



City of Apache Junction

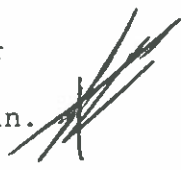
Development Services Department



Date: May 8, 2019

To: Planning and Zoning Commission Members

Through: Larry Kirch, Development Services Director

From: Rudy Esquivias, Senior Planner/Zoning Admin. 

Subject: May 14, 2019, P&Z Commission Public Hearing Item:
Request to Revoke CUP-9-17 (Res. #18-21) granted to Mehmood Mohiuddin for Non-compliance with Conditions

Background

On March 27, 2018, the Planning and Zoning Commission approved case CUP-9-17, an application by Mehmood Mohiuddin, owner of the Hitching Post and HP Steakhouse restaurants, requesting approval of a Conditional Use Permit ("CUP") to conduct various outdoor entertainment activities on his property surrounding the restaurants, including gazebo and water feature, concert and event area (including weddings, concerts, car shows, art fairs, wrestling shows, etc.), 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. The commission's decision was appealed to the city council in a timely manner by aggrieved parties.

On May 15, 2018, the city council also approved CUP-9-17, but with stricter conditions and tighter timeframes (for example, 6-month instead of 1-year timeframes) for compliance on some items, than the commission had recommended. See Resolution #18-21 attached. Soon afterward, after a request for reconsideration of the council decision failed, Mr. Mohiuddin filed a lawsuit against certain city staff members.

Over the next several months, staff's counsel and various attorneys for Mr. Mohiuddin tried to work out a settlement agreement and a path forward. Staff was advised, however, to meticulously enforce Resolution #18-21's conditions of approval. Nearing November of 2018, when it became clear that the conditions with 6-month timeframes were not going to be complied with, staff prepared to take CUP-9-17 back to the P&Z commission for possible revocation. The revocation of CUP-9-17 was advertised and scheduled for the P&Z meeting of December 11, 2018.

Around this same time period, Mr. Mohiuddin was sent a notice of violation letter for certain parking issues at the Hitching Post. Mr. Mohiuddin appealed said notice of violation to the city's Board of Adjustment ("BOA"). The city's legal counsel, Mr. Doyle, advised staff that the CUP matter should be continued, pending the outcome of

Planning & Zoning – Building & Safety – Revenue Development

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the case before the BOA. On December 11, 2018, the Commission continued CUP-9-17 to their meeting on March 12, 2019.

Discussions between the two parties continued and for a while it appeared some positive progress was being made towards a settlement agreement. Another request for continuance of both the CUP and BOA matters was made. On February 12, 2019 (one month earlier than scheduled), staff requested and the commission agreed to continue the P&Z hearing to May 14, 2019, and that new public hearing notices be mailed to surrounding property owners. This was done.

Current Status

It has been almost one year since the council's approval of Resolution #18-21. Mr. Mohiuddin has made no substantial progress to comply with the conditions with timeframes. For example:

Condition #1 required that within 6 months, a properly permitted 12-foot-tall western town theme fence be constructed on the east side of the bull-riding area and around the new activity areas approved under the CUP. This was not done (see "required fences" exhibit).

Condition #2 required that within 1 year, the same type of fence as in #1 above be constructed along the Lost Dutchman and Cortez Road frontages and along the north side of the house. Instead, Mr. Mohiuddin put up a +/-6 foot wooden fence that does not comply with this condition.

Condition #3 required that within 1 year, a traffic impact analysis be prepared subject to review by the city engineer. This was not done.

Condition #4 required that within 1 year, a septic system analysis be done to determine proper septic needs. This was not done.

Condition #5 required that within 6 months, all lighting be brought into dark sky compliance. No inspections have been requested for verification.

It appears that Mr. Mohiuddin has chosen to continue to generally operate under the terms of his old development agreement, instead of complying with the conditions of Res. #18-21, including old hours of operation. Even so, over the course of the last year additional complaints have been received about noise, parking, extra activities not allowed under the CUP, and other problems. As with other property owners who do not comply with the conditions of a CUP approval, and in this case more specifically relative to conditions 21, 22, 27 and 28, staff must bring the matter back to the commission for their review.

Planning Staff Recommendation

Since it appears that the applicant in case CUP-9-17 has no intention or interest in complying with the conditions of Resolution No. 18-21

and because he has essentially run out of time to effect his CUP under the city's CUP regulations, specifically 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) and (6), the planning division recommends to the planning and zoning commission that CUP-9-17/Resolution No. 18-21 be revoked.

RECOMMENDED MOTION

I move that the Planning and Commission (REVOKE/NOT REVOKE) case CUP-9-17 (Resolution No. 18-21), a Conditional Use Permit granted to Mehmood Mohiuddin, to conduct various outdoor entertainment activities on property surrounding the Hitching Post and HP Steakhouse restaurants, including gazebo and water feature, concert and event area (including weddings, concerts, car shows, art fairs, wrestling shows, etc.), 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, because of the following findings::

- 1) The applicant has made no substantial progress toward compliance with time specific conditions;
- 2) The CUP is subject to expiration and revocation in accordance with 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 and (6) Revocation;
- 3) (other findings made by the commission.....?)


Prepared by Rudy Esquivias
Senior Planner/Zoning Admin.

The Commission's decision is final, unless an aggrieved individual or party appeals said decision (in writing, with reasons and accompanied by all applicable appeal fees) to the City Council within 20 calendar days of the Commission action, and in accordance with the applicable procedures set forth in the Apache Junction Zoning Ordinance, Section 1-16-12.

Attachments:

- Resolution No. 18-21;
- Required Fences exhibit

RESOLUTION NO. 18-21

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, APPROVING CASE CUP-9-17, AN APPEAL OF 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 ("City" or "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's development services department; and

WHEREAS, on March 13, 2018, the City's 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 ("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 testimony both in favor and against the request; 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", a copy of which is available at the city's development services department, contained in case file CUP-9-17; and

WHEREAS, on April 16, 2018, within the requisite time period, 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 fil-ing 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 conducted a new public hearing on the appeal of case CUP-9-17 and heard from the applicants, the appellants, the public and other interested parties, and made the following decision, with findings of fact, relative to the CUP appeal request, as follows:

"That the decision of the planning and zoning commission memorialized in Planning and Zoning Commission Resolution No. CUP-9-17, be modified with changes to some of the conditions based on the following findings:

That pursuant to Apache Junction City Code, Volume II, Zoning Ordinance, Section 1-16-12(D) (3), the uses covered by the conditional use 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.

This finding is based on the following factors:

Negative impacts arising from the emission of odor, dust, gas, noise, lighting, vibration, smoke, heat or glare; the applicant has agreed on the conditions for the dust control to minimize the dust and various items coming up from the ground;

Compatibility with surrounding uses and structures; that the Hitching Post is in B-1 zoning and that was not in dispute;

Conformance with the general plan; that the Hitching Post is in fact in compliance with the general plan, that was not in dispute; and

Unique nature of the property, use and/or development's physical characteristics; the applicant has developed the area thus far with some very unique features.

The applicant has met the burden of proof on some factors mentioned under Finding B."

The following conditions of approval of the resolution are modified as follows: The 25 conditions of approval brought forth by the P&Z in Resolution No. CUP-9-17 be replaced as follows:

- 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 (1) year of CUP approval, a properly engineered and permitted 12-foot-tall western façade theme fence shall be constructed along the E. Lost Dutchman Boulevard and N. Cortez Road frontages of the east parking lot of the Hitching Post and along the north side of the property line where the house is. 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.

- 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/constructed.
- 5) Within six (6) months 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.
- 22) If any condition of approval is not met in the time allowed, the P&Z Commission shall review the circumstances and determine what action is appropriate.
- 23) At such time as sewer service reaches the property, the entire facility shall become connected to the sewer district system.
- 24) 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.
- 25) 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.
- 26) 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.

- 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)(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.
- 28) 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 CUP approval for the outdoor entertainment venue, at a new public hearing, for noncompliance with any condition prescribed as part of said CUP permit approval, including sign violations or safety problems.

WHEREAS, on the same date, the mayor and city council decided that the previously stated findings and conditions be included in a resolution drafted by the development services department staff, approved as to form by the city attorney, signed by the mayor and attested to by the city clerk as soon as possible in the coming days.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF APACHE JUNCTION, ARIZONA, ON THIS 15th DAY OF May, 2018.

SIGNED AND ATTESTED TO THIS 24th DAY OF MAY, 2018.




JEFF SZADY
Mayor

ATTEST:

Kathleen Connelly
KATHLEEN CONNELLY
City Clerk

APPROVED AS TO FORM:

 5.23.18
RICHARD J. STERN
City Attorney

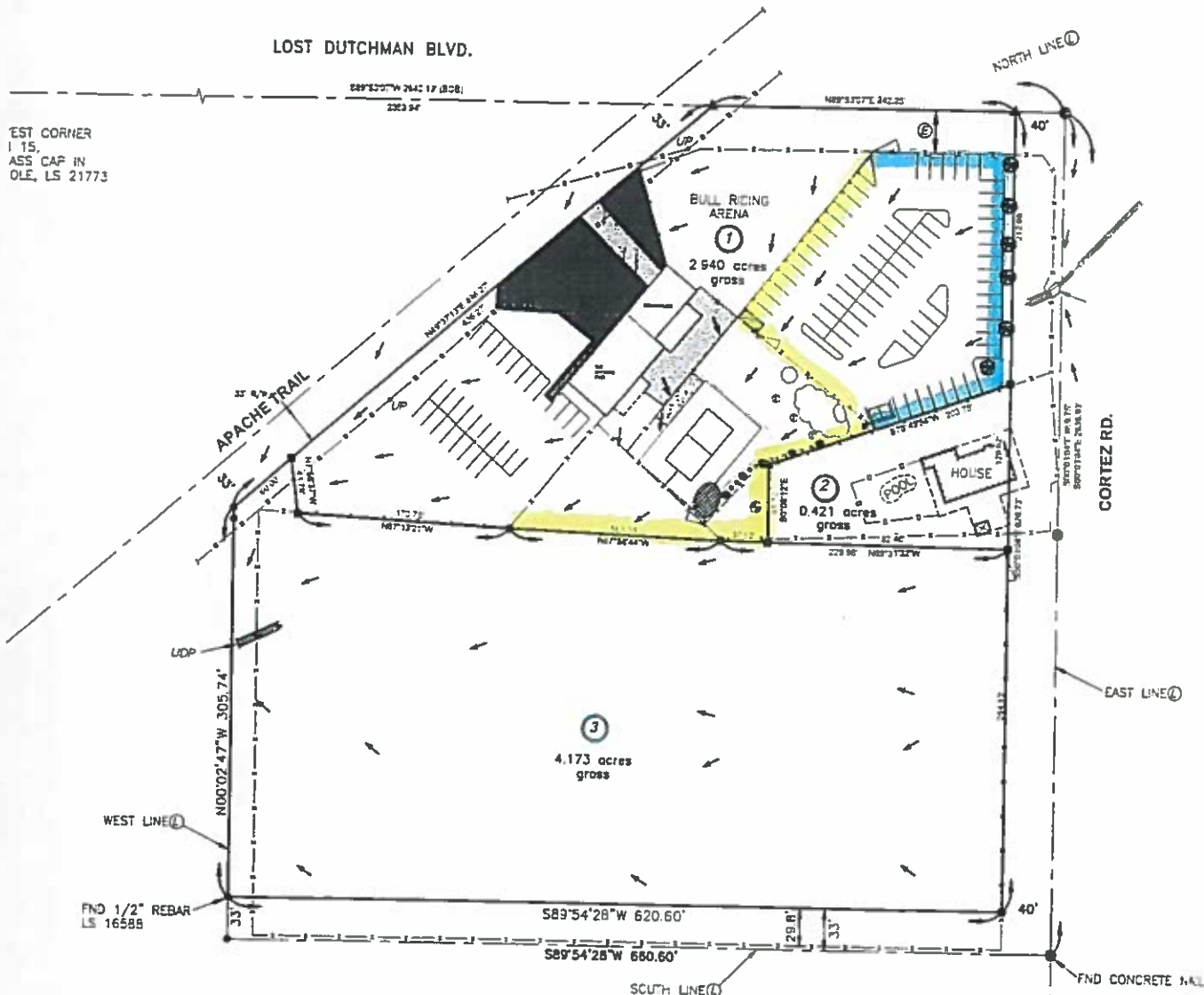
REQUIRED FENCES

COVER SHEET

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APN 10025043A; SECTION 15, TOWNSHIP 1 NORTH, RANGE 8 EAST OF GSRB&M.

LOST DUTCHMAN BLVD.

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OWNE

MOHIJUDIN
2345 N APACHE TRAIL
APACHE JUNCTION, AZ 85119
MOBILE 602-
CONTACT 1

Department Service Engineer,
of Apache Junction

SIGNATURE OF APPROVAL DATE

Water Company or
Junction Water Company

SIGNATURE OF APPROVAL DATE

the Junction Fire District

SIGNATURE OF APPROVAL DATE

on Mountains Community
District No. 1

SIGNATURE OF APPROVAL DATE

Pinal County Health Dept.

SIGNATURE OF APPROVAL DATE

ADEQ

SIGNATURE OF APPROVAL DATE

 = 12' THEME FENCE
(6 MONTHS)

 = 12' THEME FENCE
(1 YEAR)

CENTER SECTION 15
FND 1/2" REBAR
LS 21773

BASIS OF BEARINGS:
NORTH LINE OF NW 1/4 SECTION 15
BEARING S89°53'07"W



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CC

PROJ NO

DATE

SCALE

DESIGNED

REV