

Date: February 4, 2019

To: City of Apache Junction
Development Services Department

From: Concerned Residents

Subject: Board of Adjustment and Appeals Case BA-1-18
Apache Junction, Arizona



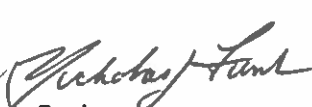

We, the undersigned residents, located in the surrounding residential district to the Hitching Post and Dash In commercial properties, understand there will be a Board of Adjustment and Appeals hearing on Monday, February 11, 2019 based on an appeal submitted by Mr. Mehmood Mohiuddin dated December 5, 2018. This property, located along Lost Dutchman and Cortez Road is adjacent to our residentially zoned properties. We would like to express our concerns that the approval of this appeal allowing for the use of commercial vehicular parking without the proper permits per the City Code removes the protections of our property rights and will have a continued negative impact on our neighborhood. Some of us purchased our properties in 2001 when it was a quiet location with only a boat storage business that was accessed from the front of the business along HWY88. After the owner of the Hitching Post purchased the subject property in July of 2014, (after the final Economic Development Agreement approval in June of 2014), he began to slowly move the boats out of the area and is now utilizing this storage lot for Hitching Post business parking.


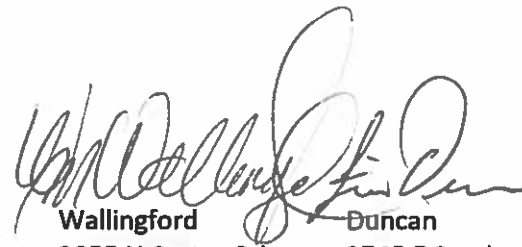


Additionally, due to the excessive violations that have occurred in the past, Mr. Mohiuddin entered into a Compliance Agreement with the City of Apache Junction Development Services Department on November 27, 2017 and was granted a temporary stay of zoning law enforcement in order to apply for the proper permits by a certain date. The Hitching Post applied for and was unanimously granted a Conditional Use Permit on May 15, 2018 by the City Council of Apache Junction Resolution No. 18-21. The conditions of use for parking on the subject lot have not been met in accordance with the approved CUP. Given these facts, we believe this application for appeal is not a valid appeal due to the timeline stipulations in the law stating that within 30 days of a Notice of Violation an appeal may be made to the Board of Adjustment and Appeals. (Code Case COD2017-01122 dated October 5, 2017).

In order to protect our properties and allow us to have a respectable quality of life in our residential district, any approved parking accommodations for the business and/or activities for the subject property shall be in accordance with a Conditional Use Permit as outlined in the current Apache Junction City Code.

We thank you in advance for listening to our concerns and humbly ask that the Board of Adjustment and Appeals members review all of the information and facts of this case and to include our testimony so that they be inclined to reach the proper decision for the City of Apache Junction, which is to protect and promote the public health, safety and general welfare of its residents and uphold our City's Zoning Laws.

Respectfully yours,

			
Theismann	Johnson	Funk	Beavers
2395 N Cortez Rd	2319 N Cortez Rd	2273 N Cortez Rd	2225 N Cortez Rd
APN100-24-006C	APN100-24-006D	APN100-24-006E	APN100-24-006A

			
LeClair	Wallingford	Duncan	Driscoll
2521 E Windsong St	2055 N Cortez Rd	2745 E Smoketree St	1852 N Goldfield Rd
APN100-24-016D	APN100-24-017B	APN100-25-004A	APN100-24-025E

Attachments:

1. Appeal Application with payment receipt
2. Storage Lot Compliance Agreement
3. Satellite Images dated 2001, 2013 and 2016



City of Apache Junction
Development Services Department
Appeal of Zoning Administrator's Decision

At

I/We hereby appeal the decision of the Zoning Administrator in accordance with Article 1-16-5 of the Apache Junction, Arizona, Zoning Ordinance.

SITE INFORMATION

SITE ADDRESS/LOCATION 2341 N. Apache Trail ASSESSORS PARCEL NO 100-25-043C
GROSS AREA: 2.94 acres NET AREA _____ EXISTING ZONING B1
LEGAL DESCRIPTION OF PROPERTY: (found on County Tax Bill Notices or Warranty Deed) _____
COMMENCING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 01 NORTH, RANGE 08 EAST, THENCE W-40.00 FT TO THE POINT OF BEGINNING THENCE S-212.98 FT THENCE S70D W-203.75 FT THENCE S-61.12 FT THENCE W-37.52 FT THENCE N87D W-168.38 FT THENCE N87D W-170.78 FT THENCE N07D W-43.78 FT THENCE N49D E-436.27 FT THENCE E-242.25 FT TO THE POINT OF BEGINNING.

PLEASE ANSWER THE FOLLOWING QUESTIONS IN THE SPACE PROVIDED, OR SUBMIT A SEPARATE, SIGNED STATEMENT IF ADDITIONAL SPACE IS NEEDED.

Provide the Zoning Ordinance Section Number(s) which you believe has been incorrectly interpreted by the Zoning Administrator: 1-16-13 (Development Agreements); 1-16-16 (Violations, Penalties and Enforcement); 1-2 (Types of Uses); 1-5-3 (Non-Residential Use Regulations); 1-7 (Parking, Loading and Circulation Regulations)

Describe existing and proposed use of the subject property (if applicable): _____
Existing use = Full Service Restaurant and Drinking Place (NAICS Code 72) with adequate off-street, on-site parking
Proposed use = same/no change

Describe your interpretation of the Section Number(s) listed above and provide any other reasoning to support your appeal of the Zoning Administrator's decision: Appellant hereby appeals the following Notices of Violation: Code Case # COD2018-00723 (dated October 31, 2018) and Code Case # COD2018-00751 (dated November 7, 2018). Appellant's use of the parcel as a Full Service Restaurant/Drinking Place with adequate off-street, on-site parking are uses permitted both by right and by the Economic Development Agreement, its amendments, and site plans. The Zoning Administrator's decisions in these cases are arbitrary/capricious as they're based on 1) the City Attorney's arbitrary/capricious decision re: Appellant's use of the parcel and 2) an illegal CUP. Since this appeal stays all proceedings re: this matter pursuant to A.R.S. 9-482.06(E), Appellant hereby requests that the City stay the criminal proceeding initiated by the City Attorney (State v. Mohiuddin Case No. M-1149-CM-2018000599 (Citation No. 134128)) regarding this same matter.

APPLICANT INFORMATION
Property Owner(s) Mehmood Mohiuddin

Address 2304 N. Cortez Rd., Apache Junction, AZ 85119

Phone Number 602-214-5635 Fax Number _____ Email tmlovelady@msn.com

12/5/2018
1:39PM



Payment Receipt

Receipt #: 000000000000000046639

Check Number #: 7251

Name: MEHMOOD . MOHIUDDIN
Address: 2304 N CORTEZ RD
APACHE JUNCTION, AZ 85119

Parcel#: 1110025043C

Case # Number	Account Number	Description	Date Paid	Amount Due	Amount Paid
PLN2018-00072		Appeal Zon Admin Decision-Com	12/5/2018	750.00	750.00
		Legal Ad Fee	12/5/2018	500.00	500.00
Total Paid:					\$1,250.00

91-2/1221 7251

PAK UNITED
2341 N APACHE TRL.
APACHE JUNCTION, AZ 85119-1003

DATE 12/5/18

PAY TO THE ORDER OF CITY of AJ \$ 1250.00

ONE THOUSAND TWO HUNDRED FIFTY

CHASE
JPMorgan Chase Bank, N.A.
www.Chase.com

MEMO Appeal BOA

00817722312251

1221000241

COMPLIANCE AGREEMENT BETWEEN CITY OF APACHE JUNCTION AND MEHMOOD MOHIUDDIN

RECITALS

A) Mehmood Mohiuddin ("Owner"), owns five parcels of real property at or near or adjacent to 2341 N. Apache Trall and 2304 N. Cortez Road, Apache Junction, Arizona (APNs 100-25-043A, 100-25-010A, 100-25-001E, 100-25-003 and 100-25-001C) (hereinafter the "Property") and depicted in Attachment A;

B) The City of Apache Junction Development Services Department issued a "Notice of Zoning Violation" to owner on October 5, 2017 (Code Case COD2017-01122) (see Attachment B) alleging certain code and development agreement violations.

C) Owner has taken some steps to abide by applicable code provisions.

D) Owner has taken initial steps to prepare a complete zoning submittal for a Conditional Use Permit ("CUP") applicable to portions of the Property.

E) Owner desires the enforcement of COD2017-01122 be held in abeyance and the City temporarily forebear further enforcement on this matter pending Owner's punctual and completed performance of his compliance commitments of this Agreement.

AGREEMENT

1. Owner agrees to use/operate the bull riding arena consistent with the terms of the Third Amendment to Economic Development Agreement and to only start bull riding events after 8:00 p.m. and end them no later than 10 p.m., and only on Thursdays and Saturdays.

2. Owner will file, on or before Thursday, December 28, 2017, a completed CUP application with the Apache Junction Development Services Department for uses on the Property.

3. Owner will diligently follow all city processes in furtherance of the CUP, to perfect the application and presentation at the duly noticed public hearing(s).

4. Owner will use APN 100-25-001C for overflow parking relating only to the Hitching Post Pizza Pub and Hitching Post Steakhouse restaurant operation on APN 100-25-043A pending the final disposition of Owner's application for broader authorization of uses under a passed and adopted CUP at the City's planning and zoning commission hearing and/or possible city council appeal.

5. If the CUP is denied by the City, Owner will cease and desist from using APN 100-25-001C for parking in connection with uses on APN 100-25-043A within ten (10) calendar days of such denial.

7. Owner intentionally, knowingly and voluntarily enters into this Compliance Agreement and has discussed its meaning and effect with his attorney and understands all possible eventualities of CUP passage and denial and violations of the city code and development agreement.


 Property Owner

Mehmed Mehmedin
 Printed Name

11/27/17
 Date

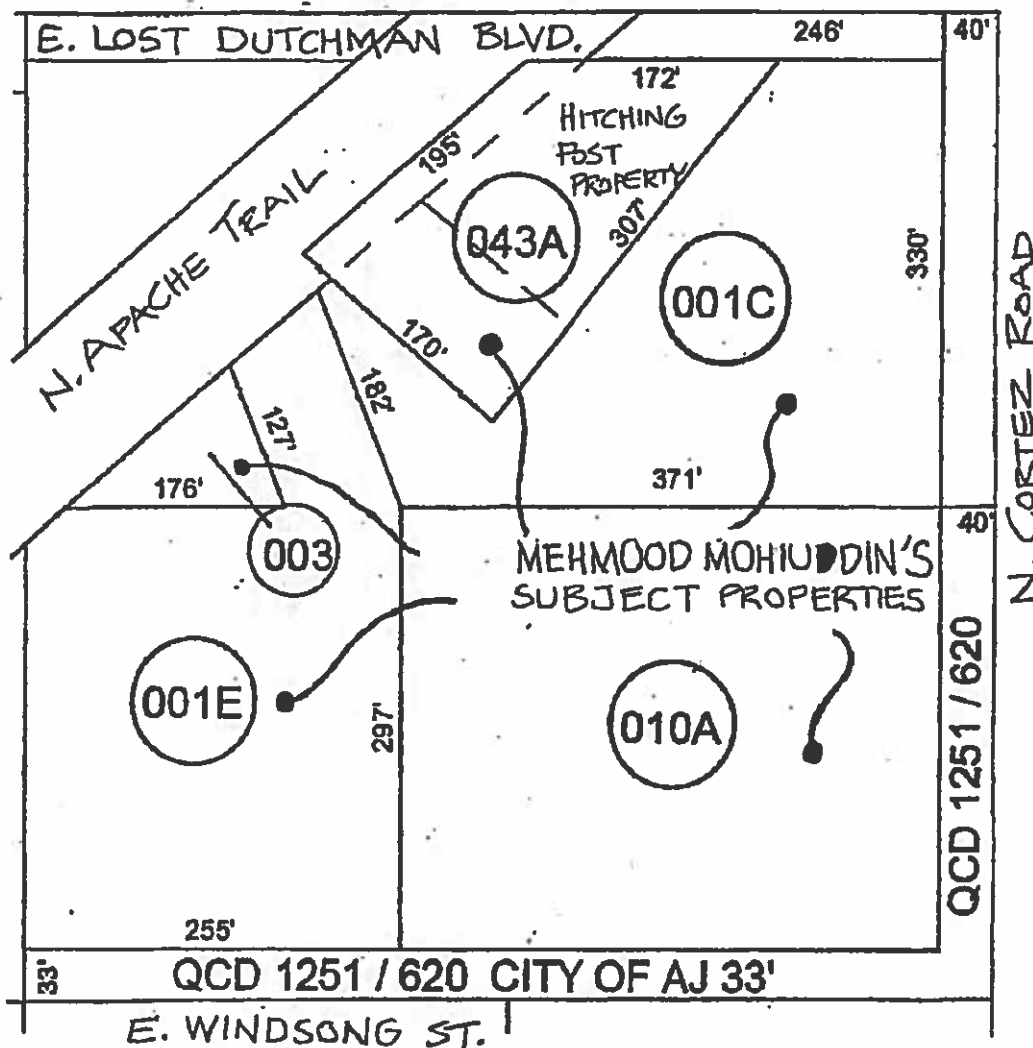

City of Apache Junction
Development Services Director

Printed Name

Date 11/27-17

PROPERTIES OWNED BY MEHMOOD MOHIUDDIN

PINAL COUNTY ASSESSOR PARCELS
100-25-001C, 001E, 003, 010A AND 043A.



ZONING + VICINITY MAP

ALL PROPERTIES SHOWN ARE ZONED
B-1 (GENERAL COMMERCIAL DISTRICT).





City of Apache Junction
Development Services Department



**NOTICE OF VIOLATION
ZONING**

CODE CASE #: COD2017-01122

Date: October 5, 2017

Sent via Certified Mail, Return Receipt Requested and
U.S. Regular First Class Mail

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

Address of Property in Violation: 2341 N. Apache Trail & 2304 North Cortez Road

Parcel Number(s): 100-25- 043A; 100-25-001C; 100-25-010A; 100-25-001E; 100-25-0030

Legal Description of Property:

100-25- 043A -- COM @ N4 COR SEC 15-1N-8E TH W-286.4 TH S-49D W-50.74 TO POB TH CONT S-49D W-195.27 TH S-48D E-170 TH N-38D E-307.49 TH W-172 TO POB, FOR REF SEE BK 22 OF SURVEYS PG 71 .85 AC

100-25-001C -- BEG AT N1/4 CR OF SEC 15-1N-8E TH W-286.4' TO E LINE OF HWY R/W THS S-49 DEG W-246.01' TH S-21 DEG W-182.68' TH E-484.38' TH N- 330' TO POB EXC: A PCL BEG AT N1/4 CR TH W-286.4' TH S-49 DEG W-50' TO POB TH CONT S-49 DEG W-195.27' TH S-48 DEG E-170' TH N-38 DEG E-307.49' TH W-172' TO POB & LESS E-7' THEREOF SEC 15 1N-8E 2.13 AC

100-25-010A -- BEG AT A PT 255.13' E OF SW COR OF S1/2 NE NE NW OF SEC 15-1N-8E; TH N-329.80' TO E-404.87' TH S-329.80' TH W-404.87' TO POB EXC FOR THE E-33' & S-33' THEREOF 3.07 AC (133729 SQ FT)

100-25-001E -- BEG N1/4 CR SEC 15-1N-8E TH W-286.4' S-49 DEG 19' 35 W-246' TO POB TH CONT S-49 DEG 19'35 W-78.23' S-21 DEG 44'43 E-127.92' W-175.5' S-329.8' E-255' N-329.8' N-21 DEG 44'43 W-182.68' TO POB SEC 15-1N-8E 2.19 AC + OR - (95396 SQ FT)

100-25-0030 -- PT OF N1/2 NE NE NW OF SEC 15-1N-8E .25 AC (10890 SQ FT)

Owner(s) of Record: Mehmood Mohiuddin

Tax Bill Mailing Address: 2345 North Apache Trail, Apache Junction, AZ 85119 and 2304 N Cortez Rd., Apache Junction, AZ 85119

The City of Apache Junction has adopted a Zoning Ordinance to protect and promote the public health, safety and general welfare. The applicable ordinances can be found in the Apache Junction

City Code, Volume II, Land Development Code, which can be read here-
http://www.amlegal.com/codes/client/apache-junction_az/.

You are in violation of Apache Junction Land Development Code; Chapter 1: Zoning Ordinance, Article 1-16: Administration, Section 1-16-13, Development Agreements (see attached Exhibit A). You have an Economic Development Agreement (including amendments) with the City of Apache Junction with the hours of operation of the bull riding activity specified in the Second Amendment (dated October 1, 2013), Paragraph 8, § 3, Developer Obligations, and are limited to Thursday and Saturday evenings from 8:00 p.m. to 10:00 p.m.

On November 17, 2016, you were previously notified that you were violating the development agreement by operating outside of the hours specified in the agreement (see attached letter as Exhibit B). Attached as Exhibit C is a City of Apache Junction Police Department incident report for incident number 170916007 dated 09/16/17. The report is clear, in that you admit to operating the bull riding activity outside of the approved hours. This is again, a clear violation of the economic development agreement and constitutes a violation of the city zoning code.

You were also notified in that same letter dated November 17, 2016, that in order to use APN 100-25-001C for parking you would need an amendment to the development agreement. Using this parcel to the east of the Hitching Post/Dash-In/HP Steakhouse also constitutes a violation of the economic development agreement.

Statement of Violations and Corrections:

Violation(s) observed: A violation of the economic development agreement constitutes a violation of Article 1-16, Section 1-16-13.

- (1) Operating the bull riding venue outside of the hours stipulated in the Economic Development Agreement.***
- (2) Parking on parcel 100-25-001C is not permitted by the economic development agreement.***

CORRECTIVE ACTIONS TO BE TAKEN:

Cease and desist all violations. The City's repeated attempts to have the above issues corrected or abated have not been successful, therefore we are issuing this formal Notice of Violation and requiring that the conditions noted above be corrected and abated within ***21 calendar days***. A City of Apache Junction code enforcement officer will perform a re-inspection to verify compliance on ***October 26, 2017***.

****Please note the following*** - Failure to comply- make requested corrections or abate the noted conditions may result in the filing of a civil or criminal misdemeanor case.

*****And also*** - Failure to comply, failure to make requested corrections or abate the noted conditions, may result in an administrative or court abatement action by the city, for which the owner or responsible person will be financially liable through a lien process which may include foreclosure of the property.

If you have any questions regarding this Notice and the action required please contact Senior Code Compliance Officer Kimberly Wilson at (480) 474-5109 or kwilson@ajcity.net.

Appeal Rights

You have the right to appeal this decision to the Board of Adjustment and Appeals ("BAS") within 30 calendar days of this letter. To exercise this right, you must request an application form and, submit a complete appeal application form with all necessary supporting documentation and information. A narrative specifying the grounds of the appeal should also be included. The complete application packet and the accompanying fees must be submitted with the zoning administrator at the development services department, 300 E. Superstition Blvd., Apache Junction, Arizona, 85119. In most circumstances, an appeal to the board stays all proceedings in the matter appealed. However, the applicant is encouraged to review A.R.S. Section 9-462.06 for more information regarding the circumstances of any stay request. The board shall affix a reasonable time for hearing the appeal, and shall give notice of the hearing by publication in a newspaper of general circulation and by posting such notice pursuant to state law.

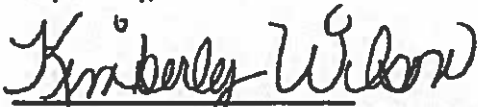
The board has the power to administer oaths and take evidence. The hearing is a quasi-judicial hearing, wherein the members act in the capacity as judges as well as fact-finders. The appellant may: 1) present evidence including any and all relevant documentation; 2) call upon witnesses to provide testimony on his or her behalf; 3) cross-examine all city witnesses; and 4) hire an attorney to represent his or her interests at the hearing. The board may reverse, affirm, wholly or partly, or modify the zoning administrator's decision, and make such requirement, decision, or determination as necessary.

To preserve his or her appellate rights, a person aggrieved by a decision of the Board must file within thirty (30) calendar days after the Board's decision, a complaint for special action in the Pinal County Superior Court challenging the Board's decision. This hearing will not be a new trial; rather it will consist of a written decision made by a superior court judge based on the evidence and testimony submitted at the BOA.

If you do retain an attorney, it is highly recommended that such person be licensed in the State of Arizona and be competent in the area of real property law.

The fee to appeal this zoning notice of violation before the BOA is \$250.00 with an additional deposit of \$500.00 due for advertising related expenses.

Respectfully,



Kimberly Wilson, Senior Code Compliance Officer

Attachments:

Exhibit A - Apache Junction Land Development Code; Chapter 1: Zoning Ordinance, Article 1-16: Administration, Section 1-16-13, Development Agreements.

Exhibit B - Development Agreement Non-compliance letter dated November 17, 2016

Exhibit C - Apache Junction Police Department Incident Report, Incident Number 170916007



City of Apache Junction
Development Services Department



November 17, 2016

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: November 2016 – Development Agreement Non-compliance (Hours of operation of Bull Riding Venue) and City Sign Code Violations - Status

Dear Mr. Mohiuddin: *MO*

Thank you for meeting with me and Senior Planner Rudy Esquivias on Wednesday, November 2, 2016, at the Hitching Post. The purpose of the visit was to follow up on the city's determination that the sign for the RV Storage lot placed in the planter along Highway 88 at the Hitching Post was not permitted because it is considered an off-premise sign. Two monument signs on one street frontage are not permitted on one parcel anywhere in the city as per the city sign code §1-11-7.

During the site visit we discussed this sign and some other possible locations that would comply with the city's sign code. You decided that you would remove the sign faces and place them on the split-rail style fence on the immediate adjacent tax parcel. We concurred that this was a permitted location. I followed up this meeting with an email confirming that the city would not require a sign permit application to simply move the sign faces to the split rail style façade fence. On Thursday, November 10, 2016, I stopped by the Hitching Post and noted that you had already moved the signs to the new location. Thank you for your prompt attention to this particular sign issue.

Also during the meeting, we discussed the allowances for banners and signs covering windows. You stated at some point you would be removing the beer-themed window shade signs on the Pita Pockets building as you felt they were tacky and that you were going to replace them with interior window coverings instead. The city sign code allows up to 75% of window area to be covered with signs and the current beer themed window screens/signs cover more than the permitted amount.

We also discussed banners. I want to reiterate that the sign code only allows two banners per site per business. Since you have two businesses on the site, you are permitted to have a total of four banners: two for the Hitching Post and two for Pita Pockets. You are permitted to use fin flags or banners, however, the city only allows a total of two for each business. You are permitted to have four banners or two fin flags and two banners or four fin flags or any combination as long as the total does not exceed four. Based on my site visit, you are in compliance with a total of three banners. Your continued compliance with all aspects of the city sign code is an ongoing requirement.

Mr. Mehmood Mohiuddin
November 16, 2016
Page 2

Bull Riding Hours of Operation

Recently it has come to my attention that the bull riding activity is operating outside the approved hours that are specified in Paragraph B, § 3, Developer's Obligations, in the Second Amendment to the Economic Development Agreement dated October 1, 2013. A copy of a police CAD report is attached wherein you stated that you are operating the bull riding from 7:30 p.m. to approximately 9:45 p.m. This is a violation of the Development Agreement. You are obligated to confine the hours of operation between 8:00 p.m. and 10:00 p.m. on Thursday and Saturday evenings only, as per the agreement as referenced above.

Parking

During our brief meeting, you indicated that you are considering relocating the parking for the Hitching Post and Pita Pockets from the area within the western town fence façade to the rear of the Hitching Post with the access to this parking area from Lost Dutchman Boulevard. Please be advised that I have consulted with the city attorney and it is the city's position that this would not be permitted under the current site plan of the second amended development agreement. You have the option to present a new site plan to the city, but this would constitute an amendment with a cost of a new application of \$1,675 and council consideration and action.

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 (direct line)

Attachment

December 19, 2001



September 23, 2013



January 3, 2016



Rudy Esquivias

From: Sidney Urias
Sent: Monday, January 28, 2019 5:19 PM
To: Rudy Esquivias; Larry Kirch
Subject: FW:
Attachments: sign for city.pdf

From: Tina Lovelady [<mailto:tmlovelady@msn.com>]
Sent: Monday, January 28, 2019 4:38 PM
To: Sidney Urias <surias@AJCity.Net>; Aaron Ludwig <aaron@ludwiglawoffices.com>
Subject:

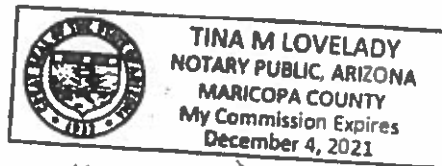
Exhibit F: Affidavit for Posting Notice
(if applicable)

Case Number BA-1-18
Project Name HITCHING Post/MOHIUDDIN/LUBWIG
Project Location 2341 N. APACHE TRAIL
Site Posting Date _____
Applicant Name MEHMOOD MOHIUDDIN
Agent Name AARON LUBWIG
Sign Company Name _____
Applicant Phone Number 602-882-5417
Applicant Email aaron@ludwiglawoffices.com

I confirm that the site has been posted by me or my agent for the case listed above at least 15 days prior to the public hearing as required by the City of Apache Junction and a photo and/or map of the sign posting location on the property is attached.

Applicant Name Mehmood Mohiuddin
Applicant Signature [Signature]
Date of Sign Posting 1-28-19

STATE OF ARIZONA)
COUNTY OF PINAL) ss.



Acknowledged and sworn to before me this 28th day of Jan 2019.

Tina M Lovelady
(NOTARY PUBLIC)

My Commission Expires: 12/04/2021

RECEIVED
FEB 04 2009
City of Appleton
BUILDING DIVISION
DEVELOPMENT SERVICES

ATTN: LARRY KIRCH
DEVELOPMENT SERVICES DIRECTOR
CASE: BA-1-18