

MINUTES OF THE REGULAR MEETING
OF THE
PLANNING AND ZONING COMMISSION

January 30, 2020
9:30 a.m.

Board of Supervisors Auditorium
301 W. Jefferson Street
Phoenix, Arizona

MEMBERS PRESENT:

Mr. Lucas Schlosser, Chairman
Mr. Michael Cowley, Vice Chair
Mr. Nathan Andersen
Mr. Greg Arnett
Mr. Bruce Burrows
Mr. Broc Hiatt (telephonically 9:37 a.m.)
Ms. Francisca Montoya
Ms. Jennifer Ruby

MEMBERS ABSENT:

Mr. Jimmy Lindblom
Mr. Robert Zamora

STAFF PRESENT:

Ms. Jen Pokorski, Planning & Development Director
Mr. Darren Gerard, Planning Services Manager
Ms. Rachel Applegate, Senior Planner
Ms. Rosalie Pinney, Recording Secretary

COUNTY AGENCIES:

Mr. Wayne Peck, County Attorney

CONSENT:

CPA2019003, Z2019046, Z2019031, Z2019089, Z2019142

REGULAR:

TA2018002

Chairman Schlosser called the meeting to order at 9:32 a.m. and made the standard announcements.

CONSENT AGENDA

Comprehensive Plan Amendment - CPA2019003 (Cont. from 1/16/20)

District 5

Applicant: Mike Jang, JY Energy Solar Project
Location: Generally located at the southwest corner of the 571st Avenue and Northern Avenue alignments in the Harquahala Valley area
Request: General Comprehensive Plan Amendment to change the land use designation from Rural Densities (0-1 d.u./ac.) to Utilities - JY Energy Solar Project

Zoning - Z2019046 (Cont. from 1/16/20)

District 5

Applicant: Mike Jang, JY Energy Solar Project

Location: Generally located at the southwest corner of the 571st Avenue and Northern Avenue alignments in the Harquahala Valley area
Request: Zone Change from Rural-190 to IND-2 IUPD - JY Energy Solar Project

Special Use Permit - Z2019031

District 4

Applicant: Keith Riefkohl, Petra Contracting
Location: Generally located south of Van Buren St., approx. 1,500 ft. east of Perryville Road in the Goodyear area
Request: Special Use Permit (SUP) for a construction yard in the Rural-43 zoning district

Zoning - Z2019089

District 5

Applicant: Tiffany & Bosco, P.A.
Location: Generally located 1,300' north of the northeast corner of 51st Ave. and Baseline Rd. in the Laveen area
Request: Zone Change from Rural-43 to C-2 - 51st Avenue C-2 Property Rezoning

Zoning - Z2019142

District 1

Applicant: Warren Petersen, VIP Custom Homes, LLC and Rhonda Hertz
Location: Generally located at the SEC of Riggs Road and Tangelo Avenue in the Queen Creek area.
Request: Modification of condition to raise maximum lot coverage to 25% in the Rural-43 RUPD Zoning District - Sonterra Modification of Condition

Mr. Gerard presented the consent agenda.

COMMISSION ACTION: Commissioner Burrows motioned to approve the consent agenda. CPA2019003 with conditions 'a'-'b', Z2019046 with conditions 'a'-'i', Z2019031 with conditions 'a'-'g', Z2019089 with conditions 'a'-'h', and Z2019142 with conditions 'a'-'m' Commissioner Andersen second. Approved 7-0.

CPA2019003 conditions;

- a. Development and use of the site shall comply with the narrative report entitled "Project Narrative Report for JY Energy Tonopah Solar Plan General Comprehensive Plan Amendment (Revised)" consisting of 8 pages, including all exhibits, dated November 5, 2019 and stamped received November 8, 2019 except as modified by the following conditions.
- b. 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 allows the property to enjoy uses in excess of those permitted by the uses existing on the date of application, subject to conditions. In the event of the failure to comply with any condition, the property shall revert to the land use designation 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, 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 change of the land use. The land use enhances the value of the property above its value as of the date the land use change is granted and reverting to the prior land use designation results in the same value of the property as if the land use change had never been granted.

Z2019046 conditions:

- a. Development of the site shall be in substantial conformance with the Site Plan entitled "Tonopah Project", consisting of 1 full-size sheet, dated August 1, 2019 and stamped received August 2, 2019, except as modified by the following conditions.
- b. Development of the site shall be in substantial conformance with the Narrative Report entitled "Project Narrative Report for JY Energy Tonopah Solar Plant RE-Zoning Request. (Revised)", consisting of 4 pages, dated July 31, 2019, and stamped received August 2, 2019 except as modified by the following conditions.
- c. The following Planning Engineering conditions shall apply:
 1. At the time of application for building/grading permits, an engineered design for the retention basin berm stabilization (along the wash alignment near the southeast corner of the site) must be provided. Said design must include onsite flows (± 40 acres) not intercepted by the retention basin.
 2. At the time of application for building permits, the preserved area (65') along the northern part of the site shall be included in the retention calculations. The retention calculations contained in the Drainage Report shall govern over those shown on the grading and drainage plans.
 3. Access to the site is remote. Prior to issuance any building permits for this project, the owner/applicant/contractor must coordinate a construction access route plan and procure the required Dust Control permits from Maricopa County Air Quality.
 4. PND Engineering review of entitlement cases is conceptual. At the time of application for building/grading permits, all development and engineering design shall be in conformance with Section 1205 of the Maricopa County Zoning Ordinance; Drainage Policies and Standards; Floodplain Regulations for Maricopa County; MCDOT Roadway Design Manual; and current engineering policies, standards and best practices at the time of application for construction.
- d. The following IND-2 IUPD standards shall apply:

1. Three required parking spaces.
 2. Chain link fencing, including concertina or barbed wire topping, and gates shall be allowed on the perimeter.
- e. The IUPD overlay is applied to restrict the use of the site. Until such time as the site is served by sewer, uses on the site shall only be those acceptable to the Maricopa County Environmental Services Department (MCESD) that can be accommodated by septic systems. A public water system and public sewer system shall be required prior to establishment of any non-residential use that requires potable water.
- f. Zoning approval is conditional per Maricopa County Zoning Ordinance, Article 304.6, and ARS § 11-814 for five (5) years for the initial phase and an additional five (5) years for each subsequent phase, within which time the initial building permit or construction permit must be obtained. The applicant shall submit a written report every five years from the date of Board of Supervisors approval of Z2019008 which details the status of this project, including progress on obtaining building and/or construction permits. The status report to be administratively reviewed by Planning and Development with the ability to administratively accept or to carry the status report to the Board of Supervisors (Board), upon recommendation by the Planning and Zoning Commission (Commission) for consideration of amendments or revocation of zoning for undeveloped parcels. Status reports will be required until completion of the project.
- g. Noncompliance with any Maricopa County Regulation shall be grounds for initiating a revocation of this Zone Change as set forth in the Maricopa County Zoning Ordinance.
- h. 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.
- i. 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 allows the property to enjoy uses in excess of those permitted by the zoning existing on the date of application, subject to conditions. In the event of the failure to comply with any condition, 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, 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 of the Zone Change. The Zone Change enhances the value of the property above its value as of the date the Zone Change is granted and reverting to the prior zoning results in the same value of the property as if the Zone Change had never been granted.

Z2019031 conditions;

- a. Development of the site shall be in substantial conformance with the Site Plan entitled "Site Plan for Petra Contracting", consisting of 3 full-size sheets, dated April 2019, and stamped received August 9, 2019 except as modified by the following conditions.
- b. Development of the site shall be in substantial conformance with the Narrative Report entitled "Petra Contracting", consisting of 6 pages, dated April 2019 and stamped received August 9, 2019, except as modified by the following conditions.
- c. The following Planning Engineering conditions shall apply:
 1. As noted in the Pre-Application summary, there are several open (unresolved) Floodplain Use Permits on this site. The recommended solution is that a single site-wide floodplain use permit be initiated for this site to encompass all prior work performed on the site, including unpermitted work, and that the open permits be subsequently closed.
 2. As part of the overall Floodplain Use Permit, elevation certificates (ECs) will be required for any buildings that do not already have them, including buildings 4 (enclosed metal shop building) and 5 (enclosed metal storage building) as shown on the Site Plan. If the building 6 (covered open air storage) has more than 1 wall, it will also need an EC, if it is supported by posts and a maximum of 1 wall, then it will not. There is already an EC for 8 (modular office building).
 3. All development and engineering design shall be in conformance with Section 1205 of the Maricopa County Zoning Ordinance; Drainage Policies and Standards; Floodplain Regulations for Maricopa County; MCDOT Roadway Design Manual; and current engineering policies, standards and best practices at the time of application for construction.
 4. Engineering 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; Floodplain Regulations for Maricopa County; and the MCDOT Roadway Design Manual.
 5. Detailed Grading and Drainage Plans showing the new site improvements must be submitted for approval and acquisition of building permits.
- d. This Special Use Permit shall expire on February 26, 2030.

- e. Prior to occupying the existing residence or any portion thereof for any use associated with the Special Use Permit, the applicant shall obtain Building Permits to retrofit the existing buildings to meet current commercial building code requirements as applicable and shall obtain a Certificate of Occupancy for the retrofitted building prior to occupancy.
- f. Noncompliance with any Maricopa County Regulation shall be grounds for initiating a revocation of this Special Use Permit as set forth in the Maricopa County Zoning Ordinance.
- g. 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 allows the property to enjoy uses in excess of those permitted by the zoning existing on the date of application, subject to conditions. In the event of the failure to comply with any condition, 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 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.

Z2019089 conditions:

- a. Development of the site shall be in substantial conformance with the Zoning Exhibit entitled "51st Ave & Baseline Rd.", consisting of 1 full-size sheet, dated revised January 14, 2020, and stamped received January 14, 2020, except as modified by the following conditions.
- b. Development of the site shall be in substantial conformance with the Narrative Report entitled "51st Avenue C-2 Property Rezoning", consisting of 10 pages, dated December 12, 2019 and stamped received December 13, 2019, except as modified by the following conditions.
- c. The following Planning Engineering conditions shall apply:
 - 1. Without the submittal of a precise plan of development, no development approval is inferred by this review, including, but not limited to drainage design, access and roadway alignments. These items will be addressed as development plans progress and are submitted to the County for further review and/or entitlement.
 - 2. Access to 51st Avenue shall be subject to review and approval by the City of Phoenix.

3. Dedication of additional right-of-way along 51st Avenue may be required as part of further site entitlements (i.e. plan of development).
 4. All development and engineering design shall be in conformance with Section 1205 of the Maricopa County Zoning Ordinance, Drainage Policies and Standards; Floodplain Regulations for Maricopa County; MCDOT Roadway Design Manual; and current engineering policies, standards and best practices at the time of application for construction.
- d. Unless annexed the applicant/property owner shall submit a 'will serve' letter for fire protection services for the project site. A copy of the 'will serve' letter shall be required as part of the initial construction permit submittal.
 - e. Prior to approval of the initial final plat, precise plan of development approval, or zoning clearance for any construction permits, the applicant shall provide the Maricopa County Planning and Development Department with an executed pre-annexation service agreement with the City of Phoenix that identifies the detail for when the proposed project will be annexed and the provision of water and sewer service. In lieu of a pre-annexation service agreement the developer must provide a 'will serve' letter from the certificated water and sewer provider.
 - f. Noncompliance with any Maricopa County Regulation shall be grounds for initiating a revocation of this Zone Change as set forth in the Maricopa County Zoning Ordinance.
 - g. 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.
 - h. 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 allows the property to enjoy uses in excess of those permitted by the zoning existing on the date of application, subject to conditions. In the event of the failure to comply with any condition, 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, 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 of the Zone Change. The Zone Change enhances the value of the property above its value as of the date the Zone Change is granted and reverting to the prior zoning results in the same value of the property as if the Zone Change had never been granted.

Z2019142 conditions;

- a. Case Z2005006 shall rezone parcels from R1-35 and R-4 to Rural-43 RUPD as indicated on the zoning exhibit entitled "Proposed Zoning Boundary Map (Project Name: Chandler Heights RUPD, Case Number: Z2005006)" and dated (as of) April 24, 2006, except as modified by the following stipulations.
- b. Only parcels for which written property owner authorization has been received from the property owner of record shall be considered to be rezoned from R1-35 and R-4 to Rural-43 RUPD as per case Z2005006.
- c. In the event that property owners within the perimeter boundary shown on the zoning exhibit referenced in stipulation 'a' (Hunt Hwy. on the south; 172nd St., San Tan Blvd., and Recker Rd. on the west, Riggs Rd. on the north, and Sossaman Rd. on the east) wish to rezone their individual parcels from R1-35 and R-4 to Rural-43 RUPD with the same RUPD standards to apply, the Commission shall initiate a rezone on their behalf.
- d. Development and use within the Rural-43 RUPD zoning district shall comply with the site plan and narrative report entitled "Site Plan" (Project Name: Chandler Heights RUPD Case #Z-2005006)" consisting of 16 pages including exhibits and sections under different title pages dated January 1, 2006, except that revised exhibits are dated (as of) April 24, 2006, except as modified by the following stipulations. Development of the site shall also be in conformance with the modification of conditions Narrative Report entitled "Narrative of Request for Zone Change Modification of Condition for Sonterra", consisting of 7 pages, dated December 6, 2019 and stamped received December 9, 2019.
- e. The use regulations, height regulations, parking regulations and sign regulations of the Rural-43 RUPD zoning district are the same as the Rural-43 zoning district.
- f. The yard regulations of the Rural-43 RUPD zoning district are the same as the R-4 zoning district.
- g. The intensity of use regulations of the Rural-43 RUPD zoning district are the same as the R1-35 zoning district except that:
 - a. The average lot area per dwelling unit shall be 43,560 sq. ft.
 - b. The minimum lot width shall be 120'.
- h. Any parcel rezoned under case Z2005006 that is substandard or otherwise nonconforming in regard to the Rural-43 RUPD zoning district must document Legal Non-Conforming (LNC) status with the Planning & Development Department. It is the responsibility of the property owner to document LNC status.

- i. There shall be no relief granted to the development standards of the Rural-43 RUPD development standards except with Variance approval by the Board of Adjustment.
- j. Secondary dwelling units (guest homes, casitas, etc.) shall be allowed in the Rural-43 RUPD zoning district with demonstration of adequate liquid waste disposal at the discretion of the Environmental Services Department.
- k. Any subdivision plat within the Rural-43 zoning district shall include the following RUPD Chart:
 - 1. Avg. Lot Area / D.U.: 43,560 sq. ft.
 - 2. Min. Lot Area: 35,000 sq. ft.
 - 3. Min. Lot Width: 120'
 - 4. Max. Lot Coverage: 25%
 - 5. Min. Distance Between Buildings: 15'
 - 6. Min. Front Setback: 20'
 - 7. Min. Rear Setback: 25'
 - 8. Min. Side Setback: 5'
 - 9. Min. Street-Side Setback: 10'
 - 10. Max. Building Height: 30' (2 stories)
 - 11. Off-Street Parking: 2 / d.u.
 - 12. Signs: Same as Rural-43
 - 13. Uses: Same as Rural-43
 - 14. Accessory Dwelling Units: One (1) secondary dwelling unit allowed with MCESD approval of liquid waste disposal system
- l. Noncompliance with any Maricopa County Regulation shall be grounds for initiating a revocation of this Zone Change Modification of Condition 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 allows the property to enjoy uses in excess of those permitted by the zoning existing on the date of the application, subject to conditions. In the event of the failure to comply with any condition, 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, 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 of the Zone Change. The Zone Change enhances the value of the property above its value as of the date the Zone Change is granted and reverting to the prior zoning results in the same value of the property as if the Zone Change had never been granted.

REGULAR AGENDA

Text Amendment - TA2018002 (revisited from 7/25/19)

All Districts

Applicant: Earl, Curley & Lagarde
Requests: Text Amendment to amend Chapter 2, Definitions; Section 501, Article 501.2.4; Section 601, Article 601.2.3; and Section 702, Article 702.2.5 of the Maricopa County Zoning Ordinance (MCZO) relating to Group Homes

Mr. Gerard presented TA2018002 and noted this case is being revisited from the July 25, 2019 Commission hearing. This matter was discussed at the November 21, 2019 Zoning, Infrastructure, Policy, Procedures, and Ordinance Review (ZIPPOR) meeting where the applicant modified the proposal. There's been no new public comment since the May 30, 2019 ZIPPOR meeting. The major ordinance changes proposed include revising the Group Home definition with regard to length stay to delete "long term" with no specific duration proposed. The proposal will delete the definition of handicapped and replace it with a new definition for person with a disability or disabled person. The amendment separates out addiction recovery from the general category of group homes for disabled persons. The proposal changes the dispersal requirement to exclude a minimum separation distance if separated from an existing Group Home by utility right-of-way of at least 300' or by a canal or freeway. The proposal will create a new application process for zoning certification of a Group Home and adds clarification statement that must always be present on site, but are not to be counted in the maximum number of ten residents permitted in a Group Home. The proposal adds a clarification statement that all parking must be on site. The amendment requests to treat Multi-Family zoning districts the same as Single-Family Residential and Rural zoning districts with regard to Group Homes. Staff has certain concerns with the proposed text amendment. Removing "long term" from the definition of Group Home is viewed as creating a more transient residential facility and would not be harmonious with single-family residential neighborhoods. Changing the definition of Group Home to read, "A residence shared as a primary dwelling" as opposed to "their" primary dwelling. Persons cannot be living together as a single housekeeping unit in a family-like environment if the dwelling is not the primary dwelling for each resident. Staff of a Group Home are currently counted for purposes of building occupancy. The applicant is directing staff to create a new process for Group Homes that do not fit within the current land use application under which Group Homes are currently processed. Staff does not believe it is appropriate to treat different classes of Group Home residents differently based upon classification, and uncertain of the meaning of "unique care, training and/or support needed by each individual" that's proposed to be added in the definition of Group Home. Staff is concerned with the sentence "Without limitation, a person with addiction to alcohol and/or illegal drugs, who is seeking to recover from such addiction and is not using alcohol or illegal drugs, shall be considered to be a Person with a Disability." This verbiage is proposed to be included in the definition of a person with a disability/disabled person. It may be more appropriate for that verbiage to be included in a Departmental Directive clarifying disability per the Federal Fair Housing Act. Staff is concerned with the proposed language to be added to the dispersal/separation distance, "Notwithstanding the foregoing, no dispersal/separation shall be required where Group Homes are separated by a utility right-of-way at least 300 feet in width, or by a freeway, or canal." It does not apply a minimum width

to freeway or canal. There needs to be more specific language to ensure desired dispersal/separation. Staff has concerns without language clearly including group counseling is permitted on site. If this matter were considered to be an issue of statewide concern Arizona Revised Statute would speak to how Group Homes are to be treated in residential zoning districts, and it does not. Staff recommends the Commission motion for denial; it is more appropriate for this to be a staff driven text amendment rather than single applicant driven.

Commissioner Arnett asked what has happened in the past with enforcement of the length of stay. Mr. Gerard said the existing language says long term, and that has been interpreted to be duration of a year or more. The conditions for a Group Home resident are expected to last for a duration of 12 months or more. A disability last for 12 months or more, elderly last 12 months or more or until they are no longer living or the disability no longer exists, and a minor lasts 12 months or more or until age 18. Historically these are the type of group homes we have seen. We have not enforced on length of stay by itself, but only with respect to the preponderance of all the conditions of Group Home.

Ms. Pokorski said we enforce for a year and long term is a year per our directive, and we are only complaint based. We did have a Group Home situation that went to superior court, and our definition of long term prevailed.

Mr. Peck said there is ongoing litigation where we were challenged on the definitions in Group Home. The superior court found that one year was reasonable and uniform because it's been enforced by directive. Right now in order to have a Group Home and comply is to obtain a Land Use approval at which time you have to disclose what your plan is. People would stay a minimum of a year, and now the proposal is to change that. The issue with single housekeeping unit, we were challenged on that and the superior court ruled it was reasonable. We were challenged on the fact our Group Homes do not allow treatment of any kind. That case involved serious mentally ill patients, and the testimony was they did have group and individual counseling; we felt that was a violation because it is treatment. The superior court upheld that and the judge did a great job explaining that Maricopa County has a made conscience decision to treat treatment centers as treatment centers and group homes as group homes. The court found that reasonable and it made sense.

Ms. Pokorski said usually text amendments are purely policy decisions. This is a policy for the County and has liability that could be associated with the County. We need to make sure we are compliant with federal regulations. We think it is more appropriate to be a staff driven text amendment which is something we would start the process. We haven't done anything sooner because we've been under the threat of litigation and have been in federal court on this particular issue. At the advice of our attorneys, we did not pursue any sort of staff driven text amendment. There has been a tolling agreement into this case that allows us time to proceed with a text amendment if appropriate, and that is what the Board of Supervisors decides. We agree this does need to be updated and we need to look at what works best for our community and also meets the intent of federal regulations.

Commissioner Ruby asked is it your intent to pursue a text amendment and to make a proposition to the Board of Supervisors to move forward with a text amendment. Ms. Pokorski said correct.

Mr. Rod Jarvis, the applicant said as an American you believe in the progress we have made as a society in caring for one another. You don't have to go back far in our history where women didn't have the right to vote. As you go back further women couldn't own property, and people of minority weren't given the same civil rights. We've made great progress overcoming those prejudices and we have progress yet to make. What we are talking about here is a prejudice. The federal government got this right just like the civil rights act in the 1960's. There are people with disabilities and too often they are shunted off somewhere, and we are going to stop that. We're going to integrate them into our lives and into our neighborhoods. The concern of changing the character of the neighborhood is completely overcome and there's a distancing requirement of every 1200 feet and this is not going to take over a neighborhood. All the municipalities in this County with the exception of Buckeye, Peoria and Scottsdale recognize Group Homes as of right without having to ask for permission and no special rule that governs how long people must stay there. A statement from The Department of Justice in Housing and Urban Development says "imposing restrictions or additional conditions on group housing for persons with disabilities that are not imposed on families or other groups of unrelated individuals is an a type of land use and zoning law or practice that violates the Fair Housing Act." Allegations have been made if you're in a group home that means you are there permanently anyways, so the one year term is consistent with group home, and that's not true. We are here to talk about all people who have disabilities, and staff thinks they don't deserve special privileges. Refusing to provide reasonable accommodations to land use and zoning policies is also a violation where those may be necessary to have an equal opportunity to use and enjoy the housing. Addicts seeking recovery simply can't be there for a year. If they are there for a year they are going to start to regress and we're not treating the disability. People have difficulty that it's not a disability, and the Federal government says it is as long as you're seeking recovery and not using. Other disabilities are typically not a result of a choice. People who are addicted choose at some point to start using. There's a recognition that addiction has its roots, an emotional illness in many cases. He is surprised the number of times he's invited staff to work with him and the lack of working with him; this has been going on for a long time. Staff has concerns with changing the definition of Group Home to read "a residence shared as a primary dwelling" as opposed to "their" primary dwelling. A group of persons cannot be living together as a single housekeeping unit in a family-like environment if the dwelling is not the primary dwelling for each resident. We'll change it back to "their" it was an inadvertent change. Staff of a Group Home are currently not counted in the number of residents for a group home. With regard to zoning, staff of a group home are currently not counted in the number of residents, but they are counted for purposes of building occupancy. He is willing to change that because the staff aren't sleeping there. The applicant is directing the department to create a new process for group home applications that do not fit within the current land use application under which group homes are currently processed. We built into this trying to show good faith a means of demonstrating compliance with the state regulations. There is an extensive state licensing requirement, the state will enforce them and the state licensing requirement generates a fee which pays for the enforcement, so there's no burden on the county for

enforcement. If staff doesn't want it we can take it out. Staff does not believe it's appropriate to treat different classes of group home residents differently based upon classification, and has heard concerns of the County Attorney's Office with respect to this issue. Staff said we have to treat them all the same and so do we, other than referencing in the ARS provision that applies and that was there in good faith. We have the state rules we have to comply with and if it makes staff uncomfortable we can take it out. Staff has concern with the term "unique care, training and/or support needed by each individual" in the proposed definition of Group Home. That language is straight out of federal law. Staff does not want any individual or group counseling, and we can add that to it if they want. In group homes there's no individual or group counseling and that's what we have been saying on the record ever since the second outreach meeting. Staff is concerned with the sentence "without limitation a person with addiction to alcohol and/or illegal drugs, who is seeking to recover from such addiction and is not using alcohol or illegal drugs, shall be considered to be a person with a disability." Included in the proposed definition of Person with a Disability/Disabled Person. It seems unnecessary verbiage and they say they much rather do that in a departmental directive. The existing zoning ordinance illegally carves out addicts seeking recovery from the definition of "handicapped," and staff has acknowledged that's illegal and they are not enforcing it anymore. That is why he is specifically reflecting the change in this amendment, and the directive problem is how they got here. Staff said long term means a year and that was their decision. He went to the Board of Adjustment to get that changed and they said no, that's something the Board of Supervisors should do. That's why he doesn't want it up to a department directive. If they want to change the language so that it simply says, disability is defined as in the American Disability Act or the Fair Housing Act, that's okay. Staff is concerned with the proposed language to be added to the dispersal/separation distance. At the second outreach meeting, people came from the New River Association in support of this amendment, but they had a couple changes to the distancing requirements which we adopted. Staff never told him they had a problem with it until the staff report. Those distancing requirements are frequently used for variances from distancing requirements in the City of Phoenix, and the variances are granted almost routinely because when you have a freeway going through the neighborhood it is not the same neighborhood anymore, and when you have a canal going through it is a moat. If the Commission and the Board of Supervisors aren't comfortable with those exceptions, its fine, it just makes sense. The idea is not to over burden a neighborhood and not to shun people all off onto one section. Staff does not believe it necessary to have the same conditions apply to group homes in multi-family residential zoning districts that are applied in rural and single-family residential zoning districts. He would like the same rights to apply everywhere, as long as group homes can be allowed in multi-family as well as in the single-family then great. He's not sure why it was not raised and discussed before. The concern has been raised, if you don't require that one year residence that somehow you are not preserving the residential character of the neighborhood. In every one of those neighborhoods the owner to that home can rent it out as an Air BnB. That's part of the character of a neighborhood, and the impacts when comparing to what we are talking about. In every one of those neighborhoods you can rent a house under the Arizona Landlord and Tenant Act, unless the lease specifies a timeframe, it is assumed that it is month-to-month. If you are in a lease that has a specified term and stay beyond that, it is assumed that you've converted to month-to-month. That's part of the character of a neighborhood. The whole reason we need to have this type of Group Home is

statistically 10 percent of all households in the State of Arizona self-report alcoholism or drug addiction in that household and it is assumed another twenty percent do not self-report. Using that conservative figure, roughly one-third of all the households in every neighborhood have some form of addiction in that household. This leads to beatings, fights and illegal activity and all the stuff that goes with addiction and that's all part of the character of the neighborhood. Compare that to what happens at the Group Home. They all have assigned tasks and get up to do their chores, somebody is making breakfast, someone is cleaning up and someone is sweeping. They get in the van that takes them off-site for their group and individual therapy and they are away most of the day or out doing community service. They come home and have more chores to do, and start dinner, then they get together to discuss their day like a family. They have a curfew and they go to bed. There are a lot of people who become disabled and they will be disabled for the rest of their natural lives. Some are old and frail and they will no longer be vital. A lot of people go to a group home because they need it temporarily, not just addicts seeking recovery. His dad was disabled temporarily from an accident where he stayed in a group home environment to get better before moving back home but it wasn't a year, it was a month. Or they are disabled the rest of their lives but they want to move. Staff only enforces this on a complaint basis, so there is going to be a law that says one thing, but won't intend to enforce it. There is no impact, so why have it in the first place and it doesn't make sense. All disabilities should be treated the same. When somebody checks into a drug addiction facility they get tested regularly, and if they test positive they are no longer disabled under the law and they have to be removed. The state says you have to put them in a vehicle and take them out of the neighborhood. There shouldn't be a rule that makes them stay a year when they aren't even disabled anymore and they are not safe to themselves or others and anybody else in the neighborhood. The group home is safer than 30 percent of the homes that are there, statistically. Everybody is being tested, living on a curfew, being supervised with staff 24/7. We aren't going to have the problems that 30 percent of the homes may generate. Waiting for staff to come up with another text amendment only delays the treatment folks need. It is inconsistent with the County Attorney's effort to try and get people out of jail, out of the system, and move them into group homes or treatment.

Mr. Jeff Taylor, a board member for the Salvation Army said when Governor Ducey came into office he declared a state emergency on our opioid epidemic, and he personally advised our governor on how to tackle this problem. This is a protected class under Federal Fair Housing and we have to abide by federal law, and you have to treat this family just like other families in the neighborhood. Unless it benefits the protected class. He worked with the City of Phoenix on their text amendment and he went to the City of Phoenix national expert and brought up the year-long stay, and he said he never heard of any municipality coming up with length of stay because it does not benefit the protected class. The length of stay can work negatively on the client. A treatment program or a jail treatment program, or some people coming out of a prison, and the most important part of that process is to transition back to the community and that's what a sober living home does. In the Group Home this is housing and housing only. The legislation and all the guidelines, either the National Association of Recovery Residences (NARR) standard, or the Department of Health Services (DHS) if you are operating a Group Home in the State of Arizona you have to verify sobriety to protect the class and the neighborhood. The people that live in that home are verified through drug testing to

assure they are clean and sober, and this benefits the client. You cannot just exit a client from a sober living home into the community, you must transport them to a detox facility, the family or some higher level of care. The Salvation Army deals with the worst addicts, usually it is their third or fourth try and the very maximum stay is a year, but most of the people stay 30, 60 and a few stay 90 days. As they grow and progress in their recovery they outgrow the sober living home environment. If they aren't moving on then this population tends to move backwards. This is going to get worse before it gets better. On the ballot is the legalization of marijuana with an addictive substance THC with an addictive property of 80 to 90 percent. A Vicodin pill has the addictive property of 7 milligrams, and Oxytocin is 80 milligrams per pill. He also represents Sage Counseling which received the countywide contract. This will take people that are charged with drug motivated/ non-violent crime, and the county attorney refers them to Sage which it is a diversion program. The biggest challenge is finding housing, and the year-long stay will inhibit the number of people they can serve. If you have a Group Home and they live there a year, you just helped 10 people, verses a minimum stay of 30 or 60 days where you can serve a lot more people much more affectively. The year-long stay is a violation of the Federal Fair Housing Act. He spoke with several people that know about addiction recovery in the community, and he told them about the year-long stay and they said it is absolutely ridiculous. Back in the mid 90's trauma occurred in his life. He never used drugs or alcohol before, he was an athlete at the University of Arizona to play football and he was injured. He was given narcotic pain medication, and at the same time he was taking these narcotics for the injury and his mother takes her own life. That started a slow downward spiral into addiction. He's been in the county jail on six different occasions, and the most important part of that was to normalize himself back into the community. He went into the Salvation Army drug treatment program in 1995, and he had that opportunity to practice recovery in a sober living home. He is here today where he can now help others that are suffering.

Commissioner Andersen asked Mr. Jarvis to go over the specific language changes.

Mr. Jarvis said under group homes for not more than ten persons, subject to the following criteria: Notwithstanding the foregoing, no dispersal/separation shall be required where group homes are separated by a utility right-of-way at least 300 feet in width, or by a freeway, or canal. If that is a sticking point for the Commission then just take it out. Mr. Gerard said the language there is not the substance of deleting the separation requirement, it is the language. If it said, notwithstanding the foregoing, **said** dispersal dispersal/separation shall **not** be required where group homes are separated by a utility right-of-way at least 300 feet in width, or by a freeway, or canal. It is the way it is written that staff has a concern with.

If licensing is required by the State of Arizona, for the use, proof of such licensure shall be provided to the Department of Planning and Development prior to the use being established. Group Homes for addiction recovery shall comply with all standards set forth in ARS section 36-2061, et seq. That was there for a demonstration of good faith that we will be compliant with the state laws. If it's a problem we can take it out.

Mr. Peck said he is unaware of any state law that licenses Group Homes, they do license for drug recovery. The only group home he knows of that have licenses are for

developmentally disabled. Mr. Taylor said that now just became law, and the guidelines were set by the DHS and they license Group Homes as of September 30, 2019.

Mr. Peck asked for non-treatment. Mr. Taylor said correct.

Mr. Peck asked all group homes or just group homes for addiction. Mr. Taylor said group homes for addiction must now be licensed state-wide by the State of Arizona.

Mr. Taylor said this is what we've been working on with the legislature because these were unlicensed facilities and we had a lot of bad actors.

Ms. Pokorski asked are all group homes licensed or just group homes for substance recovery. Mr. Taylor said most group homes are, like homes that deal with people that have mental disabilities they are licensed by DHS.

Mr. Peck asked all group homes or only group homes for addiction recovery. Mr. Taylor said the statute he worked on was just for group homes for addiction recovery. Mr. Peck asked does that include the definitional section that talks about providing medication and counseling. Mr. Taylor the medication is self-administered and there is no counseling in a group home for addiction recovery.

Commissioner Ruby asked what the concerns of staff is. Ms. Pokorski said it is creating a separate process we currently don't have. Our main reason for denial is this applies to all group homes not just substance recovery. We currently allow up to 5 people by right, they can live there for 30 days or even 5 days. In order to get 10 people by right, is where the long term kicks in. We recognize that needs to be looked at and that's why we would be initiating a text amendment process so we can determine the correct amount. A lot of the cities allow it by right but not in all of the residential jurisdictions. Does this make sense in a rural area or should it be in single-family subdivisions; all of these questions need to be looked at to make sure we are in compliance with the federal regulations. Some of the language we pointed out we were concerned how it was worded, and it would remain a denial based on those concerns being addressed.

Mr. Gerard asked does the applicant intend for this to read, Group Homes for addition recovery shall comply with all standards set forth in ARS Section 36-2061.3.

Ms. Pokorski said this language in our ordinance actually covers all Group Homes. Mr. Jarvis said we aren't asking the county to adopt ordinances for the state. The state specifically applied rules to group homes for addiction recovery and we are simply acknowledging that, it is not separate treatment. It is the law that will apply to group homes. It will apply either we say anything about it in the ordinance or not, if we are uncomfortable saying it separately in the ordinance it will still apply.

Mr. Taylor said with the enforcement piece, if they call DHS they would have to by statute investigate each complaint no matter how minor or unsubstantiated for their operation standards. If they are out of compliance with a zoning issue then that's left up to the municipality.

Commissioner Montoya said she has concerns with this process and she doesn't feel anywhere close to being comfortable with moving forward, unless other Commissioners feel different. Both the applicant and staff have to go back and take a look at this and work it out. Chairman Schlosser said he agrees.

Mr. Jarvis said they have tried to get staff to work with him back in June and he wanted to work together and staff told him no. Mr. Peck said that is not exactly correct. It was engaged in litigation with the County and that had a lot to do with why there was limitations on the ability to meet.

Commissioner Andersen said we got side tracked from the question he originally asked. He is pretty close to be in a position to make a motion. He recognizes there's a lot to be done, and communication needs to be improved. He would like the applicant to continue to walk through the specific language changes they are willing to make. 4 'd' resident staff, if any, 'shall' be included with the ten-resident limitation. He would like to see a 4 'i' no group or individual counseling in group homes. Those same changes apply to all the subsections that follow.

Commissioner Andersen asked are there any other language changes that he did not identify. Mr. Jarvis said he think that is it.

Commissioner Andersen said the County's one year requirement is arbitrary and he hasn't heard any rationale for that. Maybe it helps to create an environment that it more conducive to a residential single-family environment in a neighborhood. That may have been true in the past, our society is changing people are in and out of houses all the time. Over the past decade half of his neighbors have changed. There's transition that is occurring in single-family neighborhoods and the short term rentals. He is comfortable moving in a direction where we are not tied to that one year requirement. His is also comfortable with the changes the applicant has proposed. There is a great need and he encourages the county to jump on board and try to be proactive in finding solutions, so we are more affectively able to address this issue that is plaguing our society and this is a really good start.

Commissioner Ruby said in a perfect world it would have been a staff-initiated text amendment, but we are now a year and a half into this and a lot of good work has been done. We have had this conversation multiple times and she is reluctant starting the process over to be a staff-initiated text amendment. She is a lot more comfortable with the changes and would like to challenge staff to make this work.

Commissioner Montoya said she is concerned there has been very little public input and stakeholder input in this process.

Commissioner Arnett said if we move forward there is a lot to be cleaned up and there are some things we are close to overcoming. This is a land use and about zoning, and the intent with zoning is to have that neighborhood whether they plan to live there for 2 months or 4 years. He doesn't know by putting a timeframe on it we could get over that hurdle. It feels a lot like it is not the final dwelling, it's like it is the last step in treatment and they will live there but there is something missing in that whole equation. The twelve

months makes no sense, but it is a real concern. There are places in zoning that have more turnover like apartments. He is very close himself, and it makes no sense to restart this whole process but we need to do something.

Commissioner Hiatt said he appreciates all the work done and it is in the best interest not to start over. He appreciates Commissioner Montoya's comment about public input. It would be good to have much more public input than we've had, but that doesn't mean to start over. He would like to recommend to continue this matter.

Chairman Schlosser said he appreciates the compassion. He agrees with the comments made and also agrees with staff that there needs to be more work done. We could spend two or three more hours here and still not come to an agreement. He is not in favor of approving this at this time, and asked staff to diligently work with the applicant.

Commissioner Montoya said she would like to make a motion to continue this for 30 days so staff and the applicant can meet to work something out.

Ms. Pokorski said 30 days would not be sufficient time for staff to do a robust public engagement process. With a staff initiated amendment, staff drafts the language and staff drives the research. When a citizen initiates a text amendment they can set the schedule and can choose to accept or ignore staff's recommendations. It is there process and staff allows them to drive that process. We would need more than 30 days to adequately analyze and assess this and have stakeholder meetings. She would put a long timeframe on it at least through the end of this year. We would need to retain counsel and get an expert on some of the Federal Fair Housing, and also contact our key stakeholder groups.

Vice Chairman Cowley said with the consensus today, we would like this to move more quickly than that, because there is an urgency to have something in the community prior to that. The only hang up is the language for the time of stay. With him being in the assisted living business himself, they have a hard time keeping people there because they die. He is not sure how you are supposed to mandate a length of stay when you have conditions that are beyond your control.

Mr. Jarvis said look at the date when this started it goes back a year and a half or longer, and we have had a long time to work with staff. Staff agreed the ordinance had to be revised. They did want to update it and didn't want to work with us. Then to be delayed further, 30 days is a hardship enough. We are down to that one issue length of stay, and we have said yes to everything else. We will live with 30 days because a lot of people are done at 30 days so make that the minimum.

Mr. Taylor said this epidemic is killing our young people daily and we have a responsibility to act quickly.

Vice Chairman Cowley said we can have a discussion at the February 27th ZIPPOR meeting and bring it back for a vote on March 12th at the next Planning and Zoning Commission hearing.

Commissioner Montoya said she accepts this change to her motion, and Commissioner Burrows second.

COMMISSION ACTION: Commissioner Montoya motioned to continue TU2018002 to the March 12 Commission hearing with discussion only to be held at the February 27 ZIPPOR meeting. Commissioner Burrows second. Continued 8-0.

Chairman Schlosser adjourned the meeting at 11:05 a.m.

Prepared by Rosalie Pinney
Recording Secretary
January 30, 2020