



# City of Apache Junction

Development Services Department



## MEMORANDUM

**DATE:** DECEMBER 8, 2014

**FROM:** LAWRENCE KIRCH, AICP, DIRECTOR OF DEVELOPMENT SERVICES

**TO:** BRYANT POWELL, ASSISTANT CITY MANAGER

**SUBJECT:** HITCHING POST – DEVELOPMENT AGREEMENT/SPECIAL EVENT COMPLIANCE

The purpose of this memorandum is to summarize the requirements of the Economic Development Agreement with Mehmood Mohiuddin and the three subsequent amendments as well as the special event approval (Bellamy Brothers) for the Hitching Post/Dash Inn property. Concern has been expressed whether all the requirements for noise, sound and parking were adhered to for the Bellamy Brothers Concert special event. There has also been a question regarding whether all the requirements of the Development Agreement(s) have been met.

The Building and Safety Division has issued two Certificates of Occupancy for this property related to the Economic Development Agreement and the amendments and therefore one should conclude that the projects (conversion of warehouse to the Hitching Post and the development of the bull riding venue) were done in conformance with the applicable codes and stipulations found in the agreements. I personally visited the site and determined that the development has substantially conformed to the site plan that was part of the third amended Economic Development Agreement (attached).

### Economic Development Agreement Requirements:

Development Agreement	Provisions/Requirements	Condition Met - Yes or No
Original Development Agreement	A. Developer to pay \$6,460 in development fees (City waived \$46,488 in development fees).	YES
	B. Developer to comply with site plan/provide parking per Site and Building Plans (City granted a 10% reduction in parking requirements and City waived requirements for landscape buffer setback and installation of perimeter masonry wall).	YES
	C. Plans to be stamped by engineer/architect	YES
	D. Fire sprinklers, if required.	N/A
	E. Business/Privilege tax license	YES
	F. Compliance with all federal, state, county and local laws.	Very General

	<p>G. Proof to City that County approves the on-site waste disposal system.</p> <p>H. Record shared parking/cross access easements.</p> <p>I. Dumpster must be screened within 1 year of CofO.</p>	<p>YES</p> <p>YES</p> <p>YES</p>
<b>First Amendment</b>	<p>Developer granted an additional 45 days to comply with requirements for landscaping, permanent parking delineation and barricades after a Temporary CofO is issued. A Temporary CofO may be issued if the restaurant contains all the fire protection systems, ADA requirements and all electrical, mechanical and plumbing systems and County Health and AJ Fire Dept. approve a Temporary CofO. City will de-energize power to restaurant if parking delineation and landscape requirements are not met. Developer to call for final inspection for CofO.</p> <p>All previous requirements still apply.</p>	<p>Modified requirement when a second/modified site plan was approved</p>
<b>Second Amendment</b>	<p>Replaces original site plan to accommodate bull riding, must comply with new site plan.</p> <p>If bull riding is terminated, extension of licensed premises shall be reduced.</p> <p>Shared parking is required with property to the south or at Elks. If <u>both</u> parking arrangements are terminated, all outdoor activities must cease. Developer to provide City 10 day notice in event of lease terminations.</p> <p>All previous requirements still apply.</p>	<p>Site plan now replaced by third site plan in the third amendment.</p> <p>Liquor license extended to bull riding area by state.</p> <p>Shared parking was met by recorded easement.</p>
<b>Third Amendment</b>	<p>Replaces site plan from Second Amendment with a new site plan (and supporting documentation).</p> <p>Insurance requirement prior to CofO added.</p> <p>Bull Riding Fence and Area Fence to be installed by a state licensed and bonded contractor.</p> <p>All previous requirements still apply.</p>	<p>YES</p> <p>YES</p> <p>YES</p>

### **Bellamy Brothers Community Event Approval Requirements:**

Below were the Event Permit Approval Requirements: There was only one noise complaint and to the best of the City Staff's knowledge all the provisions below were followed.

The Bellamy Brothers event scheduled for November 16 has received all necessary approvals provided the following:

- The south west lot (without a gate) is limited to 30 – 40 vehicles
- Staff/volunteers will be assisting with parking on the property
- The number of tickets sold does not exceed 300
- The music concludes by 7pm
- Surrounding neighbors are notified in advance about the event
- The stage and amplified music will be pointed in a northerly direction, away from the residential neighborhoods to the east
- You will provide porta-johns
- Pre-event watering down of activity areas to minimize dust
- Event day signage will remain on your property without obstructing vehicle/pedestrian view and is taken down at the conclusion of the event

The Police Department recommends the following items to increase safety:

- Rope off or place some type of barricade across part the south west parking area to make a clear entrance and exit for the parking area, This would ensure only 1 car at a time would be entering or exiting the parking area.
- Have traffic exiting the north lot turn right (east) on Lost Dutchman
- Hire 1 – 2 off duty officers to control traffic after the event (\$65 per hour per officer)

In conducting the research for your request, scrutiny of this development was warranted since this developer has a well-established record of doing work without permits on this property.

Examples include:

- o Illegal shipping containers on the property;
- o Erecting of monument sign without permit appropriately paid double fees;
- o Placed a 750 lb. rooster on the roof without a permit;
- o Demolished a gas station without a permit;
- o Abandoned fuel tanks without proper permits;
- o Built a wooden patio cover without a permit;
- o Began fencing, bull riding arena and judges stand without a permit.

The most recent work done without permits was the construction of the fake western building facades. In this case, the Developer was told not to use the facades for “gunfights.” They will be allowed for the upcoming T.G. Shepard concert as part of the event permit. To legitimize the use of the adjacent property other than vehicle/RV storage, the Development Services staff has strongly encouraged the Developer to proceed with a Conditional Use Permit application now that he owns all the adjacent property. The developer stated that he would have a permit application filed on November 27, 2014.

Thank you and if you have any questions or require additional information, please let me know.



*City of Apache Junction*  
*Development Services Department*



March 25, 2015

Mr. Mehmood Mohiuddin  
c/o Dash In and Mini Mart  
2341 N. Apache Trail  
Apache Junction, AZ 85119

PERSONALLY DELIVERED  
E-MAILED, AND SENT BY FIRST  
CLASS U.S. CERTIFIED MAIL

**Subject: DEVELOPMENT AGREEMENT NONCOMPLIANCE AND CITY CODE VIOLATIONS**

Dear Mr. Mohiuddin:

It has been observed that you have removed and replaced the lighting fixtures that were approved and incorporated as part of the site plan in the Third Amendment to the Economic Development Agreement with the City of Apache Junction. This is a contractual breach and is a violation of the City's Dark Sky lighting ordinance.

You are also notified that violations of the City's sign code exist with the placement of too many banners. In particular, you were informed via letter dated November 19<sup>th</sup>, 2014 that the AZ Trail Riding.com operation was not permitted unless it was approved as part of a conditional use permit. You indicated that Mr. McFadden was no longer permitted to use the site for staging horse rentals, yet a banner for his business is displayed on your building. Consequently, in addition to having too many banners, the McFadden banner is an illegal off-site sign. This is a contractual breach and is a violation of the Sign Code.

Finally, you have permitted the construction of the pretend western building facades without the requisite engineering and permit. You are instructed to remedy these matters within 14 days. Failure to remedy the contractual breaches and violations outlined herein within this time period may cause the City to take further action including but not limited to those specified in the economic development agreement and the amendments thereto and enforcement action as permitted under the City code.

Any further changes to the operation of the Hitching Post/Dash In facility, including expanding the licensed premises require an amendment to the economic development agreement(s) including but not limited to a new site plan. The proposed permanent extension of the licensed premises for your liquor license will require additional building code review and may trigger requirements related to maximum occupancy, routes of egress, Americans with Disabilities Act (ADA) considerations, and fire sprinklers. This will also require a review of the existing septic system's ability to accommodate additional occupancy loads. In addition, should your pending conditional use permit application be approved these same building code matters will need to be addressed.

Letter to Mr. Mehmood Mohiuddin  
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City Development Services staff is recommending denial of the expansion of the licensed premises to the adjacent property until the contractual breaches and code violations are rectified and a new development agreement is approved by the City Council.

Thank you and if you have any questions regarding this letter, please contact me at (480) 474-5082.

If you have hired an attorney to address these issues please have them contact the City Attorney at (480) 474-5000.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lawrence J. Kirch".

Lawrence J. Kirch, AICP  
Director of Development Services/Zoning Administrator



*City of Apache Junction*  
*Development Services Department*



April 7, 2015

Mr. Mehmood Mohiuddin  
c/o Dash In and Mini Mart  
2341 N. Apache Trail  
Apache Junction, AZ 85119

PERSONALLY DELIVERED  
E-MAILED, AND SENT BY FIRST  
CLASS U.S. CERTIFIED MAIL RETURN  
RECEIPT REQUESTED

**Subject: DEVELOPMENT AGREEMENT NONCOMPLIANCE AND CITY CODE  
VIOLATIONS - STATUS**

Dear Mr. Mohiuddin:

Thank you for meeting with me, Rudy Esquivias, Senior Planner and Dave Zellner, Building Official on Monday, March 30, 2015 at the Hitching Post. Present at the meeting were your brother Zee and Tina Lovelace and yourself. During the meeting we discussed the current status of the Conditional Use Permit (CUP) application and the extension of liquor license application. You indicated that you were no longer interested in pursuing either of these matters for several reasons. I indicated to you that the CUP application and its appeal was a matter that was scheduled for another city council meeting on April 21 and could not be stopped at this time. Rudy and I inquired as to whether you wanted us to set up a neighborhood meeting. You stated that we did not have to because you were not interested in the CUP any longer.

As for the extension of the licensed premise for your liquor license, we noted that you would need to put your request to withdraw in writing. As of the date of this letter, you have not sent any correspondence to City Clerk, Kathy Connelly offering to withdraw your application.

We then discussed the violations that were outlined in my letter dated March 24, 2015. We noted the electrical work done without permits for the proposed lights for the bull riding venue and conduit that was installed. We directed that you obtain an electrical permit for this work and any and all electrical work. Later in the day, a licensed electrical contractor pulled a permit for the lighting that is to be dark sky lighting ordinance compliant. We noted that the four light fixtures along the north fence were returned to their original locations as shown on the approved site plan. Please ensure that all electrical work is completed by a licensed electrical contractor (with property permits issued) and that City Building Inspector Tracy Post is contacted for all required inspections. Until the electrical work is inspected and approved, there continues to be a contractual breach of the Economic Development Agreement and a violation of the City's Dark Sky lighting ordinance.

We then discussed the sign code violations and we noted that you had removed the McFadden AZ Trail Riding.com banner. It is our continued understanding that Mr. McFadden is not using the site for staging horse rentals and this activity is not permitted without a CUP. One additional signage banner



Letter to Mr. Mehmood Mohiuddin

Development Agreement Noncompliance and City Code Violations - Status

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was removed while we were at the meeting. We reminded you that under the city sign code, you are entitled to a total of four banners as you have two businesses operating on the property, the Hitching Post and the DashIn. Your continued compliance with all aspects of the city sign code is an ongoing requirement. If you ever have any questions regarding the sign code and allowable signage, please contact me directly.

Finally, you permitted the construction of the pretend western building facades without the requisite engineering and permit. You were instructed to remedy these matters within 14 days of March 24<sup>th</sup>. The architect contacted Rudy Esquivias and indicated that he is working with an engineer. Rudy indicated to your architect that a permit needs to be applied for that includes engineering for the structure. The city will grant an extension until April 21, 2015 to apply for a permit. Now that you have stated that you are no longer interested in a CUP or the extension of the licensed premises, it is unclear how you intend to utilize the pretend western building facades. Please inform the city what the intended purpose of the facades are going to be.

Thank you for addressing the sign code, dark sky lighting ordinance and pretend western building façade issues as we noted at the meeting. City staff will continue to work with you for the benefit of the city, your customers and your business. As we discussed, if you have any questions regarding city code requirements, permitting requirements or the executed Economic Development Agreement(s), please do not hesitate to contact me.

If you have any questions regarding this letter, please contact me.

Sincerely,



Lawrence J. Kirch, AICP  
Director of Development Services/Zoning Administrator  
(480) 474-5082