

**MINUTES OF THE REGULAR MEETING**  
**OF THE**  
**PLANNING AND ZONING COMMISSION**

May 16, 2019  
9:30 a.m.

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

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**MEMBERS PRESENT:**

Mr. Jimmy Lindblom, Chairman  
Ms. Francisca Montoya, Vice Chair  
Mr. Nathan Andersen  
Mr. Greg Arnett  
Mr. Bruce Burrows  
Mr. Michael Cowley  
Mr. Broc Hiatt  
Ms. Jennifer Ruby  
Mr. Lucas Schlosser

**MEMBERS ABSENT:**

Mr. Robert Zamora

**STAFF PRESENT:**

Mr. Darren Gerard, Planning Services Manager  
Ms. Rachel Applegate, Senior Planner  
Ms. Jaclyn Sarnowski, Planner  
Ms. Rosalie Pinney, Recording Secretary

**COUNTY AGENCIES:**

Ms. Emily Craiger, County Attorney

**CONTINUANCE:**

**CPA2018007, Z2018100**

**CONSENT:**

**S2018040, Z2019017**

**REGULAR:**

**MCP2018003**

Chairman Lindblom called the meeting to order at 9:34 a.m.

Chairman Lindblom asked if there were any changes or comments to the February 28 or the March 14 minutes, none.

**COMMISSION ACTION: Chairman Lindblom approved the February 28, 2019 and March 14, 2019 minutes as written.**

Mr. Gerard said CPA2018007 and Z2018100 are being moved to the continuance agenda. Commissioner Montoya has been working with the applicant and the neighborhood group to reach some compromise on certain stipulations.

Commissioner Schlosser said he is recusing himself from CPA2018007 and Z2018100.

## CONTINUANCE AGENDA

### Comprehensive Plan Amendment - CPA2018007

**District 5**

Applicant: William E. Lally, Tiffany & Bosco, PA  
Location: Generally located at the southwest corner and southeast corner of Broadway Rd. and 83<sup>rd</sup> Ave. in the Phoenix area  
Request: Comprehensive Plan Amendment (CPA) to change the Estrella Area Plan land use designation from Rural Densities (0-1 d.u./ac.) to Multiple Family Low (8 – 12 d.u./ac.) and Community Retail - 83<sup>rd</sup> Ave. & Broadway Rd.

**COMMISSION ACTION: Vice Chair Montoya motioned to continue CPA2018007 to the June 13, 2019 hearing to allow time to coordinate meetings with the applicant and area residents. Commissioner Cowley second. Continued 8-0-1 (Schlosser).**

### Zoning - Z2018100

**District 5**

Applicant: William E. Lally, Tiffany & Bosco, PA  
Location: Generally located at the southwest corner and southeast corner of Broadway Rd. and 83<sup>rd</sup> Ave. in the Phoenix area  
Request: Zone Change with Overlay from Rural-43 to R-5 RUPD and C-2 – 83<sup>rd</sup> Ave. & Broadway Rd.

**COMMISSION ACTION: Vice Chair Montoya motioned to continue Z2018100 to the June 13, 2019 hearing to allow time to coordinate meetings with the applicant and area residents. Commissioner Cowley second. Continued 8-0-1 (Schlosser).**

## CONSENT AGENDA

### Preliminary Plat - S2018040

**District 4**

Applicant: Joe Cable, Bowman Consulting  
Location: Generally located approximately 1,320' south of the southeast corner of Cotton Ln. and Olive Ave. in the Glendale area  
Request: Preliminary Plat containing 255 residential lots and 15 tracts in the R1-6 RUPD zoning district – Northern Farms

### Special Use Permit - Z2019017

**District 3**

Applicant: Wendy Riddell, Barry Riddell, LLC  
Location: Approximately 1,300' southeast of the intersection of Venture Drive and Anthem Way in the Anthem area  
Request: Special Use Permit (SUP) Major Amendment to add duplex casitas and parking – The Enclave at Anthem Senior Living

Mr. Gerard presented the consent agenda.

**COMMISSION ACTION: Commissioner Ruby motioned to approve S2018040 with conditions 'a'-'o', and Z2019017 with conditions 'a'-'i'. Commissioner Schlosser second. Approved 9-0.**

**S2018040 conditions;**

- a. The Final Plat shall be in substantial conformance with the Preliminary Plat entitled "Preliminary Plat Northern Crossing Subdivision" consisting of 6 full-size sheets, dated stamped received March 15, 2019, except as modified by the following conditions.
- b. Development and use of the site shall comply with the Narrative Report entitled "Northern Crossing – Narrative Report for Preliminary Plat", consisting of 28 pages, dated stamped received March 15, 2019, except as modified by the following conditions.
- c. The following Engineering conditions shall apply:
  1. Any retention basin emergency spillways required by Maricopa County Drainage Policies and Standards 6.10.4, must be shown on the G&D plans submitted for final plat approval. The applicant is responsible for any coordination required with ADOT for the spillway design from the offsite spreader basin to the Loop 303 channel.
  2. An updated Traffic Impact Study (TIS) is required with the first submittal of the final plat. The updated TIS must re-evaluate the need for any traffic signal improvements adjacent to the site based on the latest development in the area.
  3. The Owner shall provide and dedicate to the public a total half-width of right-of-way for the following roadway:

Cotton Lane	65 feet
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All such dedications 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.
  4. Construct ultimate half-width improvements on Cotton Lane. Roadway must meet County Standards in effect at the time they are constructed. A waiver from this requirement may be requested from MCDOT.
- d. Prior to final plat and infrastructure permit submittal, the applicant is required to attend a pre-submittal meeting in order to coordinate the permitting process for improvements, fees, and assurances associated with

the subdivision. Intake of the Final Plat and Infrastructure permit shall be by appointment only.

- e. Concurrent with submittal of final plat, improvement plans shall be submitted to the Planning and Development Department.
- f. After final plat recordation and prior to any zoning clearance for building permits, the applicant shall obtain a final grading and drainage and infrastructure permit from Maricopa County.
- g. Prior to final plat approval, water and wastewater plans shall be submitted to and approved by the Maricopa County Department of Environmental Services (MCESD) subject to their procedures.
- h. The master developer shall notify future homeowners that they are located within the state-defined "territory in the vicinity of a military airport" with the following language:

"You are buying a home or property in the 'vicinity of a military airport' as described by State of Arizona statute ARS §28-8481. Your house should include sound attenuation measures as directed by State law. You will be subject to direct over flights and noise by Luke Air Force Base jet aircraft in the vicinity.

Luke Air Force Base executes over 200,000 flight operations per year, at an average of approximately 170 overflights 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 limited flying will occur outside these hours and during most weekends.

Such notification shall be recorded on all Final Plats, be permanently posted on not less than a 3 foot by 5 foot sign in front of all home sales offices, be permanently posted on the front door of all home sales offices on not less than an 8½ inch by 11 inch sign, and be included in all covenants, conditions, and restrictions (CC&Rs) as well as the Public Report and conveyance documents.

For further information, please check the Luke Air Force Base website or contact the Maricopa County Planning and Development Department."

- i. Specific roadway cross-sections and pavement sections are not approved as shown on the preliminary plat. The number and width of lanes, including turn and auxiliary lanes, as well as pavement thickness, will be approved on construction improvement plans in conjunction with the final plat, in compliance with the traffic impact statement (TIS) approved by the Maricopa County Department of Transportation (MCDOT).
- j. Prior to final plat approval or issuance of a grading permit, 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 Rural Metro servicing the project. This information shall be included in the narrative report for the final plat and the associated public report for the subdivision. The final plat shall contain a note referencing the will serve letter.
- k. The applicant/owner shall comply with the standard assurance provisions as set forth in the Maricopa County Subdivision Regulations.
- l. The applicant/owner shall submit a 'will serve' letter from EPCOR for water & wastewater services for the project site. A copy of the 'will serve' letter shall be required as part of the initial construction permit submittal.
- m. Preliminary plat approval shall expire two (2) years from the date of commission approval. Any request for an extension of time shall be submitted prior to the expiration date and may be administratively approved in accordance with the Maricopa County Subdivision Regulations.
- n. The property owner/s and their successors waive claim to diminution in value if the County takes action to rescind approval due to noncompliance with conditions.
- o. The final plat shall include a note that states that there shall be no further division of land or delineation of parcels within the area of this subdivision plat without approval by the Board of Supervisors.

**Z2019017 conditions;**

- a. Development of the site shall comply with the Site Plan entitled "The Enclave at Anthem, Senior Living Cottages", consisting of one full-size sheet, stamped received May 1, 2019, except as modified by the following conditions.
- b. Development of the site shall be in conformance with the Narrative Report entitled "Enclave at Anthem", consisting of six (6) pages, stamped received April 8, 2019 except as modified by the following conditions.

- c. The following Planning Engineering conditions shall apply:
  - 1. Detailed Grading and Drainage Plans showing the new site improvements must be submitted for approval and acquisition of building permits.
  - 2. Work within the Venture Drive ROW (sidewalk and utility connections) will require a MCDOT ROW Permit issued concurrent with the building permit.
- d. The following MCESD conditions shall apply:
  - 1. Development and engineering design shall be in conformance with the Maricopa County Stormwater Quality Management and Discharge Control Regulation. The owner/developer shall prepare a Stormwater Site Plan and obtain approval by MCESD prior to construction. (A separate submittal to MCESD is required.)
  - 2. Upon completion of construction, the owner shall fulfill MCESD post-construction requirements. This will include appropriate operation and maintenance requirements.
- e. The applicant/property owner shall submit a cross-access agreement prior to issuance of building permits.
- f. 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.
- g. Continued compliance with the conditions of approval for Z2014098 and Z2015084 as applicable.
- h. 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.
- 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, 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.

**REGULAR AGENDA**

**Military Compatibility Permit - MCP2018003 (Cont. from 3/28/19)**

**District 4**

Applicant: Francisco Badilla  
Location: Generally located 790' west of the southwest corner of Alsup Ave. and Myrtle Ave. in the Glendale area  
Request: Military Compatibility Permit (MCP) with precise Plan of Development for RF Pipeline Storage Facility

Ms. Sarnowski presented MCP2018003 and noted the case was originally scheduled for the March 28 hearing, however the applicant requested a continuance to today's hearing to allow for additional time. Staff has not received any updated case materials from the applicant. The property has a code violation V201700335 for a business operating in a residential zoning district without entitlements. A civil hearing was held on April 26, 2018 regarding the violation and a judgment ordered the property owner to obtain entitlement by April 30, 2019. There's been additional code violations V201801545 and V201801249 for junk, trash and debris on the property. The violations for junk, trash and debris have been corrected and the cases are now closed. A Use Compatibility and Consistency Determination (UCCD) has been issued for the proposed land use determining the proposed land use is compatible and consistent with the high noise or accident potential of the military airport or ancillary military facility for Luke Air Force Base (AFB). This was done prior to filing for the Military Compatibility Permit (MCP). Business hours will be from 6:00 a.m. to 4:00 p.m. (October – April) and 5:30 a.m. to 4:30 p.m. (May – September). Due to emergency contracts there will be occasions when the site will need to be accessed outside of business hours. There's five employees and two existing buildings on the site and both structures were built without permits. The property owner intends to build a Concrete Masonry Unit (CMU) wall around the property to shield the site from adjacent properties. The applicant has also requested deviations from the Rural-43 zoning district as outlined in the staff report. Staff has received multiple complaints from the adjacent homeowners regarding the noise, the use of the property, hours of operation, and concerns with conditions of the roadway. They described workers on site all hours of the day, trucks idling for hours at a time, and overweight vehicles impacting road conditions on Myrtle Avenue. Staff is aware of at least one Maricopa County Sheriff Officer's report for the site. The applicant addressed the truck concerns and said they need five minutes to warm up for the braking system to be operable. An additional letter of opposition was received after the writing of the original staff report. The concerns were operating a business in an established neighborhood, the hours of operation, and noise. The City of Glendale has not provided comments to the application. Luke AFB issued a letter stating the proposed use would not negatively impact the flying operations of the base and the proposed uses are compatible and consistent with the high noise accident potential of the military airport or ancillary military facility. The site is in an established residential neighborhood that was built and developed prior to the state statutes.

Allowing a non-residential use that is consistent with IND-2 zoning uses within an established residential neighborhood adjacent to residents would not be considered an appropriate location for this type of land use. This property can no longer be developed for residents and there are less intensive uses that would likely be compatible with the Military Airport and Ancillary Military Facility Overlay District. It would have less of an impact on the neighboring property and staff is recommending denial.

Commissioner Schlosser asked staff if they've had dialogue with the applicant. Ms. Sarnowski said the applicant requested a continuance for additional time to research mitigation for noise, however staff has not received any additional case materials.

Chairman Lindblom asked if a residential home cannot be built on it or be developed with a commercial purpose. Mr. Gerard said there's an overlay zoning district called the Military Airport and Ancillary Military Facility Overlay Zoning District and that was to address changes to state statute. No new residential uses may be established within that region which is defined by high noise and accident potential hazard. There's noise contours over 65 decibels, and there's linear flight patterns for takeoff and landing that are prone to crash hazard so those areas have been determined inappropriate for new development. Any subdivision that was approved prior to December 2004 is grandfathered. This is an industrial use proposed between two single family residents, so we want to protect the integrity of the existing established single family neighborhood. Even though a new residential use is prohibited on that lot, there may be other uses more appropriate than an industrial storage and contractor yard.

Commissioner Schlosser asked what other kind of compatible uses are appropriate? Mr. Gerard said there could be vehicle storage, a mini storage or other uses that may be more compatible adjacent to single family residents than this particular use.

Mr. Francisco Badilla said he is representing the property owner, Fermin Fuentes. He purchased the property knowingly he could not build a residence there, and under the list of what he could utilize the property for. He is using it as a storage yard. In regards to the noise, in order to start a diesel truck it needs at least 10 minutes for the braking system to start. He is proposing to limit that startup period to a certain hour to limit the noise. They could also do some landscaping with large trees surrounding the property to reduce the noise. The other complaint was about the roadway, and the property owner put recycled asphalt on the roadway that accesses his property 500 feet east and west to abate the dust control. He is trying his best to utilize this property as a storage yard to store vehicles and store trucks, and if he can't use it for its intended purpose then the property would be worthless to him.

Commissioner Schlosser said he read in the staff report they would build a block wall around the entire perimeter. Mr. Badilla said yes.

Commissioner Schlosser asked will the wall be six or eight feet. Ms. Sarnowski said it will be six feet, but the maximum height would be eight feet.

Mr. Badilla said they would actually go to eight feet to reduce the noise so it wouldn't go outside the property, and they can put in trees every 15 or 20 feet.



Commissioner Andersen asked how many trucks we are talking about. Mr. Badilla said about four or five trucks.

Commissioner Andersen asked semi-trucks? Mr. Badilla said no they are 10 yard dump trucks.

Commissioner Andersen asked if the trucks are stored on site. Mr. Badilla said some are stored on site and some are not. When they go out to a site to start working they would leave the trucks at the job site and the same for the equipment.

Mr. Antonio Gonzalez Jr. said he is a resident in this area, and he is a veteran and his neighbors are veterans. A lot of them are sick and he oversees them because of the nature of their sickness. He thought in the United States you should ask permission first and then do something, but he is seeing where they are asking for forgiveness and then ask for permission. He bought his property for the peace. When you buy property you have to investigate what you can use that property for. It's not wise to buy a property and then find out you can't use it for what you intended. We researched our property and were told it's residential. We received a letter from Luke Air Force Base that we could not build anymore buildings then what is already there, and some of the neighbors are using those properties for cattle. He doesn't mind the cattle since he knew they were there and it was going to smell like cattle, and the neighbor across the street has a pig farm. The airplanes flying above sound like freedom to him, and he also knew that was going on in the area. Now this gentleman buys this property and there's no notices or permits to rezone this area, and now they want one after the fact. Bylaws are bylaws and rules are rules. He has called the police to come out to enforce the law. It was five o'clock in the morning and someone was idling, and he knows for a fact you can only idle those trucks for eight minutes. He drove a garbage truck for 31 years and he knows it doesn't take 10 minutes to build up pressure, you can build it up in three minutes and then you do a brake check. This isn't the only noise, they also load up all of their supplies with a backhoe on to a trailer that's attached to the dump truck. Who wants to hear this as an alarm clock when you know you don't have to get up? He went over there and told them his wife and neighbor are recovering from an illness and they are trying to sleep and they've been idling their truck for an hour. We pay are taxes and abide by the laws, and it doesn't get taken care of.

Chairman Lindblom said we are trying to decide today if the use they are doing will be approved or not, and asked is there any other issue we need to consider to make this use not good? Mr. Gonzalez said they load up asphalt and don't spray the back of the bed, and it gets stuck. Then the truck is trying to unstick a load and it sounds like a bomb going off. They don't just have five trucks there are more vehicles. They also have a vac machine and when they are working on their trucks it is running the whole time. An eight foot fence and trees won't stop the noise. People are now putting in their own speed bumps to keep these people from going down the road so fast, and after it rains a loaded truck makes holes all over the place. It cost us \$3,000 to repair the front part of our property, and he has to go out there and fill it up with gravel to maintain it. He isn't the one driving the dump truck and why is he the one that has to pay. Why hasn't this been stopped a long time ago? We are setting a precedent and now there's another company down the street starting to load and unload materials, because if he can do it

someone else can. We have been dealing with this guy for three years and he's never stopped and talked to us. Why as a resident is he having to deal with this?

Ms. Maria Gonzalez said she brought in pictures and videos to show the other side of the truth. They have many vehicles and many employees coming and going all day long, it's a business. She has lost her privacy and this is an eyesore. The person that lives next to her is a veteran and he is sick, and they have gross neglect and no consideration for the residents that live in the area. If they wanted to make this workable they would have done it years ago. The trucks go down the road all day long. Lately they've been defiant by stopping in front of her house with their trucks idling and staring at her, and it scares her. She is asking for a denial of this permit.

Commissioner Schlosser said he lives close to this area and he is sympathetic. He was in the area and pulled over to talk on his phone and an F-35 flew overhead and he couldn't even hear himself think with the noise. The businesses in the area are a towing company, painting company, pig farm, commercial agriculture packaging facility, mobile home moving company, car restoration, commercial landscape business, tree farm, grading company, and a car storage. He asked if we were to approve stipulation 'h' in the staff report "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." If they don't follow the rules like they're supposed to, the County can go back and pull whatever is approved? Mr. Gerard said that is correct. It could be a zoning violation and it can be grounds to revisit this case before this body for recommendation of the Board for revocation.

Chairman Lindblom said in the project summary the business hours would be from 6:00 a.m. to 4:00 p.m. and winter hours 5:30 a.m. to 4:30 p.m. He is concerned with the sentence, "emergency contracts on occasions to work outside of business hours." He asked how often an occasion is and what do they do at night? Running heavy equipment and loading dump trucks at 10:00 at night doesn't seem to be the neighborly thing to do in a residential mixed community. He understands they are not allowing any new residents to come and build in this area so Luke Air Force Base can continue to operate. If they comply with the hours of operation, building an eight foot wall, and to put in the trees he starts to lean more towards approval than denial.

Commissioner Ruby said she isn't convinced that an eight foot wall and trees is going to be a significant noise mitigation for this type of intense use. She has concerns about the trees, and none of that was formally presented as part of the application. They had time since the previous hearing to bring additional materials to staff. She doesn't feel comfortable that there's been much of an effort to formerly make those concessions of what we would like to see. We could add a condition since it wasn't part of the narrative and application. Mr. Gerard said we have some draft revisions to 'c.1'. Change it to read an eight foot CMU wall must surround the entire non-residential use of the site and screen adjacent properties. Stipulation 'f' talks about the hours of operation and we can begin that sentence without exception. He doesn't see any allowance on the site plan where the landscaping would go and there would have to be a revised site plan.

Chairman Lindblom said when the applicant first presented the use it was more of a storage area, but now it's a full business being run with storage of materials, loading and

unloading of trucks. It is a concern because of the noise. He asked if the applicant is willing not to load and unload on the property. Mr. Badilla said the storage is minor and they deal with water line valves and the material is normally delivered to the job site. Loading and unloading is very rare and everything is delivered on site.

Chairman Lindblom said he is concerned with the materials being loaded and unloaded into a dump truck making loud crashing noises. Mr. Badilla said they can have these materials delivered to the job site and it would be a minor change.

Chairman Lindblom said it would be a minor change but could make a big difference for the neighbors.

Commissioner Schlosser asked if they are fine with the hours of operation. Mr. Badilla said starting at 7:00 a.m. is too late in construction and it would be hard for them to start at that time.

Commissioner Schlosser said if we were to approve your proposed hours of operation can you make sure Mr. Fuentes is aware that he has to follow the rules and to let all the employees know about the rules or they could get shut down.

Chairman Lindblom said if we approve this and the business hours are from 6:00 a.m. to 4:00 p.m., and if you don't abide by the hours the neighbors will make complaints and it could revert back to no use at all. This requires you to work with the neighbors very closely. Mr. Badilla said they would be willing to do 6:00 a.m. all the time, and 4:00 or 5:00 for end of business, or even 4:30 because in the summertime they would shut down by 2:00 or 3:00 p.m.

Commissioner Hiatt asked if there's been any meeting with the neighbor's and have they tried to meet to resolve this issue at all? Mr. Badilla said not that he is aware of.

Commissioner Hiatt said there are so many details that need to be resolved and he is uncomfortable without that interaction taking place. He entertains this case be continued to give the neighbors and the owner an opportunity to work together where they could come up with some type of resolution to work for everybody.

Chairman Lindblom said he agrees to get both parties together. He thought that's why it was continued before, and he isn't really happy that the applicant didn't do any work from the last hearing. He advised both parties in good faith to try and find something that will work to agree on as neighbors.

Vice Chair Montoya said she is concerned because the applicant has been out of compliance a number of times in the past, and only now he is trying to do the right thing in terms of going through the process. She asked if they were to approve this and the applicant does not comply, what kind of time period are we looking at. Is this going to take another three years? The neighbors have dealt with this for a really long time and if we proceed and the applicant doesn't comply how much longer will this drag on?

Mr. Gerard said their violation has been open for two years and now seeking administrative remedy. There's been no cease and desist of the business, they've been operating this entire time. The civil enforcement process is very slow, it would be based on staff reaction of citizen complaints. We would send them a summons to take to an administrative hearing and it's a judgment from an administrative officer. In order to take further action you have fines accruing and you can't seek any approval from the County for a building permit or a special use permit without bringing the fines current. We can record against the property so if they try and sell it or refinance the property there's issues. The only way to really take firm action is go to court and seek an injunction, but it's a long process. If we're aggressive we are still looking at a year to seek relief for the neighbors.

Vice Chair Montoya said she hasn't seen any good faith effort from the applicant to deal with these issues. She is concerned if we approve this with all the stipulations, she is not confident the situation would change.

Commissioner Arnett said he is trying to figure out where both property owners' rights are. On one hand the ideal use would be a quiet house, but they can't build because of the overlay. He asked by right under the overlay, what can be built there? Think of all the other uses that were mentioned and are they an SUP or done by right? Mr. Gerard said there are very few permitted by right uses in this area. The listed uses are by state statute, and per the overlay are uses that are anticipated to be consistent and compatible with the military air base operations. They still have to come before this body for recommendation of the Board for establishment of any use other than agriculture.

Commissioner Cowley said they would need approval from the base as well.

Commissioner Arnett asked with the list of uses in the area did those uses essentially go before the Board or are they out of compliance and are just operating? Mr. Gerard said some are agricultural and are exempt from our permitting requirements, and the others he doesn't know if they are out of compliance or grandfathered. If they want to establish a use on the subject property but the concern is it is already out there. If this use was proposed it would be a much easier discussion to have. That's the way we have to look at it as a proposed use not an existing use, because there are existing dwellings out there and it will largely change overtime to non-residential. It's our job to protect the integrity of those pre-existing residences, and non-residential development should be things that are people extensive like a storage facility or a lot for storage of vehicles. By right the only thing that is permitted is agriculture.

Commissioner Arnett said this whole area has been determined a high noise area. It's an awkward situation from a land rights perspective and he's super sympathetic. If they go by sympathy they shouldn't do this, but there's a landowner that should be able to do something with their land. He would agree to go with something milder and to protect what is there currently for the homeowners.

Commissioner Ruby said she does not think this use is compatible with the neighborhood, it is more intense and more industrial. If this was coming to us as a brand new use she would feel very comfortable going along with staff's recommendation for denial. The applicant's lack of following the rules in the past gives her a lot of pause to give

forgiveness after the fact. She is open to the idea of a continuance for further work, but she would also be comfortable making a motion for denial.

Commissioner Cowley said he agrees with Commissioner Ruby's comments and feels this use is too intense for the neighborhood and agrees the applicant's past behavior is not real conducive with believing they would behave in the future. They are building things with no permits and it's been in violation for several years. He is more inclined to go with staff's recommendation than to do a continuance.

Commissioner Schlosser said we could give them a continuance for 30 days and see if they can work something out. If not then we can make a decision then.

Commissioner Andersen said he prefers to give them a chance as well. It's a unique area with the overlay and from a land use perspective. This requires the neighbors to talk to each other. Maybe there's been efforts on one side to do that and not on the other, but he encourages the applicant to reach out. If for no other reason than to build good will and make a good faith honest effort to do that. Mr. Badilla said that is a good idea to have a meeting with the neighbors in two or three weeks and find a location in the area to meet and find a solution to the problem.

Chairman Lindblom said if they choose to continue, the applicant should seriously look at their operation and figure out how to make it compliant within a residential neighborhood and a good relationship long term.

Commissioner Arnett said this is a situation where the land owner should be able to do something, and to have something there other than a house is not an option, so this needs to be a two way street.

Commissioner Schlosser said if we do vote to continue you need to prove to your neighbors that you can follow the rules.

Mr. Gerard said the next hearing dates are June 13, July 25 or August 8.

**COMMISSION ACTION: Commissioner Schlosser motioned to continue MCP2018003 to July 25, 2019. Commissioner Burrows second. Continued 6-3 (Ruby, Montoya, Arnett).**

Chairman Lindblom adjourned the meeting at 10:43 a.m.

Prepared by Rosalie Pinney  
Recording Secretary  
May 16, 2019