MINUTES OF THE REGULAR MEETING
OF THE
PLANNING AND ZONING COMMISSION

June 6, 2013
9:30 a.m.

Board of Supervisors' Auditorium
301 W. Jefferson Street, 10th Floor
Phoenix, Arizona

MEMBERS PRESENT:

Mr. Michael Deutsch, Chairman
Mr. Dick Smith, Vice-Chairman
Mr. Jerry Aster
Mr. Bruce Burrows
Mr. B.J. Copeland
Mr. Mark Pugmire (arrived at 9:36 a.m.)
Mr. Murray Johnson

MEMBERS ABSENT:

Mr. Jason Barney
Mr. Broc Hiatt
Mr. Jimmie Munoz

STAFF PRESENT:

Ms. Debra Stark, Planning Director
Mr. Darren Gerard, Deputy Planning Director
Ms. Lynn Favour, Deputy Planning Director
Ms. Terri Hogan, Current Planning Supervisor
Mr. Matt Holm, Comprehensive Planning Supervisor
Mr. Tom Ewers, Plan Review Manager
Mr. Michael Norris, Drainage Engineering Manager
Ms. Rachel Applegate, Planner
Mr. Glenn Bak, Planner
Mr. Raymond Bank, Planner
Ms. Carol Hu, Planner
Ms. Patty Zaricor, Planner
Ms. Marsha Spencer, Commission Secretary

COUNTY AGENCIES:

Mr. Wayne Peck, County Counsel
Mr. Marc Allen, MCESD
Mr. Gerald Toscano, MCDOT

UNFINISHED BUSINESS: **None**

CONTINUANCE: **None**

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NEW BUSINESS: **TA2012011, TA2012012, TA2012015, TA2012016, TA2012033, TA2013001, TA2013002, TA2013003, DMP2013003, Z2013024, CPA2012011, Z2012093, Z2011022**

Chairman Deutsch called the meeting to order at 9:32 a.m.

Debra Stark, Planning & Development Director, informed the Commissioners that longtime Planner John Verdugo passed away.

COMMISSION ACTION: Commissioner Burrows moved to approve the minutes of the March 28, 2013 regular meeting. Commissioner Aster seconded the motion which passed with a vote of 6-0.

COMMISSION ACTION: Vice-Chairman Smith moved to approve the minutes of the April 11, 2013 regular meeting. Commissioner Burrows seconded the motion which passed with a vote of 6-0.

COMMISSION ACTION: Commissioner Aster moved to approve the minutes of the April 25, 2013 Zoning, Infrastructure, Policy, Procedure and Ordinance Review (ZIPPOR) Committee meeting. Vice-Chairman Smith seconded the motion which passed with a vote of 6-0.

Chairman Deutsch noted updated information sheets had been passed out and he asked that the Commissioners review them to make sure their information was correct and if not, to see Terri Hogan.

Text Amendment: TA2012011 **All Districts**

Applicant: Commission-Initiated

Request: Text Amendment to the Maricopa County Zoning Ordinance to permit gardens as a primary use in every zoning district

Darren Gerard, Deputy Planning Director, presented the above item. There is no known opposition and two emails of support. The proposed language is outlined in leg-edit fashion in Paragraph 4 of the report and includes two definitions to be added to Chapter 2 and language to be inserted in Articles 501.2.4, 601.2.22, 802.2.15, 803.2.50 and 901.2.22. Mr. Gerard noted there was internal concern about the definition of garden as it indicates a private facility intended for cultivation by one person, but multiple people in a family or multiple people residing at a property may work the garden. Staff is not concerned about the consequences of this language, because they are trying to separate garden from community garden. If this passes, they both will be permitted in all zoning districts. Staff is not proposing any language changes, but wanted to go on record as one party indicates all parties involved with that property. Staff recommends approval per the language recommended for TA2012011 as shown in Paragraph 4 of the report.

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Chairman Deutsch asked if there were any questions for staff and if anyone from the public wished to speak.

COMMISSION ACTION: Commissioner Aster moved to recommend approval of TA2012011 according to Paragraph 4 of the staff report; Commissioner Johnson seconded the motion which passed with a unanimous vote of 7-0.

The proposed verbatim language is shown below, with added text underscored and deleted text is struck-through:

Chapter 2 - Definitions

GARDEN:
A private facility for the cultivation of fruits, vegetables, flowers and ornamental plants by one person. Accessory sales of products cultivated on site are permissible.

GARDEN, COMMUNITY:
A private or public facility for the cultivation of fruits, vegetables, flowers and ornamental plants by more than one person. Accessory sales of products cultivated on site are permissible.

Chapter 5 – Rural Zoning Districts

Article 501.2. **USE REGULATIONS:** A building or premises shall be used only for the following purposes:

4. Gardens, community gardens and f~~F~~arms as defined in Chapter 2.

Chapter 6 – Single Family Residential Zoning Districts

Article 601.2. **USE REGULATIONS:** A building or premises shall be used only for the following purposes:

22. Gardens and community gardens as defined in Chapter 2.

Chapter 8 – Commercial Zoning Districts

Article 802.2. **USE REGULATIONS:** A building or premises shall be used only for the following purposes:

15. Gardens and community gardens as defined in Chapter 2.

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Article 803.2. **USE REGULATIONS:** A building or premises shall be used only for the following purposes:

50. Gardens and community gardens as defined in Chapter 2.

Chapter 9 – Industrial Zoning Districts

Article 901.2. **USE REGULATIONS:** A building or premises shall be used only for the following purposes:

22. Gardens and community gardens as defined in Chapter 2.

Text Amendment: TA2012012 **All Districts**

Applicant: Commission-Initiated

Request: Text Amendment to the Maricopa County Zoning Ordinance to permit the keeping of up to five chickens hens in residential zoning districts

Darren Gerard, Deputy Planning Director, presented the above item. There is one email of opposition and one email of support. The proposed verbatim language is shown in leg-edit in Paragraph 4. This language is to be added to Article 601.2.14. Staff recommends approval as shown in Paragraph 4 of the report.

Chairman Deutsch asked if there were any questions for staff.

Commissioner Aster clarified there would be hens but no roosters. Mr. Gerard confirmed five chicken hens only and pointed out that this was residential zoning and did not affect rural zoning where you could keep roosters.

Chairman Deutsch asked if there were any other questions for staff and if anyone from the public wished to speak.

COMMISSION ACTION: Commissioner Pugmire moved to recommend approval of TA2012012 according to Paragraph 4 of the staff report; Commissioner Burrows seconded the motion which passed with a unanimous vote of 7-0.

The proposed verbatim language is shown below, with added text underscored and no language proposed for deletion:

Chapter 6 – Single Family Residential Zoning Districts

Article 601.2. **USE REGULATIONS:** A building or premises shall be used only for the following purposes:

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14. Accessory buildings and uses customarily incidental to the above uses, including:

a. The keeping of a farm animals limited to the following:

1. Up to **five** chicken hens.

2. Corrals for the keeping of horses, provided such corrals are located in the rear yard, set back from all lot lines a distance of not less than **40 feet** and contain at least **1,200 square feet** of area for each horse kept therein. The keeping of horses on properties located in residential zoning districts in other than permitted corral areas is prohibited.

Text Amendment: TA2012015 **All Districts**

Applicant: Commission-Initiated

Request: Text Amendment to the Maricopa County Zoning Ordinance regarding the storage/parking RVs.

Darren Gerard, Deputy Planning Director, presented the above item. This is a text amendment to the Zoning Ordinance to permit the storage of RVs in other than the required front yard. There is one email of opposition and two emails of support. The Sun Lakes Fire District remains concerned with the increased potential for excessive storage inside a unit or illegal occupancy of a RV if it is stored in a side yard as opposed to a rear yard. Staff disagrees. Location in a side yard will usually be more visible than a location in the rear yard and it is less likely to be occupied or to be used for storage. Mr. Gerard noted that occupancy of the RV would be a zoning violation whether it is in the rear yard as permitted today or whether it is in a side and/or rear yard as would be permitted if this is approved. Earlier versions of TA2012015 spoke to the storage of RVs "in the rear yard of the lot or side yard of the lot, but no closer to the street than the front plane of the principal building". The language now proposed will further liberalize the text amendment to simply state that you may store an RV "in the rear yard of the lot or side yard of the lot, but not within the required front yard." This will allow units to potentially be stored in front of the front plane of the principal building, but would limit storage of an RV to the same locations on a lot where an accessory building could be placed under the ordinance today. The proposed language "such storage shall maintain a five foot clear path around any structures" remains in place. The purpose of this language is to ensure adequate egress for occupants attempting to escape a fire and access for emergency response personnel. This was noted and appreciated by the Fire District. It is important to note that even accounting for clear paths across property lines and including areas within open carports or canopies, this requirement will limit where units can be placed in relationship to buildings, walls, and other structures.

Chairman Deutsch asked if there were any questions for staff.

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Commissioner Aster asked if this was effective in all zoning districts. Mr. Gerard confirmed this would be effective in all rural and residential zoning districts and pointed out that the language being inserted would revise 1114.1.2 as shown in Paragraph 5 of the report.

Commissioner Pugmire asked what percentage of single family residential permits was not subject to HOAs/CC&Rs. Mr. Gerard stated he did not know and estimated over half because there had been a lot of permitting in recent years in the outer areas which tended not to have CC&Rs. Commissioner Aster asked if HOA rules would supersede. Mr. Gerard explained staff did not enforce CC&Rs and the HOA and private property owners would need to police themselves. He stated they might supersede in the court, but many types of CC&Rs were constitutionally illegal and could not be enforced.

Chairman Deutsch asked if there were any other questions for staff and if anyone from the public wished to speak.

COMMISSION ACTION: Commissioner Burrows moved to recommend approval of TA2012015 according to Paragraph 5 of the staff report; Vice-Chairman Smith seconded the motion which passed with a unanimous vote of 7-0.

The proposed verbatim language is shown below, with added text underscored and deleted language struck-through. Changes to the proposed language since the ZIPPOR meeting are highlighted:

SECTION 1114. LOCATION OF MOBILE HOMES, TRAVEL TRAILERS, AIRCRAFT, BOATS, CAMPING TRAILERS, TRUCK CAMPERS & MOTOR HOMES

Article 1114.1 **REGULATIONS:** At no time shall the mobile home, travel trailer, aircraft, boat, camping trailer, truck camper or motor home be occupied or used for living, sleeping or housekeeping purposes, except as provided below:

1114.1.1. Mobile homes and travel trailers intended for non-residential use shall be subject to securing a Temporary Use Permit; provided that mobile homes used for quarters for on duty personnel in connection with publicly or privately owned or operated fire stations shall be considered to be a non-residential use in any zoning district and be subject to securing a Temporary Use Permit.

1114.1.2. If a travel trailer, aircraft, boat, camping trailer, truck camper or motor home is located or stored outside of a garage or carport it shall be placed in the rear yard of the lot or side yard of the lot, but not within the required front yard except that ~~placement in other than the rear yard~~ for loading and

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unloading purposes may be permitted for a period of time not to exceed **72 hours.** Such storage shall maintain a **five (5) foot** clear path around any structures.

Text Amendment: TA2012016 **All Districts**

Applicant: Commission-Initiated

Request: Text Amendment to the Maricopa County Zoning Ordinance to permit the storage of up to three unregistered/inoperable vehicles in the rural and residential zoning districts

Darren Gerard, Deputy Planning Director, presented the above item. There are two emails of support. Staff changed the proposed language from the original version presented at stakeholder meetings to clarify that vehicles stored out of doors must be visually screened from the street unless within an attached carport and must be stored in other than the required front yard, maintaining an open and clear front yard. This will keep the article consistent with the language previously recommended for approval and throughout the ordinance. The proposed verbatim language is listed in Paragraph 5 and includes revising Article 1102.9.5. Staff recommends approval subject to the language shown in Paragraph 5 of the report.

Chairman Deutsch asked if there were questions for staff and if anyone from the public wished to speak.

COMMISSION ACTION: Commissioner Johnson moved to recommend approval of TA2012016 according to Paragraph 5 of the staff report; Commissioner Burrows seconded the motion which passed with a unanimous vote of 7-0.

The proposed verbatim language is shown below, with added text underscored and deleted language struck-through. Changes to the proposed language since the ZIPPOR meeting are highlighted:

ARTICLE 1102.9 ADDITIONAL PARKING REGULATIONS:

1102.9.5. Not more than ~~one~~ **three** unregistered or inoperable motor vehicles shall be stored on any lot or parcel of land within any rural or residential zoning district, and such unregistered or inoperable vehicles if stored out of doors shall be stored in other than the required front yard and such that it ~~cannot be seen from~~ is visually screened from any public or private street or right-of-way unless stored within an attached carport. Such storage shall maintain a **five (5) foot** clear path around any structures.

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Text Amendment: TA2012033 **All Districts**

Applicant: Commission-Initiated

Request: Text Amendment to the Maricopa County Zoning Ordinance to permit a maximum lot coverage of 25% in the Rural-43 zoning district

Darren Gerard, Deputy Planning Director, presented the above item. This is a text amendment to the Zoning Ordinance in regard to Article 503.5.4 to increase the maximum Rural-43 lot coverage from 15% to 25%. There has been one email of support and there was no known opposition. This will bring unincorporated Maricopa County zoning jurisdiction in alignment with the City of Phoenix RE-43 and most other area jurisdictions equivalent to the County's Rural-43 Zoning District. Lot coverage increases have not been proposed in the Rural-70 and Rural-190 Zoning Districts, because those locations tend to be more remote for emergency fire protection and less appropriate for increased bulk of structure. The proposed verbatim language is shown in Paragraph 4. Again this is a change to Article 503.5.4. Included in the staff report was a Table showing current lot coverage in Maricopa County was 15% and all other jurisdictions were between 20% and 40%, so this would bring the County in line with those other jurisdictions, but keep it at the lower end of the spectrum at 25%. Staff recommends approval as outlined in Paragraph 4 of the report.

Commissioner Aster asked if lot coverage included all structures not just the main structure. Mr. Gerard responded that lot coverage was all area under roof: sheds, carports, canopies, structures, hen houses. Vice-Chairman Smith confirmed that included accessory buildings. Mr. Gerard responded it did and clarified all aggregate area under roof on the lot can be up to 25% of the lot.

There was a discussion as to why 25% was preferred over 30% or 35%. Mr. Gerard explained large portions of Rural-43 were developed within fire districts, but there were areas of Rural-43 that were more isolated and dependent upon subscription fire service, so staff was not prepared to double the lot coverage potential at this point. He stated this had gone through the Enhanced Regulatory Outreach Program and was raised from 20% to 25% as a result of public input. He stated staff was confident that the people who had been involved in the process believed that 25% was appropriate. He was not sure there would be strong opposition to go to 30% and if that would result in the Board sending it back to Stakeholder meetings for further discussion, which would increase the time for implementation. He stated there was not a strong push from the citizenry to go higher.

Chairman Deutsch asked if anyone from the public wished to speak.

COMMISSION ACTION: Commissioner Pugmire moved to recommend approval of TA2012033 according to Paragraph 4 of the staff report; Vice-Chairman Smith seconded the motion which passed with a unanimous vote of 7-0.

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The proposed verbatim language is shown below, with added text underscored and deleted language struck-through:

Chapter 5 – Rural Zoning Districts

SECTION 503. RURAL-43 (Rural Zoning District – One Acre Per Dwelling Unit)

ARTICLE 503.5. INTENSITY OF USE REGULATIONS: The intensity of use regulations are as follows:

1. ***Lot Area:*** Each lot shall have a minimum lot area of **one acre**.

2. ***Lot Width:*** Each lot shall have a minimum width of **145 feet**.

3. ***Lot Area per Dwelling Unit:*** This minimum lot area per dwelling unit shall be **one acre**.

1. ***Lot Coverage:*** The maximum lot coverage shall be ~~**15%**~~ ***25%*** of the lot area.

Text Amendment: TA2013001 **All Districts**

Applicant: Commission-Initiated

Request: Text Amendment to the Maricopa County Local Additions & Addenda to adopt and amend updated construction safety codes

Darren Gerard, Deputy Planning Director, referred the Commissioners to the two handouts they received at the meeting and the second addendum to the staff report, which included the verbatim language being recommended by staff after the May 21st Building Code Advisory Board (BCAB) meeting. He introduced Tom Ewers, Chief Building Official and Plan Review Manager for Maricopa County Planning and Development Department.

Mr. Ewers presented the above item. He explained that every three years staff seeks to update the International Codes by adopting the Local Additions and Addenda. The changes between the 2009 and 2012 International Codes were minor in nature and most were editorial in that they took all of the definitions out of the different sections and moved them into Chapter 2 of each of the codes. He explained the code books have black lines in the margins that show changes from one edition to the other, and the 2012 edition had very few black lines, except in Chapter 16 which deals with some structural and wind load requirements and Chapter 17 which deals with special inspections requirements. He stated staff was seeking to adopt the 2012 International Suite of Codes and the 2011 National Electrical Code. He stated staff was also seeking to adopt the same amendments that were proposed by the Arizona Building Officials and the Maricopa Association of Governments Building Code Committee, which were included in the leg-edit draft that was

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presented to the BCAB at three different hearings and was being presented to the Planning & Zoning Commission. Staff did receive proposed amendments from the Homebuilders Association and SRP that were included in staff's original and revised drafts that were in the Commissioners' packets. The Arizona Masonry Counsel suggested an additional change that affects the wind loading on masonry fences, which was passed out to the Commissioners at the meeting, and would be include in the redraft going to the Board of Supervisors. Staff has received a couple of letters of support and some emails in opposition, which were included in the Commissioners' packets. A letter of opposition was passed out to the Commissioners at the meeting and a letter from David and Sharon Mann supporting the adoption of the new codes, in particular, the adoption of the green code and the energy code was received at the meeting and Mr. Ewers read it into the record. Mr. Ewers indicated the Local Additions and Addenda with the MAG/AZBO amendments and some amendments from the Homebuilders Association, SRP and the Arizona Masonry Counsel were being presented to the Commission and staff asked the Commission recommend approval of TA2013001 to be forwarded to the Board of Supervisors.

Chairman Deutsch asked if there were questions for staff.

Commissioner Pugmire asked if cost estimates had been done on the Codes' effect on a typical house. Mr. Ewers responded that staff had not done cost estimates. He stated that with the Energy Codes there was the philosophy that whatever it costs, it saves. Commissioner Pugmire asked if that was a philosophy or was it true. Mr. Ewers believed it was true, stating whatever improvements you make to a building that can save you energy will eventually pay for itself and then there is the difference in how many years it takes to pay for itself. Commissioner Pugmire confirmed that they did not know of any cost increases created by the code. Mr. Ewers stated the changes being recommended from the 2009 Code were not sufficient to make any substantial cost difference in the construction of a building.

Chairman Deutsch asked if there were any other questions for staff and asked Spencer Kamps if he wanted to speak.

Spencer Kamps, representing the Homebuilders Association of Central Arizona, spoke in favor of the item. Mr. Kamps stated they had worked well with staff in addressing some of their concerns related to the Codes. He stated they supported, for the record, the adoption of the Building Codes. He explained there were advantages to that for the industry as it related to uniformity and certainty in updating your Codes so they were supportive of that. He stated they had concerns over the Energy Code and submitted amendments related to the HERS path to compliance. Addressing the cost issue, Mr. Kamps stated the HERS path allows them to obtain the same energy savings to the home buyer as the Code with about half the cost, which was why they proposed the amendment and were grateful that it was being included in the Code. He encouraged the Commissioners to pass it.

Chairman Deutsch asked if there were any questions.

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Sharon Bonesteel, representing SRP, spoke in favor of the item. Addressing Commissioner Pugmire's comment on the cost savings, Ms. Bonesteel stated she provided to staff the Department of Energy's review of the cost of the Energy Code as it related to the 2006 Energy Code and the 2009 and they were looking at a net positive cash flow within one year for the 2009 and two years for 2012. She stated life-cycle cost savings were $6,550 in terms of money that residents would not be putting into utility bills and would be able to spend back into the community. She stated the Energy Code was a code of many selections and paths, giving a lot of different options in the way people could comply with the Code. Ms. Bonesteel stated one of the key elements about the IRC and the IECC was they allowed a small builder who builds one or two homes a year to have a prescriptive path, an easy path to take to comply with the code and they allowed the large scale homebuilders to utilize some of those other method that were very efficient when you are building 300 homes. She stated she had been involved in the development of the building codes for probably 16 years, attended the code hearings, and been a part of helping to write them and making sure that they were reasonable. Ms. Bonesteel urged the Commissioners' support.

Chairman Deutsch asked if there were any questions.

Commissioner Aster asked for clarification of the $6,550. Ms. Bonesteel explained the Arizona Energy and Cost Savings for New Single and Multi-Family Homes did cost savings comparisons of the 2012 Energy Code to the 2009 and 2006 Codes. She stated they looked at life-cycle cost savings and net positive cash flow in a single pay back and the dollars and cents that people would be saving. She stated the 2012 Energy Code was expected to save a homeowner about $154 a year on up to maybe $500 a year, depending on the house, and the $6,550 had to do with life-cycle cost savings.

Chairman Deutsch asked if there were any other questions.

COMMISSION ACTION: Commissioner Aster moved to recommend approval and adoption of TA2013001; Vice-Chairman Smith seconded the motion which passed with a unanimous vote of 7-0.

<u>Text Amendment: TA2013002</u> **All Districts**

Applicant: Commission-Initiated

Request: Text Amendment to the Maricopa County Zoning Ordinance to clarify a maximum height of retaining walls

Darren Gerard, Deputy Planning Director, presented the above item. There is one email of support. This is a simple housekeeping item. Article 1111.5.2 will be revised to reference Article 1201.4 permits retaining walls subject to hillside slopes to have a maximum 30 foot height where they are otherwise limited to a maximum six foot

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height. This is not changing regulation. It is just housekeeping to make the document more user friendly so that people understand they can have higher walls on hillsides. The proposed verbatim language is listed in Paragraph 4. Again that changes Article 1111.5.2.4. Staff recommends approval as shown in Paragraph 4.

Chairman Deutsch asked if there were questions for staff; if anyone from the public wished to speak; and if there was any discussion.

COMMISSION ACTION: Commissioner Johnson moved to recommend approval of TA2013002 according to Paragraph 4 of the staff report; Commissioner Burrows seconded the motion which passed with a unanimous vote of 7-0.

The proposed verbatim language is shown below, with added text underscored and no language proposed for deletion:

1111.5.2.4. Retaining walls shall not exceed a height of **six (6) feet** as measured from the low side finished grade to the top of the earth being retained, except as permitted in Article 1201.4 of this Ordinance.

Text Amendment: TA2013003 **All Districts**

Applicant: Commission-Initiated

Request: Text Amendment to the Maricopa County Zoning Ordinance, Section 1205, Drainage Regulations to allow administrative approval of drainage waivers

Darren Gerard, Deputy Planning Director, presented the above item. This is an effort to streamline the development process. The New River Desert Hills Community Association did express some early concern that staff believes has been alleviated in noting that the Administrative Drainage Waivers will have site posting giving neighbors the opportunity to provide comment and that the administrative determination may be appealed to the Drainage Review Board, which also happens to be the same body as the Board of Adjustment. The proposed verbatim language is listed in Paragraph 4. To summarize, it will delete Articles 1205.4.4, 1205.4.5 and 1205.4.6.; add Articles 1205.3.9 and 1205.6.4; revise Articles 1205.5 and 1205.6; and all other Articles in that Chapter will be renumbered accordingly. Mr. Gerard introduced Michael Norris, Drainage Review Supervisor, who could address questions the Commissioners might have. Staff recommends approval subject to Paragraph 4.

Chairman Deutsch asked if there were any questions for staff; if anyone from the public wished to speak; and if there was any discussion.

Commissioner Johnson stated he was glad to see some of the cleanup and the streamlining of the process, especially when it came to drainage.

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Chairman Deutsch asked if there was any other discussion and if anyone from the public wished to speak.

COMMISSION ACTION: Commissioner Burrows moved to recommend approval of TA2013003 according to Paragraph 4 of the staff report; Commission Johnson seconded the motion which passed with a unanimous vote of 7-0.

The proposal is to delete Articles 1205.4.4, 1205.4.5 & 1205.4.6; add Articles 1205.3.9 & 1205.6.4; revise Articles 1205.5 & 1205.6; and to renumber the articles accordingly. The proposed verbatim language is shown below, with added text underscored and deleted language is struck-through:

ARTICLE 1205.3 ADMINISTRATION: This article sets forth the duties and powers of the Drainage Administrator and the limitations on regulation.

1205.3.1 Drainage Administrator: The Board of Supervisors of Maricopa County shall appoint the Director of the Maricopa County Planning and Development Department or a duly authorized representative as the Drainage Administrator who shall enforce the provisions of this Regulation.

1205.3.2 Mandatory Duties:

The Drainage Administrator shall:
1. Review drainage reports and plans for all developments of land covered by this ordinance and approve such plans when the requirements of this section are met.
2. Investigate violations and complaints of non-compliance with the Ordinance.
3. Keep copies of all documents or other submissions made pursuant to the requirements of this section.
4. Issue notices or orders necessary to enforce the provisions of this section.
5. Upon determination that development of land subject to this Ordinance has proceeded without drainage clearance, take action necessary to obtain compliance with this Ordinance.

1205.3.3 **Discretionary Powers:**
The Drainage Administrator may:

1. Inspect properties for which approval of drainage and grading reports and plans has been requested.
2. Inspect properties in response to complaints and, if violations are found, require compliance with the provisions of this Ordinance.
3. Upon determination that all reasonable means to gain voluntary compliance have been exhausted, record a notice of non-compliance or disclaimer with the Maricopa County Recorder in a manner so that it appears in the chain of Title of the affected parcel of land.
4. Issue notices of violation pursuant to this Ordinance.

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5. Require additional information necessary to make a determination concerning violations and compliance with the provisions of this Ordinance.
6. Adopt drainage design standards, guidelines, administrative rules, procedures and policies to implement and effectuate the purposes of this section.
7. Establish, collect and regulate fees, which have been which have been approved by the BOS, for review and inspection of drainage. Fees will be waived for all Federal, State, County and Municipal governments that are developing in the unincorporated areas of Maricopa County.
8. Require appropriate financial assurances for one or more of the following drainage infrastructure projects:
a. Drainage control features which provide protection for the development, such as dams, levees, dikes and interceptor channels or canals;
b. Common area retention systems or drainage way easements affecting two or more tracts or phases of development;
c. A development that has been interrupted and a partially completed drainage system presents a flood hazard to adjacent property;
d. A project that has more than one phase and the schedule of construction of all phases is longer than one year.
9. Grant Drainage Waivers pursuant to Article 1205.6 of this Ordinance.

ARTICLE 1205.4 DRAINAGE REVIEW BOARD

Pursuant to the authority granted in ARS 11-251, the Board of Supervisors shall appoint each member of the Maricopa County Board of Adjustment as a member of the Drainage Review Board (DRB) which shall hear requests for waivers to this section and appeals from interpretations made by the Drainage Administrator in accordance with the rules of this section.
1205.4.1**.** The Drainage Review Board shall select a chair and a vice chair from among its own members who shall have the power to administer oaths and take evidence.
1205.4.2. The Drainage Review Board shall by resolution fix the time and place of its meetings. The meetings shall be open to the public; minutes of its proceedings and records of its examinations and other official actions shall be kept and filed in the office of the Maricopa County Planning and Development Department as a public record.
1205.4.3. The Drainage Review Board shall adopt rules of procedure consistent with the provisions of this Ordinance for the conduct of Drainage Review Board business including establishment of a fee schedule to cover in part administrative costs incurred in the processing of appeals, drainage clearances, drainage waivers, plans review and performance bonds. The fee schedule shall be effective when approved by the Board of Supervisors and may be separately amended from time to time as deemed necessary by the Board of Supervisors.
~~1205.4.4. Property shall be posted a minimum of fifteen days prior to a public Drainage Review Board hearing date.~~

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~~1205.4.5. The Drainage Review Board may prescribe, in connection with the grant of any waiver or appealed clearance, conditions determined necessary to fully carry out the provisions and intent of this section.~~
~~1205.4.6. If the Drainage Review Board has cause to believe, after approval of a waiver, that any stipulations or conditions may have been violated, it may set a hearing for the purpose of determining whether to revoke the waiver for such violation. The Drainage Review Board may revoke the waiver upon finding a violation of the stipulations or conditions or it may grant a limited time to allow the violator to correct the violation in order to avoid revocation of the waiver.~~

ARTICLE 1205.5 APPEALS

1205.5.1 Appeals of any decision of the Drainage Administrator to the Drainage Review Board shall be filed with the Drainage Administrator within 30 days from the receipt of notice of the decision to be appealed and shall be in writing on a form provided by the Drainage Administrator. The notice of appeal shall specify the grounds for said appeal.
1205.5.2 During the pendency of an appeal all matters regarding the proceeding shall be stayed unless the Drainage Administrator certifies to the Drainage Review Board that by reason of facts surrounding the appeal the stay would, in the opinion of the Drainage Administrator, cause imminent peril to life or property. In such cases the other matters shall not be stayed.
1205.5.3 The Drainage Review Board shall fix a time for hearing the appeal and give notice to the parties in interest and to the public as set forth herein. The Drainage Review Board shall hear and decide the appeal within a reasonable time.
1205.5.4. After public hearing, the Drainage Review Board shall render its decision whereby the Board may either affirm or reverse the decision of the Drainage Administrator.
1205.5.4~~5~~ Any person aggrieved by a decision of the Drainage Review Board may, within 30 days of such decision, appeal to Superior Court ~~the Board of Supervisors by filing a written notice of appeal with the Clerk of the Board of Supervisors on a form provided by the Drainage Administrator. Said notice of appeal shall specify the grounds of appeal. The Board of Supervisors shall conduct the appeal under such rules of procedure as they shall adopt. The decision of the Board of Supervisors shall be a final decision~~.

ARTICLE 1205.6 DRAINAGE WAIVER

1205.6.1 The Drainage ~~Review Board~~ Administrator shall hear and decide requests for waiver from the requirements of this section.
1205.6.2 Before granting a waiver the Drainage ~~Review Board~~ Administrator shall find that each of the following criteria is met:
a. The grant will not result in an increase in the 100-year peak flow or discharge; and

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b. By reason of special physical circumstances, location or surroundings of the property, strict application of the Regulation would deprive the property of privileges enjoyed by similar property; and

~~c. The waiver would not constitute a grant of special privilege inconsistent with the limitations on similar property; and~~

~~d~~c. The waiver request is the minimum necessary, considering the flood hazard, to afford relief; and

~~e~~d. There is a showing of good and sufficient cause; and

~~f. Failure to grant the waiver would result in exceptional hardship to the applicant; and~~

~~g~~e. Granting the waiver will not result in additional threats to public safety, health, welfare, or extraordinary public expense, create a nuisance, the victimization of or fraud on the public and that the waiver does not conflict with existing local laws or ordinances.

1205.6.3 The Drainage ~~Review Board~~Administrator may attach such conditions or restrictions to the granting of a waiver as ~~it~~ the Drainage Administrator determines necessary to reduce or eliminate potential threats to public safety, health, welfare or to public or private property resulting from the granting of the waiver. The applicant may be required to post bonds, assurances or other security to guarantee compliance with the conditions and restrictions imposed.

1205.6.4 Property shall be posted a minimum of fifteen days prior to the Drainage Administrator's decision.

Development Master Plan: DMP2013003 **District 5**

Applicant: Beus Gilbert, PLLC for Desert Whisper, LLC

Location: Northwest corner of 363rd Avenue and Indian School Road (in the Tonopah area)

Request: Modification of condition 'c' and elimination of condition 'k' to the Desert Whisper Development Master Plan (ref. #DMP2007004) (Approx. 960 acres) – Desert Whisper

Rachel Applegate, Planner, presented the above item. Case DMP2013003 is a request for modification of the Desert Whisper Development Master Plan which is a mixed use master planned community approved by the Board of Supervisors in 2006. The applicant is requesting modification of condition 'c' and elimination of condition 'k' which addresses a timeframe for project development. The applicant complied with notification to property owners within 300' and mailed a secondary notification letter with the public hearing dates. To date, staff has not received any letters in support or opposition regarding the request. The developer did receive approval for a zone change and approval for three Preliminary Plats. The initial phases of development did not progress to Final Plat stage. Staff recognizes the economic conditions may have impeded progress and believes a time extension is appropriate and consistent with other cases presented to the Commission and approved by the Board. Reviewing County agencies have no objections to the

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request. Staff recommends the Commission motion for approval to modify condition 'c', remove condition 'k' with re-labeling of all conditions as identified in Paragraph 11 of the staff report.

Chairman Deutsch asked if there were any questions for staff and if the applicant was present.

Lindsay Schube, Beus Gilbert, spoke in favor of the item and commended staff.

Chairman Deutsch asked if there were any questions.

Vice-Chairman Smith expressed concern that a lot of smaller DMPs were approved without a lot of infrastructure as far as shopping centers and employment, because larger developments next to them, such as Belmont, were going to furnish this infrastructure. Now that these larger developments were not being developed, he asked if the Commissioners would still have a chance to make sure that the smaller developers put some of these things in place. Matthew Holm, Comprehensive Planning Supervisor, stated in this particular instance, any type of infrastructure that was required, such as sewer, water, emergency response, etc., if that was tied to Belmont or any other project and that plan was altered, it would be the developer's responsibility to come back and either modify their plan or come up with some other solution. Mr. Holm stated absent that, the conditions that were reviewed when it initially came through holds true today, but ultimately the developer would be responsible for installing the required infrastructure.

Vice-Chairman Smith clarified it was not the infrastructure as much as employment opportunities and shopping and things like that, which Belmont's development would provide. His fear was that these smaller ones might develop first and there would not be any employment, which defeated the purpose of the development master plan theory. Vice-Chairman Smith wanted to make sure that if this particular development got going that Belmont was going to be right there or behind it or there was a way to provide employment and other opportunities, open spaces, etc., that comes with a properly run Development Master Plan. He wanted to make sure there was a tool to say you are going to have to provide some of that when you start your final plating or come in for your final zoning changes.

Mr. Gerard noted that the employment opportunities in commercial, the ratio was smaller, but it was not completely removed and that was taken into account in proximity to the larger acreage proposed for Belmont in the fact that there was a mixed use employment center that the area plan called for to the west, so it was not completely residential without taking into account those other opportunities, but those types of land use ratios always had to be evaluated and reevaluated over time.

Vice-Chairman Smith wanted to make sure that they could bring it up to date twenty years down the road when this thing started to develop out. Mr. Holm stated that was why they were here and noted the language in condition 'c' stated a

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written report would be submitted every five years and at that point, the Commission would have the opportunity to determine whether the land use designation still represented appropriate and better long-term land use planning. Ms. Shube reiterated they would have to come back to the Commission and they would all get an opportunity to look at if the land use was still appropriate.

Chairman Deutsch asked if Ms. Shube agreed with the modification and the way it was written and the elimination of 'k'. Ms. Schube confirmed she was in agreement.

Chairman Deutsch asked if anyone from the public wished to speak and if there were any questions and discussion from the Commissioners.

COMMISSION ACTION: Commissioner Johnson moved to recommend approval of DMP2013003 with conditions and modifying condition 'c' and eliminating condition 'k' as listed in Paragraph 11 of the staff report; Vice-Chairman Smith seconded the motion which passed with a unanimous vote of 7-0.

c. ~~If the initial final plat has not been approved within four (4) years from the date of Board of Supervisors approval, this development master plan will be scheduled for public hearing by the Maricopa County Board of Supervisors, upon recommendation by the Maricopa County Planning and Zoning Commission, to consider revocation of the adopted development master plan. Further, should this development master plan be rescinded, all zoning and other entitlement changes approved as part of the Desert Whisper Development Master Plan shall also be considered for reversion by the Board of Supervisors, upon recommendation of the Commission, to the previous entitlements.~~

The applicant shall submit a written report every five years from the date of Board of Supervisors approval of DMP2013003 which details the status of this project, including progress on obtaining necessary entitlements, licenses, and permits; compliance with the conditions of approval; compliance with the approved narrative report; compliance with the approved land use plan; and justification as to how the approved land use plan still represents appropriate land use planning for the property and unincorporated Maricopa County in accordance with the goals and policies in its comprehensive and applicable area plan. This report shall be scheduled for public hearing by the Maricopa County Board of Supervisors (Board), upon recommendation by the Maricopa County Planning and Zoning Commission (Commission), to consider whether the planning justification for this DMP is still present, and whether the land use designations associated with this DMP still represent appropriate and better long-term land use planning in accordance with the goals and policies of the Maricopa County Comprehensive Plan and applicable area plan. If the Board rescinds this DMP and reverts the current land use designations back to *Rural (0-1 du/ac),* all entitlements associated with this project that were conditional pursuant to the Maricopa County

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Zoning Ordinance may also be considered by the Board, upon recommendation by the Commission, for reversion to the prior entitlements. In such an event, the comprehensive plan land use map, area plan land use map, and, as applicable, zoning map shall be altered to reflect Board action.

~~k. The master developer shall submit a written report to the Maricopa County Planning and Zoning Commission outlining the status of the Desert Whisper Development Master Plan every three years following Board of Supervisors approval. The status report shall discuss development progress, including the total number of units built and platted, locations of areas/parcels under construction, status of infrastructure development, status of non-residential property, progress on how the stipulations of approval are being implemented, and any other information as requested by the Maricopa County Planning and Development Department.~~

All other conditions approved by the Board of Supervisors pursuant to case DMP2007004 shall remain in effect. All conditions listed in their entirety in final format are as follows:

a. Development shall comply with the Development Master Plan document entitled "Desert Whisper Development Master Plan", a bound document, dated January 30, 2008 and stamped received April 28, 2008, including all exhibits, maps, and appendices, except as modified by the following stipulations.

b. Changes to the Desert Whisper Development Master Plan with regard to use and intensity, or changes to any of the stipulations approved by the Maricopa County Board of Supervisors, shall be processed as a revised application with approval by the Board of Supervisors upon recommendation by the Maricopa County Planning and Zoning Commission. Revised applications shall be in accordance with the applicable Development Master Plan Guidelines, subdivision regulations, and zoning ordinance in effect at the time of application(s) submission. The Maricopa County Planning and Development Department may approve minor changes administratively as outlined in the Maricopa County Development Master Plan Guidelines in effect at the time of amendment. Non-compliance with the approved Desert Whisper Development Master Plan narrative report, maps, and exhibits, or the stipulations of approval will be treated as a violation in accordance with the provisions of the Maricopa County Zoning Ordinance.

c. The applicant shall submit a written report every five years from the date of Board of Supervisors approval of DMP2013003 which details the status of this project, including progress on obtaining necessary

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entitlements, licenses, and permits; compliance with the conditions of approval; compliance with the approved narrative report; compliance with the approved land use plan; and justification as to how the approved land use plan still represents appropriate land use planning for the property and unincorporated Maricopa County in accordance with the goals and policies in its comprehensive and applicable area plan. This report shall be scheduled for public hearing by the Maricopa County Board of Supervisors (Board), upon recommendation by the Maricopa County Planning and Zoning Commission (Commission), to consider whether the planning justification for this DMP is still present, and whether the land use designations associated with this DMP still represent appropriate and better long-term land use planning in accordance with the goals and policies of the Maricopa County Comprehensive Plan and applicable area plan. If the Board rescinds this DMP and reverts the current land use designations back to *Rural (0-1 du/ac),* all entitlements associated with this project that were conditional pursuant to the Maricopa County Zoning Ordinance may also be considered by the Board, upon recommendation by the Commission, for reversion to the prior entitlements. In such an event, the comprehensive plan land use map, area plan land use map, and, as applicable, zoning map shall be altered to reflect Board action.

d. Prior to approval of any zone change, the master developer shall enter into a development agreement with Maricopa County. Further, prior to approval of any zone change this development agreement shall be signed by both the master developer and the designated Maricopa County representative(s), approved by the Board of Supervisors and provided to the Maricopa County Planning and Development Department for public record.

e. The master developer shall be responsible for the construction of all public and private on-site roads within the Desert Whisper Development Master Plan. Further, the Desert Whisper homeowners association shall be responsible for the maintenance and upkeep of all private roads, public open spaces and facilities, washes, parks, roadway median landscaping, landscaping with public rights-of-way, and all pedestrian, bicycle, and multi-use paths.

f. Prior to approval of each final plat, the master developer shall submit to the Maricopa County Planning and Development Department a landscape inventory and salvage plan which identifies and assesses the native vegetation within the development parcels, and which determines the preservation/disposition for each of the selected native vegetation.

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g. Landscaping of all common areas and open spaces, except for identified recreational areas, within Desert Whisper shall consist of indigenous and near-native plant species of a xeriphytic nature.

h. All irrigation water supplied for common/open space areas and/or lakes over ten (10) acres in size shall be provided entirely by a renewable supply of water, such as treated effluent, surface water, or Central Arizona Project (CAP) water, within five (5) years after issuance of the first building permit. Interim water for the purposes noted may be supplied by groundwater and shall comply with all Arizona Department of Water Resources regulations. Proof of conversion from groundwater to a renewable water supply shall be provided to the Maricopa County Planning and Development Department within the five year requirement.

i. The Desert Whisper Development Master Plan shall be developed sequentially as depicted on the phasing diagram contained in the Desert Whisper Development Master Plan narrative report.

j. The total number of residential dwelling units for the Desert Whisper Development Master Plan shall not exceed 2,943 dwelling units. To help ensure compliance, the cumulative number of dwelling units completed to date, in relation to the identified limit, shall be identified on all plats.

k. The master developer shall notify all future Desert Whisper Development Master Plan residents that they are not located within an incorporated city or town, and therefore will not be represented by, or be able to petition a citizen-elected municipal government. Notification shall also state that residents will not have access to municipally-managed services such as police, fire, parks, water, wastewater, libraries, and refuse collection. Such notice shall be included on all final plats, be permanently posted on the front door of all home sales offices on not less than an 8-½ by 11 inch sign, and be included in all homeowner association covenants, conditions, and restrictions (CC&Rs).

l. All park facilities shall be completed concurrently with residential development of the respective plat on which the park is shown. Park facilities and amenities shall be identified on all applicable plats, and are subject to review by the Maricopa County Planning and Development Department.

m. Not less than 36 acres shall be reserved for Recreational Open Space (ROS) land use. Further, the project shall have not less than two (2) park sites as depicted on the land use plan. Further, not less than thirteen (13) pocket parks at least one (1) acre size each shall be

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provided. All parks shall include recreational amenities. At the time of each preliminary plat submission, the master developer shall include a description of the status of the cumulative ROS acreage and park numbers with respect to the requirements of this stipulation. A description of the types of recreational amenities that will be included in the ROS and mini-park areas shall also be submitted with all preliminary plats to the Maricopa County Planning and Development Department.

n. Unless otherwise agreed to in writing by the applicable school districts, not less than one (1) school site and a minimum of 17 acres shall be reserved for a school at the site identified on the Desert Whisper land use plan. Said school shall not front on to arterial streets.

o. The master developer shall provide major multi-use trails and minor pathways/trail connections as depicted on Figure 12 of the Desert Whisper Development Master Plan. Such trails and minor pathways/trail connections shall be identified on all plats and are subject to approval by Maricopa County.

p. At the time each residential building permit is issued, a quality of life assessment of $596.00 will be made available to the Maricopa County Library District for the purposes of future library service and infrastructure needs.

q. Prior to approval of the first preliminary plat or first Approval to Construct (whichever comes first), Final Water and Sewer Master Plans must be submitted, under application and fee, for the onsite water and sewer infrastructure to MCESD for approval. Approval of these final master plans will be required before any Final Plats will be approved by MCESD.

r. The property owner and their successors waive claim for diminution in value if the County takes action to rescind approval of this Development Master Plan due to noncompliance with any of the approved stipulations.

s. The following Maricopa County Drainage Review stipulations shall apply:

1. All development and engineering design shall be in conformance with the Drainage Regulation and current engineering policies, standards and best practices at the time of application for construction. No variance from the Drainage Regulations or drainage engineering design standards is granted or entitled under this DMP.

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2. Drainage review of planning, zoning and/or Development Master Plan cases is for conceptual design only and does not represent final design approval nor shall it entitle applicants to future designs that are not in conformance with Drainage Regulation and design policies and standards. Modeling submitted with this DMP is for conceptual level analysis only. All plats shall be submitted with appropriate and detailed model to reflect the existing and proposed development conditions.

3. Hydrology analysis for this development is dependent on the conditions of upstream area around Central Arizona Project. All flow data from this study will not be approved until FEMA approves the condition around the Central Arizona Project. Hydrology analysis will need to be re-done if FEMA approval is not granted.

t. The following Maricopa County Department of Transportation stipulations shall apply:

1. The Applicant/Developer shall provide a Traffic Impact Study (TIS). The TIS shall comply with MCDOT requirements and shall address development phasing and the offsite improvements necessary to accommodate the anticipated traffic demands. The TIS must be approved before subsequent approval of any roadway improvement plans. The TIS shall be updated prior to the first final plat approval and with each development phase to reflect current conditions and any changes to the development plan. Additional lane capacity on offsite alignments will be reviewed with each resubmittal of the TIS. The project must comply with all recommendations in the MCDOT-approved TIS. The Applicant must provide an updated TIS prior to rezoning.

2. The Developer shall make a contribution to regional transportation infrastructure. The contribution shall be $3,281.00 per residential dwelling unit. The Developer may choose to construct off-site street improvements in lieu of payment of this contribution. Such off-site street improvements must be "system roadways," must be all-weather facilities, must meet county standards in effect at the time they are improved, and must be pre-approved by MCDOT. MCDOT may require a Development Agreement to detail the specifics of construction, including phasing and timing. If the Developer chooses not to construct off-site regional roadway improvements, the Developer shall pay the contribution amount at the time individual building permits are issued, or per an alternate agreement as approved by MCDOT.

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3. If required per item 2 above, a Development Agreement shall be executed prior to any zoning approval. The Development Agreement shall be an enforceable contract, regardless of annexation.

4. The Applicant/Developer shall provide the ultimate full or half-width of right-of way for all public roadways as follows:

A.)	Bethany Home Road:	65 feet (entire north boundary of project.)
B.)	Camelback Road:	70 feet and 140 feet with 30 feet of landscape/roadway/utility easement on each side.
C.)	Indian School Road:	65 Feet.
D.)	371st Avenue:	65 Feet.
E.)	363rd Avenue:	65 Feet

The above references interior and perimeter roads. (The project boundary is the centerline of all perimeter roadways and/or roadway alignments.) Full-width right-of-way shall be provided where the entire roadway is within the development (interior roadways). Half-width right-of-way shall be provided where "half" of the roadway is within the development (perimeter roadways).

At intersections where future dual left turn lanes are possible, right-of-way shall be increased at the intersection to 150-feet for arterials and 220-feet for parkways. This widened right-of way section shall accommodate dual left turn lengths (including reverse curves.)

5. The Developer shall be responsible for design and construction of the ultimate full-width of all interior roadways, and the ultimate half-width of all perimeter roadways, unless approved otherwise by MCDOT. A portion of these improvements may be creditable to the Developer's contribution referred to in item 2. All roadways must meet county standards in effect at the time they are improved. Half-width roadways must be designed so as to safely carry two-way traffic until the ultimate roadway is constructed.

6. The Developer is responsible for assuring paved access to their site at the time of the first final plat. Improvements necessary to provide paved access may or may not be creditable to the Developer's contribution referred to in item 2.

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7. The Developer shall provide all-weather access to all parcels and lots, including an all weather access from I-10.

8. The Developer shall provide and make available a minimum of two access points to each development phase and/or subdivision unit.

9. The Developer shall not locate elementary or middle schools on arterial roads.

10. The Developer shall design the development to promote pedestrian, bicycle and other alternative modes of transportation to public facilities within and adjacent to the site (i.e., bus bays, electric vehicles, shared accommodations, internal trail systems, etc.)

11. If streetlights are provided, installation shall be provided by the Developer. If streetlights are within public rights-of-way, a Street Light Improvement District (SLID) or comparable authority shall be established to provide operation and maintenance. The Developer should contact the Office of the Superintendent of Streets (602-506-8797) to initiate the SLID process.

12. The Developer shall design landscaping to comply with all MCDOT requirements and to conform to Chapter 9 of the MCDOT Roadway Design Manual. The Developer (or as assigned to the Home Owner's Association (HOA)) shall be responsible for maintenance of landscaping within public rights-of-way.

13. The Developer shall provide a construction traffic circulation plan. The construction traffic circulation plan must be approved by MCDOT.

14. The Developer shall comply with all applicable local, state and federal requirements. (Dust control, noise mitigation, AZPDES, 404 permitting, etc.)

u. The following Flood Control District of Maricopa County stipulation shall apply:

1. Prior to approval of any development in the Palo Verde Zone "A" delineation floodplains through the DMP limits, a detailed floodplain study must be completed and submitted to the Flood Control District for approval. The study will then be submitted to the Federal Emergency Management Agency for the

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Conditional Letter of Map Revision (CLOMR)/Letter of Map Revision (LOMR) process.

v. The following Maricopa County Department of Emergency Management stipulation shall apply:

1. Any areas not covered by the existing Outdoor Warning Siren System used to alert residents within the 10-mile Emergency Planning Zone of the Palo Verde Nuclear Generating Station in time of emergency shall be required to include additional sirens, at the developer's cost, in order to provide adequate warning for the residents of that development, using technical information concerning the siren system obtained from the Emergency Planning Department at the Palo Verde Nuclear Generating Station. In addition, adequate signage available from the Palo Verde Nuclear Generating Station Emergency Planning Department shall be required to be posted on the site to inform the public of the presence of a nuclear generating station in the vicinity and outlining actions to take upon receiving warning notification.

w. The following Luke Air Force Base stipulation shall apply:

1. The master developer shall notify future residents that they are located within the vicinity of a military training route with the following notification:

"You are buying a home or property within the vicinity of a military training route, and may be subject to direct overflights and noise by Luke Air Force Base and other military jet aircraft in the vicinity.

Luke Air Force Base executes over 200,000 flights per year, at an average of approximately 170 over flights per day. Although Luke's primary flight paths are located within 20 miles from the base, jet noise will be apparent throughout the area as aircraft transient to and from the Barry M. Goldwater Gunnery Range, and other flight training areas.

Luke Air Force Base may launch and recover aircraft in either direction off its runways oriented to the southwest and northeast. Noise will be more noticeable during overcast sky conditions due to noise reflections off the clouds.

Luke Air Force Base's normal flying hours extend from 7:00 A.M. until approximately midnight, Monday through Friday, but some

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limited flying will occur outside these hours and during most weekends."

Such notification shall be permanently posted in front of all home sales offices on not less than a 3 foot by 5 foot sign, be permanently posted on the front door of all home sales offices on not less that an 8½ inch by 11 inch sign, be included in all covenants, conditions, and restrictions (CC&Rs) and be included in the public report.

x. Prior to any zoning change, the applicant shall submit to the Maricopa County Planning and Development a "will serve" letter and an approved Certificate of Convenience and Necessity (CC&N) from the Water Utility of Greater Tonopah which demonstrates a willingness and capability to serve the entire Desert Whisper Development Master Plan.

y. Prior to any zoning change, the applicant shall submit to the Maricopa County Planning and Development Department a "will serve" letter and verification of approval of a Maricopa Association of Governments (MAG 208) amendment from Balterra Sewer Corporation which demonstrates a willingness and capability to serve the entire Desert Whisper Development Master Plan.

z. The Desert Whisper Development Master Plan is not a protected development right plan.

aa. At the time each residential building permit is issued, two-hundred fifty dollars ($250) per residential unit will be paid by the developer to a park enhancement fund for trails and facilities enhancement and maintenance. The county shall deposit and hold all receipts in the parks special revenue fund for the specific purposes stated above. All interest earned on the fund shall remain an asset of the fund. The assets of this fund are not intended to replace existing county appropriations for similar purposes, but rather are intended as supplemental resources resulting from additional park usage by desert whisper residents. Details regarding this assessment are to be addressed in the development agreement.

Special Use Permit: Z2013024 **District 3**

Applicant: Withey Morris, PLC for Deer Valley High School District
Location: Cloud Road and 7th Avenue (in the New River area)
Request: Special Use Permit (SUP) for Wireless Communication Facility in the Rural-43 zoning district and in the Wireless Communication Facility Use District 1 (Approx. 0.034 acres) – St. Charles Wireless Tower

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Glenn Bak, Planner, presented the above item. Staff received 18 emails and one letter of opposition. Staff's recommendation was to approve with the conditions. The applicant proposed to construct an 80 foot high monopole and ground equipment within a fully enclosed area. The area would be approximately 1,499 square feet of a roughly 65 acre parcel that was located approximately 800 feet east of 7th Avenue and 240 feet east of Cloud Road. The site is part of a bus depot located adjacent to an elementary school. The proposed ground equipment will be hidden from view and surrounded by a CMU wall. In addition, portions of the parent parcel are enclosed by a CMU wall that appears to be of varying heights. In staff's analysis, the applicant states that the site was selected to provide vertical tower space to AT&T and other future carriers and it does have collocation potential. The New River Desert Hills Community Association (NRCHCA) provided a response letter requesting that the fence height be raised to 10 feet and a compromise of 8 feet has been proposed.

Chairman Deutsch asked if there were any questions for staff.

Commissioner Aster asked for clarification of the height. Mr. Bak responded the elevations were showing a 76 foot height for one of the collocations and the narrative showed a 72 foot height. He stated if the fence changes from what was proposed, staff would request an amended site plan be provided and the elevations be shown to be congruent between the narrative and the site plan.

Adam Baugh, Withey Morris, P.L.C., spoke on behalf of St. Charles Tower. He explained St. Charles Tower had a variety of cell tower sites throughout the mid-west and west. He stated they were not a cellular provider or a wireless carrier, but they built the infrastructure upon which these carriers would come and lease their space. Mr. Baugh understood the towers were sensitive to the area and so as a result these towers should be designed to provide two or three different providers rather than single towers for single carriers and that had been the philosophy they employed with Maricopa County. He gave a presentation detailing the need to provide and fill in a service gap between essentially Carefree and Desert Hills. Mr. Baugh stated customers that lived there had requested better service. He described the process in determining the site, stating initially, they had located two residential sites and were going to build an 80 foot tower that would blend in more with the residential character of the area; however, feedback from both the residents and key stakeholders in that area indicated these uses were better situated on institutional types of facilities. He stated they were directed towards the Deer Valley Unified School District site, which was a large campus. He stated the area surrounding their tower was the bus bay and bus parking. Mr. Baugh stated the school board approved a lease and an easement for this area with the condition they come back before the Commission for this process. He showed a slide and described the facility enclosure and reiterated it was placed in a more compatible area. He noted besides having a proposed 6 foot wall enclosure around their facility, there was a 10 foot perimeter block wall on the western side of the School District and another wall on Cloud Road which was of varying heights, so essentially there was two layers of walls. Mr. Baugh stated they sat it back significantly beyond what the

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minimum requirements were. He thought the Code was 80 feet from the property line and at their shortest point they were 200 feet and at their greatest point they were 1500 feet depending on which setback you measured from the north, south, east or west. By locating it more internal to the site in the bus barn, he thought the concern about putting this in a residential area had been addressed. He stated this will allow up to three providers on the site, the tallest being AT&T. Responding to Commissioner Aster's question on heights, Mr. Baugh stated their tower was 80 feet; the first antenna at its tallest point was at a centerline of 76 feet, which was shown on their site plan and their narrative mistakenly said it was 72 feet. He also stated their second one was at 65 feet and their third was at 55 feet, and if it was a matter of clarification in their narrative, they could adjust that number.

Mr. Baugh addressed the concerns of light, noise, obstructing the view and commercial use in a residential area. He stated they did not propose any lights on their facility. He believed there was the perception that this would generate a lot of noise and clarified there were two air conditioning (AC) units for this first user and they rotate back and forth so only one AC unit was running. He stated the fan size and unit were similar to residential AC units and some homes had one, two and sometimes three AC units. He believed that the impact of noise from their site was no greater than what already existed in the residential area. He noted the bus barn area had several AC units so they were compatible with what existed in the area. He noted they were 300 feet from the closest home and the homes were within 50 feet of each other so you would hear the neighbors' AC units before you would hear theirs. He appreciated the view in this area, but their pole was a diameter of 3 feet and it would not obstruct the mountain views. He did not characterize this as a commercial use as there was no employees, no business, and no traffic generated. He stated this was like a telephone pole or electrical pole and it was located on an institutional type of facility. Mr. Baugh stated they were agreeable to staff's stipulation that recommended increasing the wall to 8 feet. He stated they had been very responsive in trying to find a site that was the least impactful and was the most appropriate and compatible with the surroundings.

Mr. Baugh highlighted the reasons to approve. He stated it was a necessity and providers had to provide and fill in service gaps and it was not just in cellular technology but it was also in the data use. He reiterated it provided collocation. He stated it was compatible with the school and the bus area and there was a financial benefit to the School District which received lease payments that would increase with each carrier that locates on the pole. He stated they had worked through the New River Desert Hills Community Association (NRDHCA) and they were helpful in guiding them to this site and based on their written response to staff, this location was acceptable to the NRDHCA. He stated staff recommended approval and there was wisdom in that recommendation because they continually reviewed these types of requests and they knew what was compatible and appropriate.

Chairman Deutsch asked if Mr. Baugh agreed with the stipulations and Mr. Baugh confirmed he did.

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Chairman Deutsch asked if there were any questions.

Commissioner Aster stated for the record the gentleman requested that he be part of a conference call and Commissioner Aster did not participate in conference calls unless a staff member was present and Terri Hogan was on the call.

Commissioner Aster and Mr. Baugh discussed the perspective of 80 feet and the possibility of locating the carrier on the APS towers along 7th Avenue. Mr. Baugh stated that 80 feet was not an arbitrary height, but was based upon analysis and study and broadcast coverage and was required by the carriers to achieve their service needs. Mr. Baugh stated it was possible that APS could lease directly with a carrier and AT&T had that conversation with them. He explained they were not able to reach an agreement both for purposes of functionality and technicality, listing the following reasons why they could not locate on the towers along 7th Avenue: 1) the poles themselves were at an inadequate height to address the needs of the carriers in this area; 2) a private company like St. Charles Tower could not lease the poles; 3) this would not allow for collocation; 4) to put a carrier on the poles required the poles to be re-engineered and reinstalled; 5) APS would not sign a lease until the entire line had been completed and activated, which was an undetermined time frame and AT&T had a need now as well as some of these other carriers that have expressed some interest; 6) you would need to lease an area of ground for the equipment and they did not have the ability to do that; 7) they had entered into a lease with the School District and they could not extend the line from their equipment on the school property as it was too far and they would lose reception effectiveness; and 8) it would be closer to the residential area. He stated based on feedback from the New River Desert Hills Community Association (NRDHCA), a single monopole would be the most appropriate for this area and the other stealth designs that you would normally see on a residential property would not apply here. He stated the NRDHCA suggested a rust colored pole and agreed the pole would be a rust color if that was the recommendation of this Board and the NRDHCA.

Commissioner Aster stated he would have more questions for this gentleman, but would like to hear from the community at this point.

Vice-Chairman Smith had concerns that it was a monopole and disagreed that it would not obstruct a view, because it obstructed a natural view by just being there. He pointed out that within a two mile range there had to be 8 or 9 cell towers and questioned the need for 80 feet because it could be located on Carefree Highway on the hillside out of view of most of that area and still have direct line of sight of the area. He asked if the cell provider contacted them regarding needing a pole, because there were 7 or 8 cell towers there. He was not excited about the 80 foot pole in his district and did not see the justification for it in that location. He did not think they had done enough homework on a proper location, because there was a lot of hillside opportunity in that area that you could put a tower in and even stealth it. He would not vote for it unless he was convinced otherwise.

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Mr. Baugh stated that the first choice for AT&T, St. Charles Tower and the other providers for this area was to look at the existing infrastructure. He explained if the current infrastructure serves those needs, there was no need to go forward; however, if after doing the analysis, there is a need, they approach St. Charles and say they are interested in coming to the area. He stated that although there are a couple of towers in the area, there was a certain capacity that each tower could hold, which was also limited by its height as well. Mr. Baugh stated AT&T and St. Charles Tower explored those options and they realized there was still a need in this area. He stated they were very sensitive to this area and understood the dynamics involved because they had been working on this for so long, but they also knew there was an absolute need in this area and believed it was more appropriate on the school facility than anywhere else.

Vice-Chairman Smith asked why a 60 foot tower would not work. Mr. Baugh stated they were at the lowest point of a valley, so an 80 foot pole was needed in order to have broadcast coverage to fill the service need and if the height was reduced then additional poles would be needed in the area. The consensus that he heard was less poles were better and this allowed for AT&T and two other carrier to be on the pole.

Vice-Chairman Smith stated there were 8 towers within two miles from them. Mr. Baugh said they had looked at those options and none of those options were sufficient. Vice-Chairman Smith asked if they were going to discontinue those towers because of their tower. Mr. Baugh stated they were not and explained it was a network; a series of towers that connect and broadcast throughout the area. He stated they were not all their towers and they did not have carrier equipment on all those items. He explained because they work as a system, adding one did not replace one but it filled in the gaps and bridged things together.

Chairman Deutsch asked if AT&T was on 2 of those 8 Vice-Chairman Smith was talking about. Mr. Baugh stated that would be a question better left for AT&T, and it was important to understand they were a cell phone tower provider not a wireless carrier.

Commissioner Aster had more questions, but wanted to hear from the public.

Alan Muller, president of the New River Desert Hills Community Association (NRDHCA), spoke on their behalf. He stated they had worked with St. Charles Tower and had not been in favor of their two original sites which were next to residential homes. He stated they were not pleased with their location and the 80 foot tower, but understood there was a need for cell service in their area. He recommended putting a hiatus on this for a couple of months so they could get AT&T to answer Mr. Smith's questions. He recommended the 10 foot walls for the facility because when you drive down Cloud Road, even though there is a jagged wall, you see pieces of equipment and 10 feet would cover almost all of it and using 8 inch hollow block would absorb or mitigate most of the sound. He pointed out three carriers was six air conditioners in addition to the air conditioners that were there now and

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sound carries in their area. He stated eventually the 640 acres across the street would be developed and they wanted to protect those people. Mr. Muller stated they would like all the facilities in their area limited to two carriers not three. He stated 69kV lines were erected this past week on 7th Avenue and an ideal scenario would be to put an antenna at the top of the pole, but the equipment would have to be moved to the front of the new solar units or just east of the 7th Avenue location, so it would sit between 7th Avenue and the fence that encloses the solar units. He explained the reason for the rust color was it would look like the APS poles that were just installed. He stated there had to be lighting for emergency units at night and their placement and the effect on the adjacent homeowners had not been discussed.

Commissioner Johnson asked why the preference of two versus three on a tower. Mr. Muller responded in the Scottsdale area, you can see four or five carriers all clustered together with three or four antenna heights on them and it looks like it belongs in a commercial area. He stated this is a residential area and they are trying to keep it as clean as they can. Mr. Muller was concerned if you go to three, there is no reason why they would not come back and want four or five and actually move the pole up to 100 feet instead of 80 feet. He pointed out that AT&T provided the service and St. Charles collected rent.

Chairman Deutsch asked if they were opposed to having the pole or did the community need the service and they believed it needed the pole there. Mr. Muller stated it was very difficult to answer because their group labored between no pole and the community's need for service, so they wanted to try and make it as compatible to the area as possible.

Commissioner Aster discussed locating a structure by the solar array and having a tower that would accommodate one carrier, two at the most, which would bring the height of the tower down, and have it of a stealth nature. He thought a palm might be optimum and suggested if there were no other palms there, putting a couple of live palms around it. He asked Mr. Muller if he had a comment.

Mr. Muller stated at 15th Avenue and New River Road, there was an AT&T pole that had a palm on it and it looked horrible.

Chairman Deutsch asked if anyone else from the public wished to speak.

Mr. Baugh appreciated the comments the discussion generated and especially Mr. Muller's. He stated what he took away from this was they were in support of the location, the pole and the rust color. He stated they were agreeable to raise the wall height to 8 feet and maybe they would work with them on the 10 foot suggestion. He agreed to the 8 inch hollow block wall as well. He pointed out there was nobody at the meeting from the community. He stated although there was a preference maybe for a single carrier on a single pole, he did not believe staff would be supportive of that and did not think that was a good philosophy or precedent to set because there was a desire to make these collocations to reduce

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the number of poles. He stated if you were to put a pole on the western side close to the solar array near 7th, the County's setback requirement would not be observed and a new lease would have to be renegotiated with the School District. He stated when they began this process, the New River Desert Hills Community Association (NRDHCA) gave them a 33 point policy paper specifically on cell towers and they complied with all of those points. He asked for the Commissioners' support, stating if there was an ability to go lower and still achieve the coverage that was required and needed, they would go lower, but it was not available to them and by going lower it took away the ability of collocation and coverage in that area, which also meant more towers. He stated if the vacant property to the north of them comes in in five years, it meant more residences that needed coverage, so this not only fulfilled current needs, but would fulfill future needs.

Commissioner Aster asked to hear from another member of the public, and Chairman Deutsch confirmed there was no one else.

Commissioner Aster stated they would like to have as many carriers on a tower as possible, but in cases that had been brought to the Commission where residences were in close proximity, stealth design was the best design with one carrier possibly two. He felt that an 80 foot monopole on any site within this campus would be unacceptable, but especially where it was being proposed at the north end. Commissioner Aster thought placing it by the solar array was almost a natural spot for it. There was a discussion of the visuals of the stealth poles that Commissioner Aster asked staff to put together for the meeting. Commissioner Aster reiterated he thought moving the actual equipment including the antenna to the commercial area by the solar array and having the design be of a stealth nature was something he could vote for and stated he would make the motion.

Chairman Deutsch did not think the Commission had the ability to have them relocate without doing a new lease and asked if Commissioner Aster was looking to continue it and let them discuss that as an option.

Wayne Peck, County Counsel, stated this application was for a specific SUP for a specific area, so the Commissioners could not just suggest they move it within the site. He stated the Commissioners would have to deny it or the applicant would have to withdraw it and come in with an application for a SUP for the area they wanted and go back through the stakeholder meetings.

Commissioner Pugmire commented that with all the respect to Vice-Chairman Smith and Commissioner Aster, there was a visual problem that he thought was minor in balance of the service that would be provided. He did not like those great big things, but stated a 90 foot mono-palm in Seligman stuck out like a sore thumb and he thought it was ridiculous. He thought it was a problem, but in balance it was a problem that was worth it.

Vice-Chairman Smith stated stealth was great when they blend into the existing landscape and trees, but it was not appropriate in this case, as there was not a tree

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within a mile and a half of this location. He was not opposed to the rust colored pole. His was concerned a commercial entity whose only business was providing cell towers was telling the Commissioners it was needed and AT&T was not presenting their case. He thought there were other opportunities in the area to put it that were less obtrusive and got the same coverage. He stated if he were to vote on anything it would be a continuance and he hoped that the applicant would bring AT&T to convince this body that this was truly needed at that location and it had to be 80 feet. He stated he might go along with it at that point, but would like to hear it from the provider.

Chairman Deutsch asked if there was any other discussion amongst the commissioners.

Commissioner Aster would support Vice-Chairman Smith's motion to continue if he chose to make it and might support a pole where it was being proposed, but he was not going to support 80 feet. Vice-Chairman Smith stated he would make that motion if the applicant would agree to bring his client back to the table in July.

Mr. Baugh appreciated the opportunity for a continuance, but because there was a lease in place with the School District that had a two year horizon that expired this summer, they had to move forward with the application today. Mr. Baugh stated AT&T had given St. Charles this information and demonstrated a need which he had shown the Commissioners, so even though AT&T could not attend, he knew there was an absolute need in this area. He stated if it was continued to next month, the Commissioners would likely hear the same points being made by AT&T that he made today. He requested the Commissioners' consideration. He agreed that stealth was not the most appropriate in this area, but believed that this met the request of compatibility and ultimately it reduced the total number of poles that would be in this area in the future.

Chairman Deutsch asked if this was not going to be continued but denied, could the height be lowered to only have one carrier. Mr. Baugh thought they might entertain a lowered height rather than a denial altogether, but stated that the height was the minimum necessary to achieve the coverage that was required. Chairman Deutsch asked for three carriers and Mr. Baugh clarified for just the one carrier.

Vice-Chairman Smith did not understand why AT&T needed 80 feet, because Verizon was doing very well in the area with no 80 foot towers anywhere in sight. It seemed to him going higher and higher did not seem appropriate with today's technology and 5, 10 or 15 years down the road there would be different technology.

Commissioner Pugmire stated he would be strongly against denying this one.

COMMISSION ACTION: Vice-Chairman Smith moved to recommend denial of Z2013024; Commissioner Aster seconded the motion which passed with a vote of

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5-2. A roll call vote was taken. Voting aye: Aster, Copeland, Deutsch, Johnson, Smith; Voting nay: Pugmire, Burrows.

a. Development of the site shall comply with the Zoning Exhibit entitled "Deer Valley School X443-DD", consisting of six (6) full-size sheets, stamped received April 19, 2013, except as modified by the following conditions. The applicant shall submit a revised site plan within 30 days of BOS approval that shows the correct CMU wall height and antenna mounting elevations.

b. Development of the site shall be in conformance with the Narrative Report entitled "St. Charles Tower Deer Valley School X443-DD", consisting of six (6) pages, stamped received April 19, 2013, except as modified by the following conditions. The applicant shall submit a revised narrative within 30 days of BOS approval that describes the correct CMU wall height and antenna mounting elevations.

c. The overall height of the facility shall be limited to 80' (h).

d. The WCF facility and related ground equipment will be enclosed by a 8' (h) CMU wall constructed of 8" hollow block.

e. All transformers, back-flow prevention devices, utility boxes and all other utility related ground mounted equipment shall be painted to complement the development and shall be screened with landscape material where possible.

f. The following Drainage Review stipulations shall apply:

1. Drainage review of planning and/or zoning cases is for conceptual design only and does not represent final design approval nor shall it entitle applicants to future designs that are not in conformance with Section 1205 of the Maricopa County Zoning Ordinance and the Maricopa County Drainage Policies and Standards.

2. All development and engineering design shall be in conformance with Section 1205 of the Maricopa County Zoning Ordinance and current engineering policies, standards and best practices at the time of application for construction.

g. All outdoor lighting shall conform to the Maricopa County Zoning Ordinance.

h. Development of the site shall be in compliance with all applicable Maricopa County Air Quality rules and regulations.

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i. Development of the site shall be in conformance with all Federal and State requirements, including but not limited to, Federal Communications Commission (FCC), Federal Aviation Administration (FAA), National Environmental Policy Act (NEPA), and State Historical Preservation Office (SHPO). The applicant shall be responsible for obtaining all necessary approvals prior to construction, and shall be accountable to those agency requirements, and penalties.

j. This Special Use Permit shall expire twenty (20) years from the date of approval by the Board of Supervisors, or upon expiration of the lease to the applicant, or upon termination of the use, whichever occurs first. All of the site improvements shall be removed within 60 days of such termination or expiration.

k. The applicant shall provide documentation showing legal access prior to zoning clearance.

l. Prior to any development, a Floodplain Use Permit will need to be obtained from the Floodplain Management and Services Division of the Flood Control District.

m. The applicant shall submit a written report outlining the status of the development at the end of two (2) and eighteen (18) years from the date of approval by the Board of Supervisors. The status report shall be reviewed by staff to determine whether the Special Use Permit remains in compliance with the approved stipulations.

n. Amendments to the site plan and narrative report shall be processed as a revised application in accordance with Maricopa County Zoning Ordinance Article 304.9.

o. Noncompliance with the conditions of approval will be treated as a violation in accordance with the Maricopa County Zoning Ordinance. Further, noncompliance of the conditions of approval may be grounds for the Planning and Zoning Commission to take action in accordance with Chapter 3 (Conditional Zoning).

p. Non-compliance with the regulations administered by the Maricopa County Environmental Services Department, Maricopa County Department of Transportation, Drainage Review Division, Planning and Development Department, or the Flood Control District of Maricopa County may be grounds for initiating a revocation of this Special Use Permit as set forth in the Maricopa County Zoning Ordinance.

q. The granting of this change in use of the property has been at the request of the applicant, with the consent of the landowner. The granting of this approval is temporary and allows the property to enjoy

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uses in excess of those permitted by the zoning existing on the date of application, subject to conditions and stipulations. In the event of the failure to comply with any condition or stipulation, and at the time of expiration of the Special Use Permit, the property shall revert to the zoning that existed on the date of application. It is, therefore, stipulated and agreed that either revocation due to the failure to comply with any conditions or stipulations, or the expiration of the Special Use Permit, does not reduce any rights that existed on the date of application to use, divide, sell or possess the property and that there would be no diminution in value of the property from the value it held on the date of application due to such revocation or expiration of the Special Use Permit. The Special Use Permit enhances the value of the property above its value as of the date the Special Use Permit is granted and reverting to the prior zoning results in the same value of the property as if the Special Use Permit had never been granted.

Commissioner Johnson commented he was very split and went with the two Commissioners that lived in the District because they were more aware of it. He stated there was never a great solution when it came to cell towers and the concerns over having multiple carriers or single carriers having multiple small ones. He stated there seemed to be some kind of inconsistency that he heard in this case when it came to what they had been talking about in the past. He stated they seemed to try to have as many carriers on a single pole, because they wanted to have fewer poles, but obviously that means they were going to have to compromise either on looks or on height, so that was a difficult thing they were going to have when it came to the staff and the applicants. He thought it was going to be important for them to know what the alternatives were or what the downsides of a denial would be, because they knew the upside of the denial was that the pole did not occur, but obviously there was going to be impact and repercussions by having to have more poles or poles located in other places.

Addressing Commissioner Johnson's point, Commissioner Aster stated in the past whenever there was a site that was either so far away from the public and in areas that probably would not be developed, he did not think the Commissioners ever objected to a monopole of any height, but what they had consistently done he believed was that whenever a request like this came through where the public was directly affected, they had gone for stealth.

Commissioner Johnson stated when it came to cell sometimes the tower was the least unsightly out there.

Commissioner Aster said if he could be convinced of that, it would get his vote.

Commissioner Johnson stated a palm over 80 feet might look like an eye sore.

Commissioner Aster stated his thought was not 80 feet whether it was stealth or a monopole.

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Commissioner Burrows commented that he knew they want fewer towers, but he thought that possibly there could be a second tower and they would not have to be so high and they could make them stealth that would get the coverage that AT&T needed.

Commissioner Pugmire commented that if they did go stealth, they had a member of the community saying stealth did not work, which was something that they had not heard very often. He stated the only question that made any sense to him was Vice-Chairman Smith's question regarding the engineering being wrong on the 80 foot pole and other than that they should have done it.

Rachel Applegate, Planner, informed the Commissioners that due to similarity of issues, staff would present agenda Items 11 and 12 together, noting that each agenda item would require separate motions. Ms. Applegate stated she would present the Comprehensive Plan Amendment and Patty Zaricor, Planner, would present the Special Use Permit.

Comprehensive Plan Amendment: CPA2012011 **District 1**

Applicant: Beus Gilbert, PLLC for Prehab of Arizona, Inc

Location: Approx. southeast corner of Lehi Road and Country Club Dr. (in the Mesa area)

Request: Comprehensive plan amendment (CPA) to change the land use designation from Rural Development Area to Institutional (Approx. 3.17 acres) – New Leaf/East Valley Men's Center

Rachel Applegate, Planner, presented the above item. Case CPA2012011 is a request for a Comprehensive Plan Amendment to change the 'Rural Development Area' land use designation within the Comprehensive Plan to 'Institutional' on approximately 3.17 acres for New Leaf/East Valley Men's Center, which is a group home facility that provides transitional shelter for homeless men. The facility provides comprehensive programs which include life skills, training, work assistance, counseling, and shelter. The facility has been operating since 1998 and merged with New Leaf in 2006. The City of Mesa, in 2007, obtained funding to remodel the site and leased it to New Leaf. At that time, the County determined ownership was considered governmental use and was exempted from zoning authority for a period of five years. Due to the change in ownership from the City to New Leaf, a determination was made that the facility would need a Comprehensive Plan Amendment in conjunction with a Special Use Permit. The applicant states the proposal is consistent with the industrial and commercial zoning districts and the proposed land use designation is an acceptable land use pattern within the area. The applicant has complied with notification and posting requirements, and staff has not received any comment to the application. Reviewing County agencies have no objections. Staff believes the land use designation is appropriate and consistent with the surrounding land uses; therefore, recommends the Commission motion for approval of conditions 'a' – 'b' as listed in Paragraph 10 of the staff report.

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<u>Special Use Permit: Z2012093</u> **District 1**

Applicant: Beus Gilbert, PLLC for Prehab of Arizona, Inc

Location: Approx. southeast corner of Lehi Road and Country Club Dr. (in the Mesa area)

Request: Special Use Permit (SUP) for a group care facility of a philanthropic nature in C-3 and IND-2 zoning districts (Approx. 2.84 acres) – New Leaf/East Valley Men's Center

Patty Zaricor, Planner, presented the above item. Beus Gilbert on behalf of the property owners is requesting a 20-year Special Use Permit. The 2.84 SUP area encompasses a portion of two parcels located on the southeast corner of Lehi Road and Country Club Drive. The existing East Valley Men's Center is a transitional shelter for homeless men who make a commitment to become self-sufficient. The facility includes a resident shelter, a skilled development building, kitchen/dining hall, and a basic needs building. In addition to providing food and basic shelter, it offers skills training, counseling, and socialization skills. The maximum number of residents is limited to 110 and there are approximately 25 staff members. The New Leaf/East Valley Men's Center received federal funding through a five-year block grant and while under the grant, it fell under government use and was exempt from zoning authority. When the five-year exemption terminates on August 20, 2013, the facility will need the Special Use Permit. There are no outstanding concerns from any reviewing agencies. The Maricopa County Sheriff's Office has requested nighttime security personnel for the campus and adequate nighttime security lighting, which have been incorporated into the recommended conditions of approval. The City supports the use and staff has not received any public opposition. Should the Commission vote for approval of CPA2012011, staff recommends the Commission approve Z2012093 with conditions 'a' – 'm'.

Chairman Deutsch asked if there were any questions for staff and if the applicant was present.

Lindsay Schube, Beus Gilbert, explained New Leaf was a nonprofit serving the East Valley, Scottsdale, Tempe, Gilbert and they took in a lot of the homeless and the East Valley Men's Center was a men's homeless shelter. She stated they were in agreement with all of the stipulations, and complimented staff on explaining the application.

Chairman Deutsch asked if there were questions for the applicant; if anyone from the public that wished to speak; and if there was any discussion amongst the Commissioners.

COMMISSION ACTION: Commissioner Pugmire moved to recommend approval of CPA2012001 according to Paragraph 10 of the staff report; Vice-Chairman Smith seconded the motion which passed with a unanimous vote of 7-0.

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a. Development and use of this site shall comply with the narrative report entitled, "East Valley Men's Center", including all exhibits dated revised April 9, 2013, and stamped received April 9, 2013, except as modified by the following conditions.

b. The granting of this change in land use designation of the property has been at the request of the applicant, with the consent of the landowner. The granting of this approval allows the property owner to enjoy uses in excess of those permitted by the land use existing on the date of application, subject to conditions. In the event of the failure to comply with any condition of approval, the property shall change to the land use designation that existed on the date of application. It is, therefore, stipulated and agreed that revocation due to the failure to comply with any condition does not reduce any rights that existed on the date of application to use, divide, sell or possess the property and that there would be no diminution in value of the property from the value it held on the date of application due to such revocation. The Comprehensive Plan Amendment enhances the value of the property above its value as of the date this Comprehensive Plan Amendment is granted and changing to the prior land use designation results in the same value of the property as if the Comprehensive Plan Amendment had never been granted.

COMMISSION ACTION: Commissioner Pugmire moved to recommend approval of Z2012093 according to Paragraph 19 of the staff report; Vice-Chairman Smith seconded the motion which passed with a unanimous vote of 7-0.

a. Development of the site shall comply with the Site Plan entitled "East Valley Men's Center", consisting of two (2) full-size sheets, dated January 15, 2013, and stamped received April 9, 2013, except as modified by the following conditions. Within thirty (30) days of BOS approval, the applicant shall submit a revised site plan clearly identifying the SUP area and incorporating the freestanding pole sign into the SUP area.

b. Development of the site shall be in conformance with the Narrative Report entitled "East Valley Men's Center", consisting of twelve (12) pages, dated April 9, 2013, and stamped received , except as modified by the following conditions.

c. All transformers, back-flow prevention devices, utility boxes and all other utility related ground mounted equipment shall be painted to complement the development and shall be screened with landscape material where possible. All HVAC units shall be ground-mounted or screened with a continuous parapet for commercial projects.

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d. All outdoor lighting shall conform to the Maricopa County Zoning Ordinance.

e. Development of the site shall be in compliance with all applicable Maricopa County Air Quality rules and regulations.

f. Prior to zoning clearance the owner shall establish emergency fire protection services, covering all real property contained within the project area during course of construction and shall obtain a 'will serve' letter substantiating coverage from the appropriate Fire District, Department or Company servicing the site.

g. The following Drainage Review conditions shall apply:

1. All development and engineering design shall be in conformance with the Drainage Regulation and current engineering policies, standards and best practices at the time of application for construction.

2. Drainage review of planning and/or zoning cases is for conceptual design only and does not represent final design approval nor shall it entitle applicants to future designs that are not in conformance with the Drainage Regulations and design policies and standards.

h. In accordance with request from the Maricopa County Sheriff's Office, the facility shall assure the site has adequate lighting for nighttime security, and nighttime security personnel. No amendment to the SUP site plan will be required for this improvement.

i. This Special Use Permit shall expire twenty (20) years from the date of approval by the Board of Supervisors, or upon termination of the use, whichever occurs first.

j. Amendments to the site plan and narrative report shall be processed as a revised application in accordance with Maricopa County Zoning Ordinance Article 304.9.

k. Noncompliance with the conditions of approval will be treated as a violation in accordance with the Maricopa County Zoning Ordinance. Further, noncompliance of the conditions of approval may be grounds for the Planning and Zoning Commission to take action in accordance with Chapter 3 (Conditional Zoning).

l. Non-compliance with the regulations administered by the Maricopa County Environmental Services Department, Maricopa County Department of Transportation, Drainage Review Division, Planning and

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Development Department, or the Flood Control District of Maricopa County may be grounds for initiating a revocation of this [Special Use Permit or Zone Change] as set forth in the Maricopa County Zoning Ordinance.

m. The granting of this change in use of the property has been at the request of the applicant, with the consent of the landowner. The granting of this approval is temporary and allows the property to enjoy uses in excess of those permitted by the zoning existing on the date of application, subject to conditions and stipulations. In the event of the failure to comply with any condition or stipulation, and at the time of expiration of the Special Use Permit, the property shall revert to the zoning that existed on the date of application. It is, therefore, stipulated and agreed that either revocation due to the failure to comply with any conditions or stipulations, or the expiration of the Special Use Permit, does not reduce any rights that existed on the date of application to use, divide, sell or possess the property and that there would be no diminution in value of the property from the value it held on the date of application due to such revocation or expiration of the Special Use Permit. The Special Use Permit enhances the value of the property above its value as of the date the Special Use Permit is granted and reverting to the prior zoning results in the same value of the property as if the Special Use Permit had never been granted.

Zone Change: Z2011022 **District 1**

Applicant: Gallagher & Kennedy, PA for J&D Rentals, LLC

Location: Approx. at the southwest corner of 43rd Avenue and Larson Road (in the Laveen area)

Request: Zone change from Rural-43 to IND-2 with Industrial Unit Plan of Development (Approx. 5.1 acres) – JD Rentals

Rachel Applegate, Planner, presented the above item. Case Z2011022 is a request for a zone change to IND-2 with an Industrial Unit Plan of Development for J&D Rentals to include outdoor equipment and vehicle storage, ancillary repair, and on-site caretaker. The site consists of two parcels zoned Rural-43 with approximately 5.1 acres and is located at the southwest corner of 43rd Avenue and Larson Road. The subject site does have an existing code violation, which the owner has entered into a compliance agreement to bring the property into conformance with the zoning ordinance. Access to the site will be from 43rd Avenue via two driveways, and one emergency access along Larson Road. The subject site is within a Class 1 County Island surrounded by the City of Phoenix. The City has issued a letter indicating the proposal is inconsistent with the plan which designates the area as Residential with 1-2 dwelling units per acre on the original Special Use Permit application. The application has been amended and references a new request to specify a zone change with the Industrial Unit Plan of Development. Staff has not received any updated comments to the Zone Change Application. In order to

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restrict the uses specifically for the J&D Rentals while utilizing the existing on-site septic systems, staff recommended the property owner process a zone change to the IND-2 with an IUPD. Environmental Services has reviewed the application and determined the existing septic systems are adequate for the use. Staff notes the allowance of on-site septic only applies to the existing land uses and any future land use change may require a public sewer system. Modification of the IND-2 base zoning district standards will include reduced open landscape setbacks, reduced side yard setbacks, and establishing frontage on the southern parcel and along with walls that will be located within the sight visibility triangles. Staff believes the proposed deviations are acceptable and will enhance the visual appearance of the site from 43rd Avenue. The applicant has complied with the requirements for the Citizen Review Process. Staff has received one letter in support from the Laveen Planning Committee. The zone change request is in concert with the Laveen Area Plan, which designates the site as Industrial. The region has developed as heavy industrial uses and the likelihood of residential development is unlikely. Staff believes the zone change will allow continued use of the property utilizing septic and aid in resolving the outstanding code violation. Staff recommends the Commission motion for approval of stipulations 'a' – 'p' as outlined in Paragraph 27 of the staff report.

Chairman Deutsch asked if there were any questions for staff and if the applicant was present.

Bill Allison, Gallagher & Kennedy, spoke on behalf of J&D Rentals, L.L.C. He stated this was an area which was highly unlikely to ever develop or certainly not in our lifetime as residential. Mr. Allison stated there was IND-3 to the north and the newly rezoned IND-2 with an IUPD to the south. He stated the property to the west although zoned Rural-43 was primarily owned by Calmet and/or Vulcan and they imagined that when their resources were exhausted at the northeast corner of 43rd and Roeser/Larson, they were going to be moving to the southwest and start mining the property to the immediate west across the wall from his client's property. Mr. Allison stated they were in complete agreement with the conditions that were in the staff report.

Chairman Deutsch asked if there were any questions for the applicant; if anyone from the public wished to speak; if there was any discussion amongst the Commissioners.

COMMISSION ACTION: Commissioner Johnson moved to recommend approval of Z2011022 with conditions 'a' through 'p' listed according to Paragraph 27 of the staff report; Commissioner Aster seconded the motion which passed with a unanimous vote of 7-0.

a. Development of the site shall comply with the site plan entitled "Site Plan for J&D Rentals, LLC", consisting of four (4) full-size sheets, dated revised April 15, 2013, and stamped received April 29, 2013, except as modified by the following conditions. Within thirty (30) days of Board of Supervisor's (BOS) approval, the applicant shall submit two (2)

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complete sets of a revised site plan showing the corrections to the sight visibility triangles, correction in lot coverage and the IUPD table.

b. Development of the site shall be in conformance with the Narrative Report entitled, "J&D Rentals, LLC Narrative Report", consisting of sixteen (16) pages, dated revised April 26, 2013, except as modified by the following conditions.

c. The approval of this case is contingent on the approval of the requested IUPD. Any changes in the intensity of development or to the specified use of the facility will require a major amendment of this entitlement and the owners may be required to ensure connection to the City of Phoenix sewer system.

d. The following J&D Rentals IND-2 Industrial Unit Plan of Development standards shall apply:

Requested Deviations from the IND-2 Zoning District Standards for J&D Rentals			
Standard	**Description**	**IND-2 Zoning District Standard**	**Proposed IND-2 IUPD Zoning District Standards**
Front Yard – North Parcel	Front yard open setback reduced to 18' to allow existing CMU walls.	All properties abutting public street shall have an open setback area for the full width of the property. Abutting any major street, section line road, State or Federal Highway no less than **20 feet.**	**18'** open landscape region to include shrubs, accent plants and groundcover along 43rd Avenue
Front Yard Setback – South Parcel	Front of the south parcel is segment along Larson Road	All properties abutting a public street shall have an open setback area extending the full width of the property. This setback shall be parallel to the centerline of the street and shall be measured from the setback line or the ultimate right-of-way line of a local street, and shall be of a depth as indicated below: Abutting local streets not less than **ten feet.**	Request to establish the front yard setback along the frontage of 43rd Avenue with elimination of the required 20' open yard setback along Larson Road for access along Larson Road for emergency access only.
Street Side Yard Setbacks - South parcel	Street side of the southern parcel is segment along 43rd Avenue Access to the site is from 43rd Avenue request to design the site with frontage to be established along 43rd Avenue	Side Yard: **None required** Front Yard: All properties abutting public street shall have an open setback area for the full width of the property. Abutting any major street, section line road, State or Federal Highway no less than **20 feet.**	**15'** open landscape region to include shrubs, accent plants and groundcover along 43rd Avenue
Side Yard Setback – South parcel	Side yard (west property line) adjacent to Rural-43 zoned property	Where a lot is adjacent to rural or residential zoning district, there shall be a side yard on the side of the lot adjacent to such rural or residential zoning district having a width of not less than **five feet.**	**0' setback** to allow existing CMU wall to remain near property line.
Existing CMU	North parcel, the	1111.4.1 Further, in commercial	Caretaker's driveway

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walls within the Sight Visibility Triangles – North and south parcels	caretaker's driveway is 20' wide with a depth of 17' to the gate. The access driveway is 35' wide with a depth of 51' to the gate. The height of the cab and the additional 18' open landscape setback from the ROW to the wall provides visibility for vehicles entering and exiting the site. South parcel, the driveway is 30' wide with a depth of 45' to the gate. The height of the cab and the additional 15' open landscape setback from the ROW to the wall provides visibility for vehicles entering and exiting the site.	and industrial zoning districts no structure, landscaping, fence, wall, terrace or other obstruction to view in excess of **two feet** in height, measured from the established elevation of the nearest street centerline, shall be placed within the triangle formed by measuring along street-side property line and driveway length a distance of **25 feet** from their point of intersection and by connecting the ends of the respective **25 feet** distances.	and access driveway – the CMU walls encroaches into SVT's on northern parcel. Access driveway – the CMU walls encroaches into the SVT's on the southern parcel.

e. All transformers, back-flow prevention devices, utility boxes and all other utility related ground mounted equipment shall be painted to complement the development and shall be screened with landscape material where possible.

f. The following Maricopa County Department of Transportation (MCDOT) condition shall apply:

1. The applicant shall provide a total half-width of right-of-way for the following roadway:
   43rd Avenue 55 feet (for parcel 104-76-005G)

   All such dedication shall be in fee and free of all liens and encumbrances. Prior to acceptance of such dedication, the applicant shall provide the County an owner's title insurance policy issued to the County, the MCDOT environmental checklist and any and all other requirements as set forth in the "MCDOT Right-of-way Dedications Reference Guide". Until Maricopa County has accepted said dedication, all responsibilities, including but not limited to maintenance and repair for the property to be dedicated shall be that of the applicant.

   Right-of-way dedication shall occur within six (6) months of approval of this request by the Board of Supervisors and prior to zoning clearance.

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g. Prior to issuance of any permits for development of the site, the applicant/property owner shall obtain the necessary encroachment permits from the Maricopa County Department of Transportation (MCDOT) for landscaping or other improvements in the right-of-way.

h. The following Drainage Review conditions shall apply:

1. All development and engineering design shall be in conformance with Section 1205 of the Maricopa County Zoning Ordinance, Drainage Policies and Standards and current engineering policies, standards and best practices at the time of application for construction.

2. Drainage review of planning and/or zoning cases is for conceptual design only and does not represent final design approval nor shall it entitle applicants to future designs that are not in conformance with Section 1205 of the Maricopa County Zoning Ordinance and Drainage Policies and Standards.

3. Detailed Grading and Drainage Plans showing the new site improvements must be submitted for the acquisition of building permits.

i. All outdoor lighting shall conform to the Maricopa County Zoning Ordinance.

j. Development of the site shall be in compliance with all applicable Maricopa County Air Quality rules and regulations.

k. Prior to zoning clearance, developer(s) and/or builder(s) shall establish emergency fire protection services, covering all real property contained within the project area during course of construction and shall obtain a 'will serve' letter substantiating coverage from the appropriate Fire District, servicing the site.

l. Variations to the development standards as indicated in the approved Unit Plan of Development (UPD) table may be varied by the Board of Adjustment in accordance with Article 303.2.2 of the Maricopa County Zoning Ordinance (MCZO).

m. Amendments to the site plan and narrative report shall be processed as a revised application in accordance with Maricopa County Zoning Ordinance Article 304.9.

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n. Noncompliance with the conditions of approval will be treated as a violation in accordance with the Maricopa County Zoning Ordinance. Further, noncompliance of the conditions of approval may be grounds for the Planning and Zoning Commission to take action in accordance with Chapter 3 (Conditional Zoning).

o. Non-compliance with the regulations administered by the Maricopa County Environmental Services Department, Maricopa County Department of Transportation, Drainage Review Division, Planning and Development Department, or the Flood Control District of Maricopa County may be grounds for initiating a revocation of this Zone Change as set forth in the Maricopa County Zoning Ordinance.

p. The property owner/s and their successors waive claim for diminution in value if the County takes action to rescind approval due to noncompliance with conditions.

Chairman Deutsch asked if there were any other matters that needed to come before the Commission.

Chairman Deutsch adjourned the meeting at 11:35 a.m.

Prepared by Marsha Spencer
Commission Secretary
June 7, 2013

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