



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

205 W. Jefferson Street, Phoenix and by GoToWebinar

**MINUTES**  
**June 22, 2023**

**CALL TO ORDER:** Acting Chairman Mitchell called the meeting to order at 9:39 a.m.

**MEMBERS PRESENT:** **In-person**  
Mr. T.J. Mitchell, Vice Chairman  
Mr. Jimmy Lindblom  
**GoToWebinar**  
Mr. Erik Hernandez  
Mr. Spike Lawrence  
Ms. Kate McGee  
Mr. Jay Swart

**MEMBERS ABSENT:** Mr. Lucas Schlosser, Chairman  
Mr. Greg Arnett  
Mr. Kevin Danzeisen  
Ms. Francisca Montoya

**STAFF PRESENT:** Mr. Darren Gérard, Planning Division Manager  
Mr. Matt Holm, Planning Supervisor  
Ms. Rachel Applegate, Senior Planner  
Mr. Adam Cannon, Senior Planner  
Mr. Daniel Johnson, Planner  
Mr. Andrew Lorentzen, Planner  
Mr. Joseph Mueller, Planner  
Ms. Rosalie Pinney, Recording Secretary

**COUNTY AGENCIES:** Mr. Wayne Peck, County Attorney  
Mr. David Anderson, OET  
Mr. Martin Camacho, Technical Team  
Ms. Katie Sanchez, Technical Team

**CONSENT:** **Z2022103, Z2023032, Z2023027, Z2023036, Z2022105, Z2022019**

Chairman Schlosser not in attendance. Vice Chairman Mitchell is acting Chairman and lead the Pledge of Allegiance and made the standard announcements.

Chairman Mitchell asked if there were any changes or comments to the May 11 minutes. None.

**COMMISSION ACTION: Chairman Mitchell approved the minutes from May 11, 2023 as written.**

## CONSENT AGENDA

### Zoning - Z2022103

**District 4**

Project name: NEC of 195<sup>th</sup> Avenue & Palm Lane  
Applicant: Tiffany & Bosco, PA  
Request: Zone Change with overlay from Rural-43 to C-2 CUPD  
Location: Generally located at the NEC of 195<sup>th</sup> Ave. and Palm Ln.

### Special Use Permit - Z2023032

**District 4**

Project name: Leister Farm  
Applicant: Michael Hannah, Smartlink LLC  
Request: Special Use Permit (SUP) for a wireless communication facility in the Rural-43 zoning district  
Location: Generally located west of the SWC of Lower Buckeye Rd. & Perryville Rd. in the Buckeye area

### Zoning - Z2023027

**District 2**

Project name: Berge Auto Mall  
Applicant: Sean Lake, Pew & Lake PLLC  
Request: Zone Change from Rural-43 to C-3 (and repeal of special use permit Z2021163)  
Location: Generally located at the NWC of SR-24 and Signal Butte Rd.

### Zoning - Z2023036

**District 2**

Project name: Gateway Auto Mall  
Applicant: Sean Lake, Pew & Lake PLLC  
Request: Zone Change from Rural-43 to C-3  
Location: Generally located at the SWC of SR-24 and Signal Butte Rd. in the East Mesa area

### Special Use Permit - Z2022105 (Cont. from 6/8/23)

**District 1**

Project name: I-10 & Loop 202 – Digital Billboards  
Applicant: Garry Hays  
Request: Special Use Permit to convert two legal non-conforming billboards on the same property in the IND-3 zoning district to digital face & other alterations  
Location: Approximately ¾ mile northwest of the NWC of 56<sup>th</sup> St. and Pecos Rd. in the Chandler area

Mr. Gérard presented the consent agenda.

Commissioner McGee had a question on the consent agenda for item #2 – Z2023032 Leister Farms, she asked why they want to go higher than the standards. Mr. Gérard said the reason the SUP was triggered, this cell tower has a maximum diameter of 36" where 30" is the maximum permitted by right, and it has a 14' diameter antenna array where 8' is the maximum by right. Commissioner McGee asked what's the need for the additional height. Mr. Gérard said it is only 80' which would be permitted by right. The additional girth of the support structure is designed to be a mono pine and the antenna array is so wide, but he would have to defer to the applicant if needed. Commissioner McGee said this answers her questions.

Chairman Mitchell asked if anyone from the public wished to speak on the consent agenda. None.

**COMMISSION ACTION: Commissioner Lindblom adopted a motion recommending the Board of Supervisors approve the consent agenda – Z2022103 with conditions ‘a’-‘o’, Z2023032 with conditions ‘a’-‘h’, Z2023027 with conditions ‘a’-‘f’, Z2023036 with conditions ‘a’-‘f’, and Z2022105 with conditions ‘a’-‘n’. Commissioner McGee second. Approved 6-0. Ayes: Hernandez, Lawrence, Lindblom, McGee, Swart, Mitchell.**

**Z2022103 conditions;**

- a. Development of the site shall be in substantial conformance with the zoning exhibit entitled “Zoning Exhibit –APN 502-67-013”, consisting of 1 page, dated May 1, 2023, and stamped received May 1, 2023, except as modified by the following conditions.
- b. Development of the site shall be in substantial conformance with the narrative report entitled “NEC of 195<sup>th</sup> Avenue and Palm Lane”, consisting of 10 pages, dated May 1, 2023, and stamped received May 1, 2023, except as modified by the following conditions.
- c. Administrative approval of a plan of development will be required prior to approval and issuance of construction permits to develop and establish use of the site.
- d. The following Planning Engineering conditions shall apply:
  1. Without the submittal of a precise plan of development, no 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.
  2. A traffic impact study to address traffic impact and roadway improvements required to support the proposed development must be submitted with the Plan of Development application. A joint access with the property on the south (parcel 502-67-031G) that is fully aligned with the opposite driveway will be considered by MCDOT. County requires the developer to coordinate with the adjacent property on the south (parcel 502-67-631G) to build a joint access. A right-in, right-out driveway along 195<sup>th</sup> Avenue north of the Palm Lane driveway may be approved upon submittal and approval of a traffic impact study that supports the proposed driveway.
  3. 65’ half street right-of-way dedication is required for 195th Ave/Jackrabbit Trail an Urban Principal arterial roadway, consistent with the preferred alternative for the MCDOT 2019 Jackrabbit Trail Corridor Improvement Study.
  4. Full half street improvements will be required for 195th Ave/Jackrabbit Trail based on the Urban Principal arterial classification.
  5. As the subject site is located within the county’s urbanized Area. The disturbed area is stated as less than 1 acre. At time of building permit submittal, if disturbance remains as less than 1 acres, then a Storm Water Pollution Prevention Permit (SWPPP) from the County will not be required prior to issuance of any construction permits. This does NOT preclude the requirement to obtain a Notice of Intent to Discharge (NOID) from the State (ADEQ), as may be required.

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.
- e. The CUPD overlay is applied to restrict the use of the site. Until such time as the site is served by sewer, uses on the site shall only be those acceptable to the Maricopa County Environmental Services Department (MCESD) that can be accommodated by septic systems. A public water system shall be required prior to establishment of any use that requires potable water. A pre-annexation services agreement shall be required for any uses that require sanitary sewer.
  - f. The C-2 CUPD zoning district shall prohibit the following uses: adult-oriented businesses, medical marijuana establishments and marijuana establishments.
  - g. The developer shall address all requirements of ADOT as per the e-mail dated July 18, 2022 prior to issuance of construction permits.
  - h. All habitable buildings constructed shall be constructed to attain a noise reduction level as per ARS § 28-8482(B) and Maricopa County building codes.
  - i. 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.
  - j. Prior to issuance of the initial 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.
  - k. Amendments to the zone change shall be processed as a revised application in accordance with Maricopa County Zoning Ordinance requirements.
  - l. Zoning approval is conditional per Maricopa County Zoning Ordinance, Article 304.6, and ARS § 11-814 for five (5) years within which time a Plan of Development and initial construction permit must be obtained or within which time annexation to the City of Buckeye must occur.
  - m. 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.

- n. 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.
- o. 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.

**Z2023032 conditions;**

- a. Development of the site shall be in substantial conformance with the site plan entitled "AZL01741 Leister Farms", consisting of 15 full-size sheets, dated May 23, 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. Development of the site shall be in substantial conformance with the Narrative Report entitled "Special Use Permit Application Addendum 4: Project Narrative for Z2023032", consisting of 2 pages, dated May 8, 2023, and stamped received May 21, 2023, except as modified by the following conditions.
- c. The wireless communication tower shall retain the stealth properties as originally designed. Any damaged or missing fronds or branches shall be replaced within 60 days of such damage occurring.
- d. This special use permit is valid for a period of twenty-five (25) years and shall expire on July 26, 2048, or upon termination of the use for a period of 90 or more consecutive 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. The following SUP standards shall apply:
  - 1. Maximum diameter of antenna arrays: 14-feet
  - 2. Tower maximum diameter: 36-inches
- f. The following engineering conditions shall apply:
  - 1. Lower Buckeye Road is classified as a principal arterial, and 65-foot preservation is required from the section line.

2. Driveway access to County roads must be paved and will require a permit from MCDOT issued concurrent with building permit(s) required for site development. OR; provide documentation that a paved driveway access is not required per MCDOT at the time of application for a building permit.
  3. The applicant must execute a Wireless Agreement with MCDOT for all equipment, conduit, F/O and other work that will be within the MCDOT ROW. This agreement must be coordinated with Ms. Kelly Roy, MCDOT Utility Branch Coordination Manager, 602-506-8603 or Kelly.Roy@maricopa.gov. OR; provide documentation that a wireless agreement is not required at the time of application for a building permit.
  4. 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.
  5. 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.
- g. Noncompliance with any Maricopa County Regulation shall be grounds for initiating a revocation of this [Special Use Permit or Zone Change] as set forth in the Maricopa County Zoning Ordinance.
  - 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, 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.

**Z2023027 conditions;**

- a. Development of the site shall be in conformance with the zoning exhibit entitled "Signal Butte & SR24", consisting of 1 full-size sheet, dated May 8, 2023, and stamped received May 18, 2023, except as modified by the following conditions.
- b. Development of the site shall be in substantial conformance with the Narrative Report entitled "Rezone Narrative Berge Auto Mall", consisting of 3 pages, dated May 18, 2023, and stamped received May 18, 2023, except as modified by the following conditions.

- c. Administrative approval of a Plan of Development will be required prior to approval and issuance of construction permits to develop and establish use of the site. 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.
- d. The Following Planning and Development Engineering conditions shall apply:
  - 1. Without the submittal of a precise plan of development, no development approval is inferred by this review, including, but not limited to number of proposed building lots/units, 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.
  - 2. A traffic impact study must be submitted with future entitlement (POD) applications(s).
  - 3. Right-of-way dedication along 222<sup>nd</sup> Street and Signal Butte Road may be required to accommodate road improvements required for site development.
  - 4. Portions of Signal Butte Road are within the jurisdiction of the City of Mesa. The applicant will be responsible for coordinating with the city to review any traffic impact, right-of-way dedication, permitting or roadway improvement requirements within its jurisdiction.
  - 5. The application is responsible for coordinating any requirements with ADOT given the site's proximity to SR-24.
  - 6. 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 these listed conditions or with any Maricopa County Regulation shall be considered a zoning violation in accordance with the Maricopa County Zoning Ordinance and grounds for initiating a revocation of this Zone Change as set forth in the Maricopa County Zoning Ordinance.
- 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.

**Z2023036 conditions;**

- a. Development of the site shall be in substantial conformance with the Zoning Exhibit entitled "Z2023036 Zoning Exhibit", consisting of 1 full-size sheet, stamped received May

22, 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. Development of the site shall be in substantial conformance with the Narrative Report entitled "Gateway Auto Mall", consisting of 9 pages, dated May 18, 2023, and stamped received May 18, 2023, except as modified by the following conditions.
- c. Administrative approval of a Plan of Development will be required prior to approval and issuance of construction permits to develop and establish use of the site. 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.
- d. The following engineering conditions shall apply:
  - 1. Without the submittal of a precise plan of development, no development approval is inferred by this review, including, but not limited to number of proposed building lots/units, 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.
  - 2. A traffic impact study must be submitted with future entitlement (POD) application(s).
  - 3. Right-of-way dedication along 222nd Street and Signal Butte Road may be required to accommodate road improvements required for site development.
  - 4. Signal Butte Road is within the jurisdiction of the City of Mesa. The applicant will be responsible for coordinating with the City to review any traffic impact, right-of-way dedication, permitting or roadway improvement requirements within its jurisdiction.
  - 5. The applicant is responsible for coordinating any requirements with ADOT given the site's proximity to SR24.
  - 6. 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 these listed conditions or with any Maricopa County Regulation shall be considered a zoning violation in accordance with the Maricopa County Zoning Ordinance and grounds for initiating a revocation of this Zone Change as set forth in the Maricopa County Zoning Ordinance.



- 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.

**Z2022105 conditions;**

- a. Development of the site shall be in substantial conformance with the Site Plan entitled "Plan of Development of a Digital Billboard Off-Site Advertising", consisting of three full-size sheets, dated April 13, 2023, and stamped received April 17, 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. Development of the site shall be in substantial conformance with the Narrative Report entitled "Narrative Report / Special Use Permit for Digital Billboards", consisting of 16 pages, dated April 13, 2023, and stamped received June 7, 2023, except as modified by the following conditions.
- c. The following Planning Engineering conditions shall apply:
  - 1. The applicant shall be responsible for coordinating any requirements that may be imposed by ADOT ([redletter@azdot.gov](mailto:redletter@azdot.gov)).
  - 2. 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.
- d. All lighting associated with the billboards shall adhere to Article 1112.3.2 of the Maricopa County Zoning Ordinance.
- e. The digital billboards shall adhere to Article 1403.3.1.J of the Maricopa County Zoning Ordinance.
- f. Minimum distance between the two billboards on site shall be 531 feet.
- g. Maximum distance a digital billboard shall be from a freeway main travel lane for the east billboard shall be 345 feet.
- h. Maximum height for the west billboard shall be 50 feet from the adjacent grade.

- i. Maximum height for the east billboard shall be 90 feet from the adjacent grade.
- j. Maximum sign face area for the east billboard shall be 1,200 sq. ft.
- k. Maximum apex of a double-faced billboard for the east billboard shall be 58 inches.
- l. Engineering technical specifications and details that demonstrate the digital billboard's louver technology that will be used in their design must be submitted with each building permit.
- m. Noncompliance with any Maricopa County Regulation shall be grounds for initiating revocation of this Special Use Permit as set forth in the Maricopa County Zoning Ordinance.
- n. 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.

**REGULAR AGENDA**

**Special Use Permit - Z2022019 (Cont. from 4/20/23)**

**District 4**

Project name: Moon Valley Nurseries SUP  
 Applicants: Ryan Kaessner, Robert Branston, Joseph Dougherty – Moon Valley Nursery  
 Request: Special Use Permit (SUP) for a nursery holding and growing grounds as an interim industrial use in the Rural-43 zoning district  
 Location: Generally located at the NEC of Pinnacle Peak Rd. & 87<sup>th</sup> Ave. in the Peoria area

Mr. Johnson presented Z2022019 and noted this is a request for a Special Use Permit for a period of 10 years, utilizing the site as a wholesale storage and growing grounds for the adjacent Moon Valley Nursery. Since the April 20 commission hearing, staff received correspondence from part owner of the adjacent parcel of the permitted nursery indicating that she did not authorize the lessee, Moon Valley Nurseries, to demolish a wall that separated her property from the subject property, nor did she authorize access between the parcels for the continuity of business operations between the two parcels. According to the owner and several neighbors, Moon Valley has essentially expanded the retail operations onto the subject site without authorization from the owner. On May 26, staff was notified by the original applicant, Adrienne Briceño of Merge Architectural Group, that they are no longer representing Moon Valley Nurseries for this request. Staff anticipated that an updated final citizen participation report would have addressed public concerns to staff and the commission at the previous hearing, however this was never done. Without proper public input to address issues caused by the operation of the nursery,

staff does not support the request. Staff followed up with three Moon Valley executives for an update on case materials for this hearing on two occasions, May 23 and May 26. Since staff did not receive the updated/revised case materials, staff notified Joseph Dougherty, special counsel to Moon Valley CEO on June 5, that we will not support the Special Use Permit. A new site plan, narrative, and updated citizen participation report was requested by staff to the previous applicant prior to them withdrawing representation. Staff has received 30 letters of opposition to this request.

Chairman Mitchell said if any commissioners weren't part of the April 20, 2023 hearing or did not listen to the hearing cannot participate in this continued case.

Chairman Mitchell confirmed all commissioners in attendance did attend the April 20 hearing.

Mr. Joseph Dougherty phoned in and said he is the special counsel to the CEO of Moon Valley Nurseries. The engineer that was working on this project is no longer involved in this application. It is his understanding the commission would like us to engage with those that are in opposition and those that commented at the last hearing. We are more than welcome to do so but we are asking for a 30-day continuance, so we have time to give a comprehensive report to the commission.

Commissioner Lindblom said he is generally lenient on continuances, but we were very clear at the last hearing there was supposed to be dialogue between Moon Valley and the residents. We have the neighbors in attendance again that came out of their day to be here. He asked if there's been any correspondence or good faith effort that occurred from April 20 until today. Mr. Dougherty said he apologizes for the delay in their application, the professional engineer that was working on this application is no longer involved, and we wanted to address the public's concerns which is something they can accomplish. The lack of engagement from the engineer created a delay. He will personally make the contact now to make sure we can resolve anything we can, it is unfortunate we had a change in vendor that resulted in this delay. If given the time he can make every effort to address the concerns that were brought up at the last commission meeting.

Commissioner Lindblom asked if he can address some of the neighbor's concerns and how they can be resolved. Mr. Dougherty said there were some concerns about the level of commercial vehicle traffic in the area, and concerns about noise and the backup trucks operating at earlier times than allowed. He believes they are able to address those concerns through operational changes, by loading trucks at night instead of in the morning and making sure we are in compliance with any of those noise violations. Some of the concerns we have worked to address since that meeting.

Commissioner Swart said the neighbors show up and everyone is cognizant of the testimony from the neighbors, and for them now to allege that somehow the engineer would have anything to do with a neighborhood meeting. He doesn't see how an engineer would conduct a neighborhood meeting or any inquiries and respond. He is adamantly against a continuance. The neighbors came in good faith, and he doesn't believe the applicant is taking this very serious since he didn't even show up in person.

Commissioner McGee said she thanked staff for their follow-up on this case and asked how the business was notified of this pending decision. Mr. Johnson said there were multiple instances where staff reached out to the applicant and then the executives for Moon Valley. On May 26 was the first time that staff was notified the original applicant wouldn't be representing Moon Valley. On May 23 and May 26 staff did reach out to the Moon Valley executives for any updates to the case for this hearing. On June 5, he notified Mr. Dougherty because we did not receive updated documents for the case and would not support the case.

Commissioner McGee said the sense of urgency isn't present here. There are many violations that are ongoing that may be fixed or not. She usually likes to give the benefit of the doubt but in this case she cannot.

Mr. Gérard said there should not be any ongoing operations, and if they are operating now, it is a violation without proper zoning entitlements.

Chairman Mitchell asked the applicant if there are ongoing operations on the site. Mr. Anderson said Mr. Dougherty's audio is no longer connected and he went offline.

Mr. Andrew Patten said he does not support the continuance. This has been ongoing for way too long. He lives on 87<sup>th</sup> Avenue and when he leaves for work around 5 a.m. there are trucks and semi-trucks on 87<sup>th</sup> and Pinnacle Peak with large dust clouds making driving on Pinnacle Peak impossible. He can't see if any cars are coming. He carries a dust control number for his company where he is not allowed to make dust, yet this site makes as much dust as they want. It's on the road and in the atmosphere where he and his family are living. Deliveries are happening early in the morning and now late at night. They are not supposed to have vehicles over 10,000 lbs. on these residential streets, but they do. He is tired of the noise, the dust, and tired of this corporation pushing their way into the neighborhood. This is destroying their neighborhood.

Commissioner Swart said he would like this case to be heard today. Mr. Peck you can handle this procedurally with a motion to continue or continue to hear this case. Commissioner Swart said he wants to make a motion to hear this case today based on all the information from the past and the tremendous amount of opposition from the neighbors. The applicant has failed to follow the processes we have in place.

Chairman Mitchell asked since there is a request for a continuance and if we don't want to grant their request for the continuance, can hear the rest of the case today. Mr. Peck said there is no motion to continue, there was a request that the commission entertain a continuance. If the commission does not want to do that, then you would just proceed as you would with any other hearing. We only need a motion if someone wants to move to continue the case for a later date.

Commissioner Swart said he would like to proceed to hear this case today.

Ms. Nancy Paganelli said she has lived in the area for nearly 50 years, when she first moved out there, there was only 40 homes. She has been through this type of personal trauma a few years ago with her neighbors opening an auto shop which took three years to solve. She experienced lack of sleep and the inability to live in peace and tranquility, which should belong to any homeowner. She knows what Mr. Toledo is going through, your life is spent recording and documenting hoping that someone will understand and do something about it. Everyone here wants to go home from work and find peace and tranquility in their own home. This nursery disrupts the surrounding area with noises of vehicles beeping and starting work before dawn. She asked the commission to not allow this business to continue as it has.

Mr. Mark Del Maestro said the constitution clearly states, we the people have a right to life, liberty and the pursuit of happiness, and our homes are our castles. There are zoning laws to protect our homes. Moon Valley Nursery needs to move and buy a commercial property where they can still run their business and still be profitable and not affect the homes and the people in the neighborhood.

Mr. Juan Toledo said Moon Valley was given an opportunity to resolve these issues and they totally ignored us. They haven't stopped operating at all, they were even working early this morning at 5:10 a.m. with the gates open. To run a business on that lot they need to follow the RU-43 zoning. No mechanical equipment or power tools should be used except for normal household operation, and the noise shouldn't have an impact on the surrounding neighborhood. Having Moon Valley behind him is like having a construction company operating 24 hours a day with no end in sight. He played an audio video with the noise he hears coming from Moon Valley. The negative impact of approving this SUP is unmeasurable, it will destroy the rights of quiet and peaceful enjoyment of their homes. This type of operation belongs in a commercial area and not in anybody's neighborhood. He asked the commission to not approve this Special Use Permit.

Mr. Kenny Murphy said he lives adjacent to Moon Valley. He moved out there 22 years ago. He said also spoke against the initial Special Use Permit. Moon Valley Nursery has a blatant disregard to the neighborhood and everyone surrounding this area, and it started 22 years ago. They have been disrupting the neighborhood with an increase in traffic, road issues, and the other concerns mentioned. A few years ago, the Blake's were the original owners of this property and Moon Valley purchased these 5 acres under Julie Blake's name. They started grading and grubbing the property from day one without permits. He called and voiced a complaint at that time, and they proceeded and installed a well with a blatant disregard for the complaints that were already called in. This isn't an issue where they are just trying to run business and are ignorant to the situation, they are doing business as they always have been by taking advantage of everyone around them. He hopes the commission will look at this for what it is and will vote accordingly.

Chairman Mitchell asked if anyone else from the public wished to speak on this case. None.

Chairman Mitchell asked if Mr. Dougherty was back on-line and if he wished to speak to the oppositions concerns. Mr. Anderson said he believes Mr. Dougherty is on-line but he needs to unmute on his side to speak.

No response from Mr. Dougherty.

Mr. Peck said this meeting was noticed at 9:30 a.m., and the chairman conducted business and called the matter in the ordinary course. Mr. Dougherty, the applicant only spoke for a brief time to request a continuance and he was offered the opportunity to present his case. No case has been presented but the opportunity was offered.

Commissioner Swart said the applicant should have showed up in person.

Chairman Mitchell said we heard this case for the first time in April, and we had a great deal of opposition that showed up in person expressing their concerns. The commission implored the applicant to meet with the neighbors to discuss if there was a way to harmoniously allow this to proceed. It sounds this has not happened. He understands about changes in staffing and representation, but that happened a month ago with plenty of time to formerly request a continuance with change of counsel. Then today, the applicant wasn't able to appear in person. He will be voting with a recommendation of denial of this Special Use Permit.

**COMMISSION ACTION: Commissioner Lindblom adopted a motion recommending the Board of Supervisors deny Z2022019. Commissioner Swart second. Denied 6-0. Ayes: Hernandez, Lindblom, McGee, Swart, Mitchell, Lawrence.**

Chairman Mitchell adjourned the meeting of June 22, 2023 at 10:37 a.m.

Prepared by Rosalie Pinney  
Recording Secretary

June 22, 2023