



City of Apache Junction

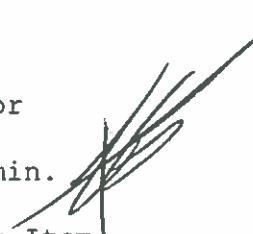
Development Services Department



Date: May 2, 2018

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: May 15, 2018, City Council Public Hearing Item:
CUP-9-17 (Res. No. 18-21) - Appeal of a Conditional Use
Permit granted to Mehmood Mohiuddin

Background

On March 27, 2018, the planning and zoning commission approved case CUP-9-17 with conditions (see P&Z Resolution No. CUP-9-17 attached). This was a request by property owner Mehmood Mohiuddin for approval of a conditional use permit ("CUP") to conduct various outdoor entertainment activities on his property surrounding the Hitching Post and HP Steakhouse restaurants. Activities include gazebo and water feature, event and concert area (including weddings, concerts, car shows, art fairs, wrestling shows, etc.), sand volleyball court, corn hole games, fire pits, bull-riding and event arena, putting green and other similar activities for his patrons, as well as parking accommodation for the activities and events.

The city's zoning ordinance provides a 20-day appeal period, by any aggrieved individual, for a CUP approved by the P&Z Commission. A properly filed appeal then forwards the case to the city council for final decision. On April 16, 2018, an appeal was filed with the city in the form of a letter (see attached) stating the reasons for the appeal and accompanied by the appropriate fees. The appeal was filed by attorney Evan Bolick on behalf of his clients, Hitching Post neighboring property owners James and Bambi Johnson, Mark and Kindra Theisman, Nick and Helen Funk, Rich and Kathy Beavers, and Patrick and Diana La Clair. The letter cites concerns pertaining to both procedural and substantive deficiencies in the commission's hearing and approval process. The appellants request that the council overturn the commission's decision or modify the conditions of approval to satisfy the criteria for a CUP as enumerated in Section 1-16-12(D)(3) of the zoning ordinance (attached).

The letter goes on to describe the perceived procedural deficiencies and the appellants' belief that the commission's decision should be reversed because: the applicant did not satisfy the criteria for the granting of the CUP (i.e., that the uses would not be detrimental to surrounding properties); and because adequate findings in support of the CUP were not made by the commission. Finally, the appellants

Planning & Zoning – Building & Safety – Revenue Development

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suggest that the CUP could be approved with certain conditions as recommended by the appellants, including: the construction of a western façade 12-foot wood fence around the bull-riding arena and activity areas; the construction of a 12-foot block wall around the east parking lot; that only 6 concerts per year be allowed, with music ending at 9pm and lights shut off by 10pm; and that all conditions be complied with before any expansion of uses occurs.

The city attorney informed Mr. Mohiuddin's attorney, Ralph Pew, of the appeal upon receiving Mr. Bolick's letter. As of the writing of this staff report, planning staff has not received any new correspondence or information from Mr. Pew's office in response to the appeal, except that they informed us that they would not be submitting anything at this time. All affected parties and other property owners within 300 feet of the Hitching Post property were informed that the appeal would be heard by the city council on May 15, through both newspaper advertisement and mailings.

Planning Staff Comments

Procedurally, a formal decision was made by the Commission, a proper appeal was filed within the required time frame and all parties are entitled to due process. The Council has the option to uphold, overturn or modify the commission's decision of approval as follows:

- 1) Upholding the commission decision means that council agrees with the decision to approve the CUP, in accordance with the commission's prescribed conditions;
- 2) Overturning the commission decision means that the CUP request is denied, the expansion of outdoor activity areas and other events may not proceed on a regular basis and all previous agreements (such as the economic development agreements) are still in place;
- 3) Council has several options with regard to modifying the commission decision, including:
 - a) council may choose to amend the conditions as suggested by Mr. Bolick on behalf of his clients;
 - b) council may choose to apply the conditions originally recommended by planning staff (see exhibit titled "CUP-9-17 Recommended Conditions (3-27-18)");
 - c) council may choose to apply the conditions suggested by Mr. Pew on behalf of Mr. Mohiuddin (see exhibit marked at the top of the page as "Ralph & Mo's Recommended Conditions");
 - d) council may choose to mix and match various conditions suggested by all parties and/or draft conditions of their own *[incidentally, the commission formulated their recommended conditions by taking ideas from staff and Mr. Pew]*.

Planning staff has prepared draft Resolution No. 18-21 (attached) for the Council's review and consideration. It contains three possible options: 1) Council may choose to support the Commission's decision and reiterate the CUP approval with the Commission's prescribed conditions; please note that council members should make their own findings on the CUP request; 2) Council may choose to deny case CUP-9-17 for specific reasons and rescind the Commission resolution, in which case the status quo (previous development agreements) remains;

or 3) Council may choose to approve the CUP, subject to new findings and with new and/or modified conditions of approval that they feel are appropriate. Of course, staff will revise and finalize the resolution for the Mayor's signature after the Council decision.

Lastly, Staff would point out that if the CUP is denied, Mr. Mohiuddin may still choose to apply on a case by case basis for concert or other outdoor private events through the city's special events process. Events which propose a temporary extension of premises for liquor sales would go to Council for their recommendation to the State Liquor Board. Otherwise, special events are subject to an internal review only. Denying the CUP does not necessarily mean there will never again be a concert event on the property. But, some of those will be separate Council decisions. The property may also still be developed in the future with other uses allowed in the B-1 zone.

Attachments:

- Planning and Zoning Commission Resolution No. CUP-9-17;
- Appeal letter from Evan Bolick, representing neighbors, dated 4-16-18;
- Zoning Ordinance Section 1-16-12, CUPs;
- Planning staff's recommended conditions from 3-27-18;
- Ralph Pew's recommended conditions from 3-27-18
- Draft Council Resolution No. 18-21 with options:
- CUP-9-17 staff report to P&Z with all attachments.

PLANNING AND ZONING COMMISSION
RESOLUTION NO. CUP-9-17

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF APACHE JUNCTION, ARIZONA, APPROVING A CONDITIONAL USE PERMIT, CASE NO. CUP-9-17, TO ALLOW MEHMOOD MOHIUDDIN TO CONDUCT VARIOUS OUTDOOR ENTERTAINMENT ACTIVITIES ON PROPERTY SURROUNDING THE HITCHING POST AND HP STEAKHOUSE RESTAURANTS, ALL OWNED BY MR. MOHIUDDIN; ACTIVITIES MAY INCLUDE GAZEBO AND WATER FEATURE, EVENT AND CONCERT AREA (INCLUDING WEDDINGS, CONCERTS, CAR SHOWS, ART FAIRS, WRESTLING SHOWS, OTHER EVENTS), SAND VOLLEYBALL COURT, CORNHOLE GAMES, FIRE PITS, BULL-RIDING AND EVENT ARENA, PUTTING GREEN AND OTHER SIMILAR ACTIVITIES FOR HIS PATRONS, AS WELL AS PARKING ACCOMMODATION FOR THE ACTIVITIES AND EVENTS.

WHEREAS, on or about December 27, 2017, a Conditional Use Permit ("CUP") application was submitted to the City of Apache Junction by Mehmood Mohiuddin ("property owner" or "applicant"), requesting approval to operate an outdoor entertainment venue and other outdoor activities on his property located at the southeast corner area of E. Lost Dutchman Boulevard and N. Apache Trail, addressed as 2341 N. Apache Trail (the "subject property"), and which is partially legally described as:

A part of the Northeast quarter of the Northeast quarter of the Northwest quarter of Section 15, Township 1 North, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona; and

WHEREAS, a complete metes and bounds legal description of the subject property is available at the City of Apache Junction Development Services Department; and

WHEREAS, on March 13, 2018, the City of Apache Junction Planning and Zoning Commission held a work session discussion to discuss case CUP-9-17 with city planning staff; and

WHEREAS, on March 27, 2018, the City of Apache Junction Planning and Zoning Commission held a public hearing on case CUP-9-17, wherein the commissioners heard the staff evaluation and recommendations pertaining to the case, as well as the applicant's presentation and suggested conditions of approval; and

WHEREAS, on March 27, 2018, as part of public input, the commissioners viewed video presentations and heard concerns against the existing and proposed activities at the subject property for reasons such as, unreasonable noise, dust, smoke from fire pits, light pollution, vehicular and pedestrian traffic concerns, disturbance of the peace and quiet of the neighborhood, and the fear that additional outdoor entertainment activities would devalue nearby residential properties; and the commission also heard public comments in favor of the outdoor entertainment venue, including comments such as, people should have done their due diligence before buying homes in the area, the subject property is zoned commercial and some noise should be expected, some of the neighbors' comments and videos misrepresented the situation, Mr. Mohiuddin has been persecuted with false complaints about his business, Mr. Mohiuddin has contributed significant tax dollars to the community and he supports and contributes to non-profit agencies and local youth; and

WHEREAS, on March 27, 2018, the commission, after: 1) receiving satisfactory responses to the questions raised at the discussion meeting and public hearing; 2) hearing, considering and discussing all of the facts and comments presented by staff, applicants, neighbors and other interested parties; 3) reviewing the land use criteria relevant to the granting of a CUP, as contained in the Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-16, Administration, Section 1-16-12, Conditional Use Permits, Administrative Use Permits and Building Permits, Subsection 1-16-12-D-3, and the evaluation of said criteria in the staff report dated March 27, 2018, voted 6-1 in favor of case CUP-9-17, citing the following findings:

- a) The commission determines that the roadways adjacent to the property are adequate for handling the increased business and increase in patrons to the property. The commission does have some concern about off-street parking and the fact that there has been parking occurring on the west side of 88, which is not legal, however, it still believes there is adequate parking on the site. The commission has found that the public facilities are able to accommodate the increase in patrons with the approval or with the necessity of using porta-johns, if necessary.
- b) The commission's findings relative to emission of odor, dust, gas, noise, lighting, vibrations, smoke, heat or

glare, was that the findings were not conclusive. The commission was not able to substantiate that the noise levels, nor lighting, nor the other issues were significant or had a negative impact on the surrounding community.

- c) The findings of the commission are that there will be no negative impact to the community in terms of the deterioration of the neighborhood, nor the property values of said homes of neighbors.
- d) The commission's findings relative to surrounding uses and structures are, the CUP is compatible with the surrounding area, of which there are commercial properties to the west and north, and those businesses are not affected. The findings were such that they could not determine significant negative impact to the residential properties to the east and south.
- e) The commission's findings are that this CUP application does conform with the general plan and city policies.
- f) The commission's findings are that there is a need to identify certain screening and buffering elements to this application and they will be recommended in the conditions.
- g) The commission does recognize that this is a unique property and obviously as such, it's the opportunity for different uses that reflect the culture and the heritage of Apache Junction. The commission's findings are that they believe it is important to be able to help the Hitching Post to achieve these goals.

NOW THEREFORE, BE IT RESOLVED by the Planning and Zoning Commission of the City of Apache Junction, Arizona, that a CUP is hereby approved, allowing Mehmood Mohiuddin to conduct various outdoor entertainment activities on property surrounding the Hitching Post and HP Steakhouse restaurants, all owned by Mr. Mohiuddin; activities may include gazebo and water feature, event and concert area (including weddings, concerts, car shows, art fairs, wrestling shows, other events), sand volleyball court, cornhole games, fire pits, bull-riding and event arena, putting green and other similar activities for his patrons, as well as parking accommodation for the activities and events as

described in the plans, narrative and other materials submitted with case CUP-9-17, pursuant to Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-16, Administration, Section 1-16-12, Conditional Use Permits, Administrative Use Permits and Building Permits, subject to the following conditions:

- 1) Within one year of CUP approval, a properly engineered and permitted 6-foot chain link fence with wood slats shall be constructed along the E. Lost Dutchman Boulevard and N. Cortez Road frontages of the east parking lot of the Hitching Post. Said fence shall be set back 10 feet from the edge of the right-of-way and reserve a 20-foot by 20-foot cutoff corner for visibility. Outside of said fence facing Lost Dutchman and Cortez, within the 10-foot strip, the property owner shall install landscaping and irrigation improvements in compliance with the city's "landscape code", Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-8, Landscape Regulations. Said landscape plan is subject to review and approval by the city's development services department planning division.
- 2) Within one year of CUP approval, the property owner shall have a traffic impact analysis prepared for his property, subject to review and approval by the city engineer, to determine proper access to said properties from N. Apache Trail and from E. Lost Dutchman Boulevard, including the possible construction of deceleration lanes and other traffic safety improvements.
- 3) Within one year of CUP approval, the property owner, together with the Pinal County health department and the city building official, will review occupancy load estimates for all customer accessible activity areas and make a determination on the adequacy of restroom facilities to serve the new outdoor activity areas.
- 4) Within one year of CUP approval, all exterior lighting shall be brought into compliance with the Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-10, Outdoor Lighting Regulations.

- 5) No more than fifteen (15) concerts and/or other events with outdoor amplified music shall be held in the western town area south of the Hitching Post only and said events shall end by 10pm, local time. These events will be held only between April 1st to October 31st. Other events in this area which do not involve any kind of amplified music or loud speakers are unlimited in number. Lights shall be shut off for any events held in the western town area no later than 10pm.
- 6) For all outdoor concerts or similar events held in the western town area, the venue operators shall hire off-duty Apache Junction police officers for traffic control and safety. If the venue operator confirms with AJPD management that no off-duty AJPD officers are available, other law enforcement agencies may be considered. Should any of the uses under this CUP become a demonstrated traffic safety hazard, additional traffic safety improvements may be required of the venue operators if warranted.
- 7) Hours for bull-riding events under this CUP shall last from 8pm to 10pm, Thursdays and Saturdays. Junior rodeo events may be held at the same time and in place of, or as part of normal bull-riding nights and hours.
- 8) Other events of similar or lesser intensity may also take place in the bull-riding arena, in place of and on the same days and times of normally allowed bull-riding events.
- 9) All music and/or announcer loudspeakers used for events held in the bull-riding arena shall be shut off at 10pm.
- 10) The owner of the property shall ensure and take reasonable precautions that any outside music or loudspeaker use from any of the outside activity areas is directed away from and is conducted in such a manner that minimizes disturbance of neighboring residential properties.
- 11) All activities held in the newly defined east expansion area shall end at 10pm, including any ambient music.

- 12) The RV, boat and truck storage lot to the south of the CUP subject property is not a part of this CUP request and shall not be used for any employee and/or event or activity overflow parking at any time. Additionally, there shall be no parking allowed (related to activities and events at the Hitching Post) on Lost Dutchman, Cortez and N. Apache Trail.
- 13) This CUP approval incorporates by reference the submitted site plans date stamped 2-26-18, illustrating the proposed development and activity areas of the property. The property owner shall not deviate from said plans without the development services director's approval for minor changes, or the Planning and Zoning Commission's approval for major changes through a CUP amendment process.
- 14) Substantial increases in intensity and/or major changes to the CUP, in the opinion of the development services director, shall be defined as, but shall not be limited to: increases in traffic or traffic safety concerns; excessive noise; occupancy/capacity issues; further expansion of activity areas; increase in or violation of hours of operation; increase in the number of events or the hosting of incompatible events; the quality of the property or venue is diminished; the intent and character of the property or its operation is contrary to the intent and spirit of the CUP approval.
- 15) The operators of the outdoor entertainment venue may use the freestanding sign (with the reader board) in front of the Hitching Post to advertise special events on the larger property; or a new properly permitted free-standing monument sign may be placed on the property along E. Lost Dutchman Boulevard to replace the sign that is there now, in accordance with the city's "sign code", Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-11, Sign Regulations.
- 16) All requirements and obligations pertaining to the separate economic development agreement and amendments thereto for the Hitching Post, Dash In and bull-riding venue, remain in full force and effect until such time as the city council nullifies the agreements.

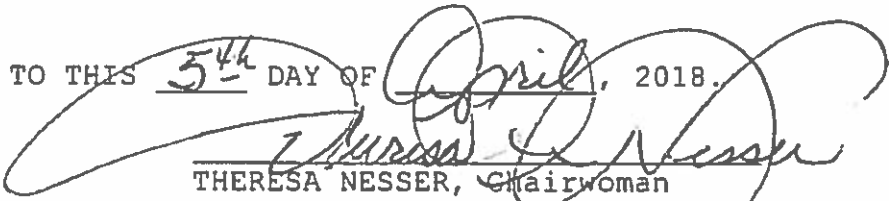
- 17) There shall be no direct access from the events center approved under this CUP to Cortez Road for traffic.
- 18) This CUP must be renewed no later than three years from the effective date of approval. Therefore, the property owner must file a timely and complete application to renew the CUP several months before the renewal date. Failure to renew the CUP shall cause all approvals under this CUP to expire.
- 19) Prior to the one-year anniversary date of this CUP approval, planning staff shall bring this item back for commission review of compliance with conditions and consideration of further commission requirements or actions.
- 20) At such time as sewer service reaches the property, the entire facility shall become connected to the sewer district system.
- 21) All signage on the subject property, including signage for the Hitching Post/HP Steakhouse/Dash In and events areas, shall at all times be in compliance with the city's "sign code" (as referenced in condition no. 15 above), including free-standing signs, permanent attached signs, window signs and banners.
- 22) Proper building permits shall be obtained and inspections and approvals received for any electrical, plumbing, remodeling, stages or scenery, announcer stands or bleachers, fire pits, signage or other property improvements which require permits, in accordance with the concept plans and narrative received for CUP-9-17.
- 23) All parking lots shall be treated for dust proofing in accordance with the options contained in the city's Engineering Guidelines for dust control mitigation, pursuant to Apache Junction City Code, Volume I, Chapter 9, Health and Sanitation, Section 9-1-3(B), Vehicles, Subsection 9-1-3(B)(6), or other solutions accepted by the development services engineer.
- 24) Pursuant to Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article

1-16, Administration, Section 1-16-12, Conditional Use Permits, Administrative Use Permits and Building Permits, Subsection 1-16-12(D)(5), Expiration, the applicant shall improve and begin operating the outdoor entertainment venue in accordance with the submitted drawings, narrative and prescribed conditions of approval, within 12 months of the granting of the CUP or else the CUP shall become void.

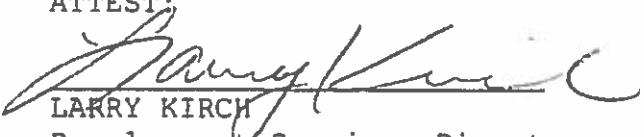
- 25) Pursuant to Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-16, Administration, Section 1-16-12, Conditional Use Permits, Administrative Use Permits and Building Permits, Subsection 1-16-12(D)(6), Revocation, the Planning and Zoning Commission shall reserve the right to reconsider the conditional use permit approval for the outdoor entertainment venue, at a new public hearing, for non-compliance with any condition prescribed as part of said CUP permit approval, including sign violations or safety problems.

PASSED AND ADOPTED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF APACHE JUNCTION, ARIZONA, ON THIS 27TH DAY OF MARCH, 2018.

SIGNED AND ATTESTED TO THIS 5th DAY OF April, 2018.


THERESA NESSER, Chairwoman
Planning and Zoning Commission

ATTEST:


LARRY KIRCH
Development Services Director

APPROVED AS TO FORM:

 4-5-18
RICHARD J. STERN
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April 16, 2018

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RE: Appeal of City of Apache Junction Planning & Zoning Commission Resolution No. CUP-9-17 Approving Mehmood Mohiuddin's Conditional Use Permit Application with Conditions

To the Members of the Apache Junction City Council:

My name is Evan Bolick and my firm represents James and Bambi Johnson, Mark and Kindra Theisman, Nick and Helen Funk, Rich and Kathy Beavers, and Patrick and Diana La Clair (collectively the "Homeowners") in their appeal of Resolution No. CUP-9-17 (the "Resolution"). The Resolution approved an application (the "Application") for a conditional use permit (the "CUP") submitted by Mehmood Mohiuddin (the "Applicant") to expand the use of his bar, restaurant, and event facility, The Hitching Post. The Homeowners live adjacent or in close proximity to the Applicant, attended the City of Apache Junction Planning and Zoning Commission' (the "Commission") hearing on the Application and objected to the same, and are parties aggrieved by the passage of the Resolution.

On appeal, the Apache Junction City Council (the "City Council") should overturn the Resolution due to both procedural and substantive deficiencies in the hearing and approval process. Alternatively, the City Council should modify several of the conditions adopted by the Commission to ensure that the expanded use of the Hitching Post ensures adequate roadways and parking; minimizes negative impacts arising from the emission of odor, dust, gas, noise, lighting, vibration, smoke, heat or glare; does not contribute to the deterioration of the neighborhood, is as compatible with the surrounding neighborhood as possible, and has adequate screening and buffering as is required by the City of Apache Junction Land Development Code ("LDC") § 1-16-12(3).

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Briefly recounting the facts underlying this appeal, The Hitching Post is a bar and restaurant with an outdoor bull-riding arena that hosts two bull-riding events per week. The Hitching Post is surrounded on three sides by and located within several hundred feet of residential properties, including those owned by the Homeowners. Applicant applied for a CUP to drastically expand the size and scope of The Hitching Post, including (but not limited to) providing for outdoor concerts, outdoor volley ball courts, the playing of live and amplified music outdoors, outdoor fire pits, and hosting events such as weddings and trade shows. The Applicant also wishes to continue hosting bull riding events twice a week. Applicant did not attend the required neighborhood meeting with the neighboring residential homeowners and made no serious effort to meet any of their requests (such as erecting fences or walls to screen these activities or holding these events in enclosed areas). After a lengthy hearing, and despite the efforts of Homeowners and others opposed to the grant of the Application, the Commission granted the Application and adopted the Resolution by a vote of 6-1. The Commission also substantially amended the conditions recommended by City Staff.

1) *The Commission's Decision Should be Reversed due to Procedural Defects in the Hearing.*

Initially, this decision should be overturned due to procedural defects that occurred in the hearing before the Commission.

Initially, there were two recesses taken during the Commission hearing. At the 1st recess, Applicant's legal counsel walked up to the Commission and spoke with them off the record and outside of the public hearing. During the 2nd recess 4 to 5 commissioners huddled to collectively work on the case until the City Attorney noticed and reminded them for the 2nd time "not to" and open the meeting back up to the public. *See* Video's of Commission Meeting dated 3/27/2018 (the "Video") at [\[2:07:22\]](#) and [\[4:19:05\]](#). After each private discussion, the Commission took action favorable to Applicant (i.e., finding that the Applicant's testimony was persuasive, and the Homeowners' was not, and then adopting conditions more favorable to Applicant). As no conversation should have occurred between the Commission and the Applicant off the record during recess, the decision should be reversed. *Cf. State ex rel. Corbin v. Ariz. Corp. Comm'n* 143 Ariz. 219, 226, 693 P.2d 362, 369 ("The doctrine of fraud upon the court has been applied to judicial proceedings involving ex parte communications with a judge or where a judge has relinquished his decision-making power to one of the parties." (Internal citations omitted))

Additionally, two Commissioners, Vice Chair Heck and Commissioner Kridler, stated that they personally drove by The Hitching Post to investigate the Homeowners' claims and stated that their personal observations contradicted the Homeowners' claims and supported their decision to approve the Application. *See* Video at [\[Kridler 3:49:43, Heck 3:53:45\]](#). Such investigation is wholly inappropriate and prejudicial to the Homeowners as it denied them the ability to rebut or present evidence bearing on the Commissioners' findings and rationale. Proceedings such as this are to be based only on the evidence and testimony presented the hearing, not a decision-maker's ex-parte investigations.

Finally, the Commission seemed unaware, or did not account for the fact, that the Applicant possesses the burden of proof to demonstrate that they have met the criteria for granting a CUP. *See* LDC § 1-16-12(3) ("The burden of proof for satisfying the aforementioned requirements shall rest with the applicant."). Commissioner Howard stated that because The Hitching Post is a commercial property, Applicant is entitled to utilize it for the purposes contained in the Application. *See* Video at [\[3:58:06\]](#). This is incorrect. Applicant may only expand the use of his property if he meets all of the criteria for obtaining a CUP. In ignoring that the Applicant must satisfy all criteria for obtaining a CUP and stating that the Applicant had a right to the uses set forth in the Application because it was zoned for commercial use, Commissioner Howard did not comply with the LDC in making his decision.

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Similarly, Commissioner Kridler and Commissioner McGraw both made statements that the Homeowners failed to sufficiently demonstrate that the grant of the CUP would be detrimental to their properties. *See* Video at [\[Kridler 3:49:29, McGraw 5:08:34\]](#). The other Commissioners generally agreed with their contentions. But in so opining, the Commission failed to recognize that the Homeowners did not have any duty to show that the CUP would be detrimental to their community. Rather, the LDC imposes the burden on Applicant burden to demonstrate that the expanded use would *not* be detrimental to the surrounding neighborhood. As discussed in greater detail below, the Applicant did not meet his burden. But in this hearing, the Commission violated the LDC in imposing a duty on the Homeowners to prove the CUP would be detrimental when only Applicant possessed a burden to demonstrate it would not be detrimental.

Given that the hearing was tainted by the off-the record conversations, the Commissioners' own personal investigations, and the Commission's confusion on the burden of proof and the need for a use permit, the City Council must reverse the Planning Commission's decision and deny the CUP.

2) *The Commission's Decision Should be Reversed as the Evidence Presented did not Support their Decision to Approve the Application.*

A CUP may be granted *only* if it meets the requirements for approval. *Cf. Doty-Perez v. Doty-Perez*, 241 Ariz. 372, 376, ¶ 18, 388 P.3d 9, 13 (App. 2016), *review denied* (Aug. 30, 2017) ("The court's primary goal in interpreting a statute is to give effect to legislative intent, focusing on the plain language as the indicator of that intent. If a statute's language is unambiguous and the meaning does not create an impossibility or absurdity, courts must observe the natural import of the language used and are not free to extend the meaning though the result may be harsh, unjust or mistaken policy." (Internal quotation omitted)). If the CUP was granted for any other bases than those set forth in the City Code, then it must be reversed. As stated below, the Application was granted despite the Commission's failure to properly consider the criteria for granting a CUP and without substantial evidence on the record to support their decision.

The LDC provides that obtain a CUP may only be granted if the Applicant demonstrates that the "the use covered by the permit, the manner of its conduct, and any structure involved will not be detrimental to persons residing or working in the area, to adjacent property, to the neighborhood, or to the public welfare in general." *See* LDC § 1-16-12(3). To reach such a determination, the Commission *must* consider the following factors: "(a) Adequacy of roadways, off-street parking, public facilities and services to accommodate the proposed use; (b) Negative impacts arising from the emission of odor, dust, gas, noise, lighting, vibration, smoke, heat or glare; (c) Contribution to the deterioration of the neighborhood or the negative impact on neighborhood property values; (d) Compatibility with surrounding uses and structures; (e) Conformance with the General Plan and city policies; (f) Screening and buffering of uses; and (g) Unique nature of the property, use and/or development's physical characteristics." *Id.*

It is crystal clear that the Commission did not consider these factors prior to making its decision. Only after the Commissioners made amendments to the conditions and moved for approval of the Application did the City Attorney inform them that they needed to make findings. *See* Video at [\[4:58:42\]](#). When told that they needed to make the findings required by LDC § 1-16-12(3). The Commission seemed confused as to what findings they needed to make. Video at [\[5:02:56\]](#). The Commission then attempted to adopt the Staff recommendations as their findings, until the City Attorney advised them they could not do so. *Id.* at [\[5:07:39\]](#). Vice chair Heck, who made the motion to approve the Application, ultimately acknowledged that the Commission had not considered or discussed the factors

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required to approve a CUP. *Id.* at [\[5:08:15\]](#). Only after much coaxing by the City Attorney did the Commission make the requisite findings. But the entire colloquy demonstrates unequivocally that the Commission was unaware of and did not consider the criteria that must be met to grant a CUP, and therefore, its decision must be reversed. In fact, at the Planning Commission's subsequent hearing, held on April 10, 2018, the City Attorney referred to confusion related to this Application and instructed the board that "the Commission is supposed to have a rational reason why they decided the way they did."

The record also unequivocally demonstrates that the Applicant did not meet his burden to prove that the grant of the CUP would not be detrimental, and therefore, the Commission's grant of the Application was arbitrary and capricious. Despite being charged with the burden to prove its Application met all the criteria for granting the CUP, the Applicant failed to provide any evidence whatsoever that the expanded use would not be detrimental to the Homeowners. Indeed, Applicant submitted no traffic study, discernable parking plan, noise study, or evidence that The Hitching Post has the capacity to accommodate the drastic increase in customers that it hopes to attract in expanding its operations under the CUP. Instead, Applicant simply proposed that it provide additional details *after* the CUP is approved. But the LDC requires that these criteria be met prior to, not after, the permit is granted. *See* LDC § 1-16-12(3).

Meanwhile, the Homeowners presented numerous videos showing that the traffic, noise, lights, and parking are *already* detrimental to their properties and quality of life. Even while largely dismissing the Homeowners' complaints, the Commission acknowledged that parking and traffic appear to already be an issue on the site, and that no plan is currently in place to address the situation. *See* Video at [\[3:56:14 & 5:11:03\]](#). Homeowners' legal counsel also outlined how the Applicant failed to meet the CUP criteria during public comment. *Id.* at [\[2:17:42\]](#).

The Application was granted despite the Commission's failure to properly consider the criteria for granting a CUP and without substantial evidence on the record to support their decision. The Applicant may meet his burden of proof to demonstrate that the CUP should have been granted. Accordingly, the Commission's decision must be reversed.

3) *Alternatively, the City Council Should Reverse or Amend some of the Conditions Adopted by the Commission.*

Even if the City Council upholds the Commission's grant of the CUP, it should reverse the Commission's amendments to the conditions and adopt conditions that actually mitigate the detrimental impacts of the expanded use of The Hitching Post.

- a) Homeowners request that the City Council reinstate 3/27/2018 Staff Condition #1 - a 12-foot-tall Western Façade wood screen fence wall be constructed around the bull riding arena and all new activity areas.¹ The CUP will result in a drastic increase in noise and light pollution. This is the only means of providing maximum screening of The Hitching Post outdoor activities from its residential neighbors.
- b) *Adopt a condition that Applicant build a 12-foot block wall around the East parking lot.* The Commission ultimately adopted a condition that the Applicant build a 6-foot chain link fence with wood slats around the East parking lot. The East parking lot faces the Homeowners' properties and is located at a downward angle from the residences. This Lot was designated and used as an RV & Boat Storage business prior to this CUP

¹ Failing that, the Homeowners request that the Staff recommendations be adopted.

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application. If a 12-foot wall is not built around the East parking lot, patron's car headlights (which will be angled up at the residences) will constantly be shining over the 6-foot fence and onto the Homeowners' property. Thus, a 12-foot-tall block wall is the only barrier capable of preventing the light pollution from the East parking lot from impacting the neighboring homeowners.

- c) *Adopt Staff's recommendations that there be only six concerts per year and that all outdoor event/amplified noise be turned off by 9:00 PM and lights by 10:00 PM.* The Commission ultimately adopted conditions that provide The Hitching Post with the ability to hold up to fifteen concerts or other events per year (in addition to twice-weekly bull riding) and that all event/amplified noise must be shut off at 10:00 PM. *See Resolution, Conditions 5, 7, 9, and 11.* This was a dramatic increase from the conditions recommended by City Staff, who proposed a 9:00 PM shut off time for all event/amplified noise and a "lights out" cut-off of 10:00 PM. *See Staff Conditions at 6, 8, 10, and 12.*

At the hearing, City Staff stated that these times were recommended as a means of respecting the needs of the Homeowners and also noted that the Applicant had expressly agreed to the 9:00 PM shut-off time for event/amplified noise. *See Video at [4:48:24].*

As 9:00 PM will help preserve the peace and quiet of the neighborhood, and Applicant does not object to the 9:00 PM shut-off time, it should be adopted by the City Council. Further, there is currently no concrete understanding of what impacts the additional concerts or other events will have on the traffic, parking, and living condition for the surrounding properties. Thus, six additional concerts is appropriate until the impact of the same can be assessed. Should the impact be minimal, Applicant can seek to modify the condition to allow for more concerts and other events. But allowing fifteen additional concerts and events unfairly subjects the Homeowners to a substantial risk of detrimental impact from the increased noise, light, traffic and parking that such concerts and events will generate without adequate insurance.

- d) *All conditions must be met prior to operation of the expanded uses.* The Commission adopted conditions that require Applicant to take many subsequent actions to mitigate the impact of the expanded use. These include (1) construction of a 6-foot-tall chain link fence with wood slats around the East parking lot; (2) submission of a traffic impact analysis; (3) review of occupancy load estimates to ensure adequacy of restroom facilities to serve the expanded use areas; (4) bringing their exterior lighting into compliance with the City Code; (5) adopting "reasonable precautions" to ensure that outdoor and amplified noise be directed away from the neighboring residential units; (6) bringing its signs into compliance with the City Code; (7) dust proofing all parking lots; and (8) making updates to the outdoor arena. *See Resolution at Conditions 1-4, 10, 15, 21, 23, and 24.*

Homeowners ask that the City Council require that all construction and assessments required by the conditions be completed before they can begin operation of the expanded use areas. Many of these requirements should have been completed prior to applying for the CUP (such as being in compliance with the City's light and signage requirements, submission of a traffic impact analysis). In so requiring, the City Council would ensure that the Homeowners and other neighbors are adequately protected from the detrimental impact of the expanded use.

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For the reasons stated above, the City Council should overturn the Commission's decision and deny the Application. Alternatively, the City Council should reverse and amend some of the conditions adopted by the Commission as outlined above.

Please do not hesitate to contact me directly at (480) 505-3936, or at ebolick@roselawgroup.com.

Regards,

/s/ Evan Bolick
Evan Bolick
Rose Law Group pc

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Apache Junction, AZ Land Development Code

§ 1-16-12 CONDITIONAL USE PERMITS, ADMINISTRATIVE USE PERMITS AND BUILDING PERMITS.

(A) *Authorization and applicability.* It shall be unlawful to erect, construct, reconstruct, alter or change the structure, land and/or use of any property within the city without first obtaining the required building permit, administrative use permit, and/or conditional use permit from the Development Services Department.

(B) *Building permits.* The City of Apache Junction Building Official and the city's adopted building codes establish the requirements and procedures for building permits.

(C) *Administrative use permits.* An Administrative Use Permit ("AUP") may be approved by the Zoning Administrator following review of the application and a finding that the use and/or structure complies with specific standards specified for such use and/or structure in the Zoning Code. Uses and/or structures requiring approval of an AUP, along with permit approval criteria, are identified in Tables 5-1 and 5-3 (see Vol. II, §§ 1-5-1 and 1-5-3).

(D) *Conditional use permits.* Conditional uses are those uses that are generally compatible with the land uses permitted by right in a zoning district, but which require individual Planning and Zoning Commission review and Conditional Use Permit ("CUP") approval of their location, design, operation and configuration along with the imposition of conditions in order to ensure the appropriateness of the use at a particular location. Uses requiring a CUP are identified in Tables 5-1 and 5-3 (see Vol. II, §§ 1-5-1 and 1-5-3). The CUP application and process requirements are as follows:

(1) *CUP application.* An application for a CUP shall be filed with the Development Services Department in accordance with the "City of Apache Junction Conditional Use Permit Application Checklist" available at the Development Services Department.

(2) *CUP public hearing and notice.* The Commission shall hold a public hearing on any proposed CUP or CUP amendment, and provide the following notice. The failure of any person or entity to receive notice shall not constitute grounds for any court to invalidate the actions of the Commission or Council.

(a) *Newspaper publication.* Notice of the time, date and place of the hearing, including a general description of the matter to be considered and a general description of the area affected, shall be published in a newspaper of general circulation that is published or circulated in the community. The publication notice shall be at least 15 calendar days before the hearing, and shall be published as required by A.R.S. § 9-462.04, as amended.

(b) *Property posting.* The notice of public hearing shall be posted by the applicant in accordance with the instructions provided in the application form.

(c) *Mailing notice.* The city shall notice by first class mail each real property owner, as shown on the last assessment of the property, within 300 feet of the property subject to the CUP proposal.

(3) *Findings.* A CUP may be granted upon a finding by the Commission that the use covered by the permit, the manner of its conduct, and any structure involved will not be detrimental to persons residing or working in the area, to adjacent property, to the neighborhood, or to the public welfare in general. The burden of proof for satisfying the aforementioned requirements shall rest with the applicant. In arriving at the above determination, the Commission shall consider but not be limited to the following factors:

- (a) Adequacy of roadways, off-street parking, public facilities and services to accommodate the proposed use;
- (b) Negative impacts arising from the emission of odor, dust, gas, noise, lighting, vibration, smoke, heat or glare;
- (c) Contribution to the deterioration of the neighborhood or the negative impact on neighborhood property values;
- (d) Compatibility with surrounding uses and structures;
- (e) Conformance with the General Plan and city policies;
- (f) Screening and buffering of uses; and
- (g) Unique nature of the property, use and/or development's physical characteristics.

(4) *CUP modification of dimensional zoning standards.* When a proposed development exhibits unique characteristics related to land, topography, architectural style, scale, historical interest or other distinguishing feature that necessitates a measure of regulatory relief, CUP modification of certain dimensional zoning standards may be approved by the Commission in accordance with the findings described above in Vol. II, § 1-16-12(D)(3). The following dimensional zoning standards may be subject to this type of modification:

- (a) *Accessory dwelling units.* Accessory dwelling unit size and height standards required in Vol. II, § 1-6-19 of this Chapter may be modified.
- (b) *Accessory structures.* Accessory structure size, height, design and setback standards required in Vol. II, § 1-6-5 may be modified.
- (c) *Landscaping.* Landscaping size, type, amount and location standards required in Vol. II, Article 1-8 may be modified.
- (d) *Signs.* Sign size, type, amount and location standards required in Vol. II, Article 1-11 may be modified.

(5) *Expiration.* CUPs granted by the Commission shall be void if the use is not commenced within 12 months of the approval date or within the time stipulated by the Commission.

(6) *Revocation.* An approved CUP may be revoked by the Commission following public hearing and a finding that there has been material noncompliance with any condition prescribed in the permit and/or the use generates a demonstrated public safety, health or welfare concern.

(7) *Appeal and City Council review.* The approval or denial of a CUP by the Commission shall be final unless, within 20 calendar days from the date of the Commission's decision, the applicant or any persons aggrieved by the decision appeals the decision to the Council. The appeal shall be in writing, filed with the Development Services Department, and shall indicate

how the Commission was in error. The appeal shall be accompanied by a fee equal to 50% of the original filing fee. The appeal shall require a Council public hearing and notification provided in the same manner as required for the Planning and Zoning Commission hearing. The Council, at its public hearing, shall uphold, modify or overrule the decision of the Commission. The decision of the Council shall be final.

(Ord. 1402, passed 5-6-2014)

CUP-9-17 RECOMMENDED CONDITIONS (3-27-18)

CUP-9-17 Specific Conditions:

- 1) Within six (6) months of CUP-9-17 ("CUP") approval, the property owner shall construct a minimum 12-foot-high solid wood screen fence designed in the same "western town" theme as the existing fence to the south of the Hitching Post Restaurant. This fence shall be constructed along the east side of the bull-riding activity area and shall continue, trace and surround the proposed new activity areas easterly and southerly of the restaurants, as proposed under the CUP. No additional outdoor activities allowed by this CUP in the expansion area shall occur until said minimum 12-foot screen fence has been properly permitted, inspected and approved by the Development Services Department.
- 2) Within one year of CUP approval, a properly engineered and permitted 8-foot-tall decorative block wall shall be constructed along the E. Lost Dutchman Boulevard and N. Cortez Road frontages of the east parking lot of the Hitching Post. Said wall shall be set back 10 feet from the edge of the right-of-way and reserve a 20-foot by 20-foot cutoff corner for visibility. Outside of said walls facing Lost Dutchman and Cortez, within the 10-foot strip, the property owner shall install landscaping and irrigation improvements in compliance with the city's "landscape code", Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-8 Landscape Regulations. Said landscape plan is subject to review and approval by the city's Development Services Department Planning Division.
- 3) Within one year of CUP approval, the property owner shall have a Traffic Impact Analysis prepared for his property, subject to review and approval by the city engineer, to determine proper access to said properties from N. Apache Trail and from E. Lost Dutchman Boulevard, including the possible construction of deceleration lanes and other traffic safety improvements.
- 4) Within six (6) months of CUP approval, the property owner shall hire an engineer to conduct a new septic system analysis of the Hitching Post property, based on plumbing fixture counts found in Table 2902.1 of the 2006 International Building Code. The expansion area shall not be used until the minimum number of fixtures and properly sized septic systems are installed.
- 5) Within one year of CUP approval, all exterior lighting shall be brought into compliance with the Apache Junction City Code,

Volume II, Land Development Code, Chapter 1 Zoning Ordinance,
Article 1-10, Outdoor Lighting Regulations.

- 6) No more than six (6) concerts and/or other events with outdoor amplified music shall be held in the western town area south of the Hitching Post only and said events shall end by 7pm, local time. These events will be held only between October 15 and May 15 yearly. Other events in this area which do not involve any kind of amplified music or loud speakers are unlimited in number. Lights off for any events held in the western town area shall be 9pm.
- 7) For all outdoor concert (or similar) events held in the western town area, the venue operators shall hire off-duty Apache Junction police officers to help with traffic control and safety. Should any of the uses under this CUP become a demonstrated traffic safety hazard, additional traffic safety improvements may be required of the venue operators if warranted.
- 8) New hours for bull-riding events under this CUP shall be 7pm to 9pm, Thursdays and Saturdays. Junior rodeo events may be held at the same time and in place of, or as part of normal bull-riding nights and hours.
- 9) Other events of similar or lesser intensity may also take place in the bull-riding arena, in place of and on the same days and times of normally allowed bull-riding events.
- 10) All music and/or announcer loudspeakers used for events held in the bull-riding arena shall be shut off at 9pm and arena lights shall be shut off no later than 10pm.
- 11) The owner of the property shall ensure and take reasonable precautions that any outside music or loudspeaker use from any of the outside activity areas is directed away from and is conducted in such a manner that minimizes disturbance of neighboring residential properties.
- 12) All activities held in the newly defined east expansion area shall end at 9pm, Sunday through Thursday; and 10pm on Fridays and Saturdays, including any ambient music.
- 13) The RV, boat and truck storage lot to the south of the CUP subject area is not a part of this CUP request and shall not be used for any employee and/or event or activity overflow parking at any time. Additionally, there shall be no parking allowed (related to activities and events at the Hitching Post) on Lost Dutchman, Cortez and N. Apache Trail.
- 14) This CUP approval incorporates by reference the submitted site plans date stamped 2-26-18, illustrating the proposed

development and activity areas of the property. The property owner shall not deviate from said plans without the Development Services Director's approval for minor changes, or the Planning and Zoning Commission's approval for major changes through a CUP amendment process.

- 15) Substantial increases in intensity and/or major changes to the CUP, in the opinion of the Development Services Director, shall be defined as, but shall not be limited to: increases in traffic or traffic safety concerns; excessive noise; occupancy/capacity issues; further expansion of activity areas; increase in or violation of hours of operation; increase in the number of events or the hosting of incompatible events; the quality of the property or venue is diminished; the intent and character of the property or its operation is contrary to the intent and spirit of the CUP approval.
- 16) The operators of the outdoor entertainment venue may use the freestanding sign (with the reader board) in front of the Hitching Post to advertise special events on the larger property; or a new properly permitted free-standing monument sign may be placed on the property along E. Lost Dutchman Boulevard to replace the sign that is there now, in accordance with the city's "sign code", Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-11 Sign Regulations.
- 17) This CUP for an outdoor entertainment venue shall not be transferable upon sale of any part of the property.
- 18) All requirements and obligations pertaining to the separate economic development agreement and amendments thereto for the Hitching Post, Dash In and bull-riding venue remain in full force and effect until such time as the City Council nullifies the agreements.
- 19) There shall be no direct access from the events center approved under this CUP to Cortez Road for traffic.
- 20) This CUP must be renewed no later than three years from the effective date of approval. Therefore, the property owner must file a timely and complete application to renew the CUP several months before the renewal date. Failure to renew the CUP shall cause all approvals under this CUP to expire.
- 21) Prior to the one-year anniversary date of this CUP approval, planning staff shall bring this item back for Commission review of compliance with conditions and consideration of further Commission requirements or actions.

CUP-9-17 Standard Conditions:

- 22) At such time as sewer service reaches the property, the entire facility shall become connected to the sewer district system.
- 23) All signage on the subject property, including signage for the Hitching Post/HP Steakhouse/Dash In and events areas, shall at all times be in compliance with the city's "Sign Code" (as referenced in 16 above), including free-standing signs, permanent attached signs, window signs and banners.
- 24) Proper building permits shall be obtained and inspections and approvals received for any electrical, plumbing, remodeling, stages or scenery, announcer stands or bleachers, fire pits, signage or other property improvements which require permits, in accordance with the concept plans and narrative received for CUP-9-17.
- 25) All parking lots shall be treated for dust proofing in accordance with the options contained in the city's Engineering Guidelines for dust control mitigation, pursuant to Apache Junction City Code, Volume I, Chapter 9 Health and Sanitation, Section 9-1-3(B) Vehicles, Subsection 9-1-3(B)(6), or other solutions accepted by the Development Services Engineer.
- 26) Pursuant to Apache Junction City Code, Volume II, Land Development Code, Chapter 1 Zoning Ordinance, Article 1-16 Administration, Section 1-16-12 Conditional Use Permits, Subsection 1-16-12(D)(5) Expiration, the applicants shall improve and begin operating the outdoor entertainment venue in accordance with the submitted drawings, narrative and prescribed conditions of approval, within 12 months of the granting of the CUP or else the CUP shall become void.
- 27) Pursuant to Apache Junction City Code, Volume II, Land Development Code, Chapter 1 Zoning Ordinance, Article 1-16 Administration, Section 1-16-12 Conditional Use Permits, Subsection 1-16-12(D)(6) Revocation, the Planning and Zoning Commission shall reserve the right to reconsider the Conditional Use Permit approval for the outdoor entertainment venue, at a new public hearing, for non-compliance with any condition prescribed as part of said CUP permit approval, including sign violations or safety problems.

CUP-9-17 RECOMMENDED CONDITIONS (3-27-18)

CUP-9-17 Specific Conditions:

1. DELETED
2. Within one year of CUP approval, the property owner shall install a 6-foot fence with mesh material to obscure vehicle light trespass from the parking lot and landscaping and irrigation improvements along North Cortez frontage in compliance with the City's "landscape code," Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 108 Landscape Regulations. Said landscape plan is subject to review and approval by the City's Development Services Department Planning Division.
3. DELETED
4. Within one year of CUP approval, the property owner, together with the Pinal County Health Department, will review occupancy load estimates for all customer accessible activity areas and make a determination on the adequacy of restroom facilities to serve the new outdoor activity areas.
5. Within one year of CUP approval, all exterior lighting shall be brought into compliance with the Apache Junction City Code, Volume II, Land Development Code, Chapter 1 Zoning Ordinance, Article 1-10, Outdoor Lighting Regulations.
6. No more than fifteen (15) concerts and/or other events with outdoor amplified music shall be held in the western town area south of the Hitching Post only and said events shall end by 10 pm, local time. These events will be held only between October 15 and May 15 yearly. Other events in this area which do not involve any kind of amplified music or loud speakers are unlimited in number. Lights off for any events held in the western town area shall be by 10 pm.
7. For all outdoor concert (or similar) events held in the western town area, the venue operators shall hire personnel to help with traffic control and safety. Should any of the uses under this CUP become a

verifiable and demonstrated traffic safety hazard, as determined by a licensed traffic engineer, additional traffic safety improvements may be required of the venue operators if warranted.

8. Bull riding events under this CUP shall be 8 pm to 10 pm, Thursdays and Saturdays. Special event bull riding for juniors and/or fundraising for competition purposes may occur up to five (5) times a year other than on Thursdays and Saturdays.
9. Other events of lesser intensity may also take place in the bull-riding arena, at any time and must be terminated by 10 pm.
10. All music and/or announcer loudspeakers and lights used for events held in the bull-riding arena shall be shut off at 10 pm.
11. The owner of the property shall ensure and take reasonable precautions that any outside music or loudspeaker used from any of the outside activity areas is directed away from and is conducted in such a manner as to comply with Section 10-1-12 (noise) of the City Code.
12. All activities held in the newly defined east expansion area shall end at the same time as the Hitching Post and the HP Steakhouse close for business and shall comply with Section 10-1-12 (noise) of the City Code.
13. The RV, boat and truck storage lot located south of the CUP subject area may be used for employee parking at any time and as replacement parking for the 26 parking spaces in the western façade area when that area is being used for an event or activity. Additionally, there shall be no parking allowed (related to activities and event at the Hitching Post) on Lost Dutchman, Cortez and N. Apache Trail.
14. This CUP approval incorporated by reference the submitted site plans date stamped 2-26-18, illustrating the proposed development and activity areas of the property. The property owners shall not deviate from said plans without the Development Services Director's approval

for minor changes, or the Planning and Zoning Commission's approval for major changes through a CUP amendment process.

15. Substantial increases in intensity and/or major changes to the CUP, in the opinion of the Development Services Director, shall be defined as, but shall not be limited to: increases in traffic or traffic safety concerns; excessive noise, occupancy/capacity issues; further expansion of activity areas; change in hours of operation; increase in the number of events; the quality of the property or venue is diminished; the intent and character of the property or its operation is contrary to the intent and spirit of the CUP approval.
16. The operators of the outdoor entertainment venue may use the freestanding sign (with the reader board) in front of the Hitching Post to advertise special events on the larger property, and a new properly permitted free-standing monument sign may be placed on the property along E. Dutchman Boulevard to replace the sign that is there now, in accordance with the City's "sign code," Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-11 Sign Regulations.
17. DELETED
18. At such time as this CUP is approved and becomes non-appealable, the separate economic development agreement and amendments thereto for the Hitching Post, Dash In and bull-riding venue shall be terminated by the mutual consent of the owner and City Council.
19. There shall be no direct access from the events center approved under this CUP to Cortez Road for traffic.
20. DELETED
21. DELETED
22. At such time as sewer service reaches the property, the entire facility shall become connected to the sewer district system.

23. All signage on the subject property, including signage for the Hitching Post/HP Steakhouse/Dash In and events areas, shall at all times be in compliance with the City's "sign code" (as referenced in 16 above), including free-standing signs, permanent attached signs, window signs and banners.
24. Proper building permits shall be obtained and inspections and approvals received for any electrical, plumbing, remodeling, stages or scenery, announcer stands or bleachers, fire pits, signage or other property improvements which required permits, in accordance with the concept plans and narrative received for CUP-9-17.
25. All parking lots (including the portion of the storage lot referred to in Condition 13) shall be treated for dust proofing in accordance with the options contained in the City's Engineering Guidelines for dust control mitigation, pursuant to Apache Junction City Code, Volume I, Chapter 9 Health and Sanitation, Section 9-1-3(8) Vehicles, Subsection 9-1-3(8)(6), or other solutions accepted by the Development Services Engineer.
26. Pursuant to Apache Junction City Code, Volume II, Land Development Code, Chapter 1 Zoning Ordinance, Article 1-16 Administration, Section 1-16-12 Conditional Use Permits, Subsection 1-16-12(D)(5) Expiration, the applicant shall improve and begin operating the outdoor entertainment venue in accordance with the submitted drawings, narrative and prescribed conditions of approval, within 12 months of the granting of the CUP or those portions of the CUP shall not be used until such improvements are made.
27. Pursuant to Apache Junction City Code, Volume II, Land Development Code, Chapter 1 Zoning Ordinance, Article 1-16 Administration, Section 1-16-12 Conditional Use Permits, Subsection 1-16-12(D)(6) Revocation, the Planning and Zoning Commission shall reserve the right to reconsider the Conditional Use Permit approval for the outdoor entertainment venue, at a new public hearing, for verifiable and clearly substantiated non-compliance with any condition prescribed as part of said CUP permit approval, including sign violations or safety problems.

- DRAFT -

RESOLUTION NO. 18-21

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, (APPROVING/DENYING) CASE CUP-9-17, A CONDITIONAL USE PERMIT REQUEST BY MEHMOOD MOHIUDDIN TO CONDUCT VARIOUS OUTDOOR ENTERTAINMENT ACTIVITIES ON PROPERTY SURROUNDING THE HITCHING POST AND HP STEAKHOUSE RESTAURANTS, OWNED BY MR. MOHIUDDIN; ACTIVITIES MAY INCLUDE GAZEBO AND WATER FEATURE, EVENT AND CONCERT AREA (INCLUDING WEDDINGS, CONCERTS, CAR SHOWS, ART FAIRS, WRESTLING SHOWS, OTHER EVENTS), SAND VOLLEYBALL COURT, CORNHOLE GAMES, FIRE PITS, BULL-RIDING AND EVENT ARENA, PUTTING GREEN AND OTHER SIMILAR ACTIVITIES FOR HIS PATRONS, AS WELL AS PARKING ACCOMMODATION FOR THE ACTIVITIES AND EVENTS.

WHEREAS, on or about December 27, 2017, a Conditional Use Permit ("CUP") application was submitted to the City of Apache Junction by Mehmood Mohiuddin ("property owner" or "applicant"), requesting approval to operate an outdoor entertainment venue and other outdoor activities on his property located at the southeast corner area of E. Lost Dutchman Boulevard and N. Apache Trail, addressed as 2341 N. Apache Trail (the "subject property"), and which is partially legally described as:

A part of the Northeast quarter of the Northeast quarter of the Northwest quarter of Section 15, Township 1 North, Range 8 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona; and

WHEREAS, a complete metes and bounds legal description of the subject property is available at the City of Apache Junction Development Services Department; and

WHEREAS, on March 13, 2018, the City of Apache Junction Planning and Zoning Commission held a work session discussion to discuss case CUP-9-17 with city planning staff; and

WHEREAS, on March 27, 2018, the City of Apache Junction Planning and Zoning Commission held a public hearing on case CUP-9-17, wherein the commissioners heard the staff evaluation

and recommendations pertaining to the case, as well as the applicant's presentation and suggested conditions of approval; and

WHEREAS, on March 27, 2018, as part of public input, the commissioners viewed video presentations and heard concerns against the existing and proposed activities at the subject property for reasons such as, unreasonable noise, dust, smoke from fire pits, light pollution, vehicular and pedestrian traffic concerns, disturbance of the peace and quiet of the neighborhood, and the fear that additional outdoor entertainment activities would devalue nearby residential properties; and the commission also heard public comments in favor of the outdoor entertainment venue, including comments such as, people should have done their due diligence before buying homes in the area, the subject property is zoned commercial and some noise should be expected, some of the neighbors' comments and videos misrepresented the situation, Mr. Mohiuddin has been persecuted with false complaints about his business, Mr. Mohiuddin has contributed significant tax dollars to the community and he supports and contributes to non-profit agencies and local youth; and

WHEREAS, on March 27, 2018, the commission, after: 1) receiving satisfactory responses to the questions raised at the discussion meeting and public hearing; 2) hearing, considering and discussing all of the facts and comments presented by staff, applicants, neighbors and other interested parties; 3) reviewing the land use criteria relevant to the granting of a CUP, as contained in the Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-16, Administration, Section 1-16-12, Conditional Use Permits, Administrative Use Permits and Building Permits, Subsection 1-16-12-D-3, and the evaluation of said criteria in the staff report dated March 27, 2018; voted 6-1 in favor of case CUP-9-17, citing specific findings relative to the case and prescribing conditions of approval as memorialized and enumerated in that document titled Planning and Zoning Commission Resolution No. CUP-9-17; and

WHEREAS, on April 16, 2018, within the requisite time period for filing an appeal, an appeal was filed in writing by attorney Evan Bolick on behalf of his clients, property owners and neighbors of the Hitching Post, James and Bambi Johnson, Mark and Kindra Theisman, Nick and Helen Funk, Rich and Kathy

Beavers, and Patrick and Diana La Clair, accompanied by the appropriate fees, requesting that the Commission-approved CUP be forwarded to the Mayor and City Council to be overturned due to both procedural and substantive deficiencies, or alternatively, be modified to ensure that the expanded use of the Hitching Post does not contribute to the deterioration of the neighborhood and is compatible with surrounding properties; and

WHEREAS, pursuant to Apache Junction City Code, Volume II, Land Development Code, Chapter 1 Zoning Ordinance, Article 1-16 Administration, Section 1-16-12 Conditional Use Permits, Subsection 1-16-12(D)(7) Appeal and City Council Review: "The approval or denial of a CUP by the Commission shall be final unless, within 20 calendar days from the date of the Commission's decision, the applicant or any persons aggrieved by the decision appeals the decision to the City Council. The appeal shall be in writing, filed with the Development Services Department, and shall indicate how the Commission was in error. The appeal shall be accompanied by a fee equal to 50% of the original filing fee. The appeal shall require a Council public hearing and notification provided in the same manner as required for the Planning and Zoning Commission hearing. The Council, at its public hearing, shall uphold modify or overrule the decision of the Commission. The decision of the Council shall be final"; and

WHEREAS, on May 15, 2018, the Mayor and City Council of the City of Apache Junction conducted a new public hearing on case CUP-9-17 and heard from the applicants, the appellants and other interested parties, and made the following findings of fact relative to the CUP request:

- a) With regard to adequacy of roadways, off-street parking, public facilities and services to accommodate the proposed use, the council finds.....
- b) With regard to negative impacts arising from the emission of odor, dust, gas, noise, lighting, vibration, smoke, heat or glare, the council finds.....
- c) With regard to the contribution to the deterioration of the neighborhood or the negative impact on neighborhood property values, the council finds.....

- d) With regard to compatibility with surrounding uses and structures, the council finds.....
- e) With regard to conformance with the General Plan and City policies, the council finds.....
- f) With regard to screening and buffering of uses, the council finds.....
- g) With regard to the unique nature of the property, use and/or development's physical characteristics, the council finds.....

(OPTION 1)

NOW THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Apache Junction, Arizona, that they support the Planning and Zoning Commission decision and a CUP is hereby approved, allowing Mehmood Mohiuddin to conduct various outdoor entertainment activities on property surrounding the Hitching Post and HP Steakhouse restaurants, all owned by Mr. Mohiuddin; activities may include gazebo and water feature, event and concert area (including weddings, concerts, car shows, art fairs, wrestling shows, other events), sand volleyball court, corn hole games, fire pits, bull-riding and event arena, putting green and other similar activities for his patrons, as well as parking accommodation for the activities and events as described in the plans, narrative and other materials submitted with case CUP-9-17, pursuant to Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-16, Administration, Section 1-16-12, Conditional Use Permits, Administrative Use Permits and Building Permits, subject to the following conditions:

- 1) Within one year of CUP approval, a properly engineered and permitted 6-foot chain link fence with wood slats shall be constructed along the E. Lost Dutchman Boulevard and N. Cortez Road frontages of the east parking lot of the Hitching Post. Said fence shall be set back 10 feet from the edge of the right-of-way and reserve a 20-foot by 20-foot cutoff corner for visibility. Outside of said fence facing Lost Dutchman and Cortez, within the 10-foot strip, the property owner shall install landscaping and irrigation improvements in compliance with the city's

- "landscape code", Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-8, Landscape Regulations. Said landscape plan is subject to review and approval by the city's development services department planning division.
- 2) Within one year of CUP approval, the property owner shall have a traffic impact analysis prepared for his property, subject to review and approval by the city engineer, to determine proper access to said properties from N. Apache Trail and from E. Lost Dutchman Boulevard, including the possible construction of deceleration lanes and other traffic safety improvements.
 - 3) Within one year of CUP approval, the property owner, together with the Pinal County health department and the city building official, will review occupancy load estimates for all customer accessible activity areas and make a determination on the adequacy of restroom facilities to serve the new outdoor activity areas.
 - 4) Within one year of CUP approval, all exterior lighting shall be brought into compliance with the Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-10, Outdoor Lighting Regulations.
 - 5) No more than fifteen (15) concerts and/or other events with outdoor amplified music shall be held in the western town area south of the Hitching Post only and said events shall end by 10pm, local time. These events will be held only between April 1st to October 31st. Other events in this area which do not involve any kind of amplified music or loud speakers are unlimited in number. Lights shall be shut off for any events held in the western town area no later than 10pm.
 - 6) For all outdoor concerts or similar events held in the western town area, the venue operators shall hire off-duty Apache Junction police officers for traffic control and safety. If the venue operator confirms with AJPD management that no off-duty AJPD officers are available, other law enforcement agencies may be considered. Should any of the uses under this CUP become a demonstrated

traffic safety hazard, additional traffic safety improvements may be required of the venue operators if warranted.

- 7) Hours for bull-riding events under this CUP shall last from 8pm to 10pm, Thursdays and Saturdays. Junior rodeo events may be held at the same time and in place of, or as part of normal bull-riding nights and hours.
- 8) Other events of similar or lesser intensity may also take place in the bull-riding arena, in place of and on the same days and times of normally allowed bull-riding events.
- 9) All music and/or announcer loudspeakers used for events held in the bull-riding arena shall be shut off at 10pm.
- 10) The owner of the property shall ensure and take reasonable precautions that any outside music or loudspeaker use from any of the outside activity areas is directed away from and is conducted in such a manner that minimizes disturbance of neighboring residential properties.
- 11) All activities held in the newly defined east expansion area shall end at 10pm, including any ambient music.
- 12) The RV, boat and truck storage lot to the south of the CUP subject property is not a part of this CUP request and shall not be used for any employee and/or event or activity overflow parking at any time. Additionally, there shall be no parking allowed (related to activities and events at the Hitching Post) on Lost Dutchman, Cortez and N. Apache Trail.
- 13) This CUP approval incorporates by reference the submitted site plans date stamped 2-26-18, illustrating the proposed development and activity areas of the property. The property owner shall not deviate from said plans without the development services director's approval for minor changes, or the Planning and Zoning Commission's approval for major changes through a CUP amendment process.

- 14) Substantial increases in intensity and/or major changes to the CUP, in the opinion of the development services director, shall be defined as, but shall not be limited to: increases in traffic or traffic safety concerns; excessive noise; occupancy/capacity issues; further expansion of activity areas; increase in or violation of hours of operation; increase in the number of events or the hosting of incompatible events; the quality of the property or venue is diminished; the intent and character of the property or its operation is contrary to the intent and spirit of the CUP approval.
- 15) The operators of the outdoor entertainment venue may use the freestanding sign (with the reader board) in front of the Hitching Post to advertise special events on the larger property; or a new properly permitted free-standing monument sign may be placed on the property along E. Lost Dutchman Boulevard to replace the sign that is there now, in accordance with the city's "sign code", Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-11, Sign Regulations.
- 16) All requirements and obligations pertaining to the separate economic development agreement and amendments thereto for the Hitching Post, Dash In and bull-riding venue, remain in full force and effect until such time as the city council nullifies the agreements.
- 17) There shall be no direct access from the events center approved under this CUP to Cortez Road for traffic.
- 18) This CUP must be renewed no later than three years from the effective date of approval. Therefore, the property owner must file a timely and complete application to renew the CUP several months before the renewal date. Failure to renew the CUP shall cause all approvals under this CUP to expire.
- 19) Prior to the one-year anniversary date of this CUP approval, planning staff shall bring this item back for commission review of compliance with conditions and consideration of further commission requirements or actions.

- 20) At such time as sewer service reaches the property, the entire facility shall become connected to the sewer district system.
- 21) All signage on the subject property, including signage for the Hitching Post/HP Steakhouse/Dash In and events areas, shall at all times be in compliance with the city's "sign code" (as referenced in condition no. 15 above), including free-standing signs, permanent attached signs, window signs and banners.
- 22) Proper building permits shall be obtained and inspections and approvals received for any electrical, plumbing, remodeling, stages or scenery, announcer stands or bleachers, fire pits, signage or other property improvements which require permits, in accordance with the concept plans and narrative received for CUP-9-17.
- 23) All parking lots shall be treated for dust proofing in accordance with the options contained in the city's Engineering Guidelines for dust control mitigation, pursuant to Apache Junction City Code, Volume I, Chapter 9, Health and Sanitation, Section 9-1-3(B), Vehicles, Subsection 9-1-3(B)(6), or other solutions accepted by the development services engineer.
- 24) Pursuant to Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-16, Administration, Section 1-16-12, Conditional Use Permits, Administrative Use Permits and Building Permits, Subsection 1-16-12(D)(5), Expiration, the applicant shall improve and begin operating the outdoor entertainment venue in accordance with the submitted drawings, narrative and prescribed conditions of approval, within 12 months of the granting of the CUP or else the CUP shall become void.
- 25) Pursuant to Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-16, Administration, Section 1-16-12, Conditional Use Permits, Administrative Use Permits and Building Permits, Subsection 1-16-12(D)(6), Revocation, the Planning and Zoning Commission shall reserve the right to reconsider

the conditional use permit approval for the outdoor entertainment venue, at a new public hearing, for non-compliance with any condition prescribed as part of said CUP permit approval, including sign violations or safety problems.

(OPTION 2)

NOW THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Apache Junction, Arizona, that Mehmood Mohiuddin's request for a conditional use permit, Case CUP-9-17, is hereby denied; and furthermore, that Planning and Zoning Commission Resolution No. CUP-9-17 is hereby rescinded. The conditional use permit is denied for the following reasons:

- 1) (reasons as determined by the Councilmembers).....
- 2)
- 3)

(OPTION 3)

NOW THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Apache Junction, Arizona, that a CUP is hereby approved, allowing Mehmood Mohiuddin to conduct various outdoor entertainment activities on property surrounding the Hitching Post and HP Steakhouse restaurants, all owned by Mr. Mohiuddin; activities may include gazebo and water feature, event and concert area (including weddings, concerts, car shows, art fairs, wrestling shows, other events), sand volleyball court, corn hole games, fire pits, bull-riding and event arena, putting green and other similar activities for his patrons, as well as parking accommodation for the activities and events as described in the plans, narrative and other materials submitted with case CUP-9-17, pursuant to Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-16, Administration, Section 1-16-12, Conditional Use Permits, Administrative Use Permits and Building Permits, subject to the following conditions:

- a) *council may choose to amend the conditions as suggested by Mr. Bolick on behalf of his clients;*

- b) council may choose to apply the conditions originally recommended by planning staff (see exhibit titled "CUP-9-17 Recommended Conditions (3-27-18)");
- c) council may choose to apply the conditions suggested by Mr. Pew on behalf of Mr. Mohiuddin (see exhibit marked at the top of the page as "Ralph & Mo's Recommended Conditions");
- d) council may choose to mix and match various conditions suggested by all parties and/or draft conditions of their own.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, ON THIS _____ DAY OF _____, 2018.

SIGNED AND ATTESTED TO THIS _____ DAY OF _____, 2018.

JEFF SERDY
Mayor

ATTEST:

KATHLEEN CONNELLY
City Clerk

APPROVED AS TO FORM:

RICHARD J. STERN
City Attorney