
Maryland Avenue 40 feet
11. Based on the conceptual design nature of the preliminary plat plans submitted, changes to the site layout and/or a reduction in the number of building lots may be necessitated by the final engineering design of the subdivision drainage infrastructure.
- j. The Final Plat shall include dedication of right-of-way as required by the related request (zoning case Z2018068) and as deemed necessary by the Maricopa County Department of Transportation (MCDOT) unless the required dedication has been completed by deed of dedication prior to the final plat approval.
- k. Prior to or concurrent with the submittal of a Final Plat for any portion or phase of this development, a traffic impact analysis must be provided as deemed necessary by the Maricopa County Department of Transportation (MCDOT).
- l. Specific roadway cross-sections and pavement sections are not approved as shown on the Preliminary Plat. The number and width of lanes, including turn and auxiliary lanes, as well as pavement thickness, will be approved on construction improvement plans in conjunction with the Final Plat, in compliance with the Traffic Impact Statement (TIS) approved by the Maricopa County Department of Transportation (MCDOT).

- m. Prior to Final Plat approval or issuance of a grading permit, developer(s) and/or builder(s) shall establish emergency fire protection services, covering all real property contained within the project area during course of construction and shall obtain a 'will serve' letter substantiating coverage from the appropriate Rural-Metro Fire Department servicing the project. This information shall be included in the narrative report for the Final Plat and the associated public report for the subdivision. The Final Plat shall contain a note referencing the will serve letter.
- n. The master developer shall notify future homeowners that they are located within the state-defined "territory in the vicinity of a military airport" with the following language:

"You are buying a home or property in the 'vicinity of a military airport' as described by State of Arizona statute ARS §28-8481. Your house should include sound attenuation measures as directed by State law. You will be subject to direct over flights and noise by Luke Air Force Base jet aircraft in the vicinity.

Luke Air Force Base executes over 200,000 flight operations per year, at an average of approximately 170 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 training 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.

Such notification shall be recorded on all Final Plats, be permanently posted on not less than a 3 foot by 5 foot sign in front of all home sales offices, be permanently posted on the front door of all home sales offices on not less than an 8½ inch by 11 inch sign, and be included in all covenants, conditions, and restrictions (CC&Rs) as well as the Public Report and conveyance documents.

For further information, please check the Luke Air Force Base website or contact the Maricopa County Planning and Development Department."

- o. All buildings subject to noise attenuation as per ARS § 28-8482(B).
- p. The applicant/owner shall comply with the standard assurance provisions as set forth in the Maricopa County Subdivision Regulations.

- q. Preliminary Plat approval shall expire two (2) years from the date of Commission approval. Any request for an extension of time shall be submitted prior to the expiration date and may be administratively approved in accordance with the Maricopa County Subdivision Regulations.
- r. The Final Plat shall include a note that states that there shall be no further division of land or delineation of parcels within the area of this subdivision plat without approval by the Board of Supervisors.

REGULAR AGENDA

Text Amendment - TA2018001

All Districts

Applicant:	Joseph White, Becker Boards Small, LLC
Location:	Countywide
Request:	Text Amendment to amend Chapter 2, Definitions and Chapter 14, Articles 1403 and 1404 of the Maricopa County Zoning Ordinance (MCZO) relating to Off-Site Advertising Signs (Billboards). TA2018001 proposes additional usage, allowance for digital billboards currently prohibited - Off-Site Advertising Signs (Billboards)

Ms. Sarnowski presented TA2018001 and noted this is an applicant driven text amendment, and staff recommends an indefinite continuance which the applicant has agreed upon. There is a letter in the packet from an industry stakeholder in support of the continuance.

Chairman Lindblom said we have a couple of speaker cards on this case, but it is being put on hold indefinitely. Mr. Peck said discussion at this point shall be limited to the question of the continuance and not the substance of the application. If any member of the public wants to address the question of the continuance that would be appropriate.

Commissioner Arnett said he would like to hear from the applicant and what changes have been made and why we are continuing this case.

Mr. Bill Lally said he is with Tiffany & Bosco representing Becker Boards. This text amendment case has been brought in front of the Commission many times and in each meeting we were told to continue to work with the stakeholders, and the folks on the north part of the valley, and those from the industry with their concerns. We continue to commit to the process by listening to everybody and when staff recommended a continuance we certainly aren't going to oppose that. We want to continue the case indefinitely with no date certain. We do not have to send out new letters or put signs on a property, this is an Enhanced Regulatory Outreach Program (EROP) run case and the general notice goes through the EROP process. When the next public hearing gets scheduled that will be the public notice and it will go out to all of the stakeholders. There are a couple issues they want to work through and instead of scheduling this and putting it back on the agenda they want to do this right and make sure they hear from everyone.

Mr. Claude Haynes said he is with the East Valley Astronomy Club and the Rotary Centennial Observatory and he is appreciative to be involved with the ongoing discussions. He is in support of the continuance to provide better time to clear up issues, especially issues with lighting ordinances.

Ms. Angela Jangula said she lives in New River and she is concerned with the dark sky. She lives out there because she likes the dark sky and she loves the rural lifestyle, and New River Road is a scenic corridor. Having a bunch of lighted billboards won't make that very scenic.

COMMISSION ACTION: Commissioner Hiatt motioned to continue indefinitely TA2018001. Commissioner Andersen second. Continued 6-0.

Military Compatibility Permit - MCP2018003 (Cont. from 5/16/19)

District 4

Applicant: Francisco Badilla
Location: Generally located 790' west of the southwest corner of Alsup Ave. and Myrtle Ave. in the Glendale area
Request: Military Compatibility Permit (MCP) with a precise Plan of Development (POD) for RF Pipeline Storage Facility

Ms. Sarnowski presented MCP2018003 and noted this case was continued from the May 16 hearing as the Commission recommended the applicant and neighbors attempt to work together. There was a meeting held on July 8 and staff has not received any additional information of coordination with neighbors from the applicant or any proposed changes. The property has a current code violation for a business operating in a residential zoning district without entitlements. A hearing was held in April of last year regarding the code violation and a judgment was made to obtain entitlements. They've also had other code violations for junk, trash and debris on the property which have been corrected and those cases have been closed. Staff has received multiple e-mails and complaints from the adjacent property owner regarding the noise, the use of the property, hours of operation and concerns of the conditions of the roadway. Opposition received from neighboring property owner describe working all hours of the day, trucks idling for hours at a time, and overweight vehicles impacting road conditions on Myrtle Avenue. The applicant addressed the noise concerns by stating the trucks need at least five minutes to warm up for the braking system to be operable. An additional letter was received with concerns with running a business in an established neighborhood and concerns with hours of operation. A petition against the proposed use was sent to staff with 14 signatures and the five within 300 feet of the subject property has triggered a super majority vote by the Board of Supervisors for approval. Staff maintains recommendation for denial, despite knowing Luke Air Force Base has deemed the use compatible and consistent with the high noise or accident potential zone. The Arizona revised statute has deemed residential uses within this overlay district as incompatible with Luke Air Force Base, however the site is in an established residential neighborhood that was developed prior to state statute. Allowing a non-residential use that is consistent with IND-2 zoning district within an established residential neighborhood and adjacent to residents would not be considered an appropriate location for this type of land use. Staff recognizes the property can no longer be developed as a residence as the property owner intended, however the moratorium on residential use has been in place since 2008, and the current property owner purchased the property in 2014. It's the property

owner's responsibility to do their due diligence prior to purchasing to understand any restrictions the property may have. There are other less intrusive uses that would likely be compatible with the overlay district that would have less of an impact on the neighboring property owners. Staff recommends denial of MCP2018003.

Commissioner Arnett asked for clarification of the overlay and why they can't do residential. Mr. Gerard said the County created an overlay zoning district and new residential uses are prohibited within that zoning district except for identified plans of development that were previously approved in December 2004, such as subdivision plats. You have to get a Military Compatibility Permit after a use compatibility determination is made in conjunction with Luke Air Force Base in this particular area. The MCP can be a permanent entitlement that allows you to have a use that's compatible and consistent with the military operations despite whatever the underlying zoning district may be. In staff's opinion an industrial operation immediately adjacent and between two single-family residences is inappropriate in that existing neighborhood. They will need to come up with some type of use to be determined to be consistent and compatible other than a new residence, but we believe there should be another use that fits in this specific location.

Mr. Francisco Badilla said he is representing the owner, Fermin Fuentes and noted they had a meeting and invited the neighbors within 300 feet around the site and only two people attended the meeting.

Chairman Lindblom asked if the next door neighbor was in attendance. Mr. Badilla said it was the adjacent neighbor, the lot to the west. The neighbor on the adjoining lot is handicapped and couldn't attend.

Mr. Badilla said based on the feedback received from the meeting the main concern is the diesel trucks idling in the morning and the loud noise. The applicant is willing to not have any diesel vehicles on site. They would use the storage yard for materials and regular trucks. No dump trucks or loaders. The only thing they would change is the 8 foot block wall. It would be a 6 foot screened fence because the block wall would be too costly to do for just a storage yard. They would comply with everything listed, but there would be no diesel vehicles on site. He didn't have time to update the narrative report. When the owner went down the list of uses he saw the storage or construction yard and that was his intent.

Ms. Maria Gonzalez, a neighbor in opposition said their next door neighbor Mrs. Roberts is disabled and Mr. Roberts is a veteran and he is ill. They asked her to represent them with the letter they wrote. Ms. Gonzalez provided a few photos out of the 300 photos and videos she has taken. There's early morning noises with the chains, people talking and the trucks. The property owner is hardly ever on site and he has no control over his employees. They work 24/7, Memorial Day through the 4th of July, they have no hours. This is becoming hazardous in every aspect. The pictures show clearly what's been going on. We have signatures from the neighbors on Myrtle Avenue and we don't want them there.

Chairman Lindblom said the applicant mentioned he would have no diesel and no dump trucks at the facility, and most of the complaints are the large dump trucks and the

dumping of materials on to the ground, and the loud noises. He asked would you be more open to allow them to operate with no dump trucks and only have normal trucks there. Ms. Gonzalez said no because he has no control over his employees and that's what we spoke to him about in the meeting. The employees drive 60 mph on that loose dirt. The man that gives horseback riding lessons, his horse was startled by one of the trucks. His horse threw him off and he was hospitalized for six months with a brain injury. This is no place for that many employees. They are defiant and it's not safe for even the animals, and not safe for our families.

Commissioner Hiatt asked when the pictures were taken. Ms. Gonzalez said she has pictures from three years ago to present.

Commissioner Hiatt asked what about the pictures she brought in today. Ms. Gonzalez said they are from three weeks ago to present.

Commissioner Lindblom asked if the applicant has copies of these pictures. Ms. Gonzalez said she showed him the video and pictures, but he didn't say much. We come peacefully to try and make something work for the both of us and we just didn't have a resolution that day at the meeting.

Commissioner Arnett said this is a high noise area. Ms. Gonzalez said yes, we were expecting the planes.

Commissioner Arnett asked isn't there other businesses up and down that street. Ms. Gonzalez said yes, Pam the pig lady, they are very quiet because they live there and they respect the neighbors.

Commissioner Arnett asked what the vision of this site is for them just a quieter business? Ms. Gonzalez said we were hoping to have sheep back there like there used to be. The people that pack watermelon are only there twice a year, and we don't hear them and don't see any of their vehicles. There is also a painting business and they live there and respect the neighborhood.

Chairman Lindblom asked where the paint business located. Ms. Gonzalez said across the street from R&F.

Chairman Lindblom asked if she knows how many trucks and crews they run out of the painting facility. Ms. Gonzalez said about seven trucks and the crews are mainly family that work there.

Mr. Antonio Gonzalez, a neighbor in opposition said he is a pastor and a veteran from Iraq and Desert Storm. When listening to the other cases everyone has permits before they begin to build. They also have a house in Surprise, and if you don't get a permit and you build something they'll tell you to tear it down. He doesn't know why they have to deal with this. We have done everything according to the law, if nothing is built there nothing can be built there. You can use the property for raising cattle or use it for other things. You cannot build anything, not even a shade structure. These individuals are coming in here building structures and then we have to deal with it, not you guys. We

are asking you to speak on our behalf because we follow the law. His wife is spending money on pictures and time with getting signatures, and they are dealing with noise and being woke up. When the property was sold it was his understanding nothing could be built on that property. He talked to the property owner the other day and told him his people are out of control. He understands he invested money but he invested in a residential area. They started out wrong and in order to do things right they need to back up and do things right. That property was vacant for a reason and now they store rock, they store pipe, they store things that require a backhoe to pick up. The rock comes in on dump trucks. The process to build in a residential area is to get a permit or a rezone and it has to go through the courts. This didn't go through the right process.

Vice Chair Montoya said she recalls hearing this case a month ago and she expressed the concern she continues to have today. This case was brought to us after a complaint, and it's taken over a year to the point we are at today. If we were to approve this and nothing were to change, and they continue to have trucks and the same operation. Then the neighbors would complain again. It was said previously by Mr. Gerard, it would take up to a year and half to two years to get back to this point and that's a very heavy burden for the neighbors to take. She is inclined to support staffs recommendation for denial.

Mr. Gerard said the civil enforcement process is slow. There would have to be a citizen complaint in order for reactive enforcement. A hearing before an administrative hearing officer would likely be no sooner than 60 days post-complaint. It then would be verified, and we are looking at two months before it goes to a hearing where there is an order, and likely a compliance deadline. Then you're looking at another month. One of the penalties if they don't comply with the hearing officers order we could move to rescind the zoning and then we come back here, so we are looking at several months. If they are not good neighbors with the conditions of approval, enforcement and relief for the neighbors can be a long process. If you are going to consider the project modifications by the applicant we would need revised materials submitted, and that would need to be stipulated with any consideration of approval.

Commissioner Arnett said he's assuming these other businesses have an MCP, but maybe some do and some don't. Can't they by right do the same kind of activity on this lot like the ones across the street with the painting? Mr. Gerard said an MCP is similar to an SUP.

Commissioner Arnett said he is assuming they are legal. Mr. Gerard said he is not familiar with the other businesses in the neighborhood. There are some Agricultural Exempt properties in the area that are intense in nature and there are some MCP's. Every SUP is like an MCP judged on its own merit subject to its own conditions.

Commissioner Hiatt asked what uses besides agricultural would be appropriate. Mr. Gerard said there's a lot of different options, but we see a lot of self-storage facilities, or RV and Boat Storage facilities that often aren't staffed.

Commissioner Hiatt asked the storage facility that the applicant suggested without the diesel trucks and without the dumping and storage of material only, would that be consistent with what you described. Mr. Gerard said he believes it's a different type of

operation altogether and that's why they need revised materials submitted, so it spells out what type of activity is occurring and what would be prohibited.

Commissioner Hiatt said the last time we were here discussing this all of these same concerns were discussed, specifically the trucks, the noise, the dumping and the hours of operation. One of the concerns he has is the applicant didn't change their operation in any significant way. We have pictures over the last three weeks and there's still the trucks, the dumping and the traffic. He doesn't have confidence things would change in the future because they haven't changed even though concerns have been made and acknowledged.

Mr. Badilla said the owner is looking for a property where he can move his operation to. He found a lot about a month ago to move his operation out of there. The diesel trucks will be gone and the employees would be reporting to the other site, and the vehicular traffic will be reduced to a minimum.

Commissioner Hiatt said there's so many variables that seem to be undefined and it seems to be in a state of flux. His preference would be to have this continued to get a new development plan and to get things redefined, but he can't support this application.

Chairman Lindblom said it appears they are listening to the neighbors and trying to keep this property productive. He believes a continuance would definitely be appropriate. He doesn't want to hash this out more than one more time, and he can't approve what is before us today.

Commissioner Ruby asked with the April 2018 judgment that came out of the violation, what are the terms of that judgment. Is it simply they have to apply for the appropriate entitlements and is there some type of cease and desist, because they are operating inappropriately? Mr. Gerard said it is very standard for the hearing officer to give a compliance deadline and to be in compliance by that deadline. It could mean you cease and desist the use without proper entitlement or you gain the proper entitlement. Often there is a daily non-compliance fine that accrues if that term isn't met.

Commissioner Ruby asked what the compliance deadline was. Ms. Sarnowski said the compliance deadline was April 30, 2019 to receive entitlement or cease and desist with fines accruing after that.

Mr. Peck said every order includes a cease and desist. The hearing officer usually postpones the fine, but they don't have the legal authority to tell someone you can continue to operate in violation. Theoretically they should have never done it and they should cease and desist until they come into compliance, and all the hearing officer can do is suspend the fine. Technically they should have ceased and desist from the beginning.

Commissioner Ruby said that she is concerned with these continuances. It's dragging out this issue long past the point of reason. She understands the approval process takes a

while and to give owners enough time to go through that process, but in this case that time has been granted. She doesn't think a continuance is appropriate.

Chairman Lindblom asked how much time it would take to turn in a proposal to the County.

Mr. Badilla asked staff what's the proposal deadline for the next hearing. Ms. Sarnowski said August 12 or August 26.

Chairman Lindblom said he suggests they build the block wall and not just a screened wall since you have noise complaints.

Commissioner Arnett said he understands not wanting to live next to that, but the owner of the lot should be able to do something since they can't put a house on it. He asked is the MCP the entitlement that allows them to operate a business since right now it's just residential land, but they can't use it as residential land. Mr. Gerard said they need the MCP to do anything other than agricultural.

Commissioner Arnett said they can farm it but can't do anything else. Mr. Gerard said that's correct.

Commissioner Arnett said just because we have a useless lot doesn't mean it should remain useless. The question is how do we fix it and what is the best way through this process. This is a high noise area and he agrees it's too much of a use as it is now. It's a residential area but then it's not. The rights of landowners in both parcels are limited. How do you enforce bringing this use down once they get their entitlement? Mr. Gerard said if there is a very specific use approved we can respond with complaints if they are doing something outside of the parameters of that use. It can be very difficult to enforce certain conditions.

Commissioner Ruby said this would have gone differently if the initial application had come to us without the diesel trucks. The issues we continually hear about are the diesel trucks, the noise and the impact on the road. She did drive out there and look at the road and it's not the kind of road that can stand up to this kind of truck traffic.

Commissioner Andersen said it's not our job to determine what uses are appropriate at this time. This is applicant driven and the applicant needs to figure out what uses they want to propose and then we vote on it. He recommends giving the applicant one more opportunity to the next hearing to come back and propose uses that are appropriate and compatible. If they do we can discuss that then and vote on it.

Mr. Gonzalez said in the meantime they continue to do this. We have been dealing with this for three years already. You keep moving it down the line, but we have to live with it.

Chairman Lindblom said this area is very unique, it's residential but you can't build a house there, it's commercial but you can't build certain things.

Mr. Peck said we have a lot of area in the County that has these regulations. It is the high noise and accident potential zone. The concern is the people who are there to be aware there is high noise, and how high the noise is affects what uses are allowed and what aren't. What really drove this was the accident potential aspects of the Air Force, and when you look at the ordinance it has a list of uses. They are trying to reduce the assembly of people. In the event there is an accident with one of their planes the damage to individuals would be limited. That's their justification for not allowing houses in these high noise and accident potential zones. As you move away from higher noises, the number of uses do go up, but when you get out of the 65 ldn which is the regulatory floor they have policies as to how dense the property should be. If the Commission does decide on a continuance, it is not a consent for the applicant to continue to operate without entitlement.

Chairman Lindblom said he agrees with Commissioner Andersen to give the applicant one more shot to propose a use that is presentable and could be approved. He just doesn't want to deny it and let a property sit with no purpose when we can give them a couple of weeks to get there.

Commissioner Arnett said if he was the applicant he would want to get that entitlement, but if he really wanted to get a long term solution he would shut it down right now and be the best neighbor you could possibly be until we find out what will be there long term. Be a good neighbor today, because continually operating like this is not going to help.

Chairman Lindblom said show good faith that you would be a good neighbor in the future instead of some of things they've talked about. Mr. Badilla said it'll be shut down this week.

COMMISSION ACTION: Commissioner Andersen motioned to continue MCP2018003 to September 12, 2019 hearing. Commissioner Hiatt second. Continued 4-2 (Ruby & Montoya).

Military Compatibility Permit - MCP2018006

District 4

Applicant: John Shinske, Desert Development Engineering, LLC
Location: Generally located approximately 1,230' west of the southwest corner of Olive Ave. and Litchfield Rd. in the Glendale area
Request: Military Compatibility Permit (MCP) with a precise Plan of Development (POD) for commercial storage of vehicles – GT Hauling

Mr. Banker presented MCP2018006 and noted the owner has agreed to add a 6 foot high block wall along the west, east and southern portions of the property to help mitigate noise and visual disturbance to the adjacent neighbors. There's no signage proposed, and no current violations on the site. Staff received an opposition letter from a neighbor adjacent to the west of the site and it was incorrectly submitted as a code complaint. The neighbor mentions issues with the type of business in a residential area with noise and work being done on the trucks. The commercial parking area will not be located adjacent to the house of this neighbor, and the proposed parking area will be closer to the middle and southern portion of the site, and the block wall would be located

between the two properties. Staff recommends approval with conditions listed in the staff report.

Commissioner Ruby asked if Olive Avenue is a County maintained road. Mr. Banker said yes, it is considered a principle arterial in that area in MCDOT's jurisdiction.

Mr. Wayne Watkins, the property owner said he wants to be a good neighbor. He talked with the neighbor before he even started this process and asked him if he had any objections to let him know. If he did then he wouldn't proceed, but he said he didn't have a problem with it. The trucks will not be repaired on the property since his mechanic is on Myrtle Avenue.

Commissioner Ruby said the narrative talks about business hours but she noticed it's not a condition in the staff report. Mr. Banker said we do condition to the narrative report itself, and didn't specifically list it as a condition.

Commissioner Ruby asked the fact that it is a condition in the narrative makes it a condition for approval. Mr. Peck said yes, an MCP is like an SUP and it's very specific.

Mr. Gerard said often there would be a separate stipulation then it becomes a major amendment to alter that, and it has to come back through this process. It is enforceable.

Commissioner Andersen asked staff is this not in an established residential neighborhood. Mr. Banker said there are residential neighbors to the west and south, but to the east it's agricultural land that cannot develop residential. It's on the edge of a residential neighborhood.

Mr. Gerard said it's not located between two single-family residences.

COMMISSION ACTION: Chairman Lindblom motioned to approve MCP2018006 with conditions 'a'-'f'. Commissioner Hiatt second. Approved 6-0.

- a. Development of the site shall comply with the Site Plan entitled "Site Plan - GT Hauling", consisting of 2 full-size sheets, stamped received May 31, 2019, except as modified by the following conditions.
- b. Development of the site shall be in general conformance with the Narrative Report entitled "GT Hauling Narrative Report", consisting of 6 pages, stamped received May 21, 2019, except as modified by the following conditions.
- c. The following Engineering condition shall apply:
 1. The owner shall provide and dedicate to the public a total half-width of right-of-way for the following roadway:

Olive Ave. 65 feet

- d. The owner shall construct a minimum 6' (h) solid wall along the east, west, and south property lines.
- e. The applicant/property owner shall submit a 'will serve' letter for fire protection services for the project site. A copy of the 'will serve' letter shall be required as part of the initial construction permit submittal.
- 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 MCP. The MCP enhances the value of the property above its value as of the date the MCP is granted and reverting to the prior zoning results in the same value of the property as if the MCP had never been granted.

Chairman Lindblom adjourned the meeting at 10:51 a.m.

Prepared by Rosalie Pinney
Recording Secretary
July 25, 2019