



# City of Apache Junction, Arizona

## Meeting Minutes Planning and Zoning Commission

Meeting location:

City Council Chambers  
at City Hall  
300 E Superstition Blvd  
Apache Junction, AZ  
85119

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*Theresa Nesser, Chair*  
*Peter Heck, Vice Chair*  
*Luciano Buzzin, Commissioner*  
*Michael Frank, Commissioner*  
*Willie Howard, Commissioner*  
*Michael McGraw, Commissioner*  
*Robert Schroeder, Commissioner*

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Tuesday, April 11, 2017

7:00 PM

City Council Chambers

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### 1. Call to Order

Chair Nesser called the meeting to order at 7:00 pm.

### 2. Pledge of Allegiance

Chair Nesser let the Pledge of Allegiance.

### 3. Roll Call

Present            6 -    Chairperson Nesser  
                                 Commissioner Buzzin  
                                 Commissioner Howard  
                                 Commissioner Frank  
                                 Commissioner Schroeder  
                                 Commissioner McGraw

Excused            1 -    Vice Chair Heck

#### Staff present:

City Attorney Joel Stern  
Director Larry Kirch  
Senior Planner Rudy Esquivias  
Planning Intern Suleima Barrera  
Planning Intern Lindsay Bresnahan

### 4. Consent Agenda

[17-138](#)            Consideration of approval of agenda.

Commissioner Schroeder motioned to accept the agenda as presented. Commission Buzzin seconded the motion. The Planning and Zoning Commission accepted the Agenda as presented.

### 5. Call to the Public

None.

## 6. Public Hearings

### 17-149

Public hearing, presentation, discussion and consideration of case PZ-12-16, a request by Kathleen Pavicevic, represented by Brian C. Locker of Fowler St. Clair Law Firm, to rezone a 1.2-acre property at 980 E. Scenic Street from High Density Multiple-Family Residential (RM-2) to Low Density Single-Family Residential by Planned Development (RS-54/PD). The rezoning proposes to allow horses on the property that is currently developed with a conventional single-family home, on a lot less than 1.25 gross acres.

**Yes:** 6 - Chairperson Nesser, Commissioner Buzzin, Commissioner Howard, Commissioner Frank, Commissioner Schroeder and Commissioner McGraw

**No:** 0

**Excused:** 1 - Vice Chair Heck

Planning Intern Suleima Barrera gave a presentation on case PZ-12-16, a request by Kathleen Pavicevic, represented by Brian C. Locker of Fowler St. Clair Law Firm, to rezone a 1.2-acre property at 980 E. Scenic Street from High Density Multiple-Family Residential (RM-2) to Low Density Single-Family Residential by Planned Development (RS-54/PD). The rezoning proposes to allow horses on the property that is currently developed with a conventional single-family home, on a lot less than 1.25 gross acres.

Chair Nesser asked about the complaint history of this property and how it came to the city's attention that this property was zoned incorrectly. Director Kirch explained that complainant's identity are confidential. Chair Nesser asked why the original complainant wasn't complaining now. Director Kirch explained that this case is a resolution of the original code case. If the rezoning is approved, the property owner will be allowed to have horses. Director Kirch added there was another corrective rezoning based on similar circumstances just down the street from this property.

Chair Nesser also asked how this lot was originally created. Senior Planner Esquivias explained that the property was once part of a 5 acre parcel that was zoned commercial. The 5 acres was split into 3 lots. He confirmed that this property was this size since the split.

Commissioner McGraw asked why front yard landscaping is being requested for this lot. Senior Planner Esquivias explained that requests like this are common practice when a land owner requests rezoning of properties.

Brian Locker of Fowler St. Clair Law Firm addressed the commission regarding the rezoning request and gave more background on the subject property. Mr. Locker asked the commission to remove the condition regarding front landscaping.

Commissioner Howard asked if there was any action taken against the real estate agent who listed the property as allowing horses when it did not. Mr. Locker explained he was retained to address this issue on Ms. Pavicevic's behalf. An alternative dispute process was initiated and they participated in a mediation process.

Chair Nesser asked Senior Planner Esquivias if the person buying the property had asked the city if the property was zoned to allow for horses would tell them so? Senior Planner Esquivias replied that the city would tell them if the property was zoned for horses.

Mr. Locker was allowed to address the commission regarding due diligence for a person

purchasing a property. He explained negligent misrepresentation is where someone puts out information that isn't correct such as in this case that horses were allowed on this property. The seller and seller's agent misrepresented the property when selling the property to Ms. Pavicevic.

Chair Nesser asked City Attorney Stern whether this information was correct. City Attorney Stern agreed that information Mr. Locker presented to the committee was correct. City Attorney Stern also discussed the request for front yard landscaping in this rezoning request.

Chair Nesser opened the Public Hearing.

Frank Shoenbeck, 525 E. Fred Ave., Apache Junction, addressed the commission in support of this zoning request.

Chair Nesser closed the Public Hearing.

Director Kirch addressed the commission regarding the city's standard request for right-of-way dedication. He explained state law allows for the city to ask for a 33 foot dedication of the federal patented easement (FPE). City Attorney Stern asked Director Kirch to confirm that dedication gets recorded and sent to the tax assessor and that square footage of property is removed and therefore, reduces the property tax on the property.

Chair Nesser asked if the applicant would like to address the commission regarding this new information.

Mr. Locker addressed the commission regarding the request for the right-of-way. He believes this isn't important at this time but can be discussed in the future as to how much compensation would be received for the request.

Chair Nesser asked City Attorney Stern what would happen with the easements if the city wanted to widen Scenic Street. City Attorney Stern verified that it was a 33 foot federally patented easement. Senior Planner Esquivias confirmed it was. City Attorney Stern explained what patented easements are. City Attorney Stern suggested the item be continued so the applicant and her attorney have time to meet regarding the issue.

Mr. Locker explained that he misunderstood the discussion topic and agreed he didn't need to meet with his client regarding the easement.

Chair Nesser and City Attorney Stern discussed the difference between a federally patented easement and zoning code.

Chair Nesser asked if the applicant would like to speak to the issue. Angelina Pavicevic, daughter of the applicant, addressed the commission in favor of approving the application.

Chair Nesser called for a motion.

Commissioner McGraw moved that the Planning and Zoning Commission recommend to the City Council the approval of rezoning case PZ-12-16, a rezoning request, for a +/-1.2 acre parcel located at 980 E. Scenic Street, from RM-2 (High Density Multiple-Family Residential) to RS-54/PD (Low Density Single-Family Residential by Planned Development), subject to the following conditions of approval: 1) At such time as the lot is further developed, and/or redeveloped, it shall be developed pursuant to the Apache Junction City Code, Volume II, Land Development Code, Chapter 1 Zoning Ordinance, Section 1-5-1 Residential Use Regulations for uses permitted in the RS-54 Low Density Single Family Zoning District; deleting number 2 - Removing Front yard landscaping shall be installed, to include 24" box trees planted at a rate of one tree for every 30

linear feet of frontage and three 5-gallon shrubs to accompany each tree. All plantings shall be within the property boundary; keeping 3) The property shall be allowed horse privileges as permitted for 1.25 acre lots; and 4) All existing and future structures 120 square feet or larger, or any structures which will be served by utilities, require building permits. Commission Howard seconded the motion. The commission was in favor of the approval with a 6 - 0 vote.

## 7. Old Business

None.

## 8. New Business

### 17-150

Presentation and discussion on case PZ-1-17 and PZ-2-17, a proposed city initiated corrective rezoning from Medium Density Single-Family Residences, Conventional Housing Permitted (RS-10) to Medium High Density Single-Family Residences by Planned Development, Conventional Housing Permitted (RS-5/PD). Case PZ-1-17, Evelyn Subdivision, is located on Main Drive between W. 1st Avenue and W. Broadway Avenue. Case PZ-2-17, Hughes Place, is located on Ocotillo Drive between W. 1st Avenue and W. Broadway Avenue. The purpose of these rezonings is to correct non-conforming lots, setbacks, and lot widths through the use of a Planned Development Overlay. For two subdivisions that have been incorrectly zoned dating back to the city's incorporation.

Planning Interns Suleima Berrara and Lindsay Bresnahan gave a presentation on cases PZ-1-17 and PZ-2-17, a proposed city initiated corrective rezoning from Medium Density Single-Family Residences, Conventional Housing Permitted (RS-10) to Medium High Density Single-Family Residences by Planned Development, Conventional Housing Permitted (RS-5/PD). Case PZ-1-17, Evelyn Subdivision, is located on Main Drive between W. 1st Avenue and W. Broadway Avenue. Case PZ-2-17, Hughes Place, is located on Ocotillo Drive between W. 1st Avenue and W. Broadway Avenue. The purpose of these rezonings is to correct non-conforming lots, setbacks, and lot widths through the use of a Planned Development Overlay. The two subdivisions have been incorrectly zoned dating back to the city's incorporation.

Chair Nesser asked if there were any encroachments into the city right of way. Director Kirch answered that there were no encroachments in the right of way but there may be in the setbacks. Chair Nesser asked if there will be any walls or structures that would have to be torn down or moved because of this rezoning. Director Kirch said there wouldn't be. There may be a couple lots that are small and will need exceptions given.

Chair Nesser asked if the duplexes were built before there city was incorporated. Director Kirch answered that there are several lots in both areas that have nonconformity letters on file that will be incorporated into the ordinance.

## 9. Information and Reports

Director Kirch thanked the commission for attending the EPA event.

## 10. Director's Report

None.

## 11. Selection of Meeting Dates, Times, Location and Purpose

**Yes:** 6 - Chairperson Nesser, Commissioner Buzzin, Commissioner Howard,  
Commissioner Frank, Commissioner Schroeder and Commissioner McGraw

**No:** 0

**Excused:** 1 - Vice Chair Heck

Commissioner Schroeder motioned and Commissioner Frank seconded to hold a Regular Meeting on April 25, 2017, at 7:00 p.m. in the City Council Chambers located at 300 E. Superstition Boulevard.

## 12. Adjournment

Adjournment:  
Meeting adjourned at 8:05 p.m.

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Theresa Nesser  
Chairperson