



City of Apache Junction, Arizona

Meeting Minutes Planning and Zoning Commission

Meeting location:

City Council Chambers
at City Hall
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Apache Junction, AZ
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Tuesday, March 13, 2018

7:00 PM

City Council Chambers

1. Call to Order

Chair Nesser called the meeting to order at 7:04 p.m.

2. Pledge of Allegiance

Chair Nesser led the Pledge of Allegiance.

3. Roll Call

Staff present:

City Attorney Joel Stern

Development Services Director Larry Kirch

Development Services Senior Planner Rudy Esquivias

Senior Economic Development Specialist E'lan Vallender

Present 6 - Chairperson Nesser
 Commissioner Schroeder
 Commissioner McGraw
 Vice Chair Heck
 Commissioner Howard
 Commissioner Kridler

Absent 1 - Commissioner Frank

4. Consent Agenda

Vice Chair Heck moved that the Planning and Zoning Commission accept the agenda as presented and approve the meeting minutes from the January 23, 2018 and February 27, 2018 meetings. Commissioner Schroeder seconded the motion. Motion passed with a 6-0 vote.

Yes: 6 - Chairperson Nesser, Commissioner Schroeder, Commissioner McGraw, Vice Chair Heck, Commissioner Howard and Commissioner Kridler

No: 0

[18-116](#) Consideration of approval of agenda.

[18-117](#)

Consideration of approval of regular meeting minutes of the January 23, 2018 and February 27, 2018.

5. Public Hearings

None.

6. Old Business

18-102

Presentation and discussion of the Old West Highway Redevelopment Area Improvement Plan.

Senior Economic Development Specialist Vallender gave a presentation on the Old West Highway Redevelopment Plan.

Commissioner McGraw asked if this was a minor or major change to the 2010 plan. Senior Economic Development Specialist Vallender said there was no change to the plan. City Attorney Stern confirmed that there was no change. Senior Economic Development Specialist Vallender asked Director Kirch to confirm the year changes will be made to the general plan. Both Director Kirch and City Attorney Stern said 2020. Senior Economic Development Specialist Vallender said the Old West Highway Redevelopment Plan is like a key that opens a tool box for the city to take actions that remove blight or slum and improve structures in the area. Senior Economic Development Specialist Vallender added there weren't any zoning changes, just a set of activities they are looking at for future vision of what the area will look like development wise. Commissioner McGraw said he was going to ask about zoning questions. Senior Economic Development Specialist Vallender said if there were to be in the future, any type of zoning changes would be handled through the appropriate public hearings. Chair Nesser said basically this is designating the area that would be eligible for funds for improvement. Senior Economic Development Specialist Vallender said it would open it up to be able to utilize some funds. He said as an example in the past some CDBG funds were used for commercial facade improvements. He added it's not only federal funds, but other actions the city can take.

Vice Chair Heck asked if one of the reasons for this redevelopment area is unique is to incorporate all of the single central business district into the Old West Highway Redevelopment Area. Senior Economic Development Specialist Vallender replied that is correct. Senior Economic Development Specialist Vallender said staff is looking to establish a single central business district. He then added the district needs to be within a redevelopment area. He added that it currently doesn't and with Crossroads coming up for reaffirmation, staff would like to ensure that if we reaffirm or reestablish a redevelopment area it would be in conformance with a single central business district so that all resources are available. Vice Chair Heck stated with the original Crossroads Redevelopment from Valley to Winchester and with this expanded to Old West Highway, that would give the opportunity to create a single central business district into what is shown now. Senior Economic Development Specialist Vallender said that is correct and at this time there isn't a single central business district established and added the boundaries exceed the Crossroad development area boundaries by about a quarter mile. This new alignment is necessary to utilize the available resources. He added the Old West Highway Redevelopment Area includes the Crossroads redevelopment area and is expanded down Old West Highway which is the primary business zoned corridor. City Attorney Stern added state law changed which requires a single central business district in the redevelopment area.

Commissioner Howard asked what the plan is to deal with dilapidated buildings and structures. Senior Economic Development Specialist Vallender replied the city has taken action in the past in a variety of different manners. He added that the activities such as building facade improvements and building code issues have been done with grant funds. He said any actions that are taken are actions that staff has received direction from council to do. He said there is nothing specific at this point but if there is an opportunity, there is a chance to act on it.

Vice Chair Heck remarked that the two plans mirror each other with the difference being a land use development plan. He added Crossroads has three land use districts and the new one has five but seem consistent. He asked Senior Economic Development Specialist Vallender if there was anything he missed that is a significant difference between the two. Senior Economic Development Specialist Vallender replied that there are no significant changes and only a few items need to be removed and adjustments with the application of items.

Commissioner Kridler asked if the funds will be better used taking care of blight and redevelopment or developing new businesses on open land. Senior Economic Development Specialist Vallender said it would be a combination. He added as opportunity for new development comes in, looking to support those in accordance with state statute. He said that it doesn't mean anyone who comes in receives assistance or incentive, but it does lay out the direction as to what is being brought into the areas. There has been both residential and commercial improvements. Commissioner Kridler commented that he is looking at cleaning up blighted areas.

Commissioner Kridler recommended cleaning up the old Bashas' plaza area as this area stands out with the new park close by. He added it could also assist with code compliance issues and perhaps hire part time code compliance staff to assist with commercial or residential issues. He also said code compliance is understaffed and therefore behind on the complaints received by the department.

Chair Nesser called for a motion.

Vice Chair Heck made a motion that the Planning and Zoning Commission approve the Old West Highway Redevelopment Area Improvement Plan as stated with two recommendations. Recommendation #1 addressing the issues of blight to include the Bashas' Shopping Center area, and Condition #2 that city council would consider the addition of necessary code enforcement personnel to address the other areas of blight within the Old West Highway Redevelopment Area. Commissioner McGraw seconded the motion. Motion passed with a 6-0 vote.

Yes: 6 - Chairperson Nesser, Commissioner Schroeder, Commissioner McGraw, Vice Chair Heck, Commissioner Howard and Commissioner Kridler

No: 0

7. New Business

18-115

Presentation and discussion of case CUP-9-17, a request by Mehmood Mohiuddin, represented by Ralph Pew of Pew and Lake, PLC, for approval of a conditional use permit to conduct various ancillary outdoor entertainment activities on his property surrounding the Hitching Post and HP Steakhouse restaurants, including events and concerts, sand volleyball court, cornhole games, fire pits, bull-riding, putting green and other similar activities for patrons and guests of the restaurants, located on a B-1 (General Commercial)-zoned property at 2341 N. Apache Trail.

Senior Planner Esquivias gave a presentation of case CUP-9-17, a request by Mehmood Mohiuddin, represented by Ralph Pew of Pew and Lake, PLC, for approval of a conditional use permit to conduct various ancillary outdoor entertainment activities on his property surrounding the Hitching Post and HP Steakhouse restaurants, including events and concerts, sand volleyball court, corn hole games, fire pits, bull-riding, putting green and other similar activities for patrons and guests of the restaurants, located on a B-1 (General Commercial)-zoned property at 2341 N. Apache Trail.

Vice Chair Heck asked about the noise complaints and if any of the complaints were substantiated. Senior Planner Esquivias said those complaints are directed to the police department. He added Police Chief Kelly said his officers have responded to noise complaints and when responding have asked the business to turn down the music. He said he doesn't think there's been any formal code action other than Development Services staff informing the applicant and addressing those issues with them through individual complaint processes. Director Kirch added said there was a question with a different but related case about noise complaints. The police chief was asked to see how many complaints there were about noise related to this property. The chief said there were six complaints over the last three months. Director Kirch said he doesn't have any information on the complaints. Vice Chair Heck asked if the information was available to the commission. Director Kirch said the information can be summarized for them. Vice Chair Heck said the information is important. He added that anyone can file a complaint but it is whether it can be substantiated or not. Chair Nesser added that just because the police went out and said to turn down the noise, if that means it was too loud.

Chair Nesser asked City Attorney Stern when the police could make a determination what's too loud and what isn't. City Attorney Stern said noise complaints are handled through the city code. It could also be handled through the criminal code. He said city code is a Class 1 Misdemeanor and the ARS statute is a Class 2 Misdemeanor. He added that it is hard to prove. There needs to be witnesses that are willing to testify and a map of where the complaints come from. He also said the city has done this with another situation and it's very difficult to prove. He said they've done away with devices that measure noise because of calibration issues. He said it comes down to if the noise unreasonably interferes with the reasonable use and enjoyment of one's property. City Attorney Stern said he would get the police department complaints before the meeting on the 27th.

Commissioner Schroeder asked if there is a noise law after a certain time. City Attorney Stern said there is a rule regarding construction noise that is from 6am to 10pm or 6am to 6pm. Director Kirch added that it is also seasonal. City Attorney Stern said there is a misconception that there can't be noise after 10pm. He added that if it is unreasonable noise, it is wrong at any time, any hour of the day. He then said the development agreement in this case deals with the bull riding and that allows for bull riding between 8pm to 10pm on Thursdays and Saturdays. After 10pm there isn't supposed to be anyone on the amplifier and the lights are supposed to be turned down. He said he thinks there is some misconception that came in a few years ago that said there can't be any noise after 10pm. He said that is untrue, there can't be any unreasonable noise. He said you can't cite someone for noise because it disturbs someone else. Commissioner Schroeder said if the commission got copies of complaints and if they were coming from the

same individuals, if they're before 10pm, if they're on a Thursday. He added that it would be an invalid complaint if it were coming on a Thursday between 8pm and 10pm. City Attorney Stern said he will ask the police chief for those complaints. Commissioner Howard agreed if the complaints were coming in when he's allowed to have activities and they are from the same parties then there might be something wrong with the issue.

Commissioner Kridler said he is interested in the consistency of the complaints and if they are coming for other places as well.

Commissioner McGraw asked if there was a metric decibel reading trying to prove whether there is an issue or not. City Attorney Stern said not in our city and not when the decibel reader has to be calibrated. He added that the elements of a public nuisance have to affect a significant portion of the community. He then said there is a private nuisance that affects private individuals individually. He said it is a different issue and can be a problem between a property owner and a business.

Vice Chair Heck asked about the letter from Development Services to the owner of the Hitching Post. He said at the end there should be items added to the CUP with one of them being a 12 foot wall constructed along the Cortez right of way and Windsong right of way to mitigate the disruption to the Cortez neighbors. Vice Chair Heck asked where the 12 foot wall came in. He asked if it were a block wall. Senior Planner Esquivias said he's not sure where the 12 foot wall came in but the basic idea is the creation of a sound attenuating wall along Cortez to try to lessen the noise impact to the residential properties to the east of Hitching Post. City Attorney Stern said he thinks the 12 foot wall came about in discussion with the neighbors because of slope of the land. The property owners' houses are higher than Mr. Mohiuddin's property. Vice Chair Heck said this would relate to the noise complaint issues. Director Kirch said he would have to go back to check the permits on front facade because he thinks those may be up to 16 feet tall but will check to make sure. Chair Nesser asked if there are any houses on the west side of Cortez. Senior Planner Esquivias said the Windsong alignment is about 300 feet to the south and houses that are along Cortez (about four houses) line up with the Cortez alignment.

Commissioner Howard said it's important to know where the complaints are coming from. Chair Nesser asked if there were any houses to the west of the property. Senior Planner Esquivias said about 600 feet away to the west. He said the closest houses are a couple hundred feet away. He said there are no houses to the south but that area is zoned as residential.

Commissioner McGraw asked if the 12 foot wall that Vice Chair Heck mentioned would block the view of the property.

Commissioner Kridler asked about the Windsong alignment and how it comes into play. Senior Planner Esquivias said it doesn't. The storage lot has nothing to do with the issue tonight. He added that the Windsong alignment is dedicated to the city and Mr. Mohiuddin's fence is in the center of the FPE and there are trucks, vehicles and RVs parked also within the easement. He added that in the narrative, Mr. Pew states that if the city needs to put a road through the applicant is agreeable to moving the fence and vehicles out of the city right of way.

Commissioner Schroeder asked about the easement on Cortez and that the wall as shown would have to be built within the easement. Senior Planner Esquivias said correct. City Attorney Stern asked if the green color on the map is dedicated or an FPE. Senior Planner Esquivias said the dark green is dedicated. City Attorney Stern said the city owns the property, whereas a federally patented easement, the underlying property owns it and there is an easement for utilities and roadway purposes. Commissioner Schroeder said the corner of the home is on city owned land.

Vice Chair Heck asked if the fencing along the Windsong alignment has been moved. Senior Planner Esquivias said as far as they can tell, they've been there since the yard was established.

Vice Chair Heck said the south side wasn't intentionally violated.

Commissioner Schroeder asked if dedication has always been that way. Senior Planner Esquivias said he will pull the dedication document to see when it was done. Chair Nesser said if the city doesn't need it, it can be sold. Senior Planner Esquivias said it's not their call if it can. That would have to be discussed with the Public Works Department director and city engineer. City Attorney Stern added that if it is an abandoned right of way, there is a process under ARS Title 28 which needs to be followed.

Commissioner Howard asked if there is any fencing along the east side. Senior Planner Esquivias said there is a chain link fence. Commissioner Howard asked if the houses along Cortez have any fencing. Senior Planner Esquivias said the most they have would be pony walls in the front yards.

8. Information and Reports

Director Kirch said on April 4th there will be the Active Transportation Plan public forum on the bike, pedestrian, and equestrian plan. More details will be forthcoming,

9. Director's Report

Director Kirch said it may take until the middle of June to replace the assistant planner position. He added that Planning Intern Danielle Jordan will be presenting the Ironwood Corridor Rezoning at the March 27th meeting.

10. Selection of Meeting Dates, Times, Location and Purpose

Vice Chair Heck made a motion to hold a regular meeting on March 27, 2018 at 7:00 pm in the Apache Junction City Council Chambers located at 300 E. Superstition Boulevard. Commissioner Schroeder seconded the motion. Motion passed with a 6-0 vote.

Yes: 6 - Chairperson Nesser, Commissioner Schroeder, Commissioner McGraw, Vice Chair Heck, Commissioner Howard and Commissioner Kridler

No: 0

11. Call to the Public

None.

12. Adjournment

Adjournment:
Meeting adjourned at 8:01 p.m.

Theresa Nesser
Chairperson