



City of Apache Junction

Development Services Department



Date: November 2, 2016

To: Honorable Mayor and City Council Members

Through: Bryant Powell, City Manager
Larry Kirch, Development Services Director

From: Rudy Esquivias, Senior Planner/Zoning Admin.

Subject: November 14, 2016, City Council Work Session Item:
Proposed Ordinance No. 1428, Case PZ-2-16, Apache Junction
Landfill Corporation PD Major Amendment Request (continued
from City Council meeting of April 19, 2016).

Background

There has been a landfill/dump operating at the northwest corner area of the Tomahawk Road and Guadalupe Avenue alignments since the late 1950's; first as a private dump, then as a County landfill, then as a private facility owned and operated by Allied Waste Industries of Arizona Inc. The property was annexed into the City of Apache Junction in 1988. Allied Waste purchased the original 40-acre landfill from Pinal County in 1993. In 1996, Allied Waste purchased an additional 88.9 acres of vacant State land around the original site and sought a rezoning of the combined +/-129 acres from the City.

In May of 1998, Ordinance No. 1034 rezoned the landfill property from GR (General Rural) to CI-2/PD (Heavy Industrial by Planned Development with a Special Use Permit for a municipal solid waste landfill). Under the city's new zoning ordinance, the property is now zoned B-5/PD, but the conditions of Ordinance No. 1034 are still in effect and govern the use of the landfill property. Although the PD designation allowed the City to require aesthetic criteria, closure and re-use conditions on the property, it did not establish a firm closure date. A separate operating agreement also allowed the City to negotiate other items with the landfill operators, beyond the purview of zoning.

Proposal

After several years of discussions between the City and Apache Junction Landfill Corporation ("AJLC") representatives, both entities feel it is time to finally establish a closure date and revisit the conditions of Ordinance No. 1034 and discuss the possible amendment of said conditions to the satisfaction of both parties. Hence, this PD amendment request.

Planning and Zoning Commission Public Hearing

Attached please find a complete copy of the staff report which was presented to the Planning and Zoning Commission at their public hearing on March 22, 2016. At the public hearing the Commissioners

Planning & Zoning – Building & Safety – Revenue Development

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heard from Stephen Anderson, the applicants' representative; and they also heard from Andy Kunasek, who was the only person from the public who spoke on the issue. Mr. Kunasek stated that he and others had made substantial financial investments in the area and he contended that according to his understanding of Ordinance No. 1034, AJLC was already violating their height allowance. He suggested that the PD amendment request be denied and AJLC not be allowed any additional height. He further suggested that the City should initiate a code compliance action against AJLC.

The Commissioners also had questions about the 1723' ultimate height requested--about which there was much back and forth discussion--and how we had arrived at the closure date of December 31, 2035. Staff revealed that the 2035 date was an internally negotiated date between City staff and the applicants, but that they could recommend a different date if they wanted. They could also recommend a different closure height. The Commissioners also discussed the idea of requiring AJLC to start making landscape improvements around the perimeter of the property now, instead of waiting until after it closed. So when it closes, there is already some mature landscaping in place.

Planning and Zoning Commission Recommendation

After conducting their public hearing, Commissioner Heck moved that the Commission recommend in favor of the PD amendment request, with all recommended conditions in the staff report, except with the following changes: that in condition #4, the closure date be changed to December 31, 2025; and that a new condition #12 be added to read "AJLC will create a natural barrier between the landfill and all neighborhoods, such barrier to be in the form of trees or natural landscaping to be agreed upon between the City and the Landfill."

The motion passed by a vote of 4 to 2 (Commissioners Heck, Buzzin, Schroeder and Frank voting in favor; Commissioners Nesser and Howard voting against; Commissioner Hill absent). Attached Ordinance No. 1428 reflects the recommendation made by the P&Z Commission.

City Council Work Session

At their work session on April 4, Councilmembers had questions about why the Commission had changed the date to 2025. Staff responded that they appeared to be reacting to comments made by the person at their public hearing who spoke in opposition to the request and also because there was some discussion with the applicant's representative about other factors which may influence the closing of the landfill, sooner as well as later. The City Manager commented that a change to the 2025 date may compromise not only the PD amendment, but also the proposed amendments to the operating agreement which have been part of a separate negotiation process and not part of the Commission discussion. Councilman Serdy commented that he liked the Commission's idea about early installation of perimeter landscaping.

There was also some discussion about what is really meant by a height of 1723 feet above mean sea level and that there is not much perceptible difference between the current permitted storage height of 1700 feet and the ultimate requested final height of 1723 feet. Please see the additional exhibit from AJLC's engineer which certifies that the landfill operators have not violated allowable height limits.

City Council Public Hearing, April 19, 2016

At their public hearing on April 19, 2016, Council members expressed interest in adding more items to both the PD amendment ordinance and the operating agreement. In particular, Council wanted that the issues of groundwater monitoring wells, payment triggers for early closure and landscape improvements be addressed in the proposed documents.

Mr. Anderson, representative for AJLC, commented that his clients were agreeable to working with staff to address these issues. He also responded to many of the issues, questions and comments that had been raised at previous meetings, including their community outreach gathering, P&Z work session and public hearing, and the Council's work session on April 4. He stated that AJLC was agreeable to all of the conditions recommended by the P&Z Commission except for the recommended closure date of December 31, 2025, instead of the staff and AJLC negotiated and recommended date of December 31, 2035. Because the operating agreement was not part of the Commission's discussion (nor within their purview of authority), he felt perhaps they did not have all of the information needed to understand why the 2035 date was ultimately the recommended closure date.

During the public hearing portion of the meeting, Council heard from several people, most of whom were against the PD amendment request, many believing that the request amounted to an expansion of use. Council decided to continue the cases (PD amendment and operating agreement amendment) to their work session of November 14, and their public hearing of December 6, 2016, and further directed that staff work with AJLC to address the requested items.

Proposed Ordinance No. 1428 as recommended by the Commission is attached for the Council's consideration. As always, Council may approve or deny the ordinance as is, or make additional changes they deem appropriate. With regard to the additional items, very similar language is also being proposed in the operating agreement (which still recommends a closure date of December 31, 2035). In response to Council's direction on April 19, and also for the purpose of updating certain conditions in light of new information, staff offers for the Council's discussion, the following possible changes/additions to proposed Ordinance No. 1428 (changes/additions shown in ~~strike-throughs~~ and **bold type**):

Possible change to Condition #4:

The landfill shall cease accepting solid waste on or before December 31, ~~2025~~, 2035, with closure being pursuant to Arizona solid waste management laws under A.R.S. Section 49-701, et seq.

Suggested change to Condition #7:

Property owner/applicant shall submit to city within twelve (12) months of council approval of this amendment to the plan of development, confirmation in manner acceptable to the city confirming the location, ~~and~~ construction and ADEQ or ADWR approval of a twelve inch (12") water utility line extension, and other related water utilities.

Staff suggests that Condition #11 be deleted as this item has been completed; and that Condition #12 be renumbered as Condition #11.

Staff suggests that the following new conditions be added to Ordinance No. 1428:

12) At the entrance drive to the landfill (intersection of S. Tomahawk Road and E. Baseline Avenue), on each side of the entry drive, AJLC shall install three 36" box trees, twelve 5-gallon shrubs, ½"-minus decomposed granite groundcover and entry monumentation no taller than six feet high. The entry drive landscaping and monument improvements shall be contained within AJLC's easement drive area, be designed by a landscape architect, use xeriscape plant materials, include irrigation and shall be subject to city's Development Services Department's review, input and approval, which approval may not be unreasonably withheld by city. AJLC shall complete this landscaping no later than one year from the effective date of this amendment, and all continuing expenses, water and maintenance costs associated therewith shall be paid by AJLC until the closure date, as defined herein. At the closure date, the city shall assume all continuing expenses, water and maintenance costs associated therewith.

13) No later than sixty (60) days after the effective date, AJLC shall submit a groundwater monitoring plan to ADEQ. Within ninety (90) days of approval by ADEQ of the groundwater monitoring plan, and in no event, in no more than one (1) year from the effective date, AJLC shall implement a groundwater monitoring plan. AJLC shall bear all costs associated with the creation, processing, implementation and management of a groundwater monitoring plan.

14) AJLC shall submit a report to city annually, on the anniversary of the effective date, regarding the status and findings of the groundwater monitoring plan. AJLC may submit to city a copy of its most recent report to ADEQ to comply with this obligation. AJLC shall continue to submit its annual report for a period of thirty (30) years

after the closure date, as defined herein, unless ADEQ determines at an earlier time that groundwater monitoring is no longer required, in which case AJLC's obligations under this section are terminated.

Please note that Planning staff is not recommending an additional condition regarding payment "triggers" for early landfill closure as that item is more appropriate to and is covered in detail in the operating agreement, which is separate from this PD amendment request.

Lastly, please also note that AJLC has again reached out to the community to try and inform the public as best they can about their requests before Council. The attached public participation report details their efforts since the April 19 Council meeting and from their second community open house held on September 28, 2016.

Attachments:

- Proposed Ordinance No. 1428;
- Letter from Geo-Logic Associates dated April 4, 2016;
- Opposition letters received;
- Second public participation report received October 21, 2016;
- PZ Staff Report from March 22, 2016, with all attachments.

ORDINANCE NO. 1428

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, APPROVING A PLANNED DEVELOPMENT MAJOR AMENDMENT, CASE PZ-2-16, FOR A 128.9-ACRE HEAVY INDUSTRIAL BY PLANNED DEVELOPMENT WITH A SPECIAL USE PERMIT FOR A MUNICIPAL SOLID WASTE LANDFILL ("B-5/PD")-ZONED PROPERTY, ORIGINALLY APPROVED BY ORDINANCE NO. 1034 AND LOCATED AT 4050 S. TOMAHAWK ROAD, BY ESTABLISHING A CLOSURE DATE FOR LANDFILL OPERATIONS, ESTABLISHING CERTAIN DEVELOPMENT STANDARDS AND INFRASTRUCTURE OBLIGATIONS RELATED TO THE DESIGN AND FINANCING OF THE CLOSURE AND RELATED POST-CLOSURE USE AND ACTIVITIES AND AMENDING OTHER PROVISIONS OF ORDINANCE NO. 1034 AS APPROPRIATE; REPEALING ANY CONFLICTING PROVISIONS; AND PROVIDING FOR SEVERABILITY.

WHEREAS, on May 19, 1998, the mayor and city council of the City of Apache Junction ("city"), passed Ordinance No. 1034, which rezoned the 128.9-acre landfill property, including the original 40-acre landfill site and an additional expansion of 88.9 acres around the original 40 acres, from General Rural ("GR") to Heavy Industrial by Planned Development with a Special Use Permit for a Municipal Solid Waste Landfill ("CI-2/PD"), with conditions; and

WHEREAS, in accordance with Ordinance No. 1034, Section II, condition "E", Apache Junction Landfill Corporation ("AJLC"), the current owner, has completed installation of a 12-inch water utility line and related water infrastructure, running along Baseline Avenue, then south on Tomahawk to the landfill; and said water line is in the process of going through the proper approval processes; and

WHEREAS, on May 6, 2014, pursuant to Ordinance No. 1402, the City adopted a new zoning ordinance and zoning district maps, effectively renaming the zoning district of the property from "CI-2/PD" to "B-5/PD", but otherwise leaving Ordinance No. 1034 in full force and effect; and

WHEREAS, discussions between AJLC and city representatives (the "parties") have commenced to identify when the closure of the

landfill will take place, how high the landfill will be at closure for community planning and aesthetic purposes, future budgetary projections, and other necessary steps related to completion of both legal and physical improvements for S. Tomahawk Road, among other things; and

WHEREAS, the parties have come to consensus on closure and related items and feel that a planned development major amendment is necessary to both update the original conditions of approval and better define the future of the landfill, and AJLC and city obligations related thereto; and

WHEREAS, on March 22, 2016, the Apache Junction Planning and Zoning Commission voted 4-2 to recommend approval of planned development major amendment case PZ-2-16, subject to conditions.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, AS FOLLOWS:

SECTION I. IN GENERAL

That a planned development major amendment, restating and amending the conditions of Ordinance No. 1034, for the property legally described as:

Pinal County Assessor parcel number 104-07-002; 128.9 acres generally located in portions of the Southeast quarter of Section 4, the Southwest quarter of Section 3, the Northeast quarter of Section 9 and the Northwest quarter of Section 10, all in Township 1 South, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona (a complete metes and bounds legal description of the landfill property is available for viewing at the City of Apache Junction, Development Services Department);

be and hereby is approved, subject to the following conditions:

- 1) At all times the property owner/applicant or operator shall be in full compliance with the terms and conditions of the vesting deed from Allied Waste Industries, Inc., to Apache Junction Landfill

Corporation ("property owner/applicant"), recorded in the Office of the Pinal County Recorder on October 3, 1996, in Docket No. 1996-033326. At all times property owner/applicant shall be in full compliance with the terms and conditions of the State of Arizona Land Patent No. 53-100817-01.

- 2) At no time during the use of this land as a municipal solid waste landfill shall any area used for solid waste storage exceed one thousand seven hundred twenty feet (1720') above mean sea level. However, upon closure of the municipal solid waste landfill, the maximum height of any area used for solid waste storage shall not exceed one thousand seven hundred twenty-three feet (1723') above mean sea level.
- 3) Property owner/applicant shall provide to the city copies of any notices of deficiency or problems, or other correspondence from any county, state or federal agency relating in any way to the operation of the solid waste landfill. Such documentation must be received by the city within ten (10) calendar days from the date property owner/applicant receives such notices, correspondence or other compliance orders/consent decrees.
- 4) The landfill shall cease accepting solid waste on or before December 31, 2025, with closure being pursuant to Arizona solid waste management laws under A.R.S. § 49-701, et seq.
- 5) Property owner/applicant shall maintain the property in accordance with state and federal regulations after all municipal solid waste landfill operations have terminated.
- 6) The special use permit issued herein does not include the use of the parcel for the operation of either a waste tire collection site or a transfer station nor does it authorize any other use allowed in the B-5 zoning district, except for storage of solid waste hauling vehicles, equipment, and machinery, as well as the repairing thereof in a fully-enclosed structure as approved by city.

- 7) Property owner/applicant shall submit to city within twelve (12) months of council approval of this amendment to the plan of development, confirmation in manner acceptable to the city confirming the location and construction of a twelve inch (12") water utility line extension, and other related water utilities.
- 8) Prior to closure as set forth above, property owner/applicant shall submit to the city the location and construction schedule for all necessary roadways and roadway realignments/improvements on Tomahawk Road between Baseline Road and the subject property, said improvements to include full title to right-of-way width as determined at such time by the city engineer, plus lanes of asphalt in both directions, with full curb, gutter and sidewalk within said right-of-way, all of which engineered standards shall also be determined by the city engineer.
- 9) Prior to closure as set forth above, property owner/applicant shall submit to the city a current site plan and final topographical survey, said site plan clearly delineating any structures, monitoring wells, methane collection systems, retaining structures, ancillary facilities, work shops, offices, gatehouses, weigh scales, and other accessory structures related to municipal solid waste landfill operations, and the storing and repairing of solid waste hauling vehicles, equipment and machinery; and clearly delineating the drainage control structures for onsite retention, and other onsite improvements which city deems necessary.
- 10) The landfill shall operate in general conformance to the site plan presented to city by property owner/applicant in January of 2016, and in accordance with normal procedures for the development, construction, filling, maintenance and monitoring of cells.
- 11) Within one year of the effective date of this planned development amendment approval, the property owners

shall present to the city's development services department planning division, proof of the combination of the 40 and 89-acre properties into one parcel, as evidenced by a recorded warranty deed or other acceptable proof of lot combination.

- 12) AJLC will create a natural barrier between the landfill and all neighborhoods, such barrier to be in the form of trees or natural landscaping to be agreed upon between the city and the landfill.

SECTION II. REPEALING ANY CONFLICTING PROVISIONS

All ordinances and parts of ordinances in conflict with the provisions of this ordinance or any part of the code adopted herein by reference are hereby repealed.

SECTION III. PROVIDING FOR SEVERABILITY

If any section, subsection, sentence, phrase, clause or portion of this ordinance, or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, THIS _____ DAY OF _____, 2016.

SIGNED AND ATTESTED TO THIS _____ DAY OF _____, 2016.

JOHN S. INSALACO
Mayor

ATTEST:

KATHLEEN CONNELLY
City Clerk

APPROVED AS TO FORM:

RICHARD JOEL STERN
City Attorney

April 4, 2016

Mr. Larry Kirch
Development Services Director
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lkirch@ajcity.net

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City of Apache Junction
DEVELOPMENT SERVICES
ENGINEERING DIVISION

Certification of Solid Waste Elevation at the Apache Junction Landfill

Geo-Logic Associates (GLA) personnel have been performing various engineering, surveying, monitoring and permitting services for the Apache Junction Landfill since 1997. Specific to these services has been annual aerial topographic volume calculations, analysis of waste placement, excavation quantities, and usable airspace at the site over the previous 11 years.

More specifically to the issue of City of Apache Junction Ordinance 1034, Section I, B., "At no time during the use of this land as a municipal solid waste landfill shall any area used for solid waste storage exceed one thousand seven hundred feet (1700') above mean sea level". To ensure compliance with this height restriction, GLA and the Apache Junction Landfill set waste placement staking parameters far below elevation 1700-feet to ensure compliance with this ordinance as a factor of safety.

GLA can represent through our extensive experience and verifiable, quantitative mapping at the Apache Junction Landfill, that at no time has solid waste been placed higher than elevation 1685 feet above mean sea level.

Please call with any questions you may have.

Respectfully,



Douglas Junk
Regional Manager, Solid Waste Services
Geo-Logic Associates



EXPIRES: 4-30-16

Caleb Miller, PE
Project Manager
Geo-Logic Associates



April 4, 2016

Dear Mayor and Council:

I represent a group of neighbors concerned with the recent Republic Services Inc. proposal to increase the height of the Apache Junction Landfill by 50% and increase its lifespan by over 20 years. Our property values, natural landscape and quality of life will be harmed if you vote to allow this to happen.

Other than a legal notice sent to some, the issue is not on the radar of most residents, and the facts contained in the staff report are not easy to understand for people who may not have time in their busy lives to read a 62-page novel. That's why we are asking the council to listen to our concerns, answer our questions, and make an informed decision as to whether this is a good deal for Apache Junction residents' quality of life.

Frankly, we believe this is a bad deal for our community. This is the second attempt to expand and extend the life of this landfill after promises were made to close it when it reached a specific height, which we understand has been reached and surpassed by Republic Services. Located in a prime growth area, the last thing our city needs is a growing eyesore in the view shed of the iconic Superstition Mountains and San Tan Mountains to the south. People who have invested their hard earned money in this community don't deserve to have their property values plummet for a company that has failed to keep its word. It's time to finally close this landfill.

Before the council votes on this proposal, we are hopeful the following questions will be fully investigated and answered so that residents understand what we are getting in this deal:

- 1) How much revenue will the city get if the plan to expand the landfill is approved? Is it worth it?
- 2) What percentage of the landfill is currently unlined?
- 3) What effects does an unlined landfill have on the local groundwater table?
- 4) Does this landfill allow medical waste?
- 5) Does the continually increasing number of birds overhead near the landfill affect the Phoenix-Gateway Airport flight patterns? Any other flight patterns?
- 6) Is the current height of the landfill in compliance with the original city ordinance approved to build it? If not, why are rewarding a company already out of compliance?

Without answers to these and other questions that will no doubt be raised with greater public awareness, we think it's a bad idea to move forward with a vote to approve this proposal. We request that the City Council sponsor a community meeting to discuss impacts, costs and other details of this proposal before a formal vote is taken.

Thank you for hearing our concerns, and we are available anytime to further discuss this important issue.

Sincerely, *Diana Burns*

Diana Burns
Chairwoman, Stop Mount Trashmore
www.facebook.com/StopMountTrashmore

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City of Apache Junction
**DEVELOPMENT SERVICES
BUILDING DIVISION**

Larry
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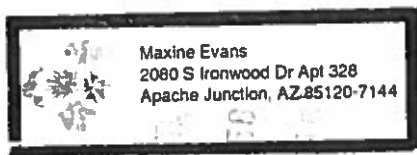


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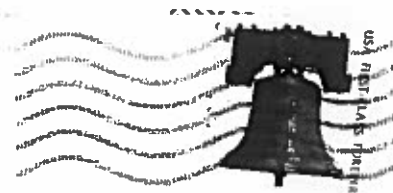
Apache Junction,
do not track
our future.

Maxine Evans
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