



**PLANNING AND ZONING COMMISSION
MARICOPA COUNTY, ARIZONA**

205 W. Jefferson Street, Phoenix and by GoToWebinar

MINUTES
April 6, 2023

CALL TO ORDER: Chairman Schlosser called the meeting to order at 9:30 a.m.

MEMBERS PRESENT: **In-person**
Mr. Lucas Schlosser, Chairman
Mr. T.J. Mitchell, Vice Chairman (left at 10:00 a.m.)
Mr. Erik Hernandez
GoToWebinar
Mr. Kevin Danzeisen
Mr. Spike Lawrence
Mr. Jimmy Lindblom
Ms. Kate McGee
Ms. Francisca Montoya
Mr. Jay Swart

MEMBERS ABSENT: Mr. Greg Arnett

STAFF PRESENT: Mr. Tom Ellsworth, Planning & Development Director
Mr. Darren Gérard, Planning Division Manager
Mr. Matt Holm, Planning Supervisor
Ms. Rachel Applegate, Senior Planner
Mr. Adam Cannon, Senior Planner
Mr. Joel Landis, Planner
Ms. Rosalie Pinney, Recording Secretary

COUNTY AGENCIES: Mr. Wayne Peck, County Attorney
Mr. Martin Camacho, Technical Team

CONTINUANCE: **Z2019024**

CONSENT: **CPA2022012, Z2022183, Z2023013**

Chairman Schlosser lead the Pledge of Allegiance and made the standard announcements.

CONTINUANCE AGENDA

Special Use Permit - Z2019024 (Cont. from 1/26/23) **District 5**
Project name: **Cazarez Small Event Venue**
Applicant: Staff-initiated
Request: Revocation of Special Use Permit (SUP) for a small event venue site in the Rural-43 zoning district due to non-compliance with SUP conditions

Location: Generally located 635' east of the NEC of 169th Ave. and Pioneer St. alignments in the Goodyear area

Mr. Gérard said the property owner's legal counsel asked for a continuance. Staff is the initiator and will pull this item to continue indefinitely. There will be a new public notice prior to a new public hearing. Since the publishing of the staff report there's been overwhelming support and their legal counsel has filed a Temporary Use Permit for upcoming events held on site. No motion is necessary by the commission.

Commissioner McGee said she is uncomfortable going from revocation of the permit to an indefinite continuance. She doesn't want it to end up like Montana Tractor being tabled and never came back. She is very supportive of small businesses, but she hasn't seen one instance of compliance and there's embedded bad behavior. She asked if there is a conflict of interest with Mr. Ray Banker now working for their legal counsel, and have the opposition been notified of this continuance and are they in agreement. She doesn't understand the continuation.

Mr. Gérard said there is a big difference with the Montana Tractor case, staff did not recommend any type of continuance. It was initiated by a commissioner that is no longer on this body. Staff was recommending approval and we have ongoing litigation with them. We do not have litigation with the Cazarez venue. Their counsel has committed to only four upcoming events and are filing a Temporary Use Permit that will address those events. If there is neighborhood opposition it will go before the Board of Adjustment for a public hearing. It is outside of this Special Use Permit. If there is no approved TUP they would cease and desist, or it would be a zoning violation. It will not operate outside of the Temporary Use Permit unless it complies with the approved SUP. The property owners legal counsel is applying an amendment to the Special Use Permit and have conditions more suitable to what is proposed. They were not represented by counsel when they originally applied for their Special Use Permit and allegedly didn't quite understand the limitations that were going to be on them. There is neighborhood opposition, but there is significantly more neighborhood support that has come in after the printing of the staff report.

Commissioner McGee asked if it would come back to us for the revision of the Special Use Permit and what is the timing around that. Mr. Gérard said it may come back as an amended Special Use Permit when they have an application ready. Or they may cease and desist or operate within the confines of the approved Special Use Permit. There are four proposed events and they have applied for a Temporary Use Permit to accommodate. They will cease and desist the activity until they are able to comply with the approved Special Use Permit or obtain an amended Special Use Permit. There is no current timeline on that. The property owners' counsel is here and can answer those questions. Commissioner McGee said her problem is there's been no compliance and she read the packet extensively and sees not evidence of compliance. She is pleased they hired counsel and hopes they will guide them, but she has no assurances to let this go.

Commissioner Montoya said this is in her district, and she has similar concerns as this goes from revocation of the permit to now an indefinite continuation. She's not sure how they got to this point.

Chairman Schlosser said he understands their concerns and it was very clear the county isn't messing around, and this property owner needs to follow the rules, if not, they are going to lose their Special Use Permit. He believes a continuance is appropriate and we aren't just letting them go. Commissioner McGee said she wants to ensure the county has certain leverage to enforce and she doesn't believe an indefinite continuance gets us there.

Commissioner McGee asked is there any requirements or deadlines we could put as part of this. She has huge concerns, and she's not seeing where there is compliance. She wants to make sure the county staff has what it needs to put this back on the agenda for revocation if needed.

Mr. Bill Lally with Tiffany and Bosco said he is here representing the Cazarez family and rarely has he seen a staff-initiated revocation of an SUP. He believes if there isn't progress soon, then staff could bring this right back if we are not working towards compliance. They need to modify the SUP since it probably wasn't well thought out when they initially went through the process. We'll have to work through all the conditions and site plan, and it will take some time. There is a Temporary Use Permit under review by the county and there will be another public hearing process to evaluate the current use. It will come before the Board of Adjustment much quicker than a revised SUP. The plan is a Temporary Use Permit for the interim uses, and at the same time giving us flexibility to work on the SUP amendment which can be brought any time by staff. This is staff initiated and they have the right to bring it back.

Commissioner McGee asked the public notification process is for the local residents that are in support or opposition, and it sounds it is outside of our purview going to the Board of Adjustment. Mr. Lally said the good thing about and indefinite continuance it puts the public notice requirement back on the applicant. It will require an entire new public notice, letters, modification of the sign and mail out postcards. It puts the burden to the applicant, which is the county. Mr. Gérard said that is correct.

Commissioner McGee said she doesn't like the word indefinite, and asked could there be a report by staff with the status in 60 or 90 days? Mr. Gérard said if the commission would like to make a motion for a date specific, but staff is comfortable with an indefinite continuance. He doesn't believe this case could come back any sooner than several months down the road.

Mr. Gérard said the reason staff has changed and recommended an indefinite continuance is because we have a Temporary Use Permit that has been submitted for 4 events only, and the facility will cease and desist outside of those 4 events. They are not going to operate until they are either operating in concert with the approved Special Use Permit and governing conditions or they come in to amend the SUP, and that would come back before you with a new application, new case number and new public notice. We are comfortable being able to control 4 specific events and then have them cease and desist operations.

Mr. Peck said this is not technically a revocation of the SUP, right now they do not have an effective SUP because it was conditioned on them doing certain things which they have not done. Every event they have held has been a violation and there is a code violation in process. They are applying for a Temporary Use Permit and under the ordinance if there is no opposition that would be granted administratively. If there is opposition it would go to the Board of Adjustment. If a TUP is issued by staff or the Board of Adjustment, you no longer have any jurisdiction. They will either meet all of the conditions that were placed on the initial SUP, or they will apply to amend the SUP or the conditions and it would be your jurisdiction. Staff is asking you take it off your agenda to see what the Board of Adjustment does and if they deny the TUP we would proceed with a code enforcement action, where the SUP was conditional. There is no reason for the commission to keep this on their agenda. Staff can report to you when the Temporary Use Permit has either been issued or denied. He respects Commissioner McGee's concerns, but we are proceeding in several areas at the same time.

Mr. Gérard said we can place an administrative staff update report as a business item on a future agenda. Chairman Schlosser asked in 90 days. Mr. Gérard said yes.

Commissioner McGee asked if he could clarify conflict of interest of a staff member going to work for the legal representation; Mr. Banker is working with the Cazarez and worked for the county. Mr. Peck said he needs to not be involved in the process unless he never worked on a TUP, and if they choose to come back with a new SUP that would be a new matter. He doesn't believe he is in conflict, because once the SUP is granted and anything after that is a separate incident. Mr. Banker is not an attorney, so he is not controlled by our rules, and he is not an AICP and not controlled by those ethical rules. It is up to the firm to decide what is and what is not appropriate. He doesn't believe it is a blanket prohibition for Mr. Banker working with the property owner to try and find a way to come into compliance. Commissioner McGee said even the legislature puts limits on what we can do on the other side of the aisle. Mr. Peck said this is a TUP which is a totally different process.

Mr. Peck said if the commission would like an update on the Montana Tractor case we would have to schedule an executive session because we are involved in litigation.

Mr. Lally said they have heard what is required and will remedy this as quick as possible.

Commissioner Lindblom said this case was on the continuance agenda and no motion is needed.

CONSENT AGENDA

Comprehensive Plan Amendment - CPA2022012

District 5

Project name: Harquahala Generating Facility
Applicant: Burch & Cracchiolo, P.A.
Request: General Comprehensive Plan Amendment (CPA) to change the land use designation in the Vision 2030 Maricopa County Comprehensive Plan from Rural Development Area and Industrial to Utilities
Location: Generally located at the SWC of 491st Ave. and Thomas Rd.

Zoning - Z2022183

District 5

Project name: Harquahala Generating Facility
Applicant: Burch & Cracchiolo, P.A.
Request: Zone Change with Overlay from Rural-43 and Rural-43 SUP to IND-2 IUPD
Location: Generally located at the SWC of 491st Ave. and Thomas Rd.

Vice Chair Mitchell said he has a conflict with item #3 – Z2023013 and will be recusing himself from that case.

Mr. Gérard presented the consent agenda.

COMMISSION ACTION: Commissioner Lindblom adopted a motion recommending the Board of Supervisors approve the consent agenda – CPA2022012 and Z2022183 with conditions 'a'-'t'. Commissioner Montoya second. Approved 9-0. Ayes: Danzeisen, Hernandez, Lawrence, Lindblom, McGee, Montoya, Swart, Mitchell, Schlosser.

Z2022183 conditions;

- a. Development of the site shall be in substantial conformance with the Site Plan entitled "Harquahala Generating Station", consisting of 17 pages, dated March 24, 2023, and stamped received March 24, 2023, except as modified by the following conditions.

- b. Development of the site shall be in substantial conformance with the Narrative Report entitled "New Harquahala Generating Company, LLC", consisting of 6 pages, dated March 10, 2023, and stamped received March 10, 2023, except as modified by the following conditions.
- c. The following IND-2 IUPD Zoning District standards shall apply:
 - 1. Max. Height: 190' for existing area of site, 50' for expansion area including evaporation ponds
 - 2. Parking Spaces Required: 37 spaces including 2 ADA spaces
 - 3. Loading and Unloading Spaces: No loading and unloading spaces required
 - 4. Landscaping: No landscaping setback required
 - 5. Screening: Min. 6' chain-link fencing along the perimeter of the site, existing fencing associated with the existing site may remain in the existing location
 - 6. Sight Visibility Triangles (SVT): SVT's waived at project site entry/exit points, section line and midsection line intersecting alignments
 - 7. Article 902.9.1: Evaporation ponds and utility uses associated with the generating station permitted outdoors
- d. The following Planning Engineering conditions shall apply:
 - 1. Engineering review of planning and/or zoning cases is for conceptual design only. 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.
 - 2. Based on the conceptual design nature of the information submitted, changes to the site layout may be necessitated by the final engineering design of the site's drainage infrastructure.
 - 3. Detailed Grading and Drainage (Site Infrastructure) Plans must be submitted with the application for Building Permits.
 - 4. The entire area covered by any new development associated with the Plan of Development and its adjacent half-streets' runoff shall be retained onsite. If portions of adjacent right-of-way are controlled by other jurisdictions, the adjacent half-streets' runoff shall be retained unless separately addressed by the other jurisdictions.
 - 5. Sufficient retention volume shall be provided onsite to retain the required 100-year, 2-hour runoff from all contributing areas from any new development associated with the Plan of Development. Retention basins with stormwater depths exceeding one foot shall provide one foot of freeboard.
 - 6. All retention basins shall drain within 36 hours per County requirements.

- e. The IUPD overlay is applied to restrict the use of the site. IND-2 IUPD shall limit the use of the site exclusively to an electric generating facility including ancillary offices, ancillary uses and existing agricultural uses.
- f. Existing encroachments within the new right-of-way may remain until notified by the Maricopa County Department of Transportation Director. If/when a relocation is required due to a public improvement project; it shall be done so in a timely manner at the owner/developer's expense.
- g. Prior to drainage clearance approval, a time limit for any temporary construction lay down areas shall be stated on the Grading and Drainage Plan.
- h. Interior driveways and parking spaces (both permanent and temporary) shall be surfaced with a form of dust-proofing deemed acceptable by Maricopa County Air Quality Control at the time of zoning clearance.
- i. Any reporting requirements associated with the Facility shall require reporting data from the original development of the Harquahala Generating Project to present. The conditions of Z2022183 supersede or otherwise retain or modify the prior conditions of approval from prior cases including CPA1999002, Z2000049, Z2001004, Z2001044, Z2002019, Z2002131, Z2003101, Z2006043, Z2009088 and Z2022078.
- j. Harquahala Generating Facility shall use CAP water as its primary source of water subject to annual availability.
- k. Harquahala Generating Facility may withdraw groundwater from the Harquahala Irrigation Non-Expansion Area for electrical generation and related uses in an amount not to exceed 62,500 acre feet per ten year period as determined by using a ten-year rolling average commencing upon the date the Harquahala Generating Project originally began withdrawing groundwater in connection with the Project in 2003. Groundwater withdrawal in excess of 62,500 acre feet per 10 years shall require a revised application processed as either a major amendment or modification of conditions and be subject to public hearing and Board of Supervisors approval.
- l. Harquahala Generating Facility shall site and operate its wells in a manner to prevent "unreasonably increasing damage" as determined by the Arizona Department of Water Resources consistent with A.A.C. R12-15-830, to any well of record with ADWR as of the original date of Board of Supervisors approval of Z2000049.
- m. The applicant shall submit a written report outlining the status of the development five years from the date of Board of Supervisors approval. The status report shall be reviewed by Staff to determine compliance with conditions of approval and whether the report needs to be reviewed by the Planning and Zoning Commission. The status report shall contain groundwater monitoring reports with annual withdrawals as well as all other annual water use itemized by type and quantity. In addition, a copy of the applicant's annual CAP allotment shall be submitted. No further status reports will be required if the five year status report is approved by Staff.
- n. All outdoor lighting shall be designed as recommended by the International Dark-Sky Association and shall be in compliance with Section 1112 of the Maricopa County Zoning Ordinance.

- o. The owner/developer shall provide to MCDOT an acceptable form of assurance to guarantee repairs and/or reconstruction of the damaged roads during construction and at time of completion.
- p. Prior to issuance of a building permit, written confirmation will be required from the emergency fire protection jurisdiction having authority that the facility has been designed in accordance with their regulations and requirements, and that emergency fire protection service will be provided to the facility. Prior to issuance of the certificate of occupancy, local fire protection jurisdiction review and approval will be required.
- q. Amendments to the zone change shall be processed as a revised application in accordance with Maricopa County Zoning Ordinance requirements.
- r. Noncompliance with the conditions of approval will be treated as a violation in accordance with the Maricopa County Zoning Ordinance, and may be grounds for further action, including zoning revocation, by the Maricopa County Board of Supervisors.
- s. Non-compliance with the regulations administered by the Maricopa County Environmental Services Department, Maricopa County Department of Transportation, Drainage Review Division, Planning and Development Department, or the Flood Control District of Maricopa County may be grounds for initiating a revocation of this Zone Change as set forth in the Maricopa County Zoning Ordinance.
- t. The granting of this Zone Change 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 the 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 the 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 the value of the property from the value it held on the date of application due to such revocation. The Zone Change enhances the value of the property above its value as of the date the Zone Change is granted and changing to the prior land use designation results in the same value of the property as if the Zone Change had never been granted.

Zoning - Z2023013

District 2

Project name: Ameripark RV & Boat Storage
 Applicant: Ian Lang, SimonCRE
 Request: Modification of Conditions (case #Z2021024)
 Location: Generally located on the SWC of Ellsworth Rd. and Apache Trail, in the Mesa Area.

Vice Chair Mitchell recused himself from this case.

Chairman Schlosser asked if anyone from the public wished to speak on this case.

Ms. Lauren Smith said she owns the property south of the proposed site. The notice says they want to change to a stabilized decomposed granite, and she would like an explanation to what that is and how it is going to be laid down. Mr. Landis said normally they would be required to pave with asphalt and the decomposed granite cuts down on costs and there will be no changes in the drainage regulations and

engineering didn't have any concerns. Ms. Smith said she is concerned with dust, and she thought they were going to put down asphalt and thought decomposed granite is basically dust.

Mr. Ian Lang the applicant said this is a crushed aggregate rock and he can send her some pictures of previous projects and a brief overview of the process. The rock is crushed down during construction and it's like pavement, but it is done with rock, and it will not be loose. It won't be in the high traffic areas around this site, and they will have asphalt around the modular building and the ADA stalls.

Commissioner McGee said this was approved as all asphalt when we first approved the project and asked why it was changed or modified. Mr. Gérard said there was a previous approval, but there will be dust control measures as part of the construction approval. This will have to meet Air Quality for dust control due to the size of the project. They are expanding the project and the only pavement in the original approval was on the drive aisles.

COMMISSION ACTION: Commissioner Lindblom adopted a motion recommending the Board of Supervisors approve Z2023013 on the consent agenda with conditions 'a'-'d'. Commissioner Hernandez second. Approved 8-0. Ayes: Danzeisen, Hernandez, Lawrence, Lindblom, McGee, Montoya, Swart, Schlosser.

Z2023013 conditions;

- a. Development of the site shall be in substantial conformance with the Zoning Exhibit entitled "Major Plan Amendment Narrative ", consisting of 6 pages, dated March 16, 2023, except as modified by the following conditions. Staff may determine slight refinements to remain in substantial conformance with the approved site plan. Minor and major amendments to the site plan will be determined in accordance with Chapter 3 of the Maricopa County Zoning Ordinance.
- b. Continued compliance with all conditions of Z2021024.
- c. The following CUPD standards shall be memorialized:
 1. Usage of stabilized decomposed granite throughout the site besides the driveway, ADA stalls, and the area surrounded by the onsite modular building is allowed.
- d. All other conditions and standards of case Z2021024 will remain in effect.

Chairman Schlosser adjourned the meeting of April 6, 2023 at 10:08 a.m.

Prepared by Rosalie Pinney
Recording Secretary

April 6, 2023