



**AGENDA
TOWN OF CAMP VERDE
BOARD OF ADJUSTMENT & APPEALS
473 S. MAIN STREET, SUITE 106, CAMP VERDE, AZ 86322
TUESDAY AUGUST 22, 2023 at 3:00 p.m.**

Special Session

Zoom Meeting Link:

<https://us06web.zoom.us/j/85630748203?pwd=WnJySnV3WUFkajB2Q0dvQIB2WXZYUT09>

Call in Phone Numbers +1 719 359 4580 US and +1 253 205 0468 US

Meeting ID: 856 3074 8203 Passcode: 050304

1. **Call to Order**
2. **Roll Call:** B J Davis, Chairman, Buck Buchanan, Vice Chairman, Tanner McDonald, Jeremy Brady and Rodney Corbin
3. **Pledge of Allegiance**
4. **Consent Agenda** - All those items listed below may be enacted upon by one motion and approved as Consent Agenda Items. Any item may be removed from the Consent Agenda and considered as a separate item if a member of the Board so requests.
 - a. **Approval of Minutes:** May 09, 2023, Regular Session ([pages 2-28](#))
 - b. **Set Next Meeting, Date and Time:** *As Needed*
6. **Call to the Public for items not on the Agenda**

Residents are encouraged to comment about any matter not included on the agenda. State law prevents the Board from taking any action on items not on the agenda, except to set them for Consideration at a future date.
7. **Public Hearing:** Discussion, consideration, and possible decision regarding an interpretation by the Town's Zoning Administrator (Community Development Director) whether, or not, an off-highway motocross track is a permitted use, conditionally permitted, and/or accessory use within the R1 Zoning District within the Town of Camp Verde. Staff Resource: John Knight, Director and B J Ratlief, Planner ([Begin page 29](#))
8. **Board Informational Reports:** Individual members of the Board may provide brief summaries of current events and activities. These summaries are strictly for the purpose of informing the public of such events and activities. The Board will have no discussion, consideration or take any action on any such item, except that an individual Board member may request an item be placed on a future agenda.
9. **Staff Comments**
10. **Adjournment**

Please note: Staff makes every attempt to provide a complete agenda packet for public review. However, it is not always possible to include all information in the packet. You are encouraged to check with Staff prior to a meeting for copies of supporting documentation that may have been unavailable at the time agenda packets were prepared.

Note: Pursuant to A.R.S. §38-431.03A.2 and A.3, the Planning & Zoning Commission may vote to go into Executive Session for purposes of consultation for legal advice with the Town Attorney on any matter listed on the Agenda, or discussion of records exempt by law from public inspection associated with an agenda item.

The Town of Camp Verde Council Chambers is accessible to the Handicapped. Those with special accessibility or accommodation needs, such as large typeface print, may request these at the Office of the Town Clerk.

CERTIFICATE OF POSTING NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at the Town of Camp Verde and public places on August 15, 2023 at 10:00 am in accordance with the Town of Camp Verde policies.

b j ratlief, Planner

Print Name/Title/Initial



**FINAL MINUTES
TOWN OF CAMP VERDE
BOARD OF ADJUSTMENTS & APPEALS
473 MAIN STREET, SUITE 106, CAMP VERDE, AZ 86322
TUESDAY, MAY 9, 2023, AT 3:00 PM
REGULAR SESSION**

Zoom Meeting Link:

<https://us06web.zoom.us/j/85630748203?pwd=WnJySnV3WUFkajB2Q0dvQlB2WXZYUT09>

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Meeting ID: 856 3074 8203

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1. **Call to Order** Chairman BJ Davis called the meeting to order at 3:00PM
2. **Roll Call** – Chairman BJ Davis; Vice Chairman Buck Buchanan; Tanner McDonald; Jeremy Brady; Rodney Corbin, All Present.
3. **Pledge of Allegiance** Mr. Corbin led the Pledge of Allegiance.
4. **Consent Agenda** – All those items listed below may be enacted upon by one motion and approved as Consent Agenda Items. Any item may be removed from the Consent Agenda and considered as a separate item if a member of the Board so requests.

a. **Approval of Minutes** – April 11, 2023

b. **Set Next Meeting, Date and Time** – June 13, 2023, at 3:00 PM (currently no items to discuss)

Mr. McDonald **moved** to accept the consent agenda.

Second by Mr. Corbin.

Roll Call Vote-

Rodney Corbin: Aye

Jeremy Brady: Aye

Chairman Davis: Aye

Vice Chairman Buchanan: Aye

Tanner McDonald: Aye

Motion carries 5-0.

5. **Item Withdrawn by Applicant - Public Hearing followed by Discussion, Consideration and Possible Approval of a Variance to encroach into the rear yard setback from 25' to approximately 11'.** Staff Resource: John Knight

Applicant/Owner: Justin Chambers

Parcel: 404-13-383

Zoning: R1-10

Address: 4732 E Cripple Creek Drive

6. **Public Hearing followed by Discussion, Consideration and Possible Decision on a Zoning Interpretation from the Community Development Department regarding the transfer of animal points by lease, license, or any mechanism.** Staff Resource: John Knight

Applicant/Owner: Stephen Magoon and Jill Irvin

- Staff Comments

08.15.2023

BOA.Packet for Aug 22, 2023

- Applicant Comments/Presentation
- Public Hearing Open
- Public Hearing Closed
- Applicant Comments or Questions
- Board Discussion

Staff Comments:

Chairman Davis shared that they held an Executive Session right before this session in order to consult their attorney on how to legally address this issue.

Additionally, Community Development Director John Knight made a few notes prior to the beginning of this discussion.

He explained that back in February they issued an interpretation regarding calculation of animal points. The board's decision this evening would be relevant to all properties, not just the properties brought up in the discussion.

The real question comes down to what is and how they count animal points? Can you use neighboring properties to increase animal points? The interpretation determined that you could use adjacent, or in this case contiguous properties to increase your animal points, if you have a legal instrument, such as a lease. Animal points are based on a table, included in the packet. This evening, the board has the authority to affirm the staff's decision, overturn the decision, or modify the decision if the board feels it's appropriate.

Applicant Comments/Presentation:

The applicant, Stephen Magoon, presented on behalf of himself and Jill Irvin. They reside at 3150 S. Sierra Ln Camp Verde, AZ 86322.

Mr. Magoon began by reading through his PowerPoint presentation.

The issue at hand is that Mr. Magoon's neighbor, Trampus Mansker, routinely exceeds the farm animal count at the Mankser property. Mr. Magoon and his wife Jill Irvin, in turn, have complained to the Town of Camp Verde on several occasions. Mr. Magoon feels that Camp Verde has taken no action to remedy Mr. Mansker's repeated violations.

As a result of Mansker's violations of the animal count limits contained in the Ordinance, Mr. Magoon and Ms. Irvin requested that Camp Verde issue a zoning interpretation to clarify how to calculate animal points under ordinance. Camp Verde issued its interpretation on February 9, 2023, concluding in part that, although a property owner such as Mansker could not exceed the animal count restrictions simply by obtaining permission to use the animal points appurtenant to and a contiguous parcel of property, the land owner could exceed the prescribed farm animal count in the Ordinance by leasing or licensing property from the owner(s) of contiguous property, and then using the lessor's animal points to house and care for the farm animals on the lessee's property.

This is significantly different from leasing a piece of property and then distributing animals across the properties, which is a long-standing practice in the farming and ranching community. If the intent of this Administrative Interpretation was to clarify that position, it does not. The interpretation asserts that it is now the animal points that transfer from one property owner to another not that the animals have been distributed across multiple lots. The interpretation concludes that the Mansker property has been out of compliance over the last 2 years.

For the reasons set forth herein, Mr. Magoon feels that Camp Verde and the Board of Supervisors should reverse that portion of the Interpretation permitting a landowner to increase its animal points via a license or by leasing contiguous property of a neighboring landowner. He feels the interpretation is a rather bold attempt to circumvent the Town of Camp Verde's ordinance regarding prescribed animal densities in rural residential neighborhoods.

Mr. Magoon's attorney, John Browder, felt that Mr. Magoon did a great job flushing out the details of the case. He did emphasis a couple of points, speaking in favor of and giving more clarification to Mr. Magoon and Ms. Irvin's stance on the topic.

Chairman Davis opened the public hearing at 3:27.

Gail Pate, 3302 W Middle Verde Rd., spoke on this agenda item. In 1997 she drafted the current animal stocking recommendations for the Town of Camp Verde. She feels points have no inherent value. They are just a way to

help count animals in an equitable way because the intent is and has been for nearly 26 years in Camp Verde to use points to enforce town code. They cannot be re-interpreted to act as if they are tangible, tradeable assets.

Dave Grondin, 1903 Country Ln., spoke on this agenda item. He does not feel that Mr. Mansker should not be allowed to rope cows on his property. He does feel, however, that codes are ordinances applicable to this situation should remain as they are.

Michael Black, 1913 E Country Ln., spoke on this agenda item. He thinks the board should go to Mr. Mansker's place and look. He feels Mr. Mansker keeps a spotless place, and he hopes they look at the whole town when they decide to do something about this process.

David Dane, 1360 S Rio Verde Ln., spoke on this agenda item. He feels that Camp Verde town code allows more than twice the best practice of the state of Arizona for cows per acre. He feels this is a bad idea and should be discouraged in city limits. He feels there is no good reason why neighbors should be able to lease, loan, or trade unused animal points to one another.

Eileen Martin, 1733 N Aren Del Loma, spoke on this agenda item. When she and her husband were looking for enough land to house their horses, they specifically found 2 acres for their four horses. She doesn't feel as though everyone in Camp Verde follows the guidelines the way they're supposed to. She had many questions on how it's a good idea to have an animal point system, with the ability to transfer points to one another. She is requesting that the board reverse this zoning interpretation.

Sherry Wishchmeyer, 866 N. Garner Ln., spoke on this agenda item. She feels that animal points are not a commodity that can be traded or loaned. They are a mechanism the town has put in place to determine the number of farm animals, large or small, that can be housed on any parcel or lot of land within the town. She is not in favor of loaning, leasing, or transferring animal points. She is asking that they reverse the document, as it erodes the current animal code.

John Cox, 4641 E Canyon Dr., spoke on this item. He said he doesn't have anything to do with this item, but he does understand issues that are being faced, as for 10 years he has been trying to get codes enforced in his neighborhood. He would like to see the code changed, not amended.

Janet Anderson, 1587 S Rio Verde Ln., said she supports the Camp Verde animal count system. She feels points are not a commodity. They are not to be traded, bartered, given, or sold to adjacent property owners. She feels it negates the entire point of the point system, which is rational, thought out, and a fair way to manage animal numbers in residentially zoned properties within the town limits. She disagrees with the interpretation allowing points to be transferred.

Trampus Mansker, 2083 E Hardy Ln., spoke on this agenda item. He understands what the code says. He thinks the biggest hurdle is the nuisance, meaning the sight of animals. It can't be a cleanliness or maintenance thing because he's had zero violations in that area. He said the animal count was put in place a long time ago. He's not sure how it mathematically came up with, however, that's not important to him. What's important to him is the well being of the animal, if the property is being cleaned up, and that it's not creating a nuisance for a neighbor. He has several neighbors who are not bothered by this, but one that is. Do they really want to change the code that's been in place for a long time, and that's worked, to appease one person.

Christa Brunori, 1738 Arena Del Loma, spoke on this agenda item. She spoke on behalf of changing the animal count. She feels people manipulate the code in order to favor their own opinion. Ms. Brunori wonders what process is available that the town is willing to create or give as an opportunity for those who would like to apply to be able to do more for their own family. She feels it comes down to recognizing that this current point system is not working.

A letter was also read by Town Planner Cory Mulcaire from Morty and Leanne Stansbury 3575 S. Sierra Ln. In the letter, the Stansburys spoke in support of the arguments of Mr. Magoon and Ms. Irvin. They also believe that if this interpretation stands, it could create uncontrolled conditions on very limited spaces/lots within the community or Camp Verde.

Gail Metz, Que Paso Dr., spoke on this item and feels that even having two animals creates a bad smell in a confirmed area. As a result, they've opted to downgrade to one animal on their two acres. So, if they're allowing points to accumulate by one person, it leads to having excess animals on one property, likely creating bad smells. It's unfair to the other neighbors who maybe weren't in agreement of transferring their points.

Chairman Davis closed the public hearing at 3:55.

08.15.2023

BOA.Packet for Aug 22, 2023

Applicant Comments or Questions:

Mr. Magoon spoke again and said the point of his appeal is whether the ordinances support, on any legal basis, the transferring of animal points via a lease or license or any other mechanism, which he holds that it is not. His attorney, Mr. Bowder, also spoke again, pointing out that it's important to pay attention to the words of Ms. Pate and the words of the interpretation. They have here the intent of who drafted it.

Board Discussion:

Mr. Corbin said he feels this needs to go back through the rest of the channels (P&Z, Council) and be put to bed. It must be explained and written down so that everyone has the same explanation for what it is.

Mr. McDonald said he thinks the point systems and how they stand don't apply very well to arena or other areas in rural communities. He knows there are community members who enjoy roping livestock. They're going to need to have more animals to do so. He wonders if that was even considered when they made the animal point system what it is. He's in agreement that it needs to go back to P&Z and Council

Mr. McDonald's biggest issue is that either way it impacts people significantly. This makes it very difficult to make a decision.

Mr. Buchanan said it was 10 or 12 years ago that this came up on Town Council. They hashed it out in multiple meetings, as it was on their agendas several times. Finally, it was decided on that the program they had been running was working fine. He has no idea why this issue is in front of them again because one man made a decision that is costing lots of dollars, and he shouldn't have ever been able to make that decision.

He hopes that the decision that comes out of this is that they get meeting times to be able to hash out.

He doesn't want to see it go back to Council. He doesn't feel like anything is going to change, as what they have right now is working.

Chairman Davis spoke in agreement with Mr. Buchanan. He feels that the basic animal count system they've had in place works and has worked for years. He agrees with Mr. Browder and Mr. Magoon's arguments. A lot is defined by a property line. He wants people to have a reasonable number of animals to enjoy their lifestyle, but they also need to control that so that it doesn't impact neighbors.

He feels Mr. Knight overstepped his boundary in writing his opinion as broadly as he did. However, he did commend him on limiting it to contiguous property and the suggestion he gave Mr. Mansker of applying for agritourism in order to increase animal count from the standard.

He also feels that it needs to go back to planning and zoning and through Council because of the issue of transferring by license or lease. He doesn't think that was ever anticipated and can create a huge problem. He also does not think they should walk away from it today entirely. He feels they need to give Mr. Knight and P&Z some direction today.

Chairman Davis made a **motion** that Mr. Knight's interpretation stands with the modifications that the words "or leases" be removed in two places so that the first sentence would read "the allowed livestock on a lot is only increased under section 305 where a property owner owns the contiguous area." Then, the first sentence in the second paragraph reads "Owners that wish to increase their number of animals have the options, including to purchase contiguous area or apply for an agritourism use permit.", adding also to the end of the second sentence in the first paragraph a limitation on transferring animal points by lease or license to read "it is not enough to have permission to use or temporarily move around animals on a neighboring lot nor to transfer animal points by lease or license from one lot to another." It will be sent back to planning and zoning to consider and modify the actual ordinance if they feel it is right to do so. Then it will be sent up to Council. Everyone here will have an opportunity again to make comments if they think it should be modified.

Second by Mr. Corbin.

His three essential points are 1. Remove "or lease" from Mr. Knight's interpretation two times. 2. They add a restriction on not being allowed to transfer animal points by lease or license from one lot to another. 3. Send it back up to P&Z, in which they can modify it anyway they want and rewrite the ordinance and allow transfer if they feel it's proper. Because of the transfer by lease and license issue, he thinks it needs to go back to a public forum to be discussed and decided.

Mr. McDonald said he feels it needs to go up to P&Z, but isn't sure he agrees to the first part of the motion because in doing so, it will force people to move animals out, and those animals can likely be right back after it's sent to P&Z. He would like to see arenas with a different set of animal counts.

Chairman Davis asked Mr. Knight if there are several situations like Mr. Mansker, where there are occasions of being over animal count. He feels Mr. Mansker's situation would be perfect for agritourism.

Mr. Knight said there may be other operations, but they haven't had any requests or complaints about those. There are a lot of arenas in town. However, he's not sure about them being over on their animal counts.

Mr. Davis asked about temporary use permits for events where they will temporarily be over animal count. Mr. Knight said there's nothing under their temporary use permit process that would allow that.

Mr. Knight knows the code is not perfect. Most of it was adopted from the county over time. Their intent is to take it and do a comprehensive update. That has been the intent of P&Z and Council. This animal problem has been an issue for a long time. Half of the people are happy with it, half are not. They won't please everyone. It needs to be clarified to find a situation that works. He feels it comes down to the distribution of the animals. He feels it all boils down to whether the properties are contiguous or not. The Code isn't always agreed with, but they do their best to enforce it.

Mr. Corbin agrees that the code needs to be clarified.

Mr. Brady agrees that public input and going back up through the channels is a good thing.

Chairman Davis said if they removed his wording about the transfer of the animal count from this interpretation and just stayed silent on it because it's clear the board doesn't agree with the transfer of animal count by lease or license. So, that direction can be taken to P&Z and they can work around that issue. They're not here to cause further problems.

Roll Cal Vote-

Rodney Corbin: Aye

Jeremy Brady: Aye

Chairman Davis: Aye

Vice Chairman Buchanan: Nay

Tanner McDonald: Aye

Motion carries 4-1.

7. Board Informational Reports: Individual Board members may provide brief summaries of current events and activities. Summaries are strictly for the purpose of informing the public. The Board will have no discussion, consideration nor act on any such item, except an individual Board member may request an item be placed on a future agenda.

None

8. Staff Comments

None

9. Adjournment Chairman Davis adjourned the meeting at 4:22.

Mr. Brady **moved** to adjourn the meeting.

Second by Mr. Corbin.

Roll Cal Vote-

Rodney Corbin: Aye

Jeremy Brady: Aye

Chairman Davis: Aye

Vice Chairman Buchanan: Aye

Tanner McDonald: Aye

Motion carries 5-0.

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The Town of Camp Verde Council Chambers is accessible to the Handicapped. Those with special accessibility or accommodation needs, such as large typeface print, may request these at the Community Development Office.

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at the Town of Camp Verde and Bashes on May 2, 2023 (date) at 12:00 (time).

(signed) _____ (print name and title) Cory Mulcaire, Planner

Chairman BJ Davis

Community Development Director John Knight

CERTIFICATION

I hereby certify that the foregoing minutes are a true and accurate accounting of the actions of the Board of Adjustment and Appeals of the Town of Camp Verde, Arizona during the Regular Session held on the 9th day of May 2023. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 9th day of May 2023.

Mary Frewin
Mary Frewin, Recording Secretary

APPEAL OF ZONING RECORDING INTERPRETATION 2023-01

Magoon- Irvin

APPEAL OF ZONING RECORDING INTERPRETATION 2023-01

- ▶ My name is Stephen Magoon. My wife Jill Irvin and I reside at 3510 S Sierra Lane in Camp Verde Arizona.
- ▶ Leasing property on which to house or graze livestock is a long-standing practice in the farming and ranching communities.
- ▶ This appeal in no way attempts to challenge that practice.
- ▶ The Town of Camp Verde will argue that supporting that long held practice is the bases of their interpretation, it is not.
- ▶ Rather, the Interpretation is either a bold attempt to circumvent the Town of Camp Verde's ordinances regarding proscribed animal densities in rural residential neighborhoods, or it is so poorly conceived and written that it accomplishes exactly that.
- ▶ So, how did we get here?

As a result of Mansker's violations of the animal count limits contained in the Ordinance utilizing notes to transfer animal points, we requested that Camp Verde issue a zoning interpretation to clarify how to calculate animal points under the Ordinance. Camp Verde issued its Interpretation concluding in part that, although a property owner such as Mansker could not exceed the animal count restrictions simply by obtaining permission to use the animal points associated with a contiguous parcel of property, the landowner could exceed the prescribed farm animal count in the Ordinance by leasing or licensing property from the owner(s) of contiguous property and then using the lessor's animal points to quarter the farm animals on the lessee's Property. Stated differently, the Interpretation purports to authorize a scenario where a landowner such as Mansker makes an end run around the animal count limits in the Ordinance simply by obtaining a license from or leasing contiguous property and "using" that property's animal points to permit having an excessive number of farm animals on Mansker's own Property.

This is significantly different from leasing a piece of property and then distributing animals across the properties which is a long-standing practice in the farming and ranching community. If the intent of this Administrative Interpretation was to clarify that position it does not. This interpretation asserts that it is now the animal points that transfer from one property owner to another not that the animals have been distributed across multiple lots.

APPEAL OF ZONING RECORDING INTERPRETATION 2023-01

- ▶ The Interpretation rightly concludes the Mansker property has been egregiously out of compliance over the last two years. Often exceeding his limit by as much as four times.
- ▶ The Town's Community Development Department (CDD) charged with enforcing those ordinances has utilized every contrivance possible to avoid enforcement including accepting handwritten notes portending to transfer animal points prompting our request for a formal Interpretation.
- ▶ The CDD attempted to formalize that dubious practice in this Interpretation.
- ▶ The primary mechanism the CDD chose in this Interpretation was to create a property right severable from the land and fully transferable. This would affectively create an animal point asset where none previously existed.

Furthermore, the Interpretation improperly purports to create a transferrable property right severable from the real property to which it is incidental. Preliminarily, the Interpretation provides no legal support whatsoever in favor of the proposition that animal points are an intangible property right that can be transferred via lease or license. Instead, it incorrectly reasons that, for the purpose of determining the number of animal points afforded a "lot," or the size of the "lot" is entirely irrelevant because the lot owner can mysteriously gain animal points by lease or license.

That proposition, however, fails to account for the fact that except for within the Agricultural District, "livestock activity" within the Town is an "accessory use to the principal use." This means the "livestock activity" (and the animal points scheme) are "incidental and subordinate to and [must be] **located on the same lot with the principal use.**" The Interpretation does violence to the terms and conditions of the Ordinance, ignoring the fact that "livestock activity" is an "accessory use" which under the terms and conditions of the Ordinance, must be located on the same lot as the principal use. There simply is no support for the Interpretation under the terms and conditions of the Ordinance.

The Interpretation leads to the absurd result that, under the Ordinance, Mansker or a

similarly situated landowner could obtain a license to quarter many more animals on a lot than would be allowed under the actual terms and conditions of the Ordinance. Put simply, if Mansker (a) had a neighbor who owned a contiguous parcel of property the size of which would permit the landowner to quarter, for example, a hundred head of cattle, and (b) Mansker obtained a license from said neighbor, Mansker could quarter an additional 100 head of cattle on Mansker's 4.7 acres of property. It is absurd to conclude the Interpretation contemplates such a result. But that is exactly the door the Interpretation has opened.

The Interpretation creates an asset that would be a transferrable property right severable from the real property to which it is incidental. The absurd result of this is that the property owner adjacent to Mansker could assign a monetary value to his animal points license and put that license up for bid. This would force Magoon-Irvin or other residents of the community into a bidding war in order to protect their property rights. Prior to this Interpretation those rights would have been protected by the Town's enforced zoning ordinances. Again, it is absurd to conclude the Interpretation contemplates the possibility of such a bidding war, but again that is exactly the door the Interpretation has opened.

APPEAL OF ZONING RECORDING INTERPRETATION 2023-01

- ▶ While the Interpretation rightly concludes that casual notes may not be used to create such an asset it then portends that such an asset could be created as a result of a “license” and subsequently leased or otherwise transferred.
- ▶ The term “license” is never defined in the Interpretation and when we were asked for such a definition, we were told by the Director of the CDD that they were not obligated to define the term.
- ▶ All of us utilize licenses everyday and in the end they nothing more than a note just written in a more formal language.
- ▶ Our Town’s ordinances never intended for animal points to be turned into an asset, created out of thin air, potentially monetized and then transferred from one property owner to another via a lease, license or any other mechanism.

The intent of the Ordinance is not to permit landowners such as Mansker to make an end-run around the animal count limits contained in the Ordinance simply by entering into a lease with or obtaining a license from an adjacent landowner. This is especially true because, as analyzed in our brief, the plain terms of the Ordinance do not support the Interpretation.

APPEAL OF ZONING RECORDING INTERPRETATION 2023-01

- ▶ This Interpretation provides no legal bases for creating such assets within the Town's codes, Arizona Statute or prevailing legal precedence.
- ▶ This Interpretation represents a gross bureaucratic overreach by the Community Development Department within the Town of Camp Verde. We feel certain that it will not survive scrutiny by the Superior Court of Arizona. Our legal analysis has been summarized and included in our packet for your review.
- ▶ For the reasons stated above, the part of the Interpretation authorizing a landowner to increase its animal count points by license or by leasing property from a contiguous landowner is unavailing, lacks serious merit, and is not supported by the relevant terms and conditions of the Ordinance. Camp Verde and the Board of Adjustment should reverse that portion of the Interpretation permitting a landowner to increase its animal points via a lease or obtaining a license from a neighboring landowner.
- ▶ Land can be leased, and animals can be distributed across multiple properties. Animal points are not an asset and cannot be transferred from one property owner to another.

MAGOON-IRVIN
APPEAL OF ZONING RECORDING INTERPRETATION 2023-01
 BASED ON LEGAL ANALYSIS PROVIDED BY JOHN J. BROWDER OF JHKM LAWYERS

I. INTRODUCTION

Stephen Magoon and Jill Irvin (collectively, “Magoon-Irvin”) live at APN 404-11-027A (“Magoon-Irvin Property”), which is across the street from two parcels Trampus Masker owns: APNs 404-12-422D and 404-12-422C (“Mansker Property”). Mansker routinely exceeds the farm animal count at the Mansker Property. Magoon-Irvin, in turn, has complained to the Town of Camp Verde (“Camp Verde”) on several occasions, but Camp Verde has taken no action to remedy Mansker’s repeated violations.

As a result of Mansker’s violations of the animal count limits contained in the Ordinance, Magoon-Irvin requested that Camp Verde issue a zoning interpretation to clarify how to calculate animal points under the Ordinance. Camp Verde issued its Interpretation on February 9, 2023, concluding in part that, although a property owner such as Mansker could not exceed the animal count restrictions simply by obtaining permission to use the animal points appurtenant to and a contiguous parcel of property, the landowner could exceed the prescribed farm animal count in the Ordinance by leasing or licensing property from the owner(s) of contiguous property and then using the lessor’s animal points to house and care for the farm animals on the lessee’s Property. Stated differently, the Interpretation purports to authorize a scenario where a landowner such as Mansker makes an end run around the animal count limits in the Ordinance simply by obtaining a license from or leasing contiguous property and “using” that property’s animal points to countenance having an excessive number of farm animals on Mansker’s own Property.

This is significantly different from leasing a piece of property and then distributing animals across the properties which is a long-standing practice in the farming and ranching community. If the intent of this Administrative Interpretation was to clarify that position it does not. This interpretation asserts that it is now the animal points that transfer from one property owner to another not that the animals have been distributed across multiple lots.

For the reasons set forth herein, the part of the Interpretation authorizing a landowner to increase its animal count points by leasing property from a contiguous landowner or by obtaining a license is unavailing, lacks serious merit, and is not supported by the relevant terms and conditions of the Ordinance. Camp Verde and the Board of Supervisors should reverse that portion of the Interpretation permitting a landowner to increase its animal points via a license or by leasing contiguous property of a neighboring landowner.

II. RELEVANT PROVISIONS OF CAMP VERDE’S PLANNING & ZONING ORDINANCE (THE “ORDINANCE”)

The following definitions and sections are relevant to the issue presented by the Interpretation.

LOT: A parcel of land established by plat, subdivision, or otherwise permitted by law, having its principal frontage on a dedicated street or street easement. A half-street dedicated from such parcel shall be qualification for street frontage.

-**AREA:** The total area within the lot lines of a lot, excluding any street rights-of-way.

LOT LINE: A line of record bounding a lot, which divides one lot from another lot or from a public or private street or any other public space.

LOT OF RECORD: A lot which existence and dimensions are acknowledged on a plat or deed at the County Recorder's Office.

PARCEL: Real property with a separate or distinct number or other designation shown on a plan recorded in the office of the County Recorder, or real property delineated on an approved survey, parcel map or subdivision plat as filed in the office of the County Recorder and abutting at least one public right-of-way or easement determined by the Community Development Director or Council to be adequate for the purpose of access.

ACCESSORY USE: A use of land or of a building or portion thereof customarily incidental and subordinate to and located on the same lot with the principal.

PRINCIPAL OR PRIMARY: The primary or predominant use of Lot or parcel.

SECTION 305 – ANIMALS: Keeping of farm animals in appropriate locations and circumstances is regarded as being consistent with the Town's rural character. However, the number, size, type or manner in which animals are maintained on any parcel shall not impair the enjoyment or use of nearby properties or violate other legal restrictions to which the properties are subject. Any lot where farm livestock are kept must be not less than one-half acre (21,780 sq ft.) in area. 87 Fowl (chickens, ducks, geese, turkeys, and peacocks) rabbits, and guinea pigs, which are cared for the by the property owner or occupant as prescribed in Section 305.C.3, are not limited to a maximum number of animals.

A. Allowed Livestock

Any of the species listed below which are cared for by the property owner or occupant according to the following Animal Points. All livestock activity within the Town limits will be considered an accessory use to the principal use on any parcel except in the Agriculture District.

1. Lots of one-half acre to one acre in area may maintain animals totaling up to 24 points as set forth below.
2. Lots of one acre or more may increase the allowable number of points by an increment of six points for each additional, contiguous quarter acre.

B. Animal Points Allowed per Acreage

The allowable type and number of animals permitted on a particular property is computed by the following allotment table:

SPECIES (or associated types)	POINTS	SPECIES (or associated types)	POINTS
Alpacas:	3 Points	Miniature Horses, Ponies and Sicilian Donkeys:	6 Points
Emus:	3 Points	Ostriches:	6 Points
Pygmy Goats:	3 Points	Cattle:	12 points
Sheep, Goats:	4 Points	Domestic Deer:	12 Points
Llamas:	6 Points	Horse, Mules and Donkeys`	12 Points

III. LEGAL ANALYSIS.

When construing a statute, a reviewing court’s “goal is to find and give effect to” the drafter’s intent. *Mail Boxes, Etc., U.S.A. v. Industrial Comm’n*, 181 Ariz. 119, 121, 888 P.2d 777, 779 (1995). The court looks “first to the plain language of the statute as the best indication” of the drafter’s intent. *Id.* “Each word, phrase, and sentence must be given meaning so that no part will be [void], inert, redundant, or trivial.” *City of Phoenix v. Yates*, 69 Ariz. 68, 72, 208 P.2d 1147, 1149 (1949). Although a statute’s language must be consulted first, uncertainty about the meaning of the statute’s terms may require the court to apply “methods of statutory interpretation that go beyond the statute’s literal language.” *Estancia Dev. Assoc., L.L.C. v. City of Scottsdale*, 196 Ariz. 87, 90, ¶ 11, 993 P.2d 1051, 1054 (App. 1999). These methods must include “consideration of the statute’s context, language, subject matter, historical background, effects and consequences, and spirit and purpose,” *id.*, as well as “the evil sought to be remedied.” *Scenic Ariz. v. City of Phx. Bd. of Adjustment*, 228 Ariz. 419, 426, 268 P.3d 370, 377 (Ct. App. 2011), quoting *McElhaney Cattle Co. v. Smith*, 132 Ariz. 286, 290, 645 P.2d 801, 805 (1982).

By applying these principles to the Interpretation, it is amply clear that it is a fatally flawed analysis of the Ordinance’s relevant terms. The first step in understanding why is to look at the pertinent language of the of the Ordinance itself:

1. Lots of one-half acre to one acre in area may maintain animals totaling up to 24 points as set forth below.

2. Lots of one acre or more may increase the allowable number of points by an increment of six points for each additional, contiguous quarter acre.

As the Interpretation acknowledged, the definition of “lot” is critical to the Interpretation. This is because the allowable number of animal points may increase by six (6) points for every contiguous quarter acre increase in the lot’s area, provided the lot is at least one acre in size.

The core premise of the Interpretation is that a lease or license of contiguous property increases the size or area of the “lot.” The premise is flawed. “Lot” is defined in pertinent part as “[a] parcel of land established by plat, subdivision, or otherwise permitted by law” It adds that the “area” within a lot is the “total area within the lot lines of a lot, excluding any street rights-of-way.” The definition of “lot line” is a “line of record bounding a lot, which divides one lot from another lot or from a public or private street or any other public space.” “Parcel,” in turn, is defined as “real property with a separate or distinct number or other designation shown on a plan recorded in the office of the County Recorder, or real property delineated on an approved survey, parcel map or subdivision plat as filed in the office of the County Recorder and abutting at least one public right-of-way or easement determined by the Community Development Director or Council to be adequate for the purpose of access.

Under these definitions, a “lot” is “real property with a separate or distinct number or other designation shown” on a “plan recorded in the office of the County Recorder,” or other otherwise delineated on a recorded “survey, parcel map or subdivision plat,” and a which abuts at least one public right of way. The “area” of the lot, which is necessary for computing the allowed number of animals on it, is the “total area” within its “lot lines,” or as defined by the Ordinance, “the line of record bounding a lot....”

Because the leasing or licensing of contiguous property does not increase the “area” of a “lot,” the Interpretation’s conclusion that owners may increase the number of animals by leasing or licensing contiguous areas is legally invalid. After a purported “lease” or “license” of the contiguous lot, the lessee’s “lot” has exactly the same “area” as it did before the purported lease or license. Concomitantly, the “area” of the lessor’s “lot” also is the exactly the same size as it was before the lease or license. In terms of the Ordinance’s definitions, the “area” of the lessee “lot” does not increase by leasing or licensing the contiguous property because the “line[s] of record” bounding it are exactly the same after the lease or license as they were before the lease or license. Leasing or licensing contiguous property is not legally sufficient to increase the lot’s “area” because leasing the ground does not increase the size of the lessee lot, i.e., its “area.” A review of the respective lots’ “line[s] of record bounding” at the County Recorder after the execution of any lease will reveal the exact same sized “lots” as they were before the lease of license of contiguous property. Because a lease of contiguous property does not enlarge the “lot” as the Ordinance defines that term, the Interpretation’s conclusion to the contrary is unavailing and contrary to the law. The “size” of “lot” for purposes of calculating animal points is not determined by a private lease. It is and must be determined by the size of the “lot” as defined by the recorded documents.

By contrast, if Mansker purchased property from a contiguous landowner and then adjusted his property’s “line of record bounding” his property, then Mansker’s “lot” would have increased in “area” such that he may be afforded additional animal points under the Ordinance. But “leasing” ground to

purportedly obtain animal points without actually increasing the “area” of the lot where the animals would be kept is not supported by the plain terms of the Ordinance.

Furthermore, the Interpretation improperly purports to create a transferrable property right severable from the real property to which it is incidental and appurtenant. Preliminarily, the Interpretation provides no legal support whatsoever in favor of the proposition that animal points are an intangible property right that can be transferred via lease or license. Instead, it incorrectly reasons that, for the purpose of determining the number of animal points afforded a “lot,” the size of the “lot” as indicated by the “plat,” “deed” or the “lot line” is entirely irrelevant because the lot owner can mysteriously transfer animal points by lease or license. That proposition, however, fails to account for the fact that except for within the Agricultural District, “livestock activity” within the Town is an “accessory use to the principal use.” This means the “livestock activity” (and the animal points scheme) are “incidental and subordinate to and [must be] **located on the same lot with the principal use.**” See definitions of “accessory use” and § 305 (emphasis added.); see also definition of Use (Accessory)(defining an “accessory use” as a “use incidental to the principal use on the **same lot**”(emphasis added.). The Interpretation does violence to the terms and conditions of the Ordinance, ignoring the fact that “livestock activity” is an “accessory use” which under the terms and conditions of the Ordinance, must be located on the same lot as the principal use. There simply is no support for the Interpretation under the terms and conditions of the Ordinance.

Besides the fact that the Interpretation is not supported by the relevant plain terms of the Ordinance, the Interpretation contravenes the purpose of the Ordinance. The purpose of the Ordinance is “to conserve and promote the public health, safety, convenience and general welfare, by guiding and accomplishing a coordinated and harmonious town development for future growth.” Ordinance, at § 101. Although the keeping of farm animals in “appropriate locations and circumstances” is consistent with Camp Verde’s nature, the “number, size, type or manner in which animals are maintained on any parcel shall not impair the enjoyment or use of nearby properties” Ordinance, at § 305.

The Interpretation, which acknowledges that it is an “expansive” reading, flies in the face of the stated purpose of the Ordinance. First, and significantly, the Interpretation does not analyze the effect that Trampus Mansker’s excessive animals have on the nearby properties, including the Magoon-Irvin Property. Indeed, the Interpretation concedes that Mansker’s “roping activities routinely exceed the allowable number of large animals,” with numbers “often” ranging from 15 to 34 animals. As such, Mansker has not complied (and is not complying with) the Ordinance. But instead of reigning in Mansker’s non-compliance, the Town appears ready and willing to reward him for violating the Ordinance based on the unavailing Interpretation. The message to the rest of the Town’s citizens is (1) their interests may not and, in the case of Magoon-Irvin, do not matter; (2) the Town would rather forgive and reward non-compliance instead of taking appropriate action to prevent the impairment of Magoon-Irvin’s right to use and enjoy their Property; and (3) the Town will justify its actions with the dubiously reasoned Interpretation.

Second, the Interpretation leads to the absurd result that, under the Ordinance, Mansker or a similarly situated landowner could enter into a lease to house many more animals on a lot than would be allowed under the actual terms and conditions of the Ordinance. Put simply, if Mansker (a) had a neighbor who owned a contiguous parcel of property the size of which would permit the landowner to

care and house, for example, a hundred head of cattle, and (b) Mansker leased the neighbor's contiguous property, Mansker could house and care for an additional 100 head of cattle on Mansker's 4.7 acres of property. It is absurd to conclude the Interpretation contemplates such a result. But that is exactly the door the Interpretation has opened.

Third, the Interpretation creates an asset that would be a transferrable property right severable from the real property to which it is incidental and appurtenant. The absurd result of this is that the property owner adjacent to Mansker could assign a monetary value to his animal points license and put that license up for bid. This would force Magoon-Irvin or other residents of the community into a bidding war in order to protect their property rights. Prior to this Interpretation those rights would have been protected by the Town's enforced zoning ordinances. Again, it is absurd to conclude the Interpretation contemplates such a result, but that is exactly the door the Interpretation has opened.

Ineluctably, the intent of the Ordinance is not to permit landowners such as Mansker to make an end-run around the animal count limits contained in the Ordinance simply by entering into a lease or license with an adjacent landowner. This is especially true because, as analyzed above, the plain terms of the Ordinance do not support the Interpretation.

For the reasons stated above, the part of the Interpretation authorizing a landowner to increase its animal count points by by license or by leasing property from a contiguous landowner is unavailing, lacks serious merit, and is not supported by the relevant terms and conditions of the Ordinance. Camp Verde and the Board of Supervisors should reverse that portion of the Interpretation permitting a landowner to increase its animal points via a license or by leasing contiguous property of a neighboring landowner.



Ms. Jill Irvin
 Mr. Stephen Magoon
 March 22, 2023
 Page 3

occupant as prescribed in Section 305.C.3, are not limited to a maximum number of animals.

A. Allowed Livestock

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III. LEGAL ANALYSIS.

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Ms. Jill Irvin
Mr. Stephen Magoon
March 22, 2023
Page 4

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As the Interpretation acknowledged, the definition of “lot” is critical to the Interpretation. This is because the allowable number of animal points may increase by six (6) points for every contiguous quarter acre increase in the lot’s area, provided the lot is at least one acre in size.

The core premise of the Interpretation is that a lease or license of contiguous property increases the size or area of the “lot.” The premise is flawed. “Lot” is defined in pertinent part as “[a] parcel of land established by plat, subdivision, or otherwise permitted by law” It adds that the “area” within a lot is the “total area within the lot lines of a lot, excluding any street rights-of-way.” The definition of “lot line” is a “line of record bounding a lot, which divides one lot from another lot or from a public or private street or any other public space.” “Parcel,” in turn, is defined as “real property with a separate or distinct number or other designation shown on a plan recorded in the office of the County Recorder, or real property delineated on an approved survey, parcel map or subdivision plat as filed in the office of the County Recorder and abutting at least one public right-of-way or easement determined by the Community Development Director or Council to be adequate for the purpose of access.

Under these definitions, a “lot” is “real property with a separate or distinct number or other designation shown” on a “plan recorded in the office of the County Recorder,” or other otherwise delineated on a recorded “survey, parcel map or subdivision plat,” and a which abuts at least one public right of way. The “area” of the lot, which is necessary for computing the allowed number of animals on it, is the “total area” within its “lot lines,” or as defined by the Ordinance, “the line of record bounding a lot....”



Ms. Jill Irvin
Mr. Stephen Magoon
March 22, 2023
Page 5

Because the leasing or licensing of contiguous property does not increase the “area” of a “lot,” the Interpretation’s conclusion that owners may increase the number of animals by leasing or licensing contiguous areas is legally invalid. After a purported “lease” or “license” of the contiguous lot, the lessee’s “lot” has exactly the same “area” as it did before the purported lease. Concomitantly, the “area” of the lessor’s “lot” also is the exactly the same size as it was before the lease. In terms of the Ordinance’s definitions, the “area” of the lessee “lot” does not increase by leasing or licensing the contiguous property because the “line[s] of record” bounding it are exactly the same after the lease as they were before the lease. Leasing contiguous property is not legally sufficient to increase the lot’s “area” because leasing the ground does not increase the size of the lessee lot, i.e., its “area.” A review of the respective lots’ “line[s] of record bounding” at the County Recorder after the execution of any lease will reveal the exact same sized “lots” as they were before the lease of license of contiguous property. Because a lease of contiguous property does not enlarge the “lot” as the Ordinance defines that term, the Interpretation’s conclusion to the contrary is unavailing and contrary to the law. The “size” of “lot” for purposes of calculating animal points is not determined by a private lease. It is and must be determined by the size of the “lot” as defined by the recorded documents.

By contrast, if Mansker purchased property from a contiguous landowner and then adjusted his property’s “line of record bounding” his property, then Mansker’s “lot” would have increased in “area” such that he may be afforded additional animal points under the Ordinance. But “leasing” ground to purportedly obtain animal points without actually increasing the lot’s “area” is not supported by the plain terms of the Ordinance.

Furthermore, the Interpretation improperly purports to create a transferrable property right severable from the real property to which it is incidental and appurtenant. Preliminarily, the Interpretation provides no legal support whatsoever in favor of the proposition that animal points are an intangible property right that can be transferred via lease or license. Instead, it incorrectly reasons that, for the purpose of determining the number of animal points afforded a “lot,” the size of the “lot” as indicated by the “plat,” “deed” or the “lot line” is entirely irrelevant because the lot owner can mysteriously transfer animal points by lease or license. That proposition, however, fails to account for the fact that except for within the Agricultural District, “livestock activity” within the Town is an “accessory use to the principal use.” This means the “livestock activity” (and the animal points scheme) are “incidental and subordinate to and [must be] **located on the same lot with the principal use.**” See definitions of “accessory use” and § 305 (emphasis added.); see also definition of Use (Accessory)(defining an “accessory use” as a “use incidental to the principal use on the **same lot**”(emphasis added.). The Interpretation does violence to the terms and conditions of the Ordinance, ignoring the fact that “livestock activity” is an “accessory use” which under the terms and conditions of the Ordinance, must be located on the same lot as the principal use. There simply is no support for the Interpretation under the terms and conditions of the Ordinance.



Ms. Jill Irvin
Mr. Stephen Magoon
March 22, 2023
Page 6

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The Interpretation, which acknowledges that it is an “expansive” reading, flies in the face of the stated purpose of the Ordinance. First, and significantly, the Interpretation does not analyze the effect that Trampus Mansker’s roping activities have on the nearby properties, including the Irvin Property. Indeed, the Interpretation concedes that Mansker’s “roping activities routinely exceed the allowable number of large animals,” with numbers “often” ranging from 15 to 34 animals. As such, Mansker has not complied (and is not complying with) the Ordinance. But instead of reigning in Mansker’s non-compliance, the Town appears ready and willing to reward him for violating the Ordinance based on the unavailing Interpretation. The message to the rest of the Town’s citizens is (a) their interests may not and, in the case of Irvin, do not matter; (2) the Town would rather forgive and reward non-compliance instead of taking appropriate action to prevent the impairment of Irvin’s right to use and enjoy their Property; and (3) the Town will justify its actions with the dubiously reasoned Interpretation.

Second, the Interpretation leads to the absurd result that, under the Ordinance, Mansker or a similarly situated landowner could enter into a lease to house many more animals on a lot than would be allowed under the actual terms and conditions of the Ordinance. Put simply, if Mansker (a) had a neighbor who owned a contiguous parcel of property the size of which would permit the landowner to care and house, for example, a hundred head of cattle, and (b) Mansker leased the neighbor’s contiguous property, Mansker could house and care for an additional 100 head of cattle on Mansker’s 4.7 acres of property. It is absurd to conclude the Interpretation contemplates such a result. But that is exactly the door the Interpretation has opened. Ineluctably, the intent of the Ordinance is not to permit landowners such as Mansker to make an end-run around the animal count limits contained in the Ordinance simply by entering into a lease or license with an adjacent landowner. This is especially true because, as analyzed above, the plain terms of the Ordinance do not support the Interpretation.

Please do not hesitate to contact me with any questions.

JHKM

Ms. Jill Irvin
Mr. Stephen Magoon
March 22, 2023
Page 7

Very truly yours,

/John J. Browder/

John J. Browder

JJB:rba

ATTACHMENT D

May 8, 2023

Subject: Appeal to Board of Adjustment and Appeals

RE: Animal Count Interpretation

We have lived in Camp Verde for six years on 2.5 acres We specifically looked for enough land to house our four horses because we were told we were allowed 1 horse per half acre. If we had to comply to zoning regulations, then we assumed others would have to do so as well. It made sense to us to keep flies and smell down to a minimum. It appears that not all property owners are treated equally, however. Not everyone in town is expected to comply with the existing codes.

We must question the legality and interpretation of this point system for animals. Has anyone looked into the future of what this could mean to the entire town of Camp Verde? If people start donating animal points arbitrarily to neighbors, do the points become "real transferable property"? Do they add value or devalue a person's land?

What about liability insurance? Who is responsible for the health and safety of the livestock and the people around it? If an animal contracts a contagious disease on somebody else's property and infects the others, who pays the vet bills? Who pays for carcass removal?

If somebody gets hurt from one of these animals, who pays the doctor bills? Where does the owner's responsibility begin and end?

When the property owner with the neighbors' points sells his property, does everyone get their points back?

What if the new buyers want to do something without any animals at all? What happens to the animals residing on the property?

Who cleans up after the livestock? The property owner or the livestock owners?

And lastly, who is going to enforce anything? The Zoning Department has not proven that they can enforce the existing zoning laws. How are they going to monitor what goes on if every neighborhood uses this animal point system? This sounds like an opportunity for a free-for-all that will destroy existing neighborhoods.

The failure to enforce the existing zoning regulations is creating havoc within our peaceful community. This point system encourages favoritism and lack of trust in our local government.

We request that the Board reverse this zoning interpretation as it will alter the intent of the existing animal code.

Jerry Martin

Eileen Martin

Handwritten signatures of Jerry Martin and Eileen Martin. The signature for Jerry Martin is written in dark ink and is cursive. The signature for Eileen Martin is also in dark ink and is cursive.

Wischmeyer Statement - BOA

Good Afternoon Mr. Chairman and Board Member

We are here today to discuss Zoning Interpretation 2023-01 that was issued by Community Development Director John Knight on February 9, 2023.

What we are not here to discuss is whether or not farm animals are allowed in Camp Verde or whether or not an individual can have a small roping arena on his property for the personal enjoyment of friends and family.

What we are here to discuss is whether or not the interpretation as written correctly mirrors the Town Code relating to Animal Counts, Animal Points, and Agritourism definition.

As has been pointed out by the documents you received from citizens and those who spoke today, Animal Points are not a commodity that can be traded or loaned. They are simply a mechanism the Town has put in place to determine the number of farm animals (large and small) that can be housed on any parcel or lot of land within the town. The number of animals is differentiated by the type of animal and is assigned points to help Town Staff in determining whether or not an individual is complying with the Animal Code. There is no other reason for the animal point than that.

The Animal Code was written to ensure that members of our community can enjoy our rural lifestyle in a reasonable and equitable manner. The notion that an individual can borrow, lease, license or purchase animal points from a neighboring property, to increase the animal count on their property is a fallacy.

There has been a long time practice of placing excess animals on our neighbor's property, and it has never required these legal documents. This is something that is coming from individuals who are not familiar with our neighborly ways in Camp Verde. In fact, there are documented instances within the complaint records of the Town, where our Community

Wischmeyer Statement - BOA

Development Department has even suggested this to individuals who had too many animals on their parcels. It was never suggested, "Why don't you borrow your neighbor's animal points?"

Additionally, the Zoning Interpretation is ambiguous; in one place it suggests placing animals on the neighboring property and in another location within the document it suggests borrowing animal points through a lease or license.

This document erodes the current Animal Code that is included within the Planning and Zoning Ordinance and was voted on by our Town Council. This document is the current law that should be enforced. If we don't like the Code, we shouldn't be making rash decisions on single instances that will have long term effects on our community, but rather we should be referring this issue to our Town Council for discussion and action that can be enforced throughout the community.

This document and the suggestions written within it should not be allowed to stand. They are both ambiguous and do not coincide with our existing ordinances.

Thank you for your time.

Good morning Stephen.

I have read the packet material and the statements in support of your claims. Very valid arguments in support of your position. Unless I missed it, there seems to also be a lack of understanding of what constitutes occupancy on lands harboring animals. Is it durationally or simply at a moment in time. These out of area participants bring with them their own support in the form of trailer(s), horses, feed, etc. This also adds numbers to the total.

I stand in support of the arguments and also believe that if this interpretation stands it has the ability to create uncontrolled conditions on very limited spaces/lots within the community of Camp Verde. At a minimum, Use Permit, contractual agreements and additional amendments to the Zoning Ordinance should be steps forward.

You are welcome to include this statement for the record regarding the appeal.

Monty & LeeAnne Stansbury
3575 S. Sierra Ln./Lot 17 Sierra Verde Estates, Camp Verde, AZ
P.O. Box 663, Yuma AZ 85366



Agenda Report Form – Section I

Meeting Date: Board of Adjustment and Appeals, Tuesday August 22, 2023

Consent Agenda Decision Agenda Executive Session Requested

Presentation Only Action/Presentation Work Session

Requesting Department: Community Development

Staff Resource/Contact Person: John Knight, Director and B J Ratlief, Planner

Agenda Title: Discussion, consideration and possible decision regarding an interpretation by the Town’s Zoning Administrator (Community Development Director) whether, or not, an off-highway motocross track is a permitted, conditionally permitted, and/or accessory use within the R1 Zoning District within the Town of Camp Verde.

List Attached Documents:

- A. Zoning Interpretation, 2023-02, ([pages 43-174](#))
(Note: [pages 43-51](#) are the interpretation documents, [pages 52-174](#) are the 2011 Planning and Zoning Ordinance Sections)
- B. Appeal Application and Supporting Documentation, ([pages 175-235](#))
- August 8, 2023 Letter from Musgrove, Drutz, Kack & Gautreaux, PX
([pages 233-235](#))
- C. Pierce-Coleman Response to Due Process Question Raised by Applicant
([pages 236-242](#))
- D. Sections 600, 601, and 602 of the Zoning Ordinance ([pages 243-251](#))
- E. ARS 9-462.06 and ARS 28-1174, ([pages 252-259](#))
- F. Public Comments Received, ([pages 260-294](#))
 - a. Sam Quicke, July 14 and July 19, 2023 (emails); ([page 294](#))
 - b. Barbara-‘a n rustler trail home owner’, July 25, 2023 (emails); ([page 265](#))
 - c. Barbara Woodlief, July 30, 2023 (email); ([page 268](#))
 - d. Donna Wiehn, August 07, 2023 (hand delivered); ([page 270](#))
 - e. Concerned Resident, August 10, 2023 (U.S. Postal Service); ([page 274](#))
 - f. Elizabeth Rocha, August 14, 2023; ([page 277](#))
 - g. Bill and Diane Calderon, August 14, 2023; ([page 279](#))
 - h. Concerned citizen, August 14, 2023; ([page 282](#))
 - i. Ryan Nave, August 14, 2023; ([page 284](#))
 - j. Hollie Gross, August 14, 2023; ([page 286](#))
 - k. Rita Fambrough, August 14, 2023. ([page 288](#))

Purpose: Public hearing regarding an interpretation by the Town's Zoning Administrator (Community Development Director) whether, or not, an off-highway motocross track is a permitted, conditionally permitted, and/or accessory use within the R1 Zoning District within the Town of Camp Verde.

Process and Application:

- February 6, 2023: Request for formal interpretation regarding a motocross track within a residential zone;
- March 09, 2023: Zoning Interpretation, Record of Interpretation, 2023-02 Issued
- April 21, 2023: Application received to appeal Zoning Interpretation 2023-02; Jason Jenkins, Applicant. See Attachment B for the application and all supporting documentation.

Appellant Application: Mr. Jenkins application alleges the Community Development Director misapplied the zoning use ordinance to the particular facts in this case. The appeal states,

"It is Mr. Jenkin's position that his riding, and that of his family and friends, of dirt bikes/motorcycles on his property is permitted because it is an accessory, customary, or incidental use as defined in relation to an R-1 District Purpose and Uses "single-family residential living" zoning as noted in the Town of Camp Verde Zoning Ordinance."

Refer to Attachment B. for the entire application and supplemental information submitted by Mr. Jenkins and is attorney.

Violation of Due Process Claim: As part of the appeal application, Mr. Jenkins, states his due process rights were violated. This assertion is a legal claim, therefore, the Town's Attorney reviewed the case and responded to this portion of the application. In short, the attorney states *"Mr. Jenkins has failed to establish a violation of his due process rights."* See Attachment C for the full response.

Additional response to August 08, 2023 letter from Musgrove, Drutz, Kack & Gautreaux, PC: The Town is in receipt of an additional letter dated August 8, 2023 from legal counsel for Jason Jenkins, specifically Musgrove, Drutz, Kack & Gautreaux, PC. This letter is in your packet as a part of Attachment B, Supporting Documentation. This letter from Mr. Jenkin's attorney, largely reaffirms Mr. Jenkins grounds for appeal of the zoning interpretation. The attorney expands on the due process arguments Mr. Jenkins has previously raised, claiming that the continuance of this matter requires dismissal. This assertion has no merit. There is no prejudice requiring dismissal arising from the continuance of the hearing as all enforcement is stayed during an appeal. Mr. Jenkins can continue to use the motocross track during the entire appeal process. Ultimately,

there is no due process violation or actual legal prejudice from a short continuance of a hearing where the homeowner is not prohibited from engaging in the activities in question. Similarly, there are no vested rights at issue in this case, which involves an expansion of a use not authorized by Code. Staff will be available to address any questions Board Members may have during the appeal. See Attachment C and the June 7, 2023 response prepared by Pierce-Coleman in reference to Mr. Jenkins Due Process Question Raised by Applicant.

Board of Adjustment (BOA) Authority: Arizona State Law, specifically Title 9, Chapter 4, Article 6.1, Municipal Zoning, Section 462.06 (9-462.06) provides the authority for a Board of Adjustment to

(C) "... hear and decide appeals from the decisions of the zoning administrator"... ; and

(D) "Appeals to the board of adjustment may be taken by persons aggrieved ... of the municipality affected by a decision of the zoning administrator..." (See Attachment F. for ARS 9-462.06)

The ARS Statute further states the Board shall

(G)(1) Hear and decide appeals in which it is alleged there is an error in an order requirement or decision made by the zoning administrator in the enforcement of a zoning ordinance adopted pursuant to this article. And

(G)(2) Reverse or affirm, in whole or in part, or modify the order, requirement or decision of the zoning administrator appealed from, and make the order requirement, decision or determination as necessary.

The ARS Statute also specifies what the board may not do, specifically:

(H)(1) Make any changes in the use permitted in any zoning classification or zoning district, or make any changes in the terms of the zoning ordinance provided the restriction of this paragraph shall not affect the authority to grant variances pursuant to this article.

In other words, the Board may not change the ordinance or create a new ordinance. The Board of Adjustment is not a legislative body with authority to make or change municipal ordinances. Instead, the BOA is an independent body set up for the purpose of hearing appeals regarding decisions of the Town's Zoning Administrator.

Section 600.E of the Town's Zoning ordinance includes additional information regarding the Board's role in appeals and requirements for a hearing. Refer to Attachment D. for additional information.

Background – Why we are here today:

Beginning in January of 2023, the Community Development Office and Camp Verde's Marshall's Office received complaints regarding neighbors riding motorcycles on a private, off-highway motorcycle track behind their homes on parcels located on Rustler's Trail. These complaints centered on nuisance issues of noise and dust generated by

the motorcycle activities. In early January, one of the complaints noted tractors were moving earth and the existing track was being upgraded and expanded.

The activity of grading raised the threshold of concern and possible violation from nuisance to:

- a) grading without a permit, and
- b) modification of land within a flood zone without a permit

The above-described activities resulted in the Town's Building Official issuing a Stop-Work-Order until the allegations could be properly investigated and, if required, then apply for and obtain the appropriate building permits.

On February 6, 2023, a neighbor of this motorcycle track specifically requested the Town:

"... provide an opinion of and interpretation of land use for R-1 zoned property. Interested mainly in the construction of a professional size motocross race track built in a residential neighborhood across 3 residential lots, one of which is in probate."

Therefore, the Town's Zoning Administrator, who is also the Community Development Director, was required to formally render an opinion regarding the land use, specifically a "motocross race track" within an R1 residential district which resulted in the issuance of Zoning Interpretation Record of Interpretation 2023-02 (refer to Attachment A) issued March 09, 2023.

Note: Upon issuance of the Zoning Interpretation and subsequent appeal of the decision, the applicant, as well as the neighboring property owner, were both notified they could continue use of the motorcycle track until the appeal is resolved through the Board of Adjustment Public Hearing and the Board's final decision.

Also note: The issue and possible violation of grading without a permit is a separate issue and ***is not*** a part of this hearing. Instead, the issue before the Board is the ***use*** of the land, specifically the use of off-highway riding of motorcycles over a course laid out on rough terrain, i.e. motocross racing, as well as the building and use of an off-highway motocross track within an R1 Residential District.

Process of Interpretation: The first step in the process of rendering an opinion is to research the current ordinance for the specific use and construction of an off-highway motocross racetrack, motorcycle racetrack or similar use such as an off-highway vehicle race track.

The 2011 Planning and Zoning Ordinance is silent on this specific land use. Therefore, the primary guidance for this opinion comes from Section 203, paragraph one, which states:

“Any use or structure not specifically permitted by (or analogous to) District Provisions shall be deemed prohibited and unlawful as a principal or an accessory use or structure for the District.” (See Attachment A for relevant Zoning Ordinance sections).

Therefore, at first blush, it would appear the use of an off-highway motocross track within a residential district is a prohibited use. However, before reaching that determination the Community Development Director next focused on the term or phrase “*or analogous to*” and continued the research.

“Any use or structure not specifically permitted by (or analogous to) District Provisions shall be deemed prohibited and unlawful as a principal or an accessory use or structure for the District.”

Merriam-Webster defines analogous as:

“Similar or comparable to something else either in general or in some specific detail.”

Therefore, the next step is to look for something within the existing Planning and Zoning Ordinance which is generally *similar* or specifically *comparable* to the use of an off-highway motorcycle racetrack. If found, then the Zoning Administrator would be able to determine the use to be a permitted use. To look for similar or comparable uses, we must first define or clarify what an off-highway motocross track is. Merriam-Webster defines motocross as:

“A motorcycle race over a course laid out on rough terrain.”

Merriam-Webster also directs the researcher to the definition of motocross racing, which is defined as:

“A closed-course motorcycle race over natural or simulated rough terrain (as with steep inclines, hairpin turns, and mud).”

Therefore, for the purpose of this review, the use of a motocross track involves two key items:

- A motorcycle, or motorcycles, and
- A course laid out upon the land.

It is important to note, a course or track such as this is also referenced within Arizona Revised Statutes which will be further analyzed and applied to this situation later in this staff report. However, returning to the review of the Town’s Planning and Zoning Ordinance, nothing similar or comparable is listed as a permitted use within the R1 Zoning District, nor any of the other residential zoning. In fact, nothing similar or

comparable is found within any of the Town's Zoning Districts, to include commercial and industrial zones.

However, there is an additional avenue to research in order to determine if an off-highway motocross track and the use of it, is a permitted use within the Town of Camp Verde.

Each of the zoning districts within Section 203 of the Planning and Zoning Ordinance, specifies "*Other accessory uses commonly associated with the primary permitted use*" as a permitted use. Specifically, in the R1 Zoning District in Section 203.B(2)(k) states:

k. Other accessory uses commonly associated with primary permitted use. (See Section 301C).

The primary permitted use of the R1 Zoning District is residential. Section 203.B(1) specifically states:

"The R1 District is intended for single-family residential living, site-built, modular or manufactured housing."

Section 301.C, specifically mentioned in Section 203.B(2)(k), provides no examples nor guidance regarding this topic, therefore, once again the ability to render an opinion which allows an off-highway motocross track, and its use, as a permitted use hits a dead end. However, before making the final determination that the use is prohibited, there is one final avenue of exploration and research of the existing Planning and Zoning Ordinance, specifically, the definition of "accessory use."

The Planning and Zoning Ordinance defines accessory use as:

"A use of land or of a building or portion thereof customarily incidental and subordinate to and located on the same lot with the principal use."

Therefore, the final question to ask in determining if an off-highway motocross track is a permitted use within the Town of Camp Verde is:

Is the construction and use of an off-highway motorcycle track, specifically a motocross racetrack, a customary incidental and subordinate use to a residence?

Typical and accepted accessory uses associated with residential districts are storage and the keeping of household pets and/or livestock which then provides for structures such as sheds, barns, and fences.

Also defined to be an accessory use are vehicles. In fact, Camp Verde Planning and Zoning Ordinance specifically defines vehicles as (yellow highlight added):

VEHICLE: *The result of arranging materials and parts together for conveyance over roads (whether or not self-propelled). Such is not deemed a structure in qualifying for a building permit, but as being accessory to the principal use on a lot (except in connection with vehicular rental sales agencies and mobile/manufactured home parks).*

Therefore, structures such as carports and garages are also deemed accessory uses and permitted on residential properties.

However, although vehicles are, by definition, an accessory use, the Planning and Zoning Ordinance does not permit unrestricted or unconditional vehicle use within residential zones.

For instance, the Planning and Zoning Ordinance does not permit owners/occupants of a residence to store an unlimited number of vehicles on their property. The Ordinance requires vehicles to be:

- Vehicles for personal use;
- Be in good repair and demonstrably operable under its own power; and
- Have current title and registration.
- Any vehicles not meeting the above requirements are to be stored and screened behind an opaque fence.

Additionally, an owner or occupant of a residence may repair their vehicle(s) at their residence, likewise he or she may offer their vehicle 'for-sale.' However, these uses also have limits within residential districts, specifically:

- Outside repair of more than one (1) vehicle at a time is prohibited, and
- An owner or occupant of a residential property may only offer for-sale up to four (4) vehicles per year.

Overview of these specified limitations regarding vehicle use within a residential district indicate, while the keeping and use of a vehicle is indeed a customary and subordinate use of a residence, the intensity or amount of usage is limited in order to alleviate the effects of that use on surrounding properties and neighborhood.

The unrestricted use of an off-highway motocross track may potentially have significant impact on the surrounding neighborhood. Returning to the question, is the use *incidental and subordinate to single-family residential living*, we need more information about the use.

What is absent from the above definitions for motocross and motocross racing, but is important to the determination if the use may be determined to be *customarily incidental and subordinate to single-family residential living*, is the construction of a track as well as the actual usage of motorcycles on such a track.

Questions for consideration are:

- Is this a single motorcycle incidentally riding on existing, natural terrain?
- Are there multiple riders? If multiple riders, how many?
- Is the track of natural terrain or a constructed track for the purpose of motorcycle racing?
- Is the track fully contained on a single parcel, or does it cross into and over other properties?

Sometimes a picture may help tell the story. Therefore, asking the question – what does this use look like may help provide context for the question “is the use *customarily incidental and subordinate to single-family residential living.*”

A single rider, incidentally using a track?



Two or more riders?



Also, what is “incidental”:

- once a week;
- a few times a month;
- every day?

There is a second criteria to the definition of an accessory use which we believe applies in this specific instance.

Again, the definition is:

“A use of land or of a building or portion thereof customarily incidental and subordinate to and located on the same lot with the principal use.”

Historic Google imagery of the two-three parcels where this motocross track is reported clearly show a constructed track behind the home of Mr. Jenkins (1626 N. Rustler Trail)
- note the track is wholly on the “same lot.”

2015 Google Image:



2022 Google Image:



Source: Google Earth 2/2022

However, aerial imagery also clearly indicates the track has been recently expanded and appears to no longer be “on the same lot with the principal use” but is now an expanded use crossing two or perhaps three lots or parcels.

2023, March or April - Camp Verde Aerial Imagery:



The above March or April 2023 aerial imagery contracted for and provided to the Town of Camp Verde clearly shows the track has been expanded from its previous – one lot boundary. Instead, this recent aerial photography shows the existing track has been expanded and now traverses more than one lot and therefore no longer meets the definition for an accessory use.

This aerial imagery was confirmed with on site inspections conducted by Town staff in January 2023 when the Town Building Official issued a stop work order for the grading activities.

The off highway tract, once limited to a single parcel, is no longer contained upon a single parcel, but now transverses 2-3 parcels. Therefore, by the Planning and Zoning Ordinance definition of an accessory use which specifically includes “*on the same lot*”, this tract clearly does not meet the definition of an accessory use.

However, there is one final piece of information which solidifies the determination that an off-highway motocross track cannot be a permitted use nor an accessory use to a residence within the Town of Camp Verde.

While motorcycles themselves, as a vehicle, are clearly defined as an accessory use, it is the use of the motorcycle(s) on an off-highway track that is still at the heart of this question. Therefore, the question becomes:

Is an off-highway vehicular course or track, specifically a motocross track a *customary incidental and subordinate use to a residence*?

Arizona state law, ARS 28-1174, specifically prohibits a person from driving an off-highway vehicle over areas that are not specifically designed as roads, trails or routes and which have been allowed by rule or regulation. State law further designates a person shall only drive off-highway vehicles on roads, trails, routes and areas that are indicated to be such by rules or regulations. See ARS 28-1174 (Highlights added) quoted below:

28-1174. Operation restrictions; violation; classification

A. A person shall not drive an off-highway vehicle:

1. With reckless disregard for the safety of persons or property.
2. Off of an existing road, trail or route in a manner that causes damage to wildlife habitat, riparian areas, cultural or natural resources or property or improvements.
3. On roads, trails, routes or areas closed as indicated in rules or regulations of a federal agency, this state, a county or a municipality or by proper posting if the land is private land.
4. Over unimproved roads, trails, routes or areas unless driving on roads, trails, routes or areas where such driving is allowed by rule or regulation.

B. A person shall drive an off-highway vehicle only on roads, trails, routes or areas that are opened as indicated in rules or regulations of a federal agency, this state, a county or a municipality.

C. A person shall not operate an off-highway vehicle in a manner that damages the environment, including excessive pollution of air, water or land, abuse of the watershed or cultural or natural resources or impairment of plant or animal life, where it is prohibited by rule, regulation, ordinance or code.

D. A person shall not place or remove a regulatory sign governing off-highway vehicle use on any public or state land. This subsection does not apply to an agent of an appropriate federal, state, county, town or city agency operating within that agency's authority.

E. A person who violates subsection A, paragraph 1 is guilty of a class 2 misdemeanor.

F. A person who violates any other provision of this section is guilty of a class 3 misdemeanor.

G. In addition to or in lieu of a fine pursuant to this section, a judge may order the person to perform at least eight but not more than twenty-four hours of community restitution or to complete an approved safety course related to the off-highway operation of motor vehicles, or both.

H. Subsections A and B do not prohibit a private landowner or lessee from performing normal agricultural or ranching practices while operating an all-terrain vehicle or an off-highway vehicle on the private or leased land.

Therefore, while motorcycles are considered to be an accessory use to a residence, Arizona state law specifically prohibits them to be used “off-highway.” Therefore, the construction and use of a motorcycle racetrack, unless such a track and use is specifically a permitted use by the Planning and Zoning Ordinance, is a prohibited use.

It is staff’s recommendation that the Board of Adjustment find allowing an off-highway motocross racetrack as an accessory use to a residence to be closed.

Conclusion: The final analysis of both state law and the current 2011 Planning and Zoning Ordinance regarding the construction and use of an off-highway motocross track in a residential district, determines:

- A motocross track is not a permitted use by right, nor conditionally permitted use within an R1, nor in fact within any of the Camp Verde Zoning Districts, including all other residential districts, commercial and industrial zone,
- No similar nor analogous uses are permitted within the Planning and Zoning Ordinance whereby the Community Development Director may deem an off-highway motocross race track may be considered – by comparison - a permitted use;
- The existing motocross track appears to have been expanded and no longer resides on a single lot, but appears to now transverse two or more parcels, therefore, the definition of an accessory use no longer applies to this specific residence; and
- An off-highway motocross track cannot be deemed an accessory use to a residence due to the fact off-highway use of an area not designated as a road, trail or route is prohibited by state law.

Therefore, the construction and use of an off-highway motocross racetrack cannot be a permitted use within the current 2011 Planning and Zoning Ordinance. Staff respectfully asks the Board of Adjustment to deny the appeal.

Administrative Steps Completed for this Appeal:

- February 6, 2023: Request for formal interpretation regarding a motocross track within a residential zone;
- March 09, 2023: Zoning Interpretation, Record of Interpretation, 2023-02 Issued
- April 21, 2023: Application received to appeal Zoning Interpretation 2023-02 (Jason Jenkins, Applicant)
Transmitted BOA Members via email, Monday April 24, 2023
- May 12, 2023: Additional Information received from Jenkins regarding appeal of Record of Interpretation, 2023-02
Transmitted BOA Members via email, Monday May 15 2023
- July 11, 2023: 300’ letter posted

July 24, 2023: Property posted

July 30th, and August 02, 2023: Newspaper notice published Verde Independent

Possible Motion: Motion to affirm the staff interpretation as written. Specifically:

“Motocross track is not listed as a permitted or conditionally permitted use in any zoning district. In addition, it can’t be considered an accessory use. It is beyond the scale of a use that is customarily incidental and subordinate to a permitted use. And finally, the only use that could be considered similar in nature (outdoor recreation and assembly) is not allowed in the R1 Zoning District.”

Other Options: The Board has the authority to reverse or affirm, in whole or in part, or modify the interpretation as necessary.

Appeal Process: Per Section 602.B.4. of the Zoning Ordinance (Attachment D.), “A person aggrieved by a decision of the Board, or a tax payer or municipal officer may, at any time within 30 days after the Board has rendered its decision, file a complaint in the Superior Court to review the decision. Filing of the complaint shall not stay proceedings upon the decision appealed, but the court may, on application, grant a stay, and on final hearing may reverse or affirm wholly or partly, or may modify the decision received.”

Attachment A

Zoning Interpretation, 2023-02

(Note: [Pages 43-51](#) are the interpretation documents,
[pages 52-174](#) are the 2011 Planning and Zoning Ordinance Sections)



ZONING INTERPRETATION
RECORD OF INTERPRETATION
2023-02

Subject of Interpretation: Motocross track as an allowed use

Regulation: Planning & Zoning Ordinances and Subdivision Regulations, Section 203 – Use Districts

Purpose: To provide clarification regarding whether a motocross track is a permitted use or conditional use in the R1 Zoning District

Background: The Town of Camp Verde, Arizona (the “Town”) adopted requirements for allowed uses of land as part of the Planning & Zoning Ordinances and Subdivision Regulations (the “Zoning Code”) in Section 203 – Use Districts. Under this section, “*Any use or structure not specifically permitted by (or analogous to) District Provisions shall be deemed prohibited and unlawful as a principal or an accessory use or structure for the District.*” The Zoning Code restricts the number, size, type, or manner of uses on any parcel so as not to impair the enjoyment or use of any nearby properties or violate other legal restrictions.

Each separate Use District includes a description of the purpose of the district, a list of permitted uses and structures, and a list of uses and structures subject to a use permit. If a use is specifically listed as a permitted use, then it is determined to be an allowed use with limited restrictions. If a use is listed as conditionally permitted, then that use is subject to a Use Permit which requires approval by the Planning and Zoning Commission and Town Council. The Use Districts also include as a permitted use, “*Other accessory uses commonly associated with primary permitted use.*” The purpose of this interpretation is to clarify whether a motocross track is a permitted use, conditionally permitted use, or an accessory use in the R1 Zoning District.

Property Dispute:

- A. **Location of Properties.** There are three properties that have a motocross track that is partially under construction. These include APN 403-11-084 [REDACTED], APN 403-11-085 [REDACTED], and APN 403-11-086 [REDACTED]. The track has existed on Mr. [REDACTED] property since at least 2015 (source – Google Earth). The track has recently been expanded and now extends into the [REDACTED] and [REDACTED] properties. This expansion appears to have occurred sometime after February 2022 (source – Google Earth).
- B. **Requestor.** Mr. Tetreault and Ms. Fambrough live adjacent to the [REDACTED] property on APN 403-11-087. Specifically, they have requested the Town,
- “... provide an opinion of and interpretation of land use for R-1 zoned property. Interested mainly in the construction of a professional size motocross race track built in a residential neighborhood across 3 residential lots, one of which is in probate.”
- C. **Neighbor Dispute.** Tetreault and Fambrough have expressed nuisance concerns related to the use of the track primarily related to dust and noise. The track is approximately 1 to 1.5

acres in size. According to Ms. Fambrough, it is used on a fairly regular basis (approximately once per week) by the property owners, their family members, and friends. The complaints that have been filed are related to nuisance concerns – primarily noise and dust. The neighbors have also raised concerns about the environmental impact of motorcycles in a flood zone including driving away animals, flooding, and soil erosion. In addition, they have stated that the track is sometimes used for gatherings with approximately 15 to 20 people in attendance with 5 or 6 people riding at a time. Although this track has existed on the Cole property for many years, this is the first time a formal interpretation of the Zoning Code has been requested.

- D. **Uses not specifically listed.** Key to this interpretation is a question of how the zoning ordinance addresses uses not specifically identified as permitted or conditionally permitted uses. The Camp Verde Zoning Ordinance, Section 203 states, “*Any use or structure not specifically permitted by (or analogous to) District Provisions shall be deemed prohibited and unlawful as a principal or an accessory use or structure for the District.*” Therefore, if a use is not specifically listed, it is generally considered as prohibited. Section 203 Use Districts provides some flexibility for uses or structures but only to the extent they are “analogous,” i.e., “similar” or comparable” as defined by Code. In other words, a use or structure must be listed as specifically permitted, or analogous to a specifically permitted use, otherwise it is prohibited in that district.
- E. **R1 District Purpose and Uses.** The zoning ordinance states in Section 203.B.1. that, “*The R1 District is intended for single-family residential living, site-built, modular or manufactured housing.*” Section 203.B.2. lists the following permitted and conditionally permitted uses:
2. Permitted Uses and Structures:
 - a. Accessory Dwelling Unit (ADU).
 - b. Agriculture and cultivation.
 - c. Dwelling unit for one family on any one lot. (See B.1).
 - d. Educational institutions (including private schools, provided they offer curriculum of general instruction comparable to similar public schools).
 - e. Flood control facilities.
 - f. Golf courses with accessory uses such as pro shops, shelters, and rest rooms.
 - g. Historical Landmarks.
 - h. Home occupations (See Section 303).
 - i. Keeping of farm animals, limited (See Section 305).
 - j. Open land carnival and recreation facilities (religious & educational institutions).
 - k. Other accessory uses commonly associated with primary permitted use. (See Section 301 C.)
 - l. Religious institutions (in permanent buildings).

3. Uses and Structures Subject to Use Permit

- a. Community parks, playgrounds or centers.
- b. Government facilities and facilities required for the provision of utilities and public services.
- c. Bed and Breakfast.
- d. Temporary Use Permits, subject to administrative approval (See Section 601.C):
 - 1) Occupancy of temporary housing, including travel trailers, during the construction of a permanent dwelling is allowed during the 12-month period after issuance of a building permit.
 - 2) Model homes, temporary offices (construction and pre-construction sales offices/showrooms), construction sheds and yards incidental to a recorded residential development or other construction project (subject to District setbacks) for a period not to exceed 12 months.
- e. Mobile/manufactured home and recreational vehicle parks subject to the requirements of Section 306.
 - 1) Notwithstanding the foregoing, in the event a Planned Area Development (PAD) District is established per Section 203, this use may be included in any Development Plan thereunder and approved without being subject to a Use Permit application and hearing procedures set forth in Section 601.

Note that there is not a use listed as Motocross track. Nor are there any uses which appear to be “analogous” or similar in nature. There is a listing under 2.j. of “*Open land carnival and recreational facilities*” but under the definitions section, it’s clear that these must be associated with a religious or educational institution.

- F. **Accessory Use.** Section 203.B.2.k. lists, “*Other accessory uses commonly associated with primary permitted use*” as a permitted use. Section 103 includes a definition of an accessory use as “*A use of land or of a building or portion thereof customarily incidental and subordinate to and located on the same lot with the principal use*”. For a motocross track to be considered a permitted accessory use under this definition, it would need to be customarily incidental and subordinate to the primary use of a single-family residential use. Based on the scale of the use, it is difficult to conclude that it is incidental and subordinate to a single-family use. In addition, the definition requires the accessory use to be “...*located on the same lot with the principal use.*” The motocross track is actually located on three (3) lots so it would not meet this requirement.
- G. **Other Uses Considered.** The zoning ordinance does include one use that could be considered similar in nature. The use is listed as, “*Outdoor recreation or assembly facilities*”. Under the Definitions in Section 103, this is defined as, “*An area designed for active recreation, whether publicly or privately owned, including but not limited to parks, baseball diamonds, soccer and football fields, golf courses, tennis courts, swimming pools, equestrian facilities, archery and shooting ranges.*” A motocross track could fall into this definition. However, this use is not allowed in the R1 Zone. It is a conditional use in the RS, C1, C2, C3, OS, and AG zones. It is a permitted use in the M2 and PAD zones.

H. **Case Law.** The Arizona Court of Appeals dealt with a similar fact pattern in *Murphy v. Town of Chino Valley*, 163 Ariz. 571 (App. 1989). The Murphys operated a recreational use on their property, a roping arena.

The Appeals Court concluded that:

A roping arena, where the owners and numerous others participate in competitive roping, is not expressly within the scope of any of the listed uses for the zoning district. If the roping arena is to be considered a permitted use, it must come under the definition of an accessory use.

While the proposed use of a motocross track is very different from a roping arena, it does address the question of what an appropriate accessory use is. The Town of Camp Verde Zoning Ordinance defines “*Accessory Use*” as a use of land or of a building or portion thereof customarily incidental and subordinate to and located on the same lot with the principal use.

The Court of Appeals (in *Murphy*) found that it would be reasonable to conclude that a roping arena where friends and community members are invited for competitive and practice cattle roping events is not an accessory agricultural use. *Murphy*, 163 Ariz. 571, 577.

While the motocross track may differ in type and scale to the Murphy arena, the extent of the impact of this activity on the neighborhood is not disputed. There are complaints that the activities are noisy and result in excessive dust. The type of activity, including the sheer scale and impact on the nearby residential area, supports a finding that this is a recreational activity in nature rather than a mere accessory use.

Conclusion: Motocross track is not listed as a permitted or conditionally permitted use in any zoning district. In addition, it can't be considered an accessory use. It is beyond the scale of a use that is customarily incidental and subordinate to a permitted use. And finally, the only use that could be considered similar in nature (outdoor recreation and assembly) is not allowed in the R1 Zoning District.

Other Options: In order for this use to be allowed as a permitted or conditionally permitted use, the Town of Camp Verde would need to amend the Zoning Ordinance. An ordinance amendment can be initiated by a private property owner, town staff, the Planning and Zoning Commission or Town Council.

Appeal: Per Section 602, paragraph B, the Board of Adjustment may hear appeals of administrative decisions. Specifically:

“The Board, on deciding appeals from decisions of the Community Development Director (Zoning Administrator), is responsible for interpreting the meaning and equitable application of the Zoning Ordinance.

1. Appeals to the Board may be filed by persons aggrieved or by any officer, department, board or bureau of the Town affected by a decision of the Community Development Director, within a period of 45 days by filing, in writing, with the Community Development Director and with the Board, a notice of appeal specifying the grounds thereof.

2. *The Community Development Director shall immediately transmit all records, pertaining to the action appealed, to the Board.*

3. *An appeal stays all proceedings in the matter appealed, unless the Community Development Director verifies to the Board after the notice of appeal is filed, that by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. Upon such certification, proceedings shall not be stayed other than by a restraining order granted by the Board or by a court of record on application and notice to the Community Development Director.*

4. *A person aggrieved by a decision of the Board, or a tax payer or municipal officer may, at any time within 30 days after the Board has rendered its decision, file a complaint in the Superior Court to review the decision. Filing of the complaint shall not stay proceedings upon the decision appealed, but the court may, on application, grant a stay, and on final hearing may reverse or affirm wholly or partly, or may modify the decision received.”*

Unless appealed, this decision is effective March 10, 2023, at 5:00 p.m. The appeal time will start 45 days from the date of publication of the decision. The deadline to file an appeal is April 24, 2023.



John Knight, Community Development Director

March 9, 2023
Date

Cc:

- Trish Stuhan, Town Attorney
- Gayle Mabery, Interim Town Manager

Attachments:

- Aerial Map of Affected Properties
- APN Map of Affected Properties
- Letter requesting interpretation
- Murphy v. Town of Chino Valley decision
- Relevant Zoning Code Section Excerpts
 - o 103 – Definitions
 - o 203 – Use Districts
 - o 602 – Zoning Adjustments



Source: Google Earth 2/2022



Map Layers Search Results Pr

Back

4 Parcels were identified

Please Select:

Zoom To Clear Selection Download

Parcel: 403-11-084

Grauer Michael &

Parcel: 403-11-085

Jenkins Jason B

Parcel: 403-11-086

Martinez Cole E &

Parcel: 403-11-087

Tetreault Wallace J &

RECEIVED

FEB 6 2023

February 6, 2023

Mr. John Knight

Community Development

Planning and Zoning

Town of Camp Verde, Az

Could you please ask the town attorney to provide an opinion of and interpretation of land use for R-1 zoned property. Interested mainly in the construction of a professional size motocross race track built in a residential neighborhood across 3 residential lots, one of which is in probate.

We look forward to and appreciate your feed back




*Rita Fambrough
WJ Tetreault*

Rita Fambrough

Wallace (Butch) Tetreault

Neighbors on Rustler Trail


Camp Verde, AZ 86322





SECTION 103 - DEFINITION OF TERMS

For the purposes of this Zoning Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. Words, phrases, and terms not defined in this Zoning Ordinance shall be given their usual and customary meanings except where the context clearly indicates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not permissive; the word "may" is permissive and not mandatory. Words used in the present tense include the future tense; words used in the future tense include the present tense. The word "person" includes individuals, partnerships, corporations, clubs, and associations and other forms of business enterprise. The following words or terms when applied to this Zoning Ordinance shall carry full force when used interchangeably; lot, plot, parcel, or premises; used, arranged, occupied, or maintained; sold or dispensed; construct, reconstruct, erect, place, or alter (structurally or otherwise), If more than one provision, standard, or requirement of any chapter of this Zoning Ordinance applies in all instances the most restrictive, provision, standard or requirement shall control.

DEFINED TERMS, PHRASES AND WORDS:

ABANDONMENT: The discontinuation of use for a period of one year.

ACCESSORY USE: A use of land or of a building or portion thereof customarily incidental and subordinate to and located on the same lot with the principal use.

ADJACENT: Adjoining or across a road from each other.

ADULT CARE CENTER: An establishment enrolling four or more adults where fees or other forms of compensation for the temporary care of the adults are charged, and which is licensed and approved to operate by the State.

AGRICULTURE: The production, keeping or maintenance, for sale, lease or personal use, of plants or animals useful to man, including the breeding and grazing of any or all of such animals; or lands devoted to a soil conservation or forestry management program. This includes farm stands for the temporary or seasonal sales of agricultural products grown on site or other grown on other properties owned or leased by the farm operator.

AGRITOURISM: Is the act of visiting a working farm, ranch, agricultural or horticultural agribusiness operation for the purpose of enjoyment, education or active involvement of visitors to experience a rural lifestyle. Visitors may participate in events and services related to agriculture which may take place on or off the farm or ranch, and that connect consumers with the heritage, natural resource or culinary experience they value. This may include but not limited to; farm stands or shops, U-pick, on-farm classes, fairs, festivals, pumpkin patches, wineries, barn dances, corn maze, hunting, fishing, guest ranches, agricultural tours, wildlife viewing or bird watching, wine tasting.

ALLEY: A passageway that has been dedicated or deeded for public use affording a secondary means of access to abutting property.

AMENDMENT: A change in the wording, context, or substance of these regulations or an addition, deletion, or a change in the zone boundaries or classifications upon the Zoning Map; Also a change in the wording, context, or other correction of a final plat.

ANALOGOUS: Similar or comparable.

ANIMALS:

- Livestock – animals, such as horses, ponies, mules, sheep, alpacas, goats, cattle; and large poultry, such as ostriches and emus.
- Fowl – chickens, ducks, geese, turkeys, and peacocks.
- Household – small domestic pets typically found in households, such as dogs, cats, hamsters, parakeets, parrots, rabbits, guinea pigs, and tropical fish.

ANTIQUUE: A collectible item, desired for its age, rarity or other unique feature.

APARTMENT: Any building or portion thereof that contains three or more dwelling units and, for the purpose of this Zoning Ordinance, includes apartment houses and apartment hotels.

APPLICANT: A person submitting an application for development.

APPLICATION FOR DEVELOPMENT: The application form and all required, accompanying documents and exhibits for development review purposes.

APPROVED PLAN: A plan, which has been granted final approval by the appropriate approving authority.

ASSEMBLY, CONSTRUCTION & PROCESSING PLANTS: Includes the following activities within a closed or partially closed buildings: machining, tooling, assembly, molding, decorating, cleaning, equipping, repairing, servicing, printing, publishing, welding, milling, planing, manufacturing, fabrication, processing, compounding, packaging, mixing, glazing, winding, binding, weaving, knitting, sewing, baking, cooking, roasting, pickling, brewing, distilling, salvage (but not wrecking), equipment, material and dead storage yards, plating, polishing, meat packing (no slaughtering except rabbits and poultry), animal treating, boarding, breeding and sales, warehousing (including elevators), freight yards, circuses and carnivals, race tracks, and stadiums.

ASSISTED LIVING CARE FACILITY: A residential care facility, including adult foster care, licensed by the State to provide supervisory care services, personal care services or directed care services on a continuing basis to a maximum of no more than ten full-time residents

AUTOMOBILE REPAIR (HEAVY): Heavy repair of automobiles, light & heavy trucks, recreational vehicles, cycles, and stationary or portable machinery entirely within enclosed buildings including the following:

- Any fabrication by means of welding, cutting, heating, bending, molding, forging, grinding, milling or machining.
- Vehicle frame repair.

The following items are not allowed:

- Any unscreened outside storage of parts, materials, or disabled vehicles;
- Any drainage or dumping of oil, fuel, grease, cleaning fluids, or hazardous materials on the pavement, gravel, ground, drainage system or in any other unauthorized place or method.
- Any hours of operation between ten (10) p.m. and six (6) a.m. is prohibited if the business property is within 300 feet from any parcel zoned or used for residential purposes. (2015 A407)

AUTOMOBILE REPAIR (LIGHT): General repair of automobiles, light trucks, recreational vehicles, cycles, and small stationary or portable machinery entirely within enclosed buildings or attached enclosures of solid material at least six feet in height, but excluding the following:

- Any fabrication by means of welding, cutting, heating, bending, molding, forging, grinding, milling or machining. (Such operations are permissible as an adjunct to repair only);
- Vehicle frame repair or major body or fender work;
- Any work on vehicles outside permitted structures or enclosures, unless on the service apron of a gasoline service station;
- Any unscreened outside storage of parts, materials, or disabled vehicles;
- Any draining or dumping of oil, fuel, grease, cleaning fluids or hazardous materials on the pavement, gravel, ground, drainage system or in any other unauthorized place or method;
- Any hours of operation between ten p.m. and six a.m. Within 300 feet of any parcel zoned or used for residential purposes;
- Any use or structure failing to comply with applicable local and state fire safety standards.

AUTOMOBILE & MACHINERY SALES: General sales of new and used automobiles, light trucks, recreational vehicles, travel trailers, mobile homes, boats, boat trailers, utility trailers, motorcycles, ATV's, bicycles and small stationary or portable machinery within enclosed buildings. Outside display of such vehicles or similar merchandise shall be permitted only as specified in Section 309 Automobile & Machinery Sales.

AUTOMOBILE SERVICE STATION: That portion of a building where flammable or combustible liquids or gases used as motor fuels are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles.

AUTOMOBILE STORAGE YARD: Includes storage of automobiles incident to a lawful towing business (but does not include automobile salvage or wrecking). The temporary storage of junked motor vehicles, if completely enclosed by a screen wall, is considered accessory to this use. Temporary storage in this context means storage for not longer than ninety (90) days.

AWNING: A roof-like cover that projects from the wall of a building for the purpose of shielding a doorway or window from the elements.

BASEMENT: A floor level below the main story of a building, wholly or partly below ground level, which may be used for habitation, household equipment or storage in compliance with the currently adopted building codes.

BED AND BREAKFAST: An overnight rooming or boarding house with breakfast where the host lives on the premises. Bed and Breakfast establishments are limited to two to five (5) bedrooms and must comply with parking requirements under Section 403.

BEDROOM: A private room planned and intended for sleeping, separated from other rooms by a door, and accessible to a bathroom.

BLOCK: That property fronting on one side of a street and so bounded by other streets, canals, railroad right-of-way, un-subdivided acreage or other barriers (except alleys) of sufficient magnitude as to interrupt the continuity of development on both sides thereof.

BOARDER OR ROOMER: An individual other than a member of the family occupying the dwelling unit or part thereof who, for a consideration, is furnished sleeping accommodations and may be furnished meals or other services as part of the consideration.

BOARDING HOUSE: See "ROOMING OR BOARDING HOUSE".

BOARDING STABLE: A structure designed for the feeding, housing or exercising of horses not owned by the owner of the premises for a consideration.

BUFFER: Undeveloped or landscaped property used to separate the activity from surrounding properties. Required landscaping or setbacks do not qualify as buffer.

BUILDING: A structure having a roof supported by columns or walls; or any structure used or intended for supporting or sheltering any use or occupancy.

-**ACCESSORY:** A subordinate structure, either attached or detached from the principal or main building or use occupied or devoted to a use incidental to the principal use.

-**ATTACHED:** A building which has a party wall or a common wall with another building.

-**CLOSED:** A structure completely enclosed by a roof, walls and doors on all sides facing the perimeter of a lot.

-**CLUSTER:** A technique in which attached or detached dwelling units are grouped relatively close together, leaving open spaces as common areas.

-**COMMUNITY:** A public or quasi-public building used for community activities of an educational, recreational or public services nature.

-**DETACHED:** A building having no party wall or common wall with another building.

-**FACTORY BUILT:** A structure, all or a major portion of which was factory assembled for permanent attachment to a lot and constructed in compliance with A.R.S. Section 41-2142 and certified as such by the Arizona State Registrar of Contractors, Building Codes Division.

-**HEIGHT:** The vertical distance above a reference datum measured to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roof. The height of a stepped or terraced building is the maximum height of any segment of the building, or as defined in the current adopted building code. The reference datum shall be selected by either of the following, whichever yields a greater height of building:

1. The elevation of the highest adjoining sidewalk or finished ground surface within a 5-foot (1524 mm) horizontal distance of the exterior wall of the building when such a sidewalk or ground surface is not more than 10 feet (3048 mm) above lowest finished grade; or
2. An elevation 10 feet (3048 mm) higher than the lowest finished grade when the sidewalk or ground surface described in Item 1 is more than 10 feet (3048 mm) above the lowest finished grade.

-**PRINCIPAL:** A building, or buildings, in which is conducted the primary use of the lot on which it is situated. In any residential district, any dwelling shall be deemed to be the principal building of the lot on which the same is situated.

CAMPGROUND: A plot of ground upon which two or more campsites are located, established, or maintained for occupancy by the general public as temporary living quarters for recreation, education, or vacation purposes.

CARPORT: A roofed structure to provide space for the parking or storage of motor vehicles and enclosed on not more than three sides.

CEMETERY: Property used for interring of the dead.

CHANGE OF USE: Any use which substantially differs from the previous use of a building or land.

CHILD CARE CENTER: A private establishment enrolling more than four children between the ages of two and five years of age and where tuition, fees, or other forms of compensation for the temporary care of the children is charged, and which is licensed or approved to operate as a child care center by the State.

CHURCH: A building or structure, or groups of buildings or structures, which by design and construction are primarily intended for the conducting of organized religious services and accessory uses associated with the church.

CLINIC: A health care establishment where patients are admitted for examination and treatment by one or more physicians, dentists, psychologists or social workers and where patients are not usually lodged overnight.

COMMERCIAL USE: See "*USE*".

COMMISSION: The Camp Verde Planning and Zoning Commission (See "*PLANNING COMMISSION*").

COMMUNITY DEVELOPMENT DIRECTOR: The Director of the Community Development Department for the Town of Camp Verde or his or her designated representative; also see "*ZONING ADMINISTRATOR*".

CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO): See Code of Federal Regulations for Environmental Protection Agency (EPA), Title 40, Volume 13, Part 122 (40 C.F.R. Part 122), as may be amended.

CONDITIONAL APPROVAL: An affirmative action by the Commission or the Town Council indicating that approval will be forthcoming upon satisfaction of certain specified stipulations.

CONDOMINIUM: A building or group of buildings, in which units are owned individually, and common areas and facilities are owned by all the owners on a proportional, undivided basis.

CONSIDERATION: An inducement to a contract.

CONSOLIDATION/COMBINING: The removal of lot lines between contiguous parcels.

CONTIGUOUS: Next to, abutting, or touching and sharing a common boundary or portion thereof.

COTTAGE INDUSTRY: See "*HOME OCCUPATION*".

COUNCIL: Camp Verde Town Council, acting under the authority of the laws of the State of Arizona.

COURT: A space, open and unobstructed to the sky, located at or above grade level on a lot and bounded on two or more sides by walls of a building or buildings.

CUSTOM: Pertaining to work, service or assembly done to order for individual customers for their own use or convenience.

CUSTOM SERVICE & CRAFT SHOPS: A use devoted primarily to the sale of a service or a product or products including the following: barber, beauty, massage, tailor and cleaning pickup; key and gun, photographic, fixit (home appliance, saw, mower, clock, radio, TV and similar); precision and musical instrument; and optical equipment.

DAY CARE CENTER: See "*ADULT CARE CENTER*" or "*CHILD CARE CENTER*".

DEVELOPMENT PROJECT: Any residential, commercial, industrial or mixed use subdivision plan or individual building development or remodeling plan which is submitted to the Town for approval.

DISTRICT: Refers to an area designated as a Zoning District.

DRIVE-IN/DRIVE-THROUGH RESTAURANT: Any establishment where food or beverages are dispensed through openings in the building or by service to customers in a vehicle.

DRIVEWAY: A private access for vehicles to a parking space, garage, dwelling or other structure usually serving a single parcel.

DUDE RANCH: A vacation resort offering activities typical of western ranches (such as camping, horseback riding and other outdoor events).

DWELLING UNIT: Any building or portion thereof that contains living facilities, including provisions for sleeping, eating, cooking and sanitation for not more than one family, or congregate residence for 10 or less persons.

-ACCESSORY DWELLING UNIT (ADU): A dwelling unit, either attached or detached, customarily incidental and subordinate to and located on the same lot with the principal dwelling unit used to house guests or relatives. ADU's must meet the applicable Zoning District requirements as to construction type and setbacks, are not to exceed 1000 square feet of livable building area or twenty-five (25%) of the total square footage of livable building area of the primary residential structure, whichever is larger. See Section 311 for ADU Rental requirements.

-CARETAKER LIVING QUARTERS:

- Living quarters located on the property to which the use pertains, is associated with the primary use and is limited to 1000 square feet.
- Quarters may be site built or manufactured housing and must comply with the currently adopted building standards or bear a label certifying compliance with the Federal Manufactured Housing Construction & Safety Standards Act.

Living quarters established on the property prior to the establishment of the primary use, shall comply with Section 601 D and apply for a Temporary Use Permit.

-DUPLEX: A building containing two dwelling units.

-MULTIPLE: A building containing three or more dwelling units.

EASEMENT: A grant of property rights by the property owner to and/or for access or other use by the public (public easement), a corporation or another person or entity (private easement).

ENGINEERING DESIGN & CONSTRUCTION STANDARDS: Standards and technical specifications for design and construction of public improvements to land required for engineering approval, including specifications for: streets; street curbs, gutters, sidewalks, and lighting; driveway standards; utilities including water and sewer; and drainage and grading. The Engineering Design & Construction Standards are on file with the Town of Camp Verde Clerk, and the Public Works Department as may be amended by the Town Council.

ELEVATION: (1) A vertical distance above or below a fixed reference level; (2) A flat scale drawing of the front, rear, or side of a building.

-FINISHED: The proposed or actual elevation of the land surface of a site after completion of all site preparation work.

ENCROACHMENT: Any obstruction in or on a delineated floodway, right-of-way or adjacent property.

ENTITLEMENT: The legal method of obtaining approvals for the right to develop property for a particular use.

EXCAVATION: Removal and/or recovery by any means whatsoever of soil, rock, minerals, mineral substances or organic substances other than vegetation, from water or land on or beneath the surface thereof.

EXISTING USE: The use of a lot, property or structure at the time of the enactment of a zoning ordinance.

EXTENDED CARE FACILITY: See "*LONG-TERM CARE FACILITY*"

FAMILY: One or more individuals occupying a dwelling unit and living as a single household unit.

FARM, FARMLAND: A parcel of land used for agricultural purposes.

FARM STAND: A temporary or seasonal sales area for the sale of agricultural products grown on site or grown on other properties owned or leased by the farm operator. Farm stand structures are subject to zoning clearance and building permit requirements.

FARM STRUCTURE: Any building or structure used for agricultural purposes.

FENCE: An artificially constructed barrier of any material or combination of materials erected in such a manner as to control entrance to, enclose, screen or mark the boundaries of a property.

FILL: Sand, gravel, earth or other materials of any composition whatsoever placed or deposited in such a manner as to give solidity or bulk.

FINAL APPROVAL: The last official action taken by the Town on an application which has been given preliminary approval, after all conditions and requirements have been met.

FLOOR AREA: The area included within the surrounding exterior walls of a building or portion thereof, exclusive of vent shafts and courts. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the useable area under the horizontal projection of the roof or floor above; also, the sum of floor areas of stories in multi-storied buildings.

FRONTAGE: That part of a lot line which is also a public or private road right-of-way line; also see "LOT LINE, FRONT".

FREIGHT YARD: A facility for loading, unloading of freight for current distribution and warehousing of freight.

GARAGE:

-**PRIVATE:** An accessory building occupied primarily by the passenger motor vehicles of the families residing on the same lot. This may include one commercial vehicle under five ton capacity. Non-commercial vehicles of persons not residing on the lot may occupy up to one-half the capacity of such garage.

-**PUBLIC:** Any building, other than that herein defined as a private garage, used for the storage or care of motor vehicles, or where any such vehicles are equipped for operation, repaired, or kept for remuneration, hire or sale.

GARBAGE: Anything discarded as worthless or useless, including but not limited to refuse matter from a kitchen.

GENERAL PLAN: A comprehensive plan prepared for development of the Town, recommended for approval by the Planning and Zoning Commission and adopted by the Town Council, and includes any part of such plan separately adopted and any amendment to such plan, or parts thereof.

GLARE: The effect produced by brightness sufficient to cause annoyance, discomfort, or loss in visual performance and visibility.

GOLF COURSE: A tract of land developed for playing golf, improved with tees, greens, fairways, hazards, and which may include clubhouses and shelters as well as driving ranges in conjunction with established golf course.

GOVERNMENT AGENCY: Any agency of a governing body created by a political division or subdivision such as Federal, State, County and Town.

GRADE: The degree of rise or descent of a sloping surface; Or the average elevation of the ground within a 5-foot radius from a structure.

-**FINISHED:** The final elevation of the ground surface after development.

-**NATURAL:** The elevation of the ground surface prior to man-made alterations.

GRADING: The excavation, removal, filling, movement, storage or relocation of material (other than mining or quarrying) which has the effect of changing the existing topography of the property or as may be defined further in the currently adopted building codes.

GRAFFITI: Unauthorized markings that have been placed upon any property through the use of paint, ink, chalk, dye, or any other substance capable of marking property. (See Town Code Article 10-2)

GROUND FLOOR: The lowest story in a building that is not more than four feet below finished grade, for more than 50% of the total perimeter, or not more than eight feet below finished grade, at any point.

GROUP CARE FACILITY: A facility or dwelling unit housing persons unrelated by blood or marriage and operating as a group family household/congregate residence.

GUESTROOM: Any paid or non-paid room used or intended to be used by a guest for sleeping purposes. Every 100 square feet (9.3 m2) of floor area in a dormitory shall be considered to be a guest room.

HEALTH CARE FACILITY: A facility or institution, whether public or private, engaged in providing services for health maintenance, diagnosis, or treatment of human disease, injury, pain, deformity or physical condition.

HEIGHT: See "*BUILDING HEIGHT*".

HOME OCCUPATION: An occupation, profession, activity or use located within a residence, garage or accessory building in a residential district, and which use is merely incidental to the residential use and does not change the character of the neighborhood by externally detectable lighting, noise, odor, traffic or appearance associated with the activity, with no more than one non-residential employee.

HOSPITAL: A facility providing primary health services and medical or surgical care to persons, suffering from illness, disease, injury, deformity and other physical or mental conditions and including, as an integral part of the facility, related facilities such as laboratories, outpatient facilities or training facilities.

HOTEL: Any building containing six (6) or more guest rooms intended or designed to be used, rented or hired out to be occupied for sleeping purposes by guests.

-**APARTMENT:** A building or group of buildings containing a number of independent suite of rooms for dwelling purposes and in which at least one common dining room is provided.

HOUSEHOLD: A family living together in a single dwelling unit, with common access to and common use of, all living and eating areas and all areas and facilities for food preparation and storage within the dwelling unit.

HOUSING UNIT: A room or group of rooms used by one or more individuals living separately from others in the structure, with direct access to the outside or to a public hall and containing separate toilet and kitchen facilities.

IMPROVED LOT: A lot having an improvement on it.

IMPROVEMENT: Any made-made, immovable item or structure, which becomes part of, placed upon, or is affixed to, real estate.

INFRASTRUCTURE: Facilities and services needed to sustain industrial, residential and commercial activities.

INSPECTOR: Official(s) charged with administration and enforcement of this Zoning Ordinance.

INSTALLED: Attached, or fixed in place, whether or not connected to the ground, a structure or a power source.

INTERMEDIATE CARE FACILITY: A facility which provides, on a regular basis, health related care and services to individuals, who do not require the level of care and treatment which a hospital or skilled nursing facility is designed to provide, but who, because of their mental or physical condition, require care and services beyond the level of room and board.

JOINT OWNERSHIP: The equal estate interest of two or more persons.

JUNK: Any old or discarded material, scrap, waste, reclaimable material or debris, whether or not stored or used in conjunction with dismantling, processing, salvaging, storage, baling, disposal or other use or disposition.

KINDERGARTEN: Same as Nursery School (See "*SCHOOL, NURSERY*") except when operated in conjunction with a school of general instruction and having accredited instruction.

LAND: Ground, soil or earth including improvements on, above or below the surface.

-**DISTURBANCE:** Any activity which alters the land topography or vegetation cover or any activity involving the clearing, cutting, excavating, filling or grading of land.

-**RECLAMATION:** Increasing land use capability by changing the land's character or environment, usually through drainage and/or fill.

LAND USE: A description of how land is occupied or used.

-**MAP:** A map indicating the desired and proposed location, extent and intensity of land uses acting as a guide for future development.

LANDSCAPE: (1) An expanse of natural scenery; (2) The addition of grasses, ground cover, trees, plants, and other natural and decorative features to land.

LAUNDERETTE (OR LAUNDRY FACILITY): An establishment that provides washing and/or drying machines on the premises for rental use to the general public for household laundering purposes.

LODGER: A transient renter whose meals may or may not be supplied in the cost of the rent.

LONG-TERM CARE FACILITY: A facility or distinct part of a facility or approved nursing home, infirmary unit of a home for the aged or other health care institution which provides 24-hour medical supervision for two or more people who are not related to the operators of such facility by marriage, blood or adoption.

LOT: A parcel of land established by plat, subdivision, or otherwise permitted by law, having its principal frontage on a dedicated street or street easement. A half-street dedicated from such parcel shall be qualification for street frontage.

-**AREA:** The total area within the lot lines of a lot, excluding any street rights-of-way.

-**MINIMUM AREA OF:** The smallest lot area established by the Zoning Ordinance on which a building or structure may be located in a particular district.

-**COVERAGE:** The portion of the lot that is covered by buildings and structures.

-DEPTH: The distance measured from the mid-point of the front and rear property lines.

-WIDTH: The horizontal distance between the side lines of a lot measured at right angles to its depth along a straight line parallel to the front lot line at the minimum required building setback line.

LOT LINE: A line of record bounding a lot, which divides one lot from another lot or from a public or private street or any other public space.

-ADJUSTMENT: Any land taken from one parcel and added to another adjacent parcel without creating any new lots or parcels.

-FRONT: The lot line separating a lot from a street right-of-way. The front line of a corner lot shall be the shorter of the two street lines as originally platted, or if such are equal, the most obvious front by reason of usage by adjacent lots. The front line of a through lot shall be that line which is obviously the front by reason of usage by adjacent lots. Such a lot exceeding 188 feet in depth may be considered as having two front lines.

-REAR: The lot line opposite and most distant from the front lot line or in the case of triangular or otherwise irregularly shaped lots, a line ten feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line.

-SIDE: Those property lines connecting the front and rear property lines.

LOT OF RECORD: A lot which existence and dimensions are acknowledged on a plat or deed at the County Recorder's Office.

LOT TYPES:

-CORNER: A lot abutting on two or more streets at their intersection or abutting on two parts of the same street forming an interior angle of less than 135 degrees. A corner lot shall be considered to be in that block in which it fronts.

-DOUBLE FRONTAGE: A lot which extends from one street to another street, existing or proposed, except where non-vehicular access easement has been established on such lot; also see "*THROUGH LOT*".

-HILLSIDE: Any lot or portion of a lot involving a part of a hill between the summit and the toe of the slope where the terrain has a natural slope.

-INTERIOR: A lot other than a corner lot.

-THROUGH: A lot with the front and rear lines abutting parallel streets; also see "*DOUBLE FRONTAGE LOT*".

MAINTENANCE: The repair, replacing or renovating of a part (or parts) of a structure, which do not require a building permit as specified by the Building Code as set forth in the Town Code.

MANUFACTURED HOME: A dwelling unit fabricated on a permanent chassis at an offsite manufacturing facility for installation at the building site, and bearing a label certifying it as built, or upgraded, to compliance with the Federal Manufactured Housing Construction and Safety Standards Act. It bears a mobile ID number and is larger than 400 square feet.

MANUFACTURING USE: See "*USE*".

MEDICAL MARIJUANA:

All parts of genus cannabis whether growing or not, and the seed of such plants that may be administered to treat or alleviate a qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

MEDICAL MARIJUANA DESIGNATED CAREGIVER CULTIVATION LOCATION:

- A Medical Marijuana designated Caregiver cultivation location or cultivation by a designated Caregiver refers to cultivation of Medical Marijuana by a Caregiver whose registration card indicates that the Caregiver has
- been authorized to cultivate marijuana plants for a qualifying patient(s) medical use, pursuant to the Arizona Medical Marijuana Act A.R.S.§ 36-2804.A.7.
- A Medical Marijuana designated Caregiver may cultivate Medical Marijuana for qualifying patient(s) within their own residence as a "Home Occupation" (see Part 3 Section 303) as long as all the conditions for a "Home Occupation" are met per the Planning & Zoning Ordinance and the Arizona Medical Marijuana Act A.R.S.§ 36-2804.

MEDICAL MARIJUANA DISPENSARY:

A non-profit Medical Marijuana Dispensary registered and certified pursuant to the Arizona Medical Marijuana Act A.R.S.§ 36-2804 that may also include a Medical Marijuana Infusion Facility.

MEDICAL MARIJUANA DISPENSARY OFF-SITE CULTIVATION LOCATION:

The one additional location, if any, where marijuana may be cultivated for the use of a specific Medical Marijuana Dispensary as disclosed pursuant to A.R.S.§ 36-2804. A Medical Marijuana Dispensary Off-Site Cultivation Location may cultivate Medical Marijuana for more than one Dispensary as allowed by Arizona Medical Marijuana Act A.R.S.§ 36-2804.

MEDICAL MARIJUANA INFUSION FACILITY:

A Facility that incorporates Medical Marijuana by means of cooking, blending, or incorporation into consumable/edible goods pursuant to Arizona Medical Marijuana Act A.R.S.§ 36-2804.

MEDICAL MARIJUANA QUALIFYING PATIENT:

A qualifying patient means a person who has been diagnosed by a physician as having a debilitating medical condition and also has a registry identification card issued by the Arizona Department of Health Services that identifies the person a registered qualifying patient pursuant to Arizona Medical Marijuana Act A.R.S.§ 36-2804.

MEDICAL MARIJUANA QUALIFYING PATIENT CULTIVATION LOCATION:

A Medical Marijuana Patient Location shall mean cultivation of medical marijuana by a qualifying patient pursuant to Arizona Medical Marijuana Act A.R.S.§ 36-2801 but shall only include a qualifying patient who is also a card holder, authorized to cultivate marijuana plants pursuant to the revisions of Act A.R.S.§ 36-2804.2.

MEMORIAL PARK CEMETERY: See "CEMETERY"

MINE: 1) A cavity in the earth from which minerals and ores are extracted; 2) The act of removing minerals, ores, or other natural resources.

MINING: The extraction of minerals, ores, rock materials, or other natural resources. The term also includes quarrying; well operation; milling, such as crushing, screening, washing and floatation; and other preparation customarily done at the mine site or as part of the mining activity.

MOBILE/MANUFACTURED HOME PARK: "Mobile/Manufactured Home Park: A parcel of land used (or designed) for the location of more than one Mobile/Manufactured Home that are or intended to be occupied as dwellings, upon lots which are not conveyable but no Accessory Dwelling Unit (ADU) authorized per section 311 shall be deemed a Mobile/Manufactured Home Park.

MOBILE HOME: A portable dwelling unit larger than 400 square feet and manufactured prior to June 15, 1976, designed and constructed to permit permanent occupancy as a residence and also to facilitate transfer from one site to another by means of a chassis with wheels and hitch or flatbed truck.

MODULAR HOUSING: Factory-built housing that is certified as meeting the state or local building code. It does not have a mobile ID. Modular housing is considered site-built housing.

MORTUARY: A building where the dead are prepared for burial or cremation. (All funeral automobile processions are to be confined to the mortuary premises).

MOTEL: See "HOTEL".

NET ACREAGE: The remaining ground area of a parcel after deleting all portions for proposed and existing public rights-of-way.

NEWSPAPER OF GENERAL CIRCULATION: A daily newspaper widely available and distributed in the local area (if one is published), or if no daily newspaper is published, a local weekly newspaper may be used.

NONCONFORMING USE: See "USE".

NONCONFORMING STRUCTURE: A building or structure that was in place prior to, and use provisions other applicable ordinances with which it now conflicts.

NONCONFORMING LOT OF RECORD: A parcel created and recorded prior to and use provisions and other applicable ordinances with which it now conflicts.

NUISANCE: Has the meaning set forth in Town Code Article 10-2. It is a nuisance, and is no less a nuisance because the extent of the annoyance or damage inflicted is unequal, for anything to be injurious to health, indecent, offensive to the senses or an obstruction to the free use of property that interferes with the comfortable enjoyment of life or property.

OCCUPANCY: The purpose for which a building, or part thereof, is used or intended to be used.

OPEN LAND CARNIVAL & RECREATION FACILITIES: Accessory uses pertaining to carnival and recreation activities within open land in association with religious or educational primary uses confined to same lot.

OUTDOOR RECREATION FACILITY: An area designed for active recreation, whether publicly or privately owned, including but not limited to parks, baseball diamonds, soccer and football fields, golf courses, tennis courts, swimming pools, equestrian facilities, archery and shooting ranges.

PARCEL: Real property with a separate or distinct number or other designation shown on a plan recorded in the office of the County Recorder, or real property delineated on an approved survey, parcel map or subdivision plat as filed in the office of the County Recorder and abutting at least one public right-of-way or easement determined by the Community Development Director or Council to be adequate for the purpose of access.

PERMIT: A document issued by a governmental agency granting permission to perform an act or service which is regulated by the Town, County, a State agency or the Federal Government.

PERMITTED USE: See "USE".

PERSON: Includes a corporation, company, partnership, firm, association or society, as well as a natural person.

PERSONAL SERVICES: Establishments primarily engaged in providing services involving the care of a person or his/her apparel, such as laundry cleaning and garment services, garment pressing, linen supply, diaper service, coin-operated laundries, dry cleaning plants, carpet and upholstery cleaning, photographic studios, beauty shops, barber shops, shoe repair, hat cleaning, funeral services, reducing salons and health clubs, and clothing rental.

PLANNED AREA DEVELOPMENT (PAD): For purposes of these regulations, a Planned Area Development is:

- a. Land under unified control, to be planned and developed as whole;

- b. In a single development operation or a definitely programmed series of development phases, including all lands and buildings;
- c. For principal and accessory structures and uses substantially related to the character and purposes of the development;
- d. According to comprehensive and detailed plans that include not only the locations of streets, utilities, lots, or building sites and the like, but also, site plans and floor plans for all buildings as intended to be located, constructed, used, and related to each other, and detailed plans for other uses and improvements on the land as related to the buildings; and
- e. With a program for provision, operation, and maintenance of such area, facilities, and improvements as will be available for common use by some or all of the occupants or visitors to the development site, but will not be provided, operated, or maintained at general public expense.

PORCH: An open, roofed, structural projection of which no portion extending into a front or side yard shall be enclosed by walls, screens, lattice or other material higher than 54 inches above the natural grade line adjacent thereto; which porch is to be used solely for ingress/egress or leisure purposes and not for occupancy as a sleeping porch or wash room.

PLANNING COMMISSION or COMMISSION: The Planning and Zoning Commission of the Town of Camp Verde.

PLANNING DEPARTMENT: The Community Development Department of Camp Verde, Arizona.

PROFESSIONAL USE: See "USE".

PROPERTY LINES: Those lines outlining the boundaries of properties on lots for the purpose of description in sale, lease, building development, or other separate use of property.

RECLAMATION PLAN: A document, in written words and/or illustrations, describing how land will be restored and made into suitable and useful condition for development or open space after a temporary use or activity on the land is finished or completed.

RECREATIONAL VEHICLE: A vehicular type unit primarily designed as temporary living accommodation for recreational, camping and travel use, which can be towed, hauled or driven and including but not limited to travel trailers, truck campers, camping trailers and self-propelled motor homes.

RESIDENTIAL USE: See "USE".

RESTAURANT: An establishment (other than a boarding house) where the public may procure meals, which are prepared therein.

REST HOME: See "LONG TERM CARE FACILITY".

REVOCABLE: Able to be voided or annulled by recalling, withdrawing, or reversing

RIGHT-OF-WAY: A strip of land acquired by reservation, dedication, forced dedication, condemnation or prescription and intended to provide space for the installation and maintenance of a road, sidewalk, trail, railroad, utilities, or other similar uses.

ROOMING OR BOARDING HOUSE: A dwelling, otherwise permitted in the District in which it is situated, containing no more than 5 guest rooms and in which food may or may not be served to the occupants thereof. Any dwelling in which more than 5 rooms are occupied as guestrooms shall be deemed to be a hotel.

SALES STAND: A booth or stall for the vending of products, established by Temporary Use Permit (Section 601.d), and consistent with the regulations of the district in which it is located.

SCHOOL: A place of general instruction having accredited instruction acceptable to the educational authorities within the school district of the jurisdiction.

-NURSERY: An establishment enrolling more than four preschool children and where tuition, fees, or other forms of compensation for the care and instruction of the children is charged, and which is licensed or approved to operate by the State.

SCREENING: A method of visually shielding or obscuring one abutting or nearby structure or use from another by fencing, walls, berms, or densely planted vegetation.

SETBACK: The distance between the street right-of-way line or a property line and the front, rear or side line of a building or any projection thereof; and which extends across the full width or depth of a lot, and in which no building or structure shall be constructed, except as provided in this Zoning Ordinance; also see "YARD".

SITE PLAN: The plan for development of one or more lots showing the existing and proposed conditions of the lot including but not limited to: topography, vegetation, drainage, floodplains, waterways, utility services, landscaping, structures and signs, lighting and screening devices; and any other information that may be required in order for the approving authority to make an informed decision.

SLEEPING ROOM: A room used for sleeping, other than a guestroom, in which no cooking facilities are provided.

SHIPPING CONTAINER: A standardized metal storage container designed and built for intermodal freight transport used to store and transport materials and products using different modes of transport. Also known as cargo container, freight container, ISO container, shipping, sea or ocean container or Conex box.

SPOT ZONING: Rezoning a lot or parcel of land to benefit the owner for a use that is incompatible with surrounding uses and does not conform with the adopted General Plan.

STIPULATIONS: Conditions under which a property or use are required to comply established by the Town as a qualification for approval.

STORAGE FACILITY Any multi-unit facility designated or used for the purpose of providing individual compartmentalized and controlled access stalls or lockers for the storage of customers' goods and wares

STORY: That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under-floor space is more than 6 feet (1829 mm) above grade, as defined herein, for more than 50 percent of the total perimeter or is more than 12 feet (3658 mm) above grade, as defined herein, at any point, such usable or unused under-floor space shall be considered as a story. Or as defined in the currently adopted building code.

FIRST: The lowest story in a building that qualifies as a story, as defined herein, except that a floor level in a building having only one floor level shall be classified as a first story, provided such floor level is not more than 4 feet (1219 mm) below grade, as defined herein, for more than 50 percent of the total perimeter, or not more than 8 feet (2438 mm) below grade, as defined herein, at any point. Or as defined in the currently adopted building code.

STREET: Any existing or proposed public or private area intended for vehicle circulation and access including any easement for public vehicular access, a street shown upon a plat approved pursuant to law, or a street upon a plat duly filed and recorded in the County Recorder's Office. A street includes all land within the street right of way whether improved or unimproved, that may include improvements such as pavement, shoulders, ditches, utilities, drainage structures, curbs, gutters, sidewalks, paths, parking spaces, traffic signals, and street lights. See Part Five, Section 501 for street classifications.

STRUCTURE: That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

TOWN: The Town of Camp Verde, Arizona, shall include the Town Council, Planning Commission and other Town officials.

UNCLAIMED PUBLICATION: Any newspapers, fliers, handbills, advertisements, signs or other papers that are in plain view; either along private or public roadways or on private or public property, that creates an unsightly atmosphere, which contributes to neighborhood deterioration and causes a public nuisance.

UNSAFE BUILDING(S) OR STRUCTURE(S): Structures or building service equipment that are or hereafter become structurally unsafe, unsanitary or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or that constitute a fire hazard, or are otherwise dangerous to human life or which in relation to existing use constitutes a hazard to safety or health, or public welfare, by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, or abandonment, as specified in the Town Code Section 7-2-108.1, technical codes or any other effective ordinance, are for the purpose of this section, unsafe buildings. A vacant structure that is not secured against entry shall be deemed an unsafe condition. Unsafe conditions and structures shall be taken down, removed or made safe, as the Building Official deems necessary and as provided in the Town Code. All such unsafe buildings are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedure specified in the Town Code Sections 7-2-108 2-5. Parapet walls, cornices, spires, towers, tanks, statuary and other appendages or structural members which are supported by, attached to, or a part of a building and which are in a deteriorated condition or are otherwise unable to sustain the design loads which are specified in the Town Code, are hereby designated as unsafe building appendages per Section 7-2-108.1.2. All such unsafe building appendages are public nuisances and shall be abated in accordance with Section 7-2-108.1 of the Town Code.

USE: The purpose for which a building, or lot, or structure, is arranged, designed, occupied or maintained.

-**ACCESSORY:** A use incidental to the principal use on the same lot.

-**CHARITABLE:** Property used by a nonprofit or philanthropic organization that provides a service beneficial to the general public or to a significant portion of the public for no fee or at a fee recognized as being less than that charged by profit-making organizations.

-**COMMERCIAL:** Activity carried out for pecuniary gain.

-**MANUFACTURING:** The act of transforming materials or substances into new products, either by mechanical or chemical means, including the assembling of component parts; or establishments engaged in the manufacturing of products by assembling of component parts or blending of materials.

-**NONCONFORMING:** A use or activity which was lawful prior to the adoption, revision or amendment of a zoning or other applicable ordinance, but which fails, by reason of such adoption, revision or amendment, to conform to the present requirements of a zoning or other applicable ordinance. A use operated in an otherwise lawful manner that does not conform to the provisions of the District in which located.

-**PERMITTED:** A use that is allowed in a Zoning District by reason of being listed among the "Permitted Uses" in the District, and is subject to restrictions applicable to the District.

PRINCIPAL OR PRIMARY The primary or predominant use of any Lot or parcel.

-**PRIVATE:** A use restricted to the occupants of a lot or building together with their guests.

-**PROFESSIONAL:** The rendering of services of a professional nature by: members of the professions licensed by competent authority; teachers in a school of general instruction; artists practicing the fine arts; consultants recognized by organizations of licensed professionals.

-**PUBLIC:** A use (or building) located on public land to serve public benefits (but not necessarily available for unrestricted public access).

-**RESIDENTIAL:** Shall be deemed to include single, duplex and multiple dwelling units, guest rooms, mobile/manufactured home parks, rooming and boarding houses, fraternity and sorority houses, convents, home for the aged and similar living accommodations.

-**SALES SERVICES:** A use intended for the sale of services (such as insurance or real estate) provided by professionals (not to include retail sales).

-**TEMPORARY:** A use established for a fixed period of time with the intent to discontinue such use upon expiration of the time period.

VARIANCE: A deviation from the literal requirements of a zoning district; requests for variances shall be in accord with Arizona Revised Statutes §9-462.06.G-2 as may be amended, and with Part Six, Section 602 of this Zoning Ordinance.

VEHICLE: The result of arranging materials and parts together for conveyance over roads (whether or not self-propelled). Such is not deemed a structure in qualifying for a building permit, but as being accessory to the principal use on a lot (except in connection with vehicular rental sales agencies and mobile/manufactured home parks).

VEHICLE, MOTOR: A self-propelled device used for transportation of people or goods over land surfaces and licensed as a motor vehicle.

VETERINARY SERVICES: Establishments of licensed veterinary practitioners primarily engaged in the practice of veterinary medicine, dentistry, or surgery for animals; and establishments primarily engaged in providing testing services for licensed veterinary practitioners.

YARD: An open space, other than a court, unobstructed from the ground to the sky, except where specifically provided by this Zoning Ordinance, on the lot on which a building is situated.

-**FRONT:** A yard abutting the front lot line as defined herein.

-**JUNK, SALVAGE:** Any area, lot, land, parcel, building or structure or part thereof used for the storage, collection, processing, purchase, sale or abandonment of wastepaper, rags, scrap metal or other scrap or discarded goods, materials, machinery including automobile salvage, recycling facilities or other type of junk.

-**REAR:** A yard abutting the rear lot line or rear alley.

-**REQUIRED:** The open space between a lot line and the buildable area within which no structure shall be located except as provided in this Zoning Ordinance; also see "*SETBACK*".

-**SIDE:** A yard abutting a side street (exterior side yard) or a common side boundary (interior side yard) lying between required front and rear yards.

-**WRECKING:** An open-land area used for dismantling or demolition of motor, machinery, equipment or similar and usually storage thereof.

ZONE/ZONING DISTRICT: A specifically delineated area or district within which regulations and requirements uniformly govern the land use, placement, spacing and size of land and buildings, and in which the same zoning regulations apply throughout.

ZONING: The dividing of a municipality into districts and the establishment of regulations governing the use, placement, spacing and size of land and buildings.

ZONING ADMINISTRATOR: The official responsible for enforcement of the Zoning Ordinance; also see "COMMUNITY DEVELOPMENT DIRECTOR".

ZONING MAP: The map of all zoning districts that is on file with the Town of Camp Verde, Clerk, and the Community Development Department.

ZONING REGULATIONS/ZONING ORDINANCE: The Planning and Zoning Ordinance of the Town of Camp Verde, Arizona.



Planning & Zoning Ordinances And Subdivision Regulations

PART TWO. ZONING CLASSIFICATIONS

The following sections provide for the location and distribution of various land use types and intensities which may be developed in the Town of Camp Verde. These designations are intended further to be regulated by the criteria set forth in Part Three, General Regulations/ Provisions and Part Four, Development Standards.

SECTION 200 - ZONING CLASSIFICATIONS INTRODUCTION AND PURPOSE

A. Introduction and Purpose

Maintaining desired community character is made possible through measures that assure land use compatibility. Identifying appropriate locations, intensities, mixtures and standards for minimizing negative impacts on nearby property is the fundamental principle of municipal development regulation.

Part Two categorizes appropriate development, in accord with the adopted Town of Camp Verde General Plan, that is both beneficial to the owners of land and to the community's planning vision. In addition to uses permitted in each District as a matter of right, accessory structures or uses are specified, as well as types of activity that may be considered pursuant to obtaining a Use Permit from the Town.

B. Applicability

Zoning District Classifications apply to and differentiate the type and intensity of use of all property in the Town of Camp Verde.

SECTION 201 - ESTABLISHMENT OF DISTRICTS

In conformity with the Purpose and Effect of this Ordinance USE DISTRICTS are hereby established in order to classify, regulate, restrict and separate: uses of land and structures; lot dimensions and areas; yard widths and depths, percent of lot coverage and open spaces; permitted density, height and bulk of structures, and related building considerations. Any reference to a "Use" shall be deemed to include "principal and accessory uses and structures".

SECTION 202 - ZONING MAP

An officially adopted map delineating the locations and boundaries of the various Use Districts within any portion of the incorporated area of the Town of Camp Verde, together with subsequent supplementary maps, shall be known collectively as the Zoning Map for Camp Verde, Arizona, and becomes an official record, as part of this Zoning Ordinance as if the matters and information set forth by said map were fully described herein.

Lands annexed into the Town shall be assigned temporary zoning designation until such time as Town zoning is adopted for the annexed area. Within six months from the effective annexation date, the property owners shall either accept the Agricultural zoning district designation or initiate rezoning on the subject property consistent with the adopted Town of Camp Verde General Plan.

A. District Boundary Determination:

District boundaries on the Zoning Map are intended to follow lot lines, subdivision lines, section lines or center lines of streets, alleys, or other right-of-ways (or extensions thereof), unless otherwise referenced by specific dimensions.

1. District boundaries may be established by designation subsequent to annexation of land into the Town and may be amended as a result of rezoning approval or other Town Council action. Boundary changes are in force as of the Council action's effective date and shall be recorded on a supplemental map until such time as a comprehensive Zoning Map update is approved.
2. Uncertainty of the location of a district boundary shall be determined by the Board of Adjustment and Appeals unless same can be resolved, to the satisfaction of the Inspector and persons of interest, by using the scale of the map. Where such boundary scales to within 25 feet of a common division line or a right-of-way, then it shall be deemed as following such division line or the center of the right-of-way, as the case may be.

B. Abandoned Rights-of-Way:

Where a public street or alley or other right-of-way is officially abandoned, any abutting district boundary shall be adjusted to extend to the centerline of the former right-of-way.

SECTION 203 - USE DISTRICTS

All incorporated areas of Camp Verde, subject to the provisions of this Ordinance are hereby divided into Use Districts which, together with the General Regulations/Provisions (where applicable), control the operation of uses and placement of structures. All structures built or placed on any site shall be constructed in accordance with the Town's adopted building codes and regulations; or bear a label certifying compliance with the Federal Manufactured Housing Construction and Safety Standards Act. No vehicle, including recreational vehicles, railroad cars or other structures not engineered for use as an accessory structure shall be placed on the property and used as an accessory structure. Any use or structure not specifically permitted by (or analogous to) District Provisions shall be deemed prohibited and unlawful as a principal or an accessory use or structure for the District

Use District Development Criteria (Section 204) are applicable to each respective District as minimum requirements necessary to maintain compatible parcel areas, dimensions, density, height, building bulk, setback, and related standards among the District's uses.

Use Districts and their order (from most to least restrictive) in applying the use provisions of the Zoning Ordinance are as follows:

- A. **R1L DISTRICT** (Residential: single-family limited)
- B. **R1 DISTRICT** (Residential: single-family)
- C. **R2 DISTRICT** (Residential: multiple dwelling units)
- D. **R-R DISTRICT** (Residential-Rural), (Formerly RCU)

- E. RS DISTRICT (Residential and Services)
- F. C1 DISTRICT (Commercial: neighborhood sales and services)
- G. C2 DISTRICT (Commercial: general sales and services)
- H. C3 DISTRICT (Commercial: heavy commercial)
- I. PM DISTRICT (Performance Industrial)
- J. MI DISTRICT (Industrial: general)
- K. M2 DISTRICT (Industrial: heavy)
- L. PAD DISTRICT (Planned Area Development)
- M. OS DISTRICT (Open Space resource conservation zone)
- N. AG DISTRICT (Agricultural)
- O. CF DISTRICT (Community Facilities)

A. R1L DISTRICT (Residential: single-family limited)

Purpose:

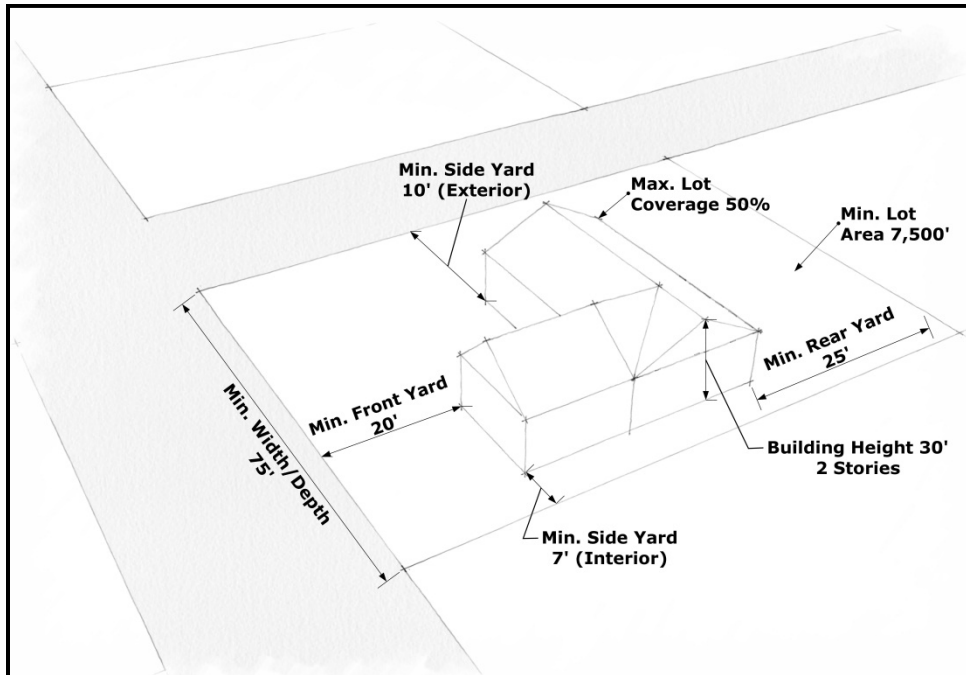
The R1L District is intended for site-built and modular single-family residential living, mobile homes and manufactured housing prohibited.

1. Permitted Uses and Structures:
 - a. Accessory Dwelling Unit (ADU).
 - b. Agriculture and cultivation.
 - c. Dwelling unit for one family on any one lot.
 - d. Educational institutions (including private schools, provided they offer a curriculum of general instruction comparable to similar public schools).
 - e. Flood control facilities.
 - f. Golf courses with accessory uses such as pro shops, shelters, and rest rooms.
 - g. Historical Landmarks.
 - h. Home occupations (See Section 303).
 - i. Keeping of farm animals, limited (See Section 305).
 - j. Open land carnival and recreation facilities (religious & educational institutions).
 - k. Other accessory uses commonly associated with primary permitted use. (See Section 301 C.)
 - l. Religious institutions (in permanent buildings).
2. Uses and Structures Subject to Use Permit
 - a. Community parks, playgrounds or centers.
 - b. Government facilities and facilities required for the provision of utilities and public services.
 - c. Bed and Breakfast.
 - d. Temporary Use Permits, subject to administrative approval (See Section 601.D):
 - 1) Occupancy of temporary housing, including travel trailers, during the construction of a permanent dwelling is allowed during the 12-month period after issuance of a building permit.
 - 2) Model homes, temporary offices (construction and pre-construction sales offices/showrooms), construction sheds and yards incidental to a recorded residential development or other construction project (subject to District setbacks) for a period not to exceed 12 months.

Table 2-1: R1L Dimensional Standards

Zoning District	"R1L"
Minimum Lot Area (sq.ft.)	7,500'
Minimum Width OR Depth (feet)	75'
Maximum Bldg Ht (stories)	2
Maximum Bldg Ht (feet)	30'
Maximum Lot Coverage (%)	50%
Minimum Front Yard (feet)	20'
Minimum Rear Yard (feet)	25'
Minimum Side Yard Interior (feet)	7'
Minimum Side Yard Exterior (feet)	10'

Figure 2-1: R1L Dimensional Standards



B. R1 DISTRICT (Residential: single-family)

1. Purpose:

The R1 District is intended for single-family residential living, site-built, modular or manufactured housing. Mobile Homes Prohibited (See Part 3 Section 306.B.1.b.3).

2. Permitted Uses and Structures:

- a. Accessory Dwelling Unit (ADU).
- b. Agriculture and cultivation.
- c. Dwelling unit for one family on any one lot. (See B.1).
- d. Educational institutions (including private schools, provided they offer curriculum of general instruction comparable to similar public schools).
- e. Flood control facilities.
- f. Golf courses with accessory uses such as pro shops, shelters, and rest rooms.
- g. Historical Landmarks.
- h. Home occupations (See Section 303).
- i. Keeping of farm animals, limited (See Section 305).
- j. Open land carnival and recreation facilities (religious & educational institutions).
- k. Other accessory uses commonly associated with primary permitted use. (See Section 301 C.)
- l. Religious institutions (in permanent buildings).

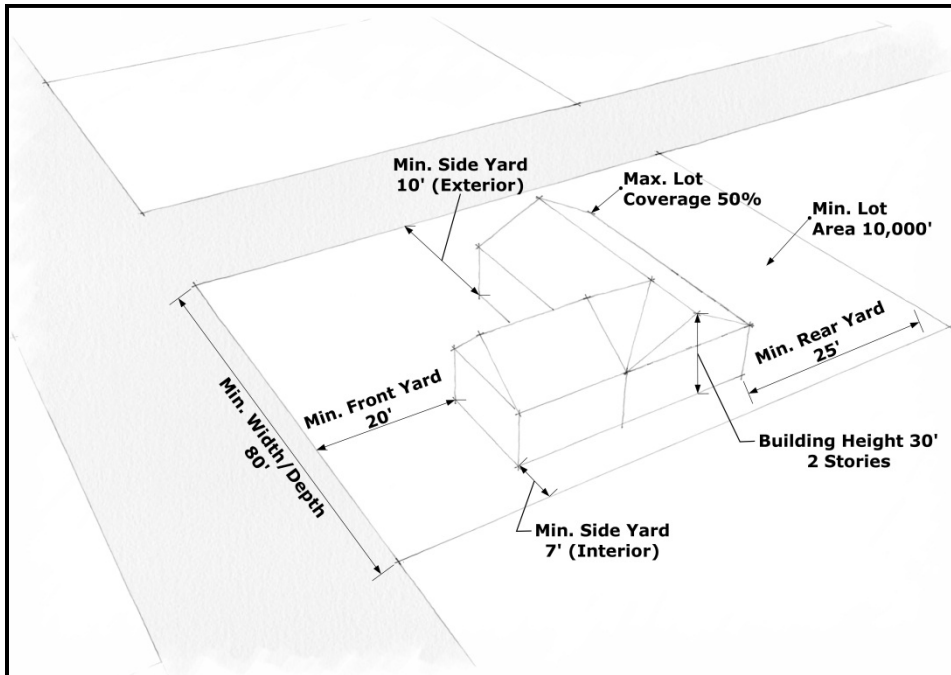
3. Uses and Structures Subject to Use Permit

- a. Community parks, playgrounds or centers.
- b. Government facilities and facilities required for the provision of utilities and public services.
- c. Bed and Breakfast.
- d. Temporary Use Permits, subject to administrative approval (See Section 601.C):
 - 1) Occupancy of temporary housing, including travel trailers, during the construction of a permanent dwelling is allowed during the 12-month period after issuance of a building permit.
 - 2) Model homes, temporary offices (construction and pre-construction sales offices/showrooms), construction sheds and yards incidental to a recorded residential development or other construction project (subject to District setbacks) for a period not to exceed 12 months.
- e. Mobile/manufactured home and recreational vehicle parks subject to the requirements of Section 306.
 - 1) Notwithstanding the foregoing, in the event a Planned Area Development (PAD) District is established per Section 203, this use may be included in any Development Plan thereunder and approved without being subject to a Use Permit application and hearing procedures set forth in Section 601.

Table 2-2: R1 Dimensional Standards

Zoning District	"R1"
Minimum Lot Area (sq.ft.)	10,000'(or as determined by suffix)
Minimum Width OR Depth (feet)	80' (or as determined by suffix)
Maximum Bldg Ht (stories)	2
Maximum Bldg Ht (feet)	30'
Maximum Lot Coverage (%)	50%
Minimum Front Yard (feet)	20'
Minimum Rear Yard (feet)	25'
Minimum Side Yard Interior (feet)	7'
Minimum Side Yard Exterior (feet)	10'

Figure 2-2: R1 Dimensional Standards



C. R2 DISTRICT (Residential: Duplex & Other Multi-Family Uses)

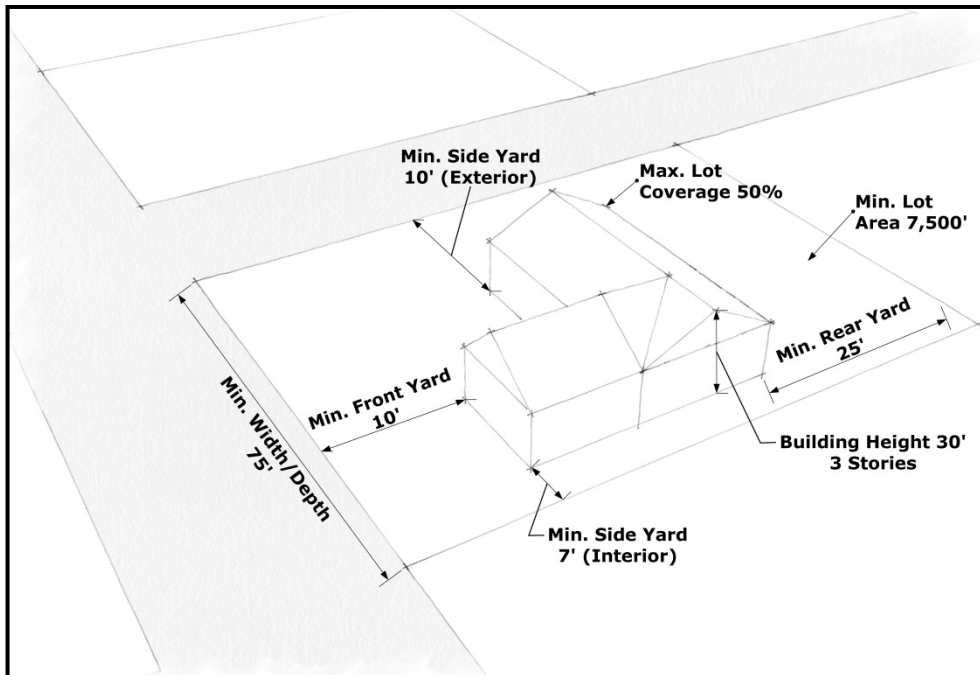
1. Purpose:

The R2 District is intended to provide for medium-high density residential living including single-family, site built, modular and manufactured housing, multiple-family and group dwelling units. Mobile Homes Prohibited See Part 3 Section 306.B.1.b.3.
2. Permitted Uses and Structures:
 - a. Accessory Dwelling Unit (ADU).
 - b. Agriculture and cultivation.
 - c. Bed and Breakfast.
 - d. Community parks, playgrounds or centers.
 - e. Dwelling unit for one family on any one lot. (See C.1).
 - f. Educational institutions (including private schools, provided they offer curriculum of general instruction comparable to similar public schools).
 - g. Flood control facilities.
 - h. Golf courses with accessory uses such as pro shops, shelters, and rest rooms.
 - i. Group or cluster of dwelling units (attached or detached) each having separate individual ownership and providing common services and recreation facilities under unified management.
 - j. Historical Landmarks.
 - k. Home occupations (See Section 303).
 - l. Keeping of farm animals, limited (See Section 305).
 - m. Multiple dwelling units.
 - n. Open land carnival and recreation facilities (religious & educational institutions).
 - o. Other accessory uses commonly associated with primary permitted use. (See Section 301 C).
 - p. Religious institutions (in permanent buildings).
3. Uses and Structures Subject to Use Permit
 - a. Government facilities and facilities required for the provision of utilities and public services.
 - 1) Temporary Use Permits, subject to administrative approval (See Section 601.C): Occupancy of temporary housing, including travel trailers, during the construction of a permanent dwelling is allowed after issuance of a building permit.
 - 2) Model homes, temporary offices (construction and pre-construction sales offices/showrooms), construction sheds and yards incidental to a recorded residential development or other construction project (subject to District setbacks).
 - c. Mobile/manufactured home and recreational vehicle parks subject to the requirements of Section 306.
 - 1) Notwithstanding the foregoing, in the event a Planned Area Development (PAD) District is established per Section 203, this use may be included in any Development Plan thereunder and approved without being subject to a Use Permit application and hearing procedures set forth in Section 601.

Table 2-3: R2 Dimensional Standards

Zoning District	"R2"
Minimum Lot Area (sq.ft.)	7,500'
Minimum Width OR Depth (feet)	75'
Maximum Bldg Ht (stories)	3
Maximum Bldg Ht (feet)	30'
Maximum Lot Coverage (%)	50%
Minimum Front Yard (feet)	10'
Minimum Rear Yard (feet)	25'
Minimum Side Yard Interior (feet)	7'
Minimum Side Yard Exterior (feet)	10'

Figure 2-3: R2 Dimensional Standards



B. D. R-R DISTRICT (Residential-Rural), (Formerly RCU)

1. Purpose:

The R-R District is intended to provide a zoning classification for portions of the incorporated area of Camp Verde not presently characterized by urban uses, and to provide for rural, large lot residential uses. Manufactured, Modular or Site Built. Mobile Homes Prohibited (See Part 3 Section 306.B.1.b.3).

Permitted Uses and Structures:

- a. Accessory Dwelling Unit (ADU).
- b. Agriculture and cultivation.
- c. Bed and Breakfast.
- d. Community parks, playgrounds or centers.
- e. Dwelling unit for one family on any one lot (See D.1).

Educational institutions (including private schools, provided they offer curriculum of general instruction comparable to similar public schools).

- f. Flood control facilities.
- g. Golf courses with accessory uses such as pro shops, shelters, and rest rooms.
- h. Historical Landmarks.
- i. Home occupations (See Section 303).
- j. Keeping of farm animals, limited (See Section 305).
- k. Open land carnival and recreation facilities (religious & educational institutions).
- l. Other accessory uses commonly associated with primary permitted use. (See Section 301 C.)
- m. Religious institutions (in permanent buildings).

2. Uses and Structures Subject to Use Permit

- a. Government facilities and facilities required for the provision of utilities and public services.
- b. Veterinary Services.
- c. Mobile/manufactured home and recreational vehicle parks subject to the requirements of Section 306.

- 1) Notwithstanding the foregoing, in the event a Planned Area Development (PAD) District is established per Section 203, this use may be included in any Development Plan thereunder and approved without being subject to a Use Permit application and hearing procedures set forth in Section 601.

d. Temporary Use Permits, subject to administrative approval (See Section 601.C):

- 1) Occupancy of temporary housing, including travel trailers, during the construction of a permanent dwelling is allowed during the 12-month period after issuance of a building permit.
- 2) Model homes, temporary offices (construction and pre-construction sales offices/showrooms), construction sheds and yards incidental to a recorded residential development or other construction project (subject to District setbacks) for a period not to exceed 12 months.

e. All uses with a valid Use Permit for expanded uses, including those uses listed in items a.-d., above, in effect as of June 24, 2011 will retain all rights associated with the Use Permit for the term of that Use Permit. Prior to the expiration of the said Use Permit, the owner may apply for a Use Permit, subject to all the requirements of Section 601.A-C, to continue the existing uses and any proposed new uses at the sole discretion of and as may be modified by the Town Council. (Ord 2013 A388).

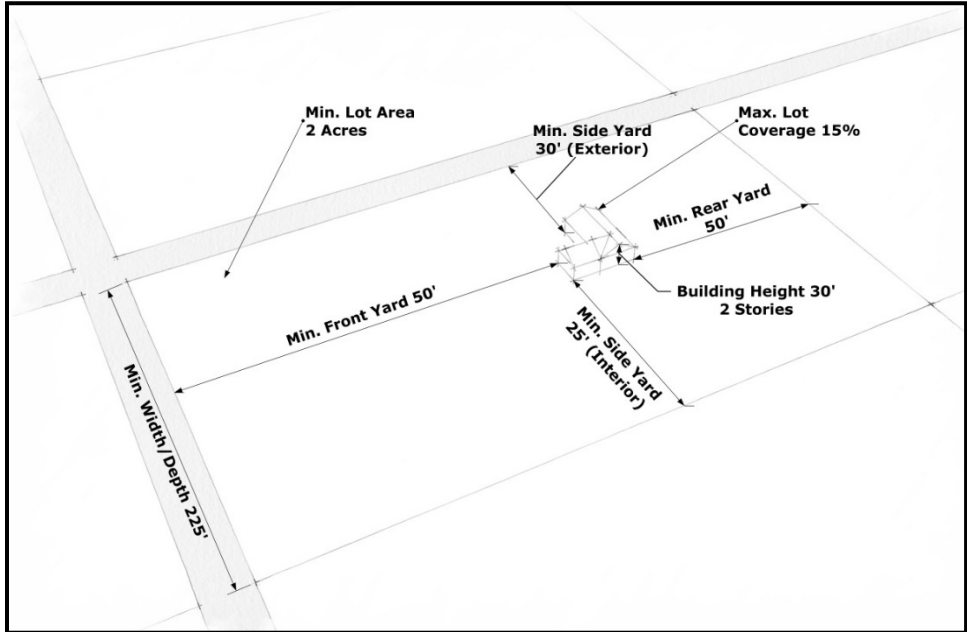
f. Agri-Tourism, Application submission, required information, procedures and review are subject to Use Permit and criteria and specific showings of:

- 1) Adequate points of direct ingress and egress for patron safety and direct emergency vehicle access;
- 2) Ample on-site parking for normal business activity and provisions for special event overflow parking;
- 3) Adequate separation distance limitation of hours of operation, and/or additional measures to mitigate negative effects of lighting, noise, traffic, dust and other detrimental environmental factors on nearby residential uses or vacant residentially zoned property.
- 4) Provision for patrons' health, safety and comfort including but not limited to shade, first aid and water stations, sanitary facilities, food and beverages, trash receptacles/removal, and appropriate security.

5) A full two (2) acres (87,120 square feet) parcel is required to obtain a Use Permit for Agri-Tourism (Ord 2015 A206).

Table 2-4: R-R Dimensional Standards	"R-R"
Minimum Lot Area (sq.ft.)	87,120' (2 acres)
Minimum Width OR Depth (feet)	225'
Maximum Bldg Ht (stories)	2
Maximum Bldg Ht (feet)	30'
Maximum Lot Coverage (%)	15%
Minimum Front Yard (feet)	50'
Minimum Rear Yard (feet)	50'
Minimum Side Yard Interior (feet)	25'
Minimum Side Yard Exterior (feet)	30'

Table 2-4: R-R Dimensional Standards



E. RS DISTRICT (Residential and Services)

1. Purpose:

The RS District is intended to permit limited services and similar non-residential uses in addition to residential dwelling units. Manufactured, Modular or Site Built. Mobile Homes Prohibited (See Part 3 Section 306.B.1.b.3).

2. Permitted Uses and Structures:

- a. A group or cluster of dwelling units (attached or detached) each having separate individual ownership and providing common services and recreation facilities under unified management.
- b. Agriculture and cultivation.
- c. Bed and Breakfast.
- d. Community parks, playgrounds or centers.
- e. Dwelling unit for one family on any one lot (See E.1).
- f. Educational institutions (including private schools, provided they offer curriculum of general instruction comparable to similar public schools).
- g. Flood control facilities.
- h. Golf courses with accessory uses such as pro shops, shelters, and rest rooms.
- i. Historical Landmarks.
- j. Home occupations (See Section 303).
- k. Hospitals, clinics, sanitariums, nursing homes and assisted living care facilities (intermediate, extended and long-term) for the care of humans.
- l. Keeping of farm animals, limited (See Section 305).
- m. Multiple dwelling units.
- n. Nursery schools; Day Care Centers (child or adult).
- o. Offices wherein only professional, clerical or sales services (such as real estate or insurance) are conducted.
- p. Open land carnival and recreation facilities (religious & educational institutions).
- q. Other accessory uses commonly associated with primary permitted use (See Section 301 C.)
- r. Personal services.
- s. Private clubs and lodges operated solely for the benefit of bona fide members.
- t. Religious institutions (in permanent buildings).

3. Uses and Structures Subject to Use Permit

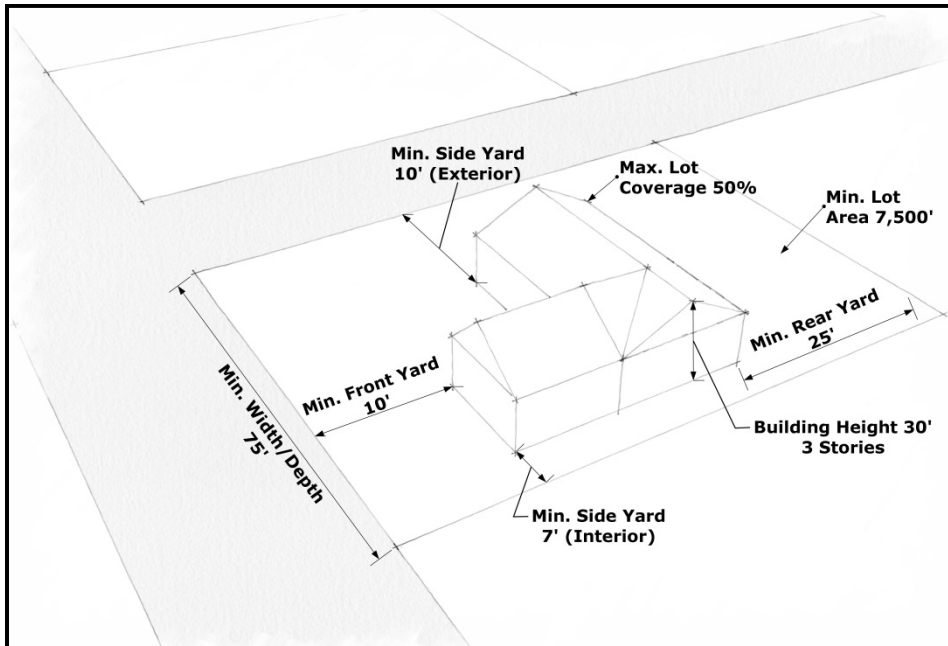
- a. Government facilities and facilities required for the provision of utilities and public services.
- b. Temporary Use Permits, subject to administrative approval (See Section 601.C):
 - 1) Occupancy of temporary housing, including travel trailers, during the construction of a permanent dwelling is allowed during the 12-month period after issuance of a building permit.

- 2) Model homes, temporary offices (construction and pre-construction sales offices/showrooms), construction sheds and yards incidental to a recorded residential development or other construction project (subject to District setbacks) for a period not to exceed 12 months.
- c. Outdoor recreation or assembly facilities.
 - d. Veterinary Services.
 - e. Mobile/manufactured home and recreational vehicle parks subject to the requirements of Section 306.
 - 1) Notwithstanding the foregoing, in the event a Planned Area Development (PAD) District is established per Section 203, this use may be included in any Development Plan thereunder and approved without being subject to a Use Permit application and hearing procedures set forth in Section 601.
 - f. Transmitter stations and towers for automatic transmitting.
 - g. Revival tents and similar temporary operations (See Section 601.D).

Table 2-5: RS Dimensional Standards

Zoning District	"RS"
Minimum Lot Area (sq.ft.)	7,500'
Minimum Width OR Depth (feet)	75'
Maximum Bldg Ht (stories)	3
Maximum Bldg Ht (feet)	30'
Maximum Lot Coverage (%)	50%
Minimum Front Yard (feet)	10'
Minimum Rear Yard (feet)	25'
Minimum Side Yard Interior (feet)	7'
Minimum Side Yard Exterior (feet)	10'

Figure 2-5: RS Dimensional Standards



F. C1 DISTRICT (Commercial: Neighborhood sales and services)

1. Purpose:

The C1 District is intended to permit limited business uses, as well as residential uses, to provide convenient supporting and service needs for nearby residents. Manufactured, Modular or Site Built. Mobile Homes Prohibited (See Part 3 Section 306.B.1.b.3).

2. Permitted Uses and Structures:

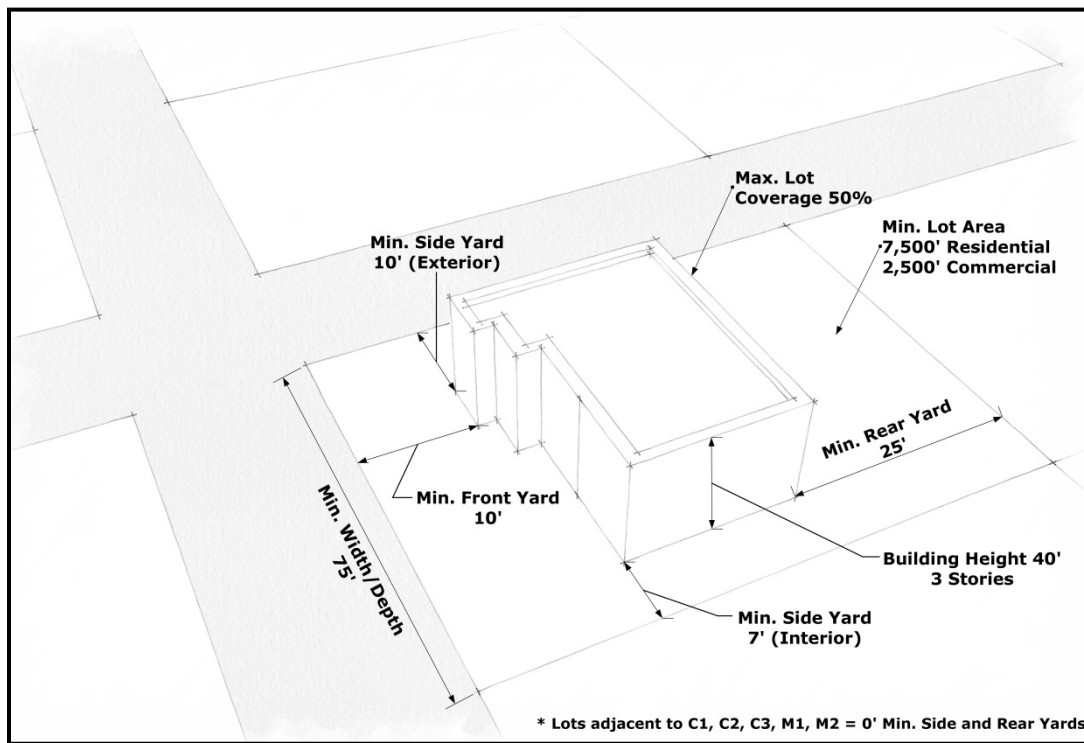
- a. Agriculture and cultivation.
- b. Antique Sales.
- c. Automotive service stations.
- d. Baking and confection cooking for on-site sale only.
- e. Bed and Breakfast.
- f. Business offices, banks and similar; including drive-through.
- g. Commercial art galleries.
- h. Community parks, playgrounds or centers.
- i. Custom service and craft shops.
- j. Dwelling unit for one family on any one lot (See F.1).
- k. Educational institutions (including private schools, provided they offer curriculum of general instruction comparable to similar public schools).
- l. Flood control facilities.
- m. Golf courses with accessory uses such as pro shops, shelters, and rest rooms.
- n. Group or cluster of dwelling units (attached or detached) each having separate individual ownership and providing common services and recreation facilities under unified management.
- o. Historical Landmarks.
- p. Home occupations (See Section 303).
- q. Hospitals, clinics, sanitariums, nursing homes and assisted living care facilities (intermediate, extended and long-term) for the care of humans.
- r. Hotels and motels with five or more guest rooms.
- s. Keeping of farm animals, limited (See Section 305).
- t. Laundrettes (limited to machines not exceeding 25 pounds capacity according to manufacturer's rating).
- u. Multiple dwelling units.
- v. Nursery schools; day care centers (child or adult).
- w. Offices wherein only professional, clerical or sales services (such as real estate or insurance) are conducted.
- x. Open land carnival and recreation facilities (religious & educational institutions).
- y. Other accessory uses commonly associated with primary permitted use (See Section 301 C).
- z. Personal services.

- aa. Private clubs and lodges operated solely for the benefit of bona fide members.
 - bb. Religious institutions (in permanent buildings).
 - cc. Restaurants and cafes, including drive-through.
 - dd. Retail sales.
3. Uses and Structures Subject to Use Permit
- a. Government facilities and facilities required for the provision of utilities and public services.
 - b. Outdoor recreation or assembly facilities.
 - c. Veterinary services.
 - d. Mobile/manufactured home and recreational vehicle parks subject to the requirements of Section 306.
 - 1) Notwithstanding the foregoing, in the event a Planned Area Development (PAD) District is established per Section 203, this use may be included in any I Development Plan thereunder and approved without being subject to a Use Permit application and hearing procedures set forth in Section 601.
 - e. Transmitter stations and towers for automatic transmitting.
 - f. Revival tents and similar temporary operations (See Section 601.D).
 - g. Temporary Use Permits, subject to administrative approval (See Section 601.C):
 - 1) Occupancy of temporary housing, including travel trailers, during the construction of a permanent dwelling is allowed during the 12-month period after issuance of a building permit.
 - 2) Model homes, temporary offices (construction and pre-construction sales offices/showrooms), construction sheds and yards incidental to a recorded residential development or other construction project (subject to District setbacks) for a period not to exceed 12 months.

Table 2-6: C1 Dimensional Standards

Zoning District	"C1"
Minimum Lot Area (sq.ft.)	7,500' Res., 2,500' Com.
Minimum Width OR Depth (feet)	75'
Maximum Bldg Ht (stories)	3
Maximum Bldg Ht (feet)	40'
Maximum Lot Coverage (%)	50%
Minimum Front Yard (feet)	10'
Minimum Rear Yard (feet)	0' (25' adjacent to residential zone)
Minimum Side Yard Interior (feet)	0' (7' adjacent to residential zone)
Minimum Side Yard Exterior (feet)	10'

Figure 2-6: C1 Dimensional Standards



G. C2 DISTRICT (Commercial: General sales and services)

1. Purpose:

The C2 District is intended to permit a broader range of business uses compatible with permitted residential uses in the District and surrounding vicinity.

Permitted Uses and Structures:

- a. Agriculture and cultivation.
- b. Antique Sales.
- c. Automobile & machinery sales (See Section 309 for outside display requirements).
- d. Automobile repair (light).
- e. Automotive service stations.
- f. Baking and confection cooking for on-site sale only.
- g. Bars, tap rooms and nightclubs.
- h. Bed and Breakfast.
- i. Bowling alleys and poolrooms.
- j. Business offices, banks and similar; including drive-through.
- k. Commercial art galleries.
- l. Commercial bath and massage.
- m. Commercial parking facilities.
- n. Community parks, playgrounds or centers.
- o. Custom service and craft shops.
- p. Dancing, art, music, business and trade schools (including permission for public recitals, concerts and dances).
- q. Dwelling unit for one family on any one lot (Manufactured, Modular or Site Built). Mobile Homes Prohibited (See Part 3 Section 306.B.1.b.3).
- r. Educational institutions (including private schools, provided they offer curriculum of general instruction comparable to similar public schools).
- s. Flood control facilities.
- t. Frozen food lockers.
- u. Golf courses with accessory uses such as pro shops, shelters, and rest rooms.
- v. Group or cluster of dwelling units (attached or detached) each having separate individual ownership and providing common services and recreation facilities under unified management.
- w. Historical Landmarks.
- x. Home occupations (See Section 303).
- y. Hospitals, clinics, sanitariums, nursing homes and assisted living care facilities (intermediate, extended and long-term) for the care of humans.
- z. Hotels and motels with five or more guest rooms.
- aa. Keeping of farm animals, limited (See Section 305).

- bb. Laundrettes (limited to machines not exceeding 25 pounds capacity according to manufacturer's rating).
- cc. Miniature golf establishment.
- dd. Mortuary.
- ee. Multiple dwelling units and apartment hotels.
- ff. Nursery schools; day care centers (child or adult).
- gg. Offices wherein only professional, clerical or sales services (such as real estate or insurance) are conducted.
- hh. Open land carnival and recreation facilities (religious & educational institutions).
- p. Other accessory uses commonly associated with primary permitted use (See Section 301 C).
- ii. Personal services.
- jj. Pet shops within enclosed buildings for the display and sale of household pets and other small animals.
- kk. Private clubs and lodges operated solely for the benefit of bona fide members.
- ll. Religious institutions (in permanent buildings).
- mm. Restaurants and cafes, including drive-through.
- nn. Retail sales.
- oo. Sales (retail and wholesale) and rentals.
- pp. Theaters, auditoriums, banquet and dance halls.
- qq. Veterinary services.
- rr. Water distillation and bottling for retail sales only.
- ss. Microbreweries or Wineries for the manufacture and processing of beer or wine respectively for onsite consumption or wholesale distribution with the following limitations:
 1. All such manufacturing and processing activity shall be conducted within a completely enclosed building along with all materials used for manufacture – processing. Products ready for shipping must be stored within a closed building.
 2. A microbrewery in the C2 District may process and produce up to 150,000 U.S. Gallons of beer per year.
 3. A winery in the C2 District may process and produce up to 18,000 U.S. Gallons of wine per year.

2. Uses and Structures Subject to Use Permit:

- a. Government facilities and facilities required for the provision of utilities and public services
- b. Outdoor recreation or assembly facilities.
- c. Mobile/manufactured home and recreational vehicle parks subject to the requirements of Section 306.
 - 1) Notwithstanding the foregoing, in the event a Planned Area Development (PAD) District is established per Section 203, this use may be included in any Development Plan thereunder and approved without being subject to a Use Permit application and hearing procedures set forth in Section 601.
- d. Transmitter stations and towers for automatic transmitting.
- c. Revival tents and similar temporary operations (See Section 601.D).

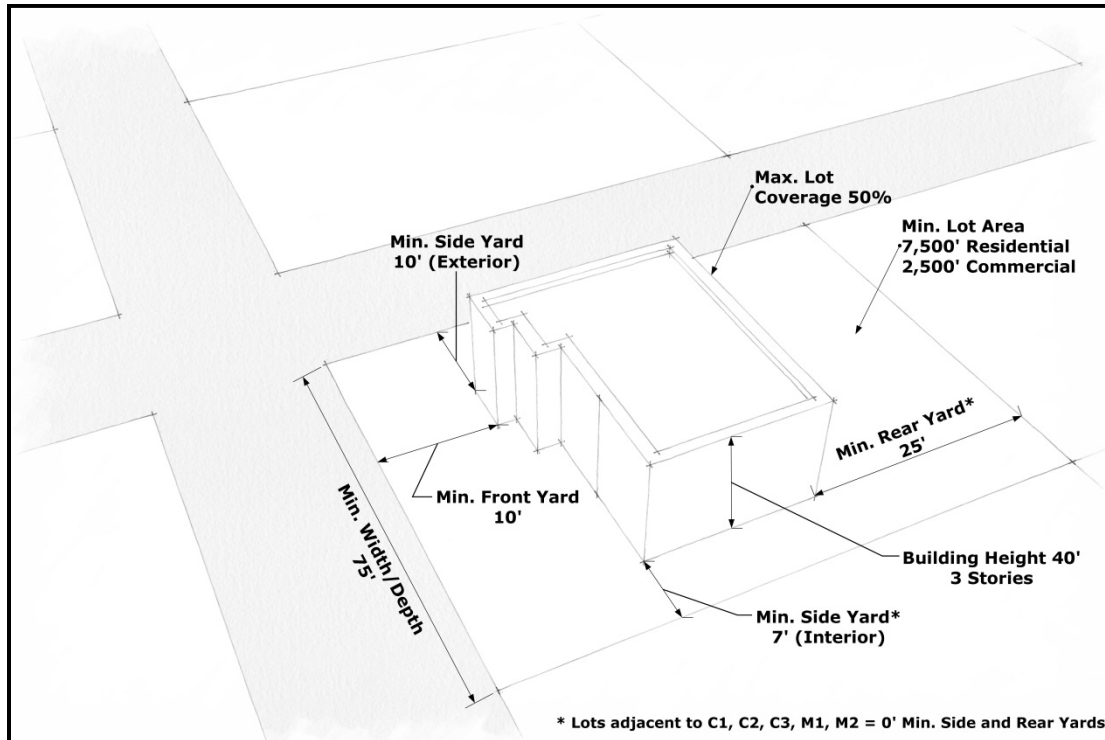
e. Temporary Use Permits, subject to administrative approval (See Section 601.C):

- 1) Occupancy of temporary housing, including travel trailers, during the construction of a permanent dwelling is allowed during the 12-month period after issuance of a building permit.
- 2) Model homes, temporary offices (construction and pre-construction sales offices/showrooms), construction sheds and yards incidental to a recorded residential development or other construction project (subject to District setbacks) for a period not to exceed 12 months.

Table 2-7: C2 Dimensional Standards

Zoning District	"C2"
Minimum Lot Area (sq.ft.)	7,500' Res., 2,500' Com.
Minimum Width OR Depth (feet)	75'
Maximum Bldg Ht (stories)	3
Maximum Bldg Ht (feet)	40'
Maximum Lot Coverage (%)	50%
Minimum Front Yard (feet)	10'
Minimum Rear Yard (feet)	0' (25' adjacent to residential zones)
Minimum Side Yard Interior (feet)	0' (7' adjacent to residential zones)
Minimum Side Yard Exterior (feet)	10'

Figure 2-7: C2 Dimensional Standards



H. C3 DISTRICT (Commercial: heavy commercial)

1. Purpose:

The C3 District is intended to accommodate a broad range of commercial sales and service uses, excluding certain activities and operations for which Industrial District zoning (PM, M1, M2) is required.

2. Permitted Uses and Structures:

- a. Agriculture and cultivation.
- b. Antique Sales.
- c. Assembly, construction and processing plants.
- d. Automobile & machinery sales. (See Section 309 for outside display requirements.)
- e. Automobile repair (heavy) (Ord 2015 A407).
- f. Automobile repair (light).
- g. Automotive service stations.
- h. Automobile Storage Yard.
- i. Baking and confection cooking for on-site sale only.
- j. Bars, tap rooms and nightclubs.
- k. Body and fender shops including a paint booth within closed building.
- l. Bottling plants confined to closed building.
- m. Bowling alleys and poolrooms.
- n. Business offices, banks and similar; including drive-through.
- o. Caretaker Living Quarters (Manufactured, Modular or Site Built.) Mobile Homes Prohibited (See Part 3 Section 306.B.1.b.3).
- p. Cleaning and dyeing plants within closed building.
- q. Commercial art galleries.
- r. Commercial ballrooms, arenas, gymnasiums, rinks, pools and indoor shooting galleries.
- s. Commercial bath and massage.
- t. Commercial parking facilities.
- u. Community parks, playgrounds or centers.
- v. Custom service and craft shops.
- w. Custom tire recapping.
- x. Custom warehouses within closed building and not including animals.
- y. Dancing, art, music, business and trade schools (including permission for public recitals, concerts and dances).
- z. Educational institutions (including private schools, provided they offer curriculum of general instruction comparable to similar public schools).
- aa. Flood control facilities.
- bb. Frozen food lockers

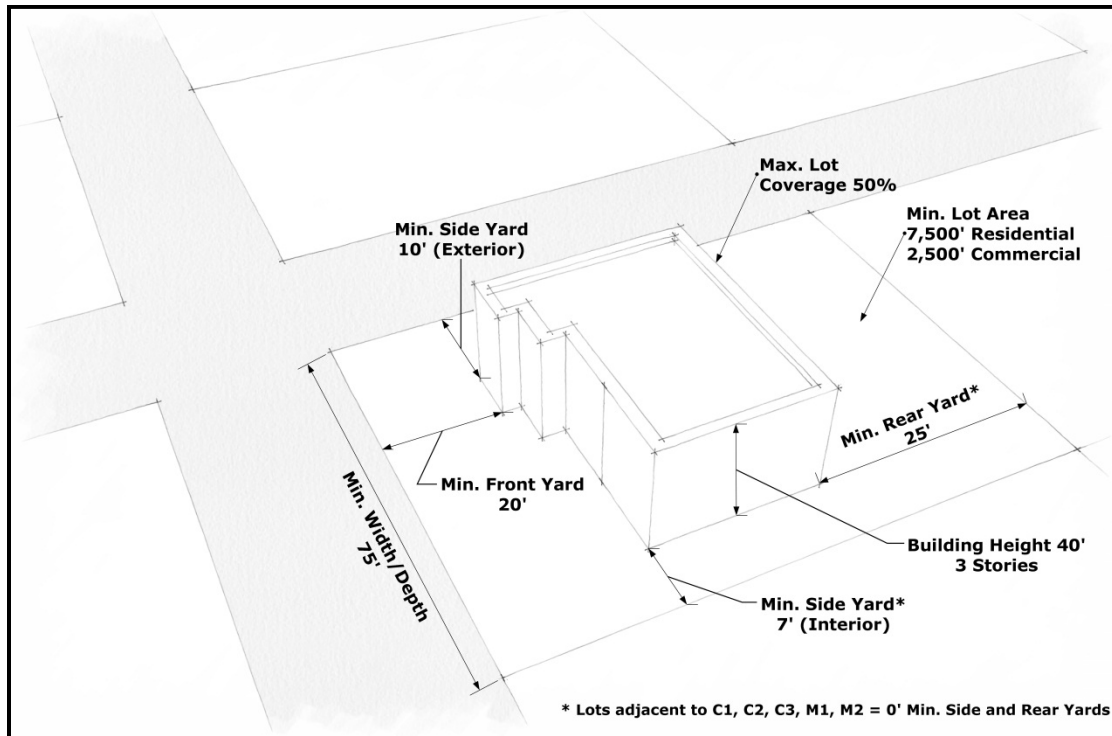
- cc. Golf courses with accessory uses such as pro shops, shelters, rest rooms.
- dd. Historical Landmarks.
- ee. Hospitals, clinics, sanitariums, nursing homes and assisted living care facilities (intermediate, extended and long-term) for the care of humans.
- ff. Hotels and motels with five or more guest rooms.
- gg. Keeping of farm animals, limited (See Section 305).
- hh. Launderettes (limited to machines not exceeding 25 pounds capacity according to manufacturer's rating).
- ii. Lumber yards (prohibiting sawmill operations).
- jj. Medical Marijuana Dispensary (See Part 3 Section 304), (Definition: See Part 1 Section 103)
- kk. Miniature golf establishment.
- ll. Mortuary.
- mm. Nursery schools; day care centers (child or adult).
- nn. Offices wherein only professional, clerical or sales services (such as real estate or insurance) are conducted.
- oo. Open land carnival and recreation facilities (religious & educational institutions).
- pp. Other accessory uses commonly associated with primary permitted use (See Section 301 C).
- qq. Personal services.
- rr. Pet shops within a closed building.
- ss. Private clubs and lodges operated solely for the benefit of bona fide members.
- tt. Public auction within closed building.
- uu. Religious institutions (in permanent buildings).
- vv. Restaurants and cafes, including drive-through.
- ww. Retail sales.
- xx. Sales (retail and wholesale) and rentals.
- yy. Storage Facility.
- zz. Theaters, auditoriums, banquet and dance halls.
- aaa. Transportation terminal and transfer facilities within closed building.
- bbb. Veterinary services.
- ccc. Water distillation and bottling for retail sales only.
- ddd. Microbreweries or Wineries for the manufacture and processing of beer or wine respectively for onsite consumption or wholesale distribution with the following limitations:
 1. All such manufacturing and processing actively shall be conducted within a completely enclosed building along with all materials used for the manufacture – processing. Products ready for shipping must be stored within a closed building.

2. A microbrewery in the C3 District may process and produce up to 300,000 U.S. Gallons of beer per year.
 3. A winery in the C3 District may process and produce up to 36,000 U.S. gallons of wine per year.
3. Uses and Structures Subject to Use Permit
 - a. Government facilities and facilities required for the provision of utilities and public services.
 - b. Outdoor recreation or assembly facilities.
 - c. Mobile/manufactured home and recreational vehicle parks subject to the requirements of Section 306.
 - 1) Notwithstanding the foregoing, in the event a Planned Area Development (PAD) District is established per Section 203, this use may be included in any Development Plan thereunder and approved without being subject to a Use Permit application and hearing procedures set forth in Section 601.
 - d. Transmitter stations and towers for automatic transmitting.
 - e. Revival tents and similar temporary operations (See Section 601.D).
 - f. Temporary Use Permits, subject to administrative approval (See Section 601.C):
 - 1) Occupancy of temporary housing, including travel trailers, during the construction of a permanent dwelling is allowed during the 12-month period after issuance of a building permit.
 - 2) Model homes, temporary offices (construction and pre-construction sales offices/showrooms), construction sheds and yards incidental to a recorded residential development or other construction project (subject to District setbacks) for a period not to exceed 12 months.
 - g. Cemeteries for human or animal internment (See Section 308).
 - h. Public stables, livestock breeding, boarding and sales.

Table 2-8: C3 Dimensional Standards

Zoning District	"C3"
Minimum Lot Area (sq.ft.)	7,500' Res., 2,500' Com.
Minimum Area/Dwelling (sq.ft.)	1 Caretaker d.u. only
Minimum Width OR Depth (feet)	75'
Maximum Bldg Ht (stories)	3
Maximum Bldg Ht (feet)	40'
Maximum Lot Coverage (%)	50%
Minimum Front Yard (feet)	20'
Minimum Rear Yard (feet)	0' (25' adjacent to residential zones)
Minimum Side Yard Interior (feet)	0' (7' adjacent to residential zones)
Minimum Side Yard Exterior (feet)	10'

Figure 2-8: C3 Dimensional Standards



I. PM DISTRICT (Performance industrial)

1. Purpose:

The PM District is intended to promote the development and operation of certain uses (such as, but not limited to, laboratories, light manufacturing and assembly) in a limited manner to foster residential compatibility in the vicinity of such industries. Restrictions on type of structures and uses, control on height and density, prohibitions against open land uses, mitigation of such nuisances as fumes, odors, noise, glare and vibration, prohibition of general retail sales and service or other uses that cater to the general public, as well as landscaping requirements, are established to protect the use and enjoyment of nearby dwelling units; however, prohibition of residential uses in the District, itself, is intended to reserve the PM zoned land for industrial development.

2. Permitted Uses and Structures: Provided such shall meet the intent and purpose of the District.

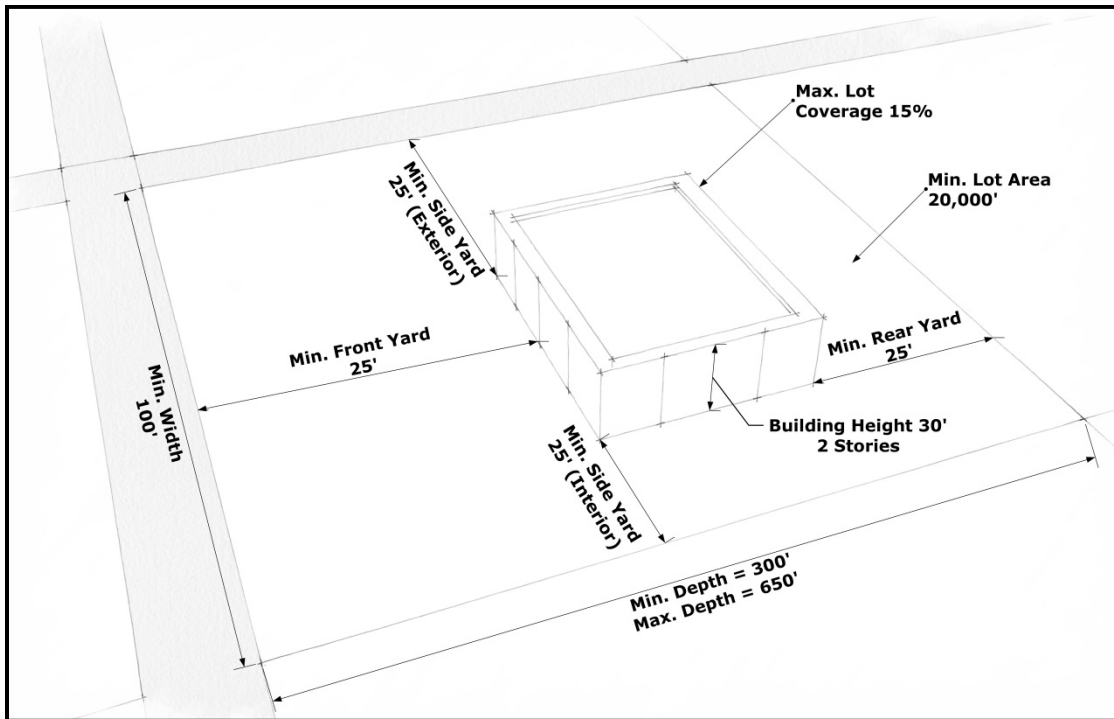
- a. Agriculture and cultivation.
- b. Assembly, construction and processing plants.
- c. Automobile repair (heavy) (Ord 2015 A407).
- d. Automobile repair (light).
- e. Automobile Storage Yard.
- f. Body and fender shops including a paint booth within closed building.
- g. Bottling plants confined to closed building.
- h. Caretaker Living Quarters (Manufactured, Modular or Site Built), Mobile Homes Prohibited (See Part 3 Section 306.B.1.b.3).
- i. Cemeteries for human or animal internment (See Section 308).
- j. Cleaning and dyeing plants within closed building.
- k. Commercial parking facilities.
- l. Community parks, playgrounds or centers.
- m. Custom service and craft shops.
- n. Custom tire recapping.
- o. Flood control facilities.
- p. Frozen food lockers.
- o. Historical Landmarks.
- p. In-plant restaurants as an accessory use, and including roof or landscaped patio dining facilities.
- q. Keeping of farm animals, limited (See Section 305).
- r. Lumber yards (prohibiting sawmill operations).
- s. Mortuary.
- q. Motion picture productions, radio and television studios.
- r. Other accessory uses commonly associated with primary permitted use (See Section 301 C).
- s. Religious institutions (in permanent buildings).

- t. Storage Facility.
 - u. Warehouses.
 - v. Water distillation and bottling for retail sales only.
3. Uses and Structures Subject to Use Permit
- a. Government facilities and facilities required for the provision of utilities and public services.
 - b. Transmitter stations and towers for automatic transmitting.
 - c. Temporary Use Permits, subject to administrative approval (See Section 601.C):
 - 1) Occupancy of temporary housing, including travel trailers, during the construction of a permanent dwelling is allowed during the 12-month period after issuance of a building permit.
 - 2) Model homes, temporary offices (construction and pre-construction sales offices/showrooms), construction sheds and yards incidental to a recorded residential development or other construction project (subject to District setbacks) for a period not to exceed 12 months.

Table 2-9: PM Dimensional Standards

Zoning District	"PM"
Minimum Lot Area (sq.ft.)	20,000
Minimum Area/Dwelling (sq.ft.)	1 Caretaker d.u. only
Minimum Width OR Depth (feet)	100' Wide, 300' Deep, Max 650' Deep
Maximum Bldg Ht (stories)	2
Maximum Bldg Ht (feet)	30'
Maximum Lot Coverage (%)	15%
Minimum Front Yard (feet)	25'
Minimum Rear Yard (feet)	25'
Minimum Side Yard Interior (feet)	25'
Minimum Side Yard Exterior (feet)	25'

Figure 2-9: PM Dimensional Standards



J. M1 DISTRICT (Industrial: General)

1. Purpose:

The M1 District is intended to provide the type of industrial facilities that, while not necessarily attractive in operational appearances, are installed and operated in a manner so as not to cause inconvenience or substantial detriment to other uses in the District (or to adjacent Districts).

2. Permitted Uses and Structures:

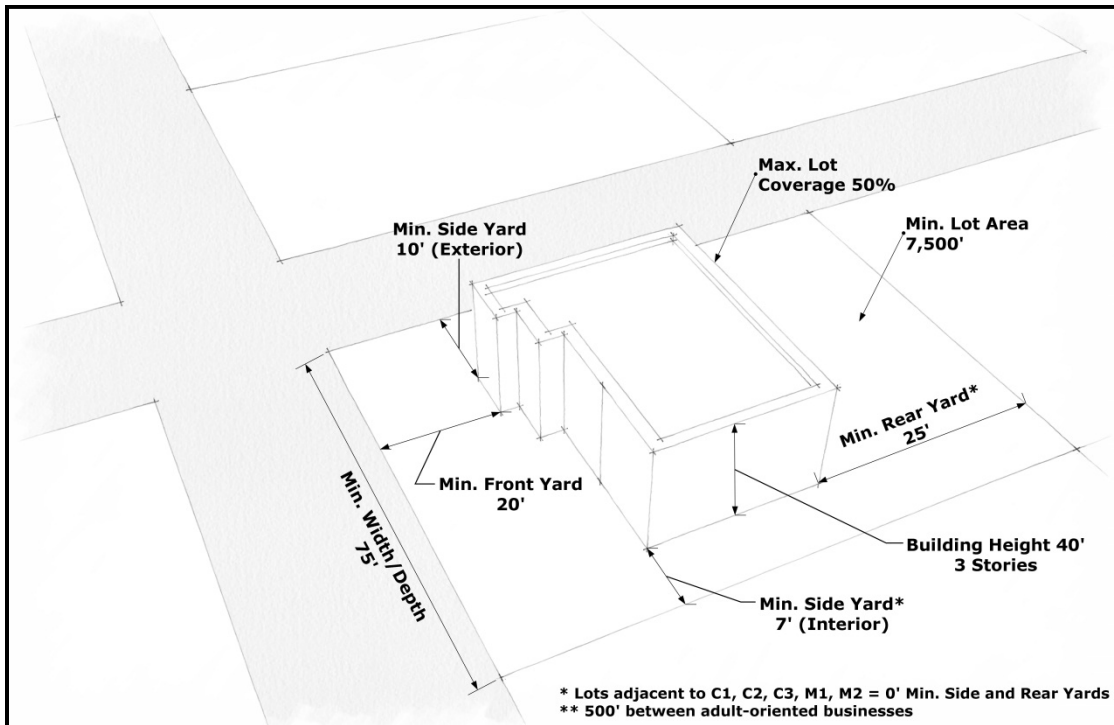
- a. Adult oriented businesses as defined in A.R.S. § 11-821H as may be amended, provided that no such adult oriented business shall operate in violation of A.R.S. § 13-1422 as may be amended or other applicable law nor be within 500 feet of schools, a church or an existing adult oriented business.
- b. Agriculture and cultivation.
- c. Assembly, construction and processing plants.
- d. Automobile repair (heavy) (Ord 2015 A407).
- e. Automobile repair (light).
- f. Automobile Storage Yard
- g. Body and fender shops including a paint booth within closed building.
- h. Bottling plants confined to closed building.
- i. Caretaker Living Quarters. (Manufactured, Modular or Site Built.) Mobile Homes Prohibited (See Part 3 Section 306 B.2.c).
- j. Cemeteries for human or animal internment (See Section 308).
- k. Cleaning and dyeing plants within closed building.
- l. Commercial parking facilities.
- m. Community parks, playgrounds or centers.
- n. Custom service and craft shops.
- o. Custom tire recapping.
- p. Dispensing of gasoline and similar petroleum products from exposed storage tanks (subject to requirements of Underwriters Laboratories Inc. or similar), provided no such tank shall be located closer than 25 feet to the lot boundaries.
- q. Flood control facilities.
- r. Frozen food lockers.
- s. Historical Landmarks.
- t. In-plant restaurants as an accessory use, and including roof or landscaped patio dining facilities.
- u. Keeping of farm animals, limited (See Section 305).
- v. Lumber yards (prohibiting sawmill operations).
- w. Medical Marijuana Dispensary Off-Site Cultivation Location/Facility.(see Part 3 Section 304) (Definition: See Part 1 Section 103)
- x. Mortuary.
- y. Motion picture productions, radio and television studios.

- z. Other accessory uses commonly associated with primary permitted use. (See Section 301 C.)
 - aa. Religious institutions (in permanent buildings).
 - bb. Retail sales.
 - cc. Storage Facility.
 - dd. Warehouses.
 - ee. Water distillation and bottling for retail sales only.
 - ff. Microbreweries or Wineries for the manufacture and processing of beer or wine respectfully for wholesale distribution.
3. Uses and Structures Subject to Use Permit
- a. Government facilities and facilities required for the provision of utilities and public services.
 - b. Transmitter stations and towers for automatic transmitting.
 - c. Temporary Use Permits, subject to administrative approval (See Section 601.C):
 - 1) Occupancy of temporary housing, including travel trailers, during the construction of a permanent dwelling is allowed during the 12-month period after issuance of a building permit.
 - 2) Model homes, temporary offices (construction and pre-construction sales offices/showrooms), construction sheds and yards incidental to a recorded residential development or other construction project (subject to District setbacks) for a period not to exceed 12 months.

Table 2-10: M1 Dimensional Standards

Zoning District	"M1"
Minimum Lot Area (sq.ft.)	7,500'
Minimum Area/Dwelling (sq.ft.)	1 Caretaker d.u. only
Minimum Width OR Depth (feet)	75'
Maximum Bldg Ht (stories)	3
Maximum Bldg Ht (feet)	40'
Maximum Lot Coverage (%)	50%
Minimum Front Yard (feet)	20'
Minimum Rear Yard (feet)	0' (25' adjacent to residential zones)
Minimum Side Yard Interior (feet)	0' (7 adjacent to residential zones)
Minimum Side Yard Exterior (feet)	10'

Figure 2-10: M1 Dimensional Standards



K. M2 DISTRICT (Industrial: Heavy)

1. Purpose:

The M2 Districts accommodate areas of concentrated fabrication, manufacturing, and industrial uses that are suitable based upon adjacent land uses, access to transportation, and the availability of public services and facilities. It is the intent of these districts to provide an environment for industries that is unencumbered by nearby residential or commercial development.

2. Permitted Uses and Structures:

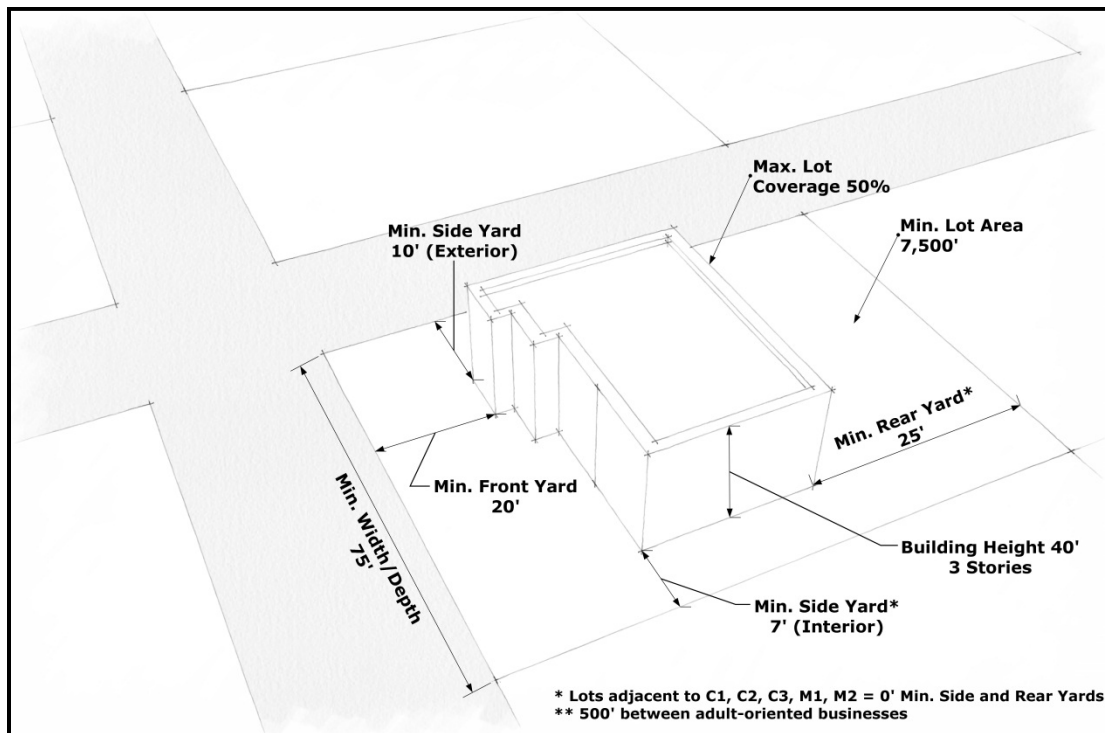
- a. Adult oriented businesses as defined in A.R.S. § 11-821H as may be amended, provided that no such adult oriented business shall operate in violation of A.R.S. § 13-1422 as may be amended or other applicable law nor be within 500 feet of schools, a church or an existing adult oriented business.
- b. Agriculture and cultivation.
- c. Assembly, construction and processing plants.
- d. Automobile repair (heavy) (Ord 2015 A407).
- e. Automobile repair (light).
- f. Automobile Storage Yard.
- g. Body and fender shops including a paint booth within closed building.
- h. Bottling plants confined to closed building.
- i. Caretaker Living Quarters (Manufactured, Modular or Site Built), Mobile Homes Prohibited (See Part 3 Section 306.B.1.b.3).
- j. Cemeteries for human or animal internment (See Section 308).
- k. Cleaning and dyeing plants within closed building.
- l. Commercial parking facilities.
- m. Community parks, playgrounds or centers.
- n. Custom service and craft shops.
- o. Custom tire recapping.
- p. Dispensing of gasoline and similar petroleum products from exposed storage tanks (subject to requirements of Underwriters Laboratories Inc. or similar), provided no such tank shall be located closer than 25 feet to the lot boundaries.
- q. Flood control facilities.
- r. Frozen food lockers.
- s. Historical Landmarks.
- t. In-plant restaurants as an accessory use, and including roof or landscaped patio dining facilities.
- u. Keeping of farm animals, limited (See Section 305).
- v. Lumber yards (prohibiting sawmill operations).
- w. Medical Marijuana Dispensary Off-Site Cultivation Location/Facility (See Part 3 Section 304), (Definition: See Part 1 Section 103).

- x. Mortuary.
 - y. Motion picture productions, radio and television studios.
 - z. Other accessory uses commonly associated with primary permitted use (See Section 301 C).
 - aa. Religious institutions (in permanent buildings).
 - bb. Storage Facility.
 - cc. Warehouses.
 - dd. Water distillation and bottling for retail sales only.
 - ee. Microbreweries or Wineries for the manufacture and processing of beer or wine respectively for wholesale distribution.
3. Uses and Structures Subject to Use Permit
- a. Government facilities and facilities required for the provision of utilities and public services.
 - b. Transmitter stations and towers for automatic transmitting.
 - c. Temporary Use Permits, subject to administrative approval (See Section 601.C):
 - 1) Occupancy of temporary housing, including travel trailers, during the construction of a permanent dwelling is allowed during the 12-month period after issuance of a building permit.
 - 2) Model homes, temporary offices (construction and pre-construction sales offices/showrooms), construction sheds and yards incidental to a recorded residential development or other construction project (subject to District setbacks) for a period not to exceed 12 months.

Table 2-11: M2 Dimensional Standards

Zoning District	"M2"
Minimum Lot Area (sq.ft.)	7,500'
Minimum Area/Dwelling (sq.ft.)	1 Caretaker d.u. only
Minimum Width OR Depth (feet)	75'
Maximum Bldg Ht (stories)	3
Maximum Bldg Ht (feet)	40'
Maximum Lot Coverage (%)	50%
Minimum Front Yard (feet)	20'
Minimum Rear Yard (feet)	0' (25' adjacent to residential zones)
Minimum Side Yard Interior (feet)	0' (7' adjacent to residential zones)
Minimum Side Yard Exterior (feet)	10'

Figure 2-11: M2 Dimensional Standards



L. PAD (Planned Area Development)

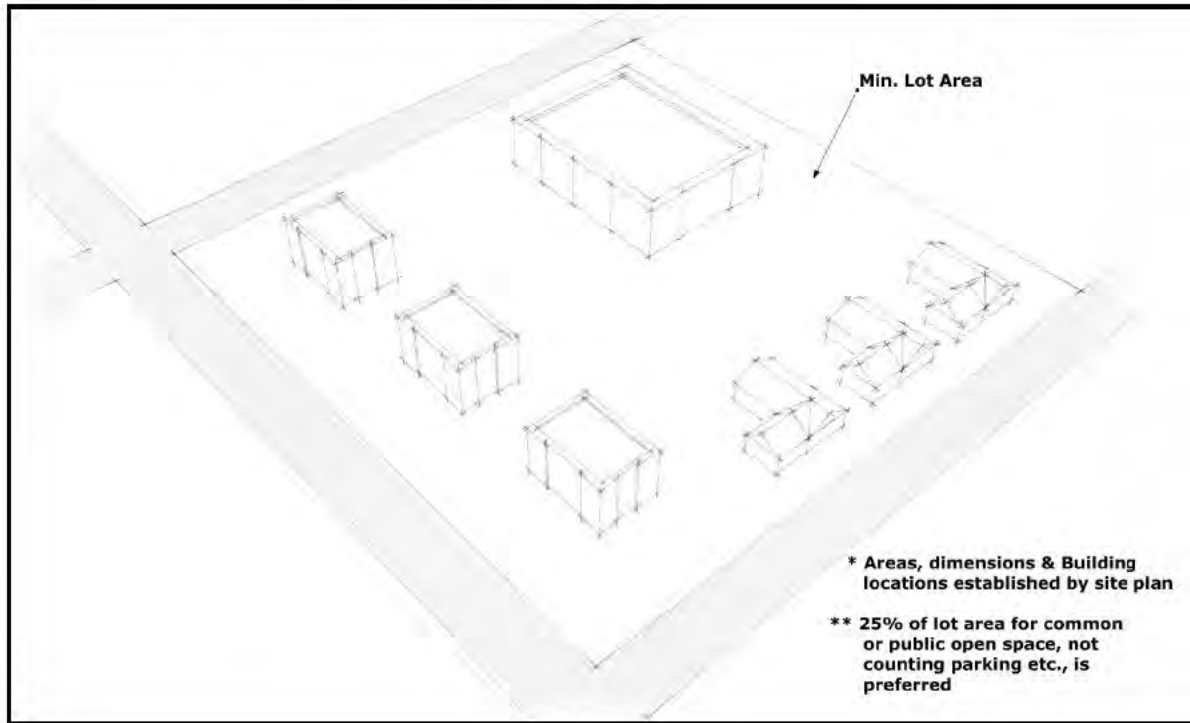
The Planned Area Development designation ensures orderly and thorough planning and review procedures that result in high quality project design and encourages variety in architectural design through techniques including, but not limited to, variations in building style, lot arrangements and site planning.

- 1) Purpose: A parcel of land planned as a unified project rather than as an aggregate of individual lots and may also provide for various types and combinations of land uses (such as single family and or multifamily housing, commercial centers, industrial complexes, and public or common spaces, with increased flexibility in site regulations). The greater flexibility in locating buildings and combining compatible uses make it possible to achieve economies of construction as well as preserving open space.
- 2) Scope: The Planned Area Development regulations that follow shall apply generally to the initiation and regulation of all Planned Area Development Districts. A PAD District may be added to an existing district to meet the intent of this Section or may be processed concurrently with a request to change an underlying zoning district. An approved PAD Development Plan/Site Plan shall be specific to that particular property as approved by Town Council upon recommendation by the Planning and Zoning Commission. A Development Plan/Site Plan must be submitted as per Site Plan requirements, Section 400 D1.
 - a. Where there are conflicts between PAD regulations and the general zoning, subdivision or other regulations, these regulations shall apply in PAD Districts unless the Council shall find, in the particular case, that the provisions herein do not serve the public to a degree at least equivalent to such general zoning, subdivision or other regulations.
 - b. It is intended to permit establishment of new Planned Area Development Districts for specialized purposes where tracts suitable in location, area, and character for the uses and structures proposed are to be planned and developed on a unified basis. Suitability of tracts for the development proposed shall be determined primarily by reference to the General Plan, but due consideration shall be given to existing and prospective character of surrounding development.
 - c. Within PAD Districts, regulations adapted to such unified planning and development are intended to accomplish purposes of zoning and other applicable regulations to an equivalent or higher degree than where such regulations are designed to control unscheduled development on individual lots, and to promote economical and efficient land use, an improved level of amenities, appropriate and harmonious variety, creative design, and a better environment.
 - d. Open Space Dedication: open space shall be included in all developments. A dedication of open space not less than twenty-five percent (25%) of a development project is preferred
- 3) PAD Major Amendments: A request for any major amendment to a PAD including amendments to the Development Phasing Schedule will be deemed major if it involves any of the following and must be approved by the Town Council upon recommendation by the Planning and Zoning Commission:
 - a. An increase in the approved totals of dwelling units or gross leasable area for the PAD District.
 - b. A change in zoning boundaries.
 - c. Any change which could have significant impact on areas adjoining the PAD as determined by the Community Development Director.
- 4) PAD Minor Amendments:
 - a. All request for amendments to a PAD that are not a PAD Major Amendment shall be deemed a PAD Minor Amendment.
 - b. A request for a Minor Amendment to a PAD with an amended site plan may be filed with the Community Development Department if the Community Development Director determines the request is not major, as defined above.
 - c. The request will be routed for comment to any affected Town departments or other agencies for comment.

Table 2-12: PAD Dimensional Standards

Zoning District	"PAD"
Minimum Lot Area (sq.ft.)	Established by Site Plan
Minimum Common/Open Space	25% of Site Area Preferred
Minimum Area/Dwelling (sq.ft.)	Established by Site Plan
Minimum Width OR Depth (feet)	Established by Site Plan
Maximum Bldg Ht (stories)	Established by Site Plan
Maximum Bldg Ht (feet)	Established by Site Plan
Maximum Lot Coverage (%)	Established by Site Plan
Minimum Between Buildings (feet)	Established by Site Plan
Minimum Front Yard (feet)	Established by Site Plan
Minimum Rear Yard (feet)	Established by Site Plan
Minimum Side Yard Interior (feet)	Established by Site Plan
Minimum Side Yard Exterior (feet)	Established by Site Plan

Figure 2-12: PAD Dimensional Standards



M. OS DISTRICT (Open Space Resource Conservation Zone)

1. Purpose:

The OS District is intended to preserve scenic and recreational areas for public and/or private use.

2. Permitted Uses and Structures

- a. Agriculture and Cultivation.
- b. Flood Control Facilities.
- c. Historical Landmarks.
- d. Public or Private Parks, Golf Courses, Golf Driving Ranges.
- e. Other Outdoor Recreational Facilities.

3. Uses and Structures Subject to Use Permit

- a. Public Utility Installation and Facilities.
- b. Change of Use: Any change in the status of use shall be approved by the Town Council upon recommendation by the Planning and Zoning Commission.

N. AG DISTRICT (Agricultural)

1. Purpose:

The AG District is intended to provide for the continuation and preservation of rural living quality on parcels of sufficient area to produce farm crops (and specified compatible principal or accessory uses and structures) including related agricultural business and support uses (See Section 301 C).

2. Permitted Uses and Structures

- a. Activities associated with the growing and sale of crops, trees, plants, vegetation, forage, grasses or other non-animal living organisms intended to be renewable and of beneficial use and recognized by the United States Department of Agriculture as a farm evidenced by a farm number.
- b. Additional dwelling units:
 - 1) Not more than two additional dwelling units may be located on any one lot expressly as the domicile(s) for persons or families related to the occupants of the principal residence by blood, marriage or adoption.
 - 2) Such additional dwellings, upon cessation of the multi-generational, "family farm" relationship by sale or otherwise, may continue to be occupied:
 - a) for other permitted accessory or Use Permit uses specified in the District; or
 - b) upon land division or subdivision into separate lots, each of which shall meet the area, setback and other requirements of the District.
- c. Dwelling unit for one family on any one lot (Manufactured, Modular or Site Built), Mobile Homes Prohibited (See Part 3 Section 306.B.1.b.3).
- d. Fabrication, storage and repair of equipment used in agricultural activity.
- e. Facilities used by the public for the sale of items permitted as identified above.
- f. Flood control facilities
- g. Historical Landmarks.
- h. Keeping of farm animals, limited (See Section 305).
- i. Other accessory uses commonly associated with primary permitted use.

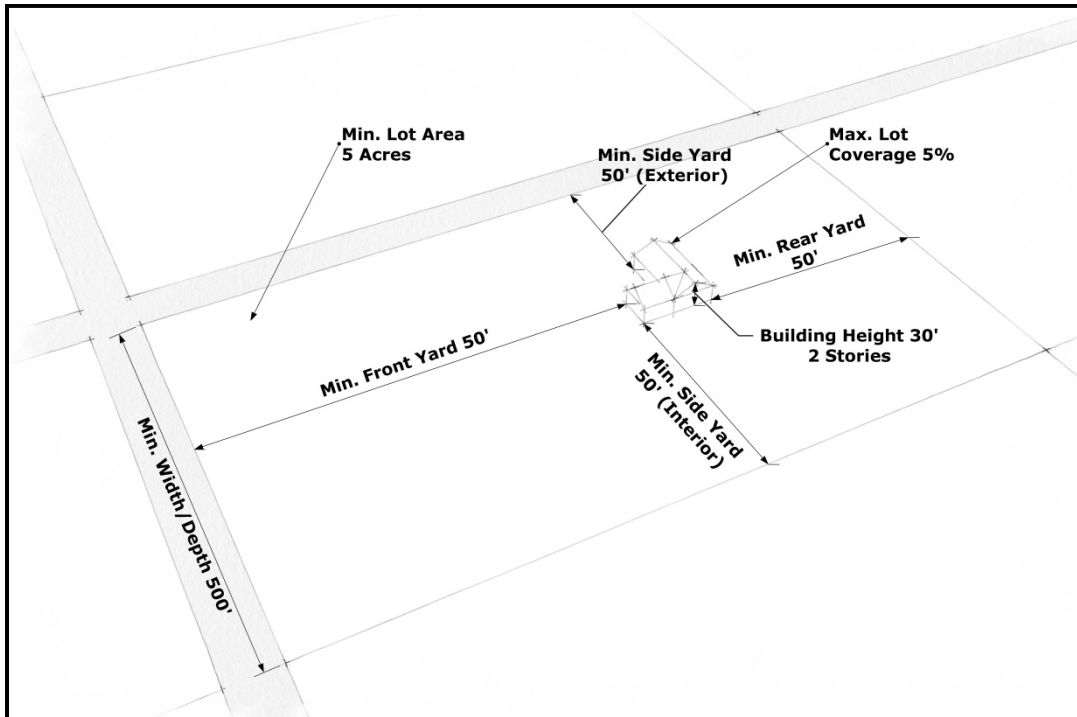
- j. Owners of property activities not recognized by the United States Department of Agriculture as a farm evidenced by a farm number where such activities are conducted shall never under any pretext be denied or restricted their right to sell and dispose of their products subject to the following restrictions:
 - 1) Sales of other producers of food products may be sold only up to 40% of the total gross sales.
 - 2) Incidental sales of related items are allowed.
 - 3) Aerial application of any substance is prohibited.
 - 4) Processing or packaging activities, storing or loading, limited to products allowed under Item e.
 - k. Religious institutions in permanent buildings.
 - l. Storage and loading facilities for products.
3. Uses and Structures Subject to Use Permit
- a. Agri-Tourism. Application submission, required information, procedures and review are subject to Use Permit and criteria and specific showings of:
 - 1) Adequate points of direct ingress and egress for patron safety and direct emergency vehicle access;
 - 2) Ample on-site parking for normal business activity and provisions for special event overflow parking;
 - 3) Adequate separation distance, limitation of hours of operation, and/or additional measures to mitigate negative effects of lighting, noise, traffic, dust and other detrimental environmental factors on nearby residential uses or vacant residentially-zoned property.
 - 4) Provision for patrons' health, safety and comfort including but not limited to shade, first aid and water stations, sanitary facilities, food and beverages, trash receptacles/removal, and appropriate security.
 - b. Facilities for the temporary housing of agricultural workers employed to work at the location for which the Use Permit is issued (Manufactured, Modular or Site Built), Mobile Homes Prohibited (See Part 3 Section 306.B.1.b.3).
 - c. Schools and training facilities for the purpose of teaching agriculture.
 - d. Museums, displays, demonstration projects and research facilities associated with agriculture.
 - e. Activities otherwise restricted by 2c.
 - f. Activities associated with the raising of animals and livestock per the requirements of Section 305 of this Zoning Ordinance with the following restrictions:
 - 1) On site sales limited to those animals produced on site or raised on the property for at least one year.
 - 2) No processing or packaging for sale activities permitted unless otherwise allowable as per A.R.S § 3-562 as they exist now or as they are amended from time to time.
 - g. Activities in excess of the requirements of Section 305 or the restrictions contained in f. (1 or 2).
 - h. Parks, playgrounds, recreation areas, government facilities and facilities required for the provision of utilities and public services.
 - i. Temporary Use Permits, subject to administrative approval (See Section 601.C):
 - 1) Occupancy of temporary housing, including travel trailers, during the construction of a permanent dwelling is allowed during the 12-month period after issuance of a building permit.

- 2) Model homes, temporary offices (construction and pre-construction sales offices/showrooms), construction sheds and yards incidental to a recorded residential development or other construction project (subject to District setbacks) for a period not to exceed 12 months.

Table 2-14: AG Dimensional Standards

Zoning District	"AG"
Minimum Lot Area (sq.ft.)	217,800' (5 acres)
Minimum Width OR Depth (feet)	500'
Maximum Bldg Ht (stories)	2
Maximum Bldg Ht (feet)	30'
Maximum Lot Coverage (%)	5%
Minimum Front Yard (feet)	50'
Minimum Rear Yard (feet)	50'
Minimum Side Yard Interior (feet)	50'
Minimum Side Yard Exterior (feet)	50'

Figure 2-14: AG Dimensional Standards



O. CF DISTRICT (Community Facilities)

1. Purpose:
The CF Districts are intended for the variety of public and quasi-public uses, institutions and facilities which generally benefit a Community. The district is intended to provide areas within the community for location of parks, historical sites, public open space, governmental buildings and facilities, schools and school grounds, quasi-public buildings and facilities, towers, antennae and wireless telecommunications facilities, and related uses for the enjoyment and use of present and future generations.
2. Uses and Structures Subject to Use Permit (Including but not limited to the following uses):
 - a. Parks and open spaces.
 - b. Public recreation facilities.
 - c. Golf courses, golf driving ranges.
 - d. Zoos.
 - e. Public schools and playgrounds.
 - f. Universities and colleges.
 - g. Governmental office buildings and grounds.
 - h. Museums, observatories and similar quasi-public facilities.
 - i. Libraries.
 - j. Governmental service and maintenance facilities.
 - k. Water production and storage facilities.
 - l. Sewage treatment facilities.
 - m. Animal shelters.
 - n. Flood control facilities.
 - o. Historical landmarks.
 - p. Hospitals.
 - q. Fairgrounds.
 - r. Fire and police stations.
 - s. Accessory uses and structures incidental to permitted uses.
 - t. Essential public utility buildings and facilities.
 - u. Towers, antennae and wireless telecommunications facilities that comply with the requirements of this Chapter.
 - v. Caretaker Living Quarters (Manufactured, Modular or Site Built), Mobile Homes Prohibited (See Part 3 Section 306 B.2.c).
3. Notwithstanding the foregoing, in the event a Planned Area Development (PAD) District is established per Section 203, the uses listed in this Subsection may be included in any Development Plan thereunder and approved without being subject to a Use Permit application and hearing procedures set forth in Section 601.

SECTION 204 - USE DISTRICT REGULATORY CRITERIA

Use district regulations establish the specifications for building construction on parcels within each designated zone classification. Variations among the several districts differentiate the appropriate parcel sizes and structure spacing necessary to maintain compatibility of land uses, densities and intensities throughout the Town of Camp Verde.

District standards are key determinants for implementing the Town's desired rural, western atmosphere with a range of residential living options, places for commerce, employment, agriculture and open space activities. Zoning district regulations offer basic development distinctions appropriate for a small community -- without becoming unnecessarily complex.

Parcel development standards pertain to height, coverage, placement (including setbacks from property lines) of structures on the parcel. These criteria are further refined, where applicable, by the additional development standards covering siting arrangements, appearance compatibility, parking, signage and outdoor lighting contained in Part Four, Development Standards.

A. Suffix District Lot Area Variations

Minimum lot area requirements may be increased or reduced for reasons of density compatibility, variations in terrain or soils, drainage conditions, infrastructure capacity, and other factors relating to the size, spacing and type of structure and/or use to be placed on a lot within a portion of a given zoning district classification. Parcels subject to increased or reduced lot area requirements are indicated by a suffix notation, expressed in thousands of square feet, on the Zoning Map. (Example: R1L-12 denotes a minimum 12,000 square foot lot).

B. Use District Development Criteria

For ease in comparing Camp Verde's district regulations, required measurements for development in each land use category are illustrated in tabular form. (Table is provided for reference only, district provisions as specified in Section 203 shall prevail).

ZONING DISTRICT	MIN LOT AREA (sq. ft.)	MIN WIDTH OR DEPTH (feet)	MAX BLDG HT (stories)	Max BLDG HT (feet)	MAX LOT COVER (%)	MIN FRONT YARD (feet)	MIN REAR YARD (feet)	MIN SIDE YARD INTERIOR / EXTERIOR (feet)	
								INT	EXT
R1L	7,500 (or as determined by suffix)	75 (or as determined by suffix).	2	30	50	20	25	7	10
R1	10,000	80	2	30	50	20	25	7	10
R2	7,500	75	3	30	50	10	25	7	10
R-R	87,120 (2 acres)	225	2	30	15	50	50	25	30
RS	7,500	75	3	30	50	10	25	7	10
C1	7,500 res. 2,500 com.	75	3	40	50	10	25 a	7 a	10
C2	7,500 res. 2,500 com.	75	3	40	50	10	25 a	7 a	10
C3	7,500 for hotels and motels 2,500 com.	75	3	40	50	20	25 a	7 a	10

PM	20,000	100' wide/ 300' deep; Not to exceed 650' deep	2	30	15	25	25	25	25
MI	7,500	75	3	40	50	20	25 ^a	7 ^a	10
M2	Same as M1								
PAD	Per Site Plan								
OS									
AG	217,800 sq.ft (5 acres)	500	2	30	5	50	50	50	50
CF									

★ Suffix designations, in thousands of square feet (e.g., R1-12 = 12,000 sq.ft. minimum area) may indicate larger lot area required, as shown on Town Zoning Map.

- a 0' minimum rear and side setbacks adjacent to C1, C2, C3, M1 or M2
- b Unless it can be shown that added depth will not block projected streets or alleys.
- c 500' between adult-oriented businesses.

Abbreviations: s-f = single-family; d.u. = dwelling unit; sq.ft = square feet; bldg ht = building height

Note: Where lots were recorded prior to the Town's incorporation with less area than required above, the Community Development Director may approve reduced setbacks.

C. Use District Classifications Table

For ease in comparing Camp Verde's district classifications in each land use category they are illustrated below in tabular form. (Table is provided for reference only, district provisions as specified in Section 203 shall prevail.)

The Letter...	Has the following meaning...
P	Permitted uses: The letter "P" indicates that the listed use is permitted by right within the zoning district. Permitted uses are subject to all other applicable standards of the Planning and Zoning Ordinance.
UP	Use Permit uses: The letters "UP" indicate that the listed use permitted within the respective zoning district only after review and approval of a use permit, in accordance with the review procedures of Section 601.C.
A	Accessory uses: The letter "A" indicates that the listed use is permitted only where it is accessory to another use that is permitted in the district on the same lot.
-	Prohibited uses: A dash indicates that the use is not permitted in the district.

Use/Activity	Zoning District														
	R1L	R1	R2	R-R	RS	C1	C2	C3	PM	MI	M2	PAD	OS	AG	CF
Residential															
Security/caretaker dwelling unit	-	-	-	-	-	-	-	P	P	P	P	P	-	-	-
Mobile/Manuf Home & RV Parks	-	UP	UP	UP	UP	UP	UP	UP	-	-	-	P	-	-	-
Multiple dwelling units	-	-	P	-	P	P	P	-	-	-	-	P	-	P	-
Single family dwelling group units	-	-	P	-	P	P	P	-	-	-	-	P	-	-	-
Single family dwelling unit	-	P	P	P	P	P	P	-	-	-	-	P	-	P	-
Single family dwelling unit (site-built)	P	P	P	P	P	P	P	-	-	-	-	P	-	P	-

Public & Semipublic															
Cemeteries (human or animal interment)	-	-	-	-	-	-	-	UP	P	P	P	P	-	-	UP
Community parks, playgrounds, etc	UP	UP	P	P	P	P	P	P	P	P	P	P	P	UP	UP
Educational institutions	P	P	P	P	P	P	P	P	-	-	-	P	-	UP	UP
Flood control facilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	UP
Golf courses	P	P	P	P	P	P	P	P	-	-	-	P	P	-	UP
Government & utility facilities	UP	UP	UP	UP	UP	UP	UP	UP	UP	UP	UP	P	UP	UP	UP
Historical landmarks	P	P	P	P	P	P	P	P	P	P	P	P	P	P	UP
Hospitals, clinics, sanitariums, nursing homes, & assisted living care facilities	-	-	-	-	P	P	P	P	-	-	-	P	-	-	UP
Nursery schools & day care centers	-	-	-	-	P	P	P	P	-	-	-	P	-	-	UP
Outdoor recreation or assembly facilities	-	-	-	-	UP	UP	UP	UP	-	-	-	P	P	UP	UP
Private clubs & lodges	-	-	-	-	P	P	P	P	-	-	-	P	-	-	UP
Religious institutions	P	P	P	P	P	P	P	P	P	P	P	P	-	P	-

Revival tents (temporary)	-	-	-	-	UP	UP	UP	UP	-	-	-	P	-	-	-
Transmitter stations & towers	-	-	-	-	UP	UP	UP	UP	UP	UP	UP	P	-	-	UP
Transportation terminal & transfer facilities within closed building	-	-	-	-	-	-	-	P	-	-	-	-	-	-	UP

Use/Activity	Zoning District														
	R1L	R1	R2	R-R	RS	C1	C2	C3	PM	MI	M2	PUD	OS	AG	
Agriculture & Open Space															
Agricultural museums	-	-	-	-	-	-	-	-	-	-	-	P	-	UP	
Agriculture & cultivation	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Agri-Tourism businesses	-	-	-	UP	-	-	-	-	-	-	-	P	-	UP	
Fabrication, storage & repair of agriculture equipment	-	-	-	-	-	-	-	-	-	-	-	P	-	A	
Farm animals/livestock	P	P	P	P	P	P	P	P	P	P	P	P	-	P	
Public facilities for sale of agriculture products	-	-	-	-	-	-	-	-	-	-	-	P	-	A	
Public stables, livestock breeding, boarding & sales	-	-	-	-	-	-	-	UP	-	-	-	P	-	UP	
Temporary housing for agricultural workers	-	-	-	-	-	-	-	-	-	-	-	P	-	UP	
Commercial															
Antique sales	-	-	-	-	-	P	P	P	-	-	-	P	-	-	
Automobile & machinery sales	-	-	-	-	-	-	P	P	-	-	-	P	-	-	

Automobile repair (light)	-	-	-	-	-	-	P	P	P	P	P	P	-	-
Automotive service stations	-	-	-	-	-	P	P	P	-	-	-	P	-	-
Baking & confection cooking (on-site only)	-	-	-	-	-	P	P	P	-	-	-	P	-	-
Bars, tap rooms & nightclubs	-	-	-	-	-	-	P	P	-	-	-	P	-	-
Bed & breakfast	UP	UP	P	P	P	P	P	P	-	-	-	P	-	-
Bowling alleys & poolrooms	-	-	-	-	-	-	P	P	-	-	-	P	-	-
Business offices, banks similar; including drive-through	-	-	-	-	-	P	P	P	-	-	-	P	-	-
Commercial art galleries	-	-	-	-	-	P	P	P	-	-	-	P	-	-
Commercial ballrooms & arenas	-	-	-	-	-	-	-	P	-	-	-	P	-	-
Commercial bath & massage	-	-	-	-	-	-	P	P	-	-	-	P	-	-
Commercial parking facilities	-	-	-	-	-	-	P	P	P	P	P	P	-	-
Custom service & craft shops	-	-	-	-	-	P	P	P	P	P	P	P	-	-
Dancing, art, music, business & trade schools	-	-	-	-	-	-	P	P				P		
Frozen food lockers	-	-	-	-	-	-	P	P	P	P	P	P	-	-
Hotels & motels (5 or more guest rooms)	-	-	-	-	-	P	P	P	-	-	-	P	-	-
In-plant restaurants including roof or landscaped patio	-	-	-	-	-	-	-	-	A	A	A	A		
Launderettes	-	-	-	-	-	P	P	P	-	-	-	P	-	-
Miniature golf	-	-	-	-	-	-	P					P		
Mortuaries	-	-	-	-	-	-	P	P	P	P	P	P	-	-

Offices (professional)	-	-	-	-	P	P	P	P	-	-	-	P	-	-
Personal services	-	-	-	-	P	P	P	P	-	-	-	P	-	-

Use/Activity	Zoning District														
	R1L	R1	R2	R-R	RS	C1	C2	C3	PM	MI	M2	PAD	OS	AG	
Commercial															
Pet shops	-	-	-	-	-	-	P	P	-	-	-	P	-	-	
Public auction within closed building	-	-	-	-	-	-	-	P	-	-	-	P	-	-	
Restaurants & cafes	-	-	-	-	-	P	P	P	-	-	-	P	-	-	
Retail sales	-	-	-	-	-	P	P	P	-	P	-	P	-	-	
Sales (retail & wholesale) & rentals	-	-	-	-	-	-	P	P	-	-	-	P	-	-	
Theaters, auditoriums, banquet & dance halls	-	-	-	-	-	-	P	P	-	-	-	P	-	-	
Veterinary services	-	-	-	UP	UP	UP	P	P	-	-	-	P	-	-	
Industrial															
Adult oriented businesses	-	-	-	-	-	-	-	-	-	P	P	-	-	-	
Assembly, construction & processing plants	-	-	-	-	-	-	-	P	P	P	P	P	-	-	
Body & fender shops within closed building	-	-	-	-	-	-	-	P	P	P	P	P	-	-	
Bottling plants confined to closed building	-	-	-	-	-	-	-	P	P	P	P	P	-	-	
Cleaning & dyeing plants within closed building	-	-	-	-	-	-	-	P	P	P	P	P	-	-	
Custom tire recapping	-	-	-	-	-	-	-	P	P	P	P	P	-	-	
Custom warehouses within closed building	-	-	-	-	-	-	-	P	-	-	-	P	-	-	
Gasoline/petroleum dispensing storage tanks	-	-	-	-	-	-	-	-	-	P	P	P	-	-	

Lumber yards	-	-	-	-	-	-	-	-	P	P	P	P	P	-	-
Motion picture productions, radio & television studios	-	-	-	-	-	-	-	-	-	P	P	P	P	-	-
Warehouses	-	-	-	-	-	-	-	-	-	P	P	P	P	-	-
Water distillation & bottling (retail sales only)	-	-	-	-	-	-	-	P	P	P	P	P	P	-	-
Accessory Uses & Structures															
Home occupations	A	A	A	A	A	A	A	A	-	-	-	-	P	-	-
Open land carnival & recreation facilities (religious & educational institutions).	A	A	A	A	A	A	A	A	A	-	-	-	A	-	A
Other accessory uses common with primary permitted use	A	A	A	A	A	A	A	A	A	A	A	A	A	-	A
Accessory Dwelling Units	A	A	A	A	A	A	A	A	-	-	-	-	A	-	-
Temporary Use Permits															
Model homes, temporary offices, construction sheds & yards	UP	UP	UP	UP	UP	UP	UP	UP	UP	UP	UP	UP	P	-	UP
Temporary housing, travel trailers, etc	UP	UP	UP	UP	UP	UP	UP	UP	UP	UP	UP	UP	P	-	UP



Map Layers Search Results Pr

[Back](#)

4 Parcels were identified

Please Select:

[Zoom To](#) [Clear Selection](#) [Download](#)

Parcel: 403-11-084
Grauer Michael &

Parcel: 403-11-085
Jenkins Jason B

Parcel: 403-11-086
Martinez Cole E &

Parcel: 403-11-087
Tetreault Wallace J &

163 Ariz. 571

Court of Appeals of Arizona,
Division 1, Department B.

Amos MURPHY and Connie Murphy,
husband and wife, Plaintiffs–Appellees,

v.

TOWN OF CHINO VALLEY, a political subdivision
of the State of Arizona, Defendant–Appellant.

No. 1 CA–CV 88–012.

Oct. 31, 1989.

Reconsideration Denied Jan. 12, 1990.

Review Denied May 1, 1990. *

Synopsis


Town appealed from an order of the Superior Court, Yavapai County, Cause No. C–45994, Richard Anderson, J., which reversed a decision of the town board of adjustments requiring landowners to apply for a conditional use permit to operate their cattle roping arena. The Court of Appeals, Voss, J., held that: (1) complaining landowner was not real party in interest; (2) determination that arena was not an accessory agricultural use was supported by sufficient credible evidence; (3) arena was a “recreation area” for which conditional use permit was required under new zoning code; and (4) landowners were not denied due process at board level.

Reversed and remanded.


Procedural Posture(s): On Appeal.

West Headnotes (10)

[1] **Courts**  In issuance of writs

Where party to judicial proceeding files special action to challenge trial judge's determination favoring opposing party, opposing party must be joined as defendant and trial judge must also be made respondent. 17B  A.R.S. Special Actions, Rules of Proc., Rule 2.

[2] **Zoning and Planning**  Parties

Town board of adjustments was real party in interest, properly before court in landowners' petition for special action requesting review of board's decision, inasmuch as board assumed adversary position in proceedings. 17B  A.R.S. Special Actions, Rules of Proc., Rule 2.

2 Cases that cite this headnote

[3] **Courts**  In issuance of writs

Complaining landowner was not necessary party to landowners' special action challenging decision of town board of adjustments and, thus, trial court had jurisdiction to consider landowners' petition for special action relief even though landowners did not join complaining landowner.

2 Cases that cite this headnote

[4] **Zoning and Planning**  Right of review and parties

Town had standing to appeal Superior Court order reversing decision of town board of adjustments; town was an “aggrieved party” because award of attorney fees was directed against it and town had legitimate interest in sustaining validity of procedures leading to board's decision, as well as decision itself. 17B A.R.S. Civil Appellate Proc.Rules, Rule 1.

6 Cases that cite this headnote

[5] **Zoning and Planning**  Hearings and meetings in general

Town board of adjustments had authority to conduct evidentiary hearing when reviewing decision of zoning administrator. A.R.S. § 9–462.06, subs. A–C, F, G.

2 Cases that cite this headnote

[6] **Zoning and Planning**  Particular accessory uses

Determination that landowners' cattle roping arena equipped with high intensity lights for nighttime use was not an accessory agricultural use under zoning code was supported by sufficient credible evidence; nothing in record indicated that landowners' competitive roping activities were part of operation of their ranch.

1 Case that cites this headnote

[7] **Zoning and Planning** 🔑 Entertainment and recreation; theaters and clubs

Landowners' use of cattle roping arena on their property constituted a "recreation area" within zoning code, requiring landowners to obtain conditional use permit to operate arena.

[8] **Appeal and Error** 🔑 Constitutional questions

Matters not raised at trial level, including constitutional issues, will not be considered on appeal.

4 Cases that cite this headnote

[9] **Constitutional Law** 🔑 Proceedings and review

Zoning and Planning 🔑 Notice, appearance and pleading

Zoning and Planning 🔑 Hearings and meetings in general

Landowners were not denied due process before town board of adjustments; record reflected that landowners were given adequate notice that board was considering whether landowners' cattle roping arena violated zoning code and that landowners were given adequate opportunity to be heard before board. U.S.C.A. Const.Amend. 14.

[10] **Eminent Domain** 🔑 Particular cases

Zoning and Planning 🔑 Legality or illegality of use

Landowners' cattle roping arena was not lawful preexisting use at time decision was reached to

limit landowners' use of roping arena and, thus, landowners were not entitled to payment of just compensation for limiting their use of arena. A.R.S. § 9-462.02; A.R.S. Const. Art. 2, § 17; U.S.C.A. Const.Amend. 5.

1 Case that cites this headnote

Attorneys and Law Firms

****1073 *572** Stan A. Lehman, Prescott, and Paul G. Ulrich, P.C., Phoenix, for defendant-appellant.

Toci, Murphy, Lutey & Beck by **Thelton D. Beck**, Prescott, for plaintiffs-appellees.

OPINION

VOSS, Judge.

This is an appeal from summary judgment in superior court reversing a zoning decision of the Town of Chino Valley Board of Adjustments (the board). We reverse and remand for reinstatement of the board's decision.

FACTS

Amos and Connie Murphy own a residence and land in the Town of Chino Valley. In 1984 the zoning on their property was changed from agricultural to R-1 residential as part of a new zoning code adopted by Chino Valley. Over a period of time, the Murphys built a roping arena on their property that was used by their family and friends for riding horses and roping cattle. The arena has a corral, cattle runs, release shoots and seven 30'-40' poles with high intensity lights. The number of people participating at roping events was estimated to vary from 6-7 to as many as 120.

In 1985 Chuck Hudson, an adjacent property owner, complained to the town manager/zoning administrator, that the Murphys' roping arena did not comply with Chino Valley's zoning code. Acting on the complaint, the zoning administrator inquired into whether the facility was in operation prior to the adoption of the 1984 code. Many responses were received, including 28 statements indicating the arena had been utilized by family and friends before 1984.

At the conclusion of the inquiry the zoning administrator wrote a letter to Hudson advising him she had concluded that the roping arena was in operation under the former zoning code and was therefore “grandfathered in” under the current code. She advised Hudson that he could appeal her decision to the board.

Hudson filed a notice of appeal of the zoning administrator's decision to the board. The appeal was considered at a special board meeting. The board heard testimony from approximately 17 witnesses, including Hudson and the Murphys. The meeting was tape recorded, but the tape ended before completion of the public hearing and prior to the board's decision. The board voted unanimously to require the Murphys to apply for a conditional use permit.

****1074 *573** Thereafter, the Murphys filed a petition for special action in superior court requesting review of the board's decision. Cross motions for summary judgment were filed by both Chino Valley and the Murphys. The trial court granted the Murphys' motion, finding that the roping arena had been in existence before the enactment of the 1984 zoning ordinance and was a permitted use under the prior zoning ordinance. It declined to decide whether the arena could exist under the new code except as a legal nonconforming use. The court entered an order reversing the decision of the board, reinstating the ruling of the zoning administrator and awarding attorney's fees against the town for \$14,487 plus costs.

JURISDICTIONAL ISSUES

Jurisdiction of the Trial Court

[1] Chino Valley contends the trial court lacked jurisdiction to hear the special action because Hudson was the real party in interest and was not joined as a defendant. First, Chino Valley compares the board proceeding to a judicial proceeding in which the board acted as the judge resolving a dispute between two parties and contends that [Rule 2, Rules of Procedure for Special Actions](#), applies to this situation and requires that Hudson be joined as a defendant. [Rule 2](#) provides:

(a) [Parties]. Any person who previously could institute an application for a writ of mandamus,


prohibition, or certiorari may institute proceedings for a special action. The complaint shall join as a defendant the body, officer, or person against whom relief is sought. If any public body, tribunal, or officer is named as a defendant, the real party or parties in interest shall also be joined as defendants.


It is clear under [Rule 2](#) that where a party to a judicial proceeding files a special action to challenge a trial judge's determination that favors the opposing party, the opposing party must be joined as a defendant. *See generally* 1 Arizona Appellate Handbook, § 7.5.1 at 7–9 (2d ed. 1983). *Cf.* [Silver v. Rose](#), 135 Ariz. 339, 343, 661 P.2d 189, 193 (App.1982). The trial judge must also be made a respondent. *See* [Hickox v. Superior Court In and For Maricopa County](#), 19 Ariz.App. 195, 505 P.2d 1086 (1973).

[2] A trial judge is expected to be impartial rather than assume an adversary position in a special action. *See Dunn v. Superior Court In and For Maricopa County*, 160 Ariz. 311, 772 P.2d 1164 (App.1989). A board of adjustment, however, must regulate land use, which may place it in an adversary position to one of the parties appearing before it. Thus, this action is not comparable to the type of judicial proceeding contemplated by [Rule 2](#). The record in this appeal supports the conclusion that the board assumed an adversary position in these proceedings; therefore the board is a real party in interest, properly before the court in this matter.

Chino Valley also points out that where one of two parties to a controversy in a hearing before the Registrar of Contractors brings an appeal to superior court under the Administrative Review Act, [A.R.S. § 12–901 et seq.](#), failure to join the opposing party deprives the trial court of jurisdiction. [International Brotherhood of Electrical Workers v. Kayetan](#), 119 Ariz. 508, 581 P.2d 1158 (App.1978). Chino Valley argues by analogy that the parties to a dispute before a municipal body are necessary parties to a special action under [A.R.S. § 9–462.06\(K\)](#).

This analogy also fails because the board is not a neutral arbitrator and is acting to protect Hudson's interest. This court held in a similar context that an administrative agency can

be an aggrieved party with standing to challenge an adverse ruling of the Superior Court.  *Burrows v. Taylor*, 129 Ariz. 212, 630 P.2d 35 (App.1981).

We have found a limited number of cases concerning whether a party who complains to a board of adjustment may also be a real party in interest. See generally 3 Rathkopf, *The Law of Zoning and Planning* § 42.05 (4th ed. 1988). The following cases hold that objecting land owners are not necessary or indispensable parties: *Peoples Trust Company v. Board of Adjustment*, 60 N.J.Super. 569, 160 A.2d 63 (1959) (It **1075 *574 might interfere with free and open discussion before boards if property owners, by participating, risked being parties to subsequent judicial proceedings); *Nepi v. Lammot*, 52 Del. 281, 156 A.2d 413 (1959). The cases indicate that the only indispensable party to an appeal from a board of adjustment's decision is the board of adjustment. *Id.*;  *Zoning Board of Adjustment of New Castle County v. Dragon Run Terrace, Inc.*, 59 Del. 175, 216 A.2d 146 (1965); see also *Tazza v. Planning and Zoning Commission*, 164 Conn. 187, 319 A.2d 393 (1972) (The zoning commission is the proper party to represent the public interest and to defend its decisions).




[3] We agree that on an appeal or special action review of a board of adjustment decision, the board and the property owner directly subject to the board decision are necessary parties. Merely taking a position before the board as an abutting landowner or neighbor does not per se make one a party to further litigation. The board represents the interests of the community at large. Further, the fact a complainant is not an indispensable party does not effect standing to intervene. There could be facts under which a complainant's interest in the outcome require that he be made a party. However, that case is not before us. We conclude the trial court had jurisdiction to consider the Murphys' petition for special action relief.

Jurisdiction of the Court of Appeals

[4] The Murphys argue that this court must dismiss Chino Valley's appeal because it is not an "aggrieved party" within the meaning of Rule 1, Arizona Rules of Civil Appellate Procedure. We find no merit to this argument. If for no other reason than the award of attorney's fees directed against the Town of Chino Valley, the town is an aggrieved party entitled to appeal this award. Further, the town has a legitimate interest in sustaining the validity of the procedures leading to the board's decision, as well as the decision itself, which gives

it standing to appear in this court. See *Dunn*, 160 Ariz. 311, 772 P.2d 1164 (App.1989); *Camelback Contractors, Inc. v. Industrial Commission*, 125 Ariz. 205, 608 P.2d 782 (App.1980).

STANDARD OF REVIEW

In a special action to review a municipal board of adjustment decision, the trial court's primary purpose is to determine whether the board's decision was arbitrary and capricious or an abuse of discretion. *Blake v. City of Phoenix*, 157 Ariz. 93, 754 P.2d 1368 (App.1988). An appellate court is bound by the same standard of review as the superior court in reviewing the board's decision.  *City of Phoenix v. Superior Court In and For Maricopa County*, 110 Ariz. 155, 515 P.2d 1175, 1178 (1973);  *Gannett Outdoor Company v. City of Mesa*, 159 Ariz. 459, 768 P.2d 191 (App.1989). Our review is limited to finding error, and we may not substitute our opinion of facts for that of the board. If there is credible evidence to support the board's decision, we must affirm. *Id.* However, where the issues involve statutory interpretation, the trial court and this court are free to draw their own conclusions on whether an agency misinterpreted the law.  *Eshelman v. Blubaum*, 114 Ariz. 376, 378, 560 P.2d 1283, 1285 (App.1977).

BASIS FOR THE TRIAL COURT'S DECISION

Chino Valley contends the trial court ruled that the board erred in holding a *de novo* hearing and considering evidence that had not been presented to the zoning administrator. The Murphys argue that this was not the basis for the trial court's decision. They contend the trial court held that the board's decision was erroneous because it was contrary to the evidence presented at the board's evidentiary hearing.

The trial court's minute entry provides in part:

The Board of Adjustments did not reverse, affirm or modify the order of the Zoning Administrator but apparently made a determination based upon a *de novo* proceeding. *This appears to be improper procedure under the applicable statute* but in any

event, the action of **1076 *575 the Board of Adjustments is clearly arbitrary, capricious and an abuse of discretion and the decision of the Board may not stand.

(Emphasis added.)

[5] We agree that the trial court was incorrect in concluding that the board was without authority to conduct an evidentiary hearing; the board has authority under A.R.S. § 9-462.06(A), (B), (C), (F) and (G) to conduct a public hearing and take evidence. See, e.g., *Boyce v. City of Scottsdale*, 157 Ariz. 265, 756 P.2d 934 (App.1988); *Arkules v. Board of Adjustment of Town of Paradise Valley*, 151 Ariz. 438, 440, 728 P.2d 657, 659 (App.1986) (“The Board of Adjustment, though structured much like an administrative agency, acts in a quasi-judicial capacity”). However, the trial court’s statement that the board followed improper procedures was not the basis for its judgment. The minute entry implies that irrespective of any improper procedure, the court found that the board’s action, after consideration of the evidence, was arbitrary, capricious and an abuse of discretion. Additionally, the trial judge later expressly stated he did not base his decision upon grounds that the town had followed improper procedures.

We therefore review the record to determine whether the trial court was correct in determining that the board acted in an arbitrary and capricious manner and abused its discretion, or whether there was sufficient evidence to support the board’s decision.

THE RECORD

Although there are difficulties with the tape recording of the board proceedings, both Chino Valley and the Murphys agree that the record is adequate for purposes of this appeal. The test for the sufficiency of an administrative record is “whether the errors are of such magnitude that the record precludes an intelligent understanding of the testimony.” *Schmitz v. Arizona State Bd. of Dental Examiners*, 141 Ariz. 37, 40–41, 684 P.2d 918, 921–22 (App.1984). Although not all the board’s deliberations are in the record, we are able to review the testimony to determine whether there is sufficient evidence to support the board’s decision under any legal

theory. *Kovacs v. Industrial Commission of Arizona*, 132 Ariz. 173, 176, 644 P.2d 909, 912 (App.1982).

FORMER ZONING ORDINANCE

Chino Valley’s former zoning ordinance, Ordinance No. 10, provided for agricultural districts as follows:

4. Agriculture One

(a) Permitted Uses:

- (1) All types of agriculture, truck gardening, horticulture, dairying, stock animal and poultry raising, breeding, processing and selling.
- (2) Homes for owners of ranch or farm and employees
- (3) Sale of farm produce and crops
- (4) Other uses that are not listed under conditional uses which the Board of Adjustment considers similar in character to those listed above

(b) Conditional Uses:


- (1) Boarding homes for children
- (2) Day care homes for children
- (3) Airports and landing strips
- (4) Other uses the Board of Adjustment considers similar in character to those listed above

A roping arena, where the owners and numerous others participate in competitive roping, lighted by high intensity lights on 30–40 foot poles, is not expressly within the scope of any of the listed uses in 4(a)(1), (2) or (3). If the roping arena is to be considered a permitted use, it must come within the provisions of paragraph 4(a)(4)—uses that the board considers similar in character to the listed uses.

The doctrine of accessory uses states that any activity naturally adjunct to the zoning category will be permitted:

‘[C]ustomarily’ ... is commonly used in regulations permitting or defining accessory usages and the courts have

sought to determine, in the case of each allegedly accessory or incidental usage, whether it is customary to maintain it in ****1077 *576** conjunction with the specifically permitted use of the land....

 *Town of Paradise Valley v. Lindberg*, 27 Ariz.App. 70, 71, 551 P.2d 60, 61 (1976).

We find no Arizona cases specifically addressing the question of accessory agricultural uses. Chino Valley relies on *Borough of Demarest v. Heck*, 84 N.J.Super. 100, 201 A.2d 75 (App.Div.1964). In *Heck* the New Jersey court held that a riding academy was not an agricultural use, referring to testimony of:

[A]nnoying dust, ‘terrific’ when there is ‘violent riding’; disturbing noises caused by the horses, also by children ‘hollering’ and ‘screaming’ and by the blowing of automobile horns; illumination of the barns and excessive light from cars at nighttime; traffic congestion and hazards in the evenings and on Saturdays and Sundays; ... and weekend equestrian functions which were likened to a rodeo.

Id. at 104, 201 A.2d at 77–78. Activity of this nature was held inconsistent with agricultural use of the property.

In response, the Murphys argue that Arizona is not New Jersey. While this response is factually indisputable, it fails to address the legal argument. It does, however, point out the difficulties in resolving mixed issues of fact and law. To a large extent what is an accessory agricultural use as a matter of law may depend on factual determinations of what is customary in a particular agricultural community. It is therefore appropriate that a determination of whether a use is “similar in character” to other express uses rests with a local board of adjustment. A local board of adjustment is the body most aware of community customs and practices and therefore best able to make this decision.

Although the board did not make a specific factual finding, the record indicates that a substantial portion of the testimony and discussion among board members was directed to whether the roping arena was an agricultural use, and, that the board's collective decision was that the roping arena was not an activity “similar in character” to the permitted uses delineated in the old code.

[6] There are sufficient facts in the record from which the board could determine that the roping arena was not an accessory agricultural use. The Murphys and invited friends engaged in competitive cattle roping in the arena. These activities were conducted both in the daytime and in the evening under high intensity lighting. The extent of the impact of this activity on the neighborhood was disputed, but there was evidence that these events were noisy and increased traffic. Nothing in the record indicates that these activities were part of the operation of the Murphys' ranch.

Even if this court were to determine that the roping arena as originally constructed and used complied with Ordinance 10 before 1984, the board heard substantial evidence that the original use expanded beyond that permitted under the old ordinance and therefore could not continue as a legal nonconforming use under the new zoning code. There is, of course, evidence to the contrary. However, in reviewing a board decision it is not the prerogative of this court nor of the trial court to weigh the evidence. *Blake*, 157 Ariz. at 96, 754 P.2d at 1371.

We find there is sufficient credible evidence to support a board decision that the roping arena was not permitted under the old code and is therefore not a legal nonconforming use under the new code. Whether it was initially a permitted use before the lighting, facilities and numbers of participants expanded is irrelevant. The board's decision was that the arena as used in 1985 would require a conditional use permit. The record supports this conclusion.

NEW CODE

The Murphys' property presently falls within an “R–1” zone under section 504 of the zoning code, which provides in part:

A. PURPOSE

This district is intended to promote and preserve low density single family residential ****1078 *577** and agricultural development. Regulations and property

development standards are designed to protect the single family residential and agricultural character of the district and to prohibit all incompatible activities. Land use is composed chiefly of individual homes, together with required recreational, religious, and educational facilities.

Section 504(B) lists permitted uses of “R-1” property, some of which the Murphys contend include the roping arena.

B. PERMITTED USES

.....

- 3. Farming and agriculture including the keeping of cattle, horses....
- 4. Customary accessory buildings such as barns, corrals, pens, coops, and storage sheds for the care and keeping of animals....
- 5. Accessory uses as follows:
 - a. Parking of vehicles in facilities and locations on the property not otherwise in conflict with the provisions of this Ordinance;
 - b. Materials used in conjunction with a hobby, avocation, or pastime, the use of which does not otherwise conflict with the provisions of this Ordinance.

The Murphys argue that although the ordinance does not expressly refer to “roping arenas,” it does expressly permit residents to keep cattle and horses, and, therefore, the ordinance implicitly authorizes riding horses or roping cattle. The Murphys further contend that their chutes and arenas qualify as “customary accessory buildings” as described in paragraph 4 above. Finally, they contend that if the roping arena does not fall within the permitted uses, it should be included as an accessory use pursuant to paragraph 5 because the roping arena is the Murphys’ “hobby, avocation, or pastime.”

[7] The Murphys urge that their interpretation of the ordinance is consistent with the policy that zoning ordinances, being in derogation of common-law property rights, should be strictly construed and any ambiguity or uncertainty should be decided in favor of property owners. *Hart v. Bayless Inv. & Trading Co.*, 86 Ariz. 379, 390, 346 P.2d 1101, 1109 (1959). However, we find that the alleged ambiguity does not exist because the Murphys’ use of the property falls under another

section of the zoning code, which, as the board found, requires a conditional use permit. That section, 504(C), provides in part:

C. CONDITIONAL USES

(Conditional Use Permit Required)

- 1. Privately owned and operated parks and *recreation areas and centers*.

(Emphasis added.)

“Recreation Facilities” are defined in § 201 of the 1984 zoning code as:

buildings, structures or areas built or developed for purposes of entertaining, exercising, or observing various activities participated in either actively or passively by individuals or organized groups.

It was undisputed that in addition to the Murphy family, the roping arena was being used by numerous other persons who organized, participated and engaged in rodeo type activities. These activities may be reasonably viewed as utilizing the roping arena as a recreation area rather than as a family hobby. Further, there is no evidence that these competitive activities were necessary for keeping cattle and horses as part of a farm and agricultural use.

We find no error in the board's decision requiring a conditional use permit for the operation of a roping arena under these circumstances. That decision is consistent with the purpose stated in section 504 of the zoning ordinance and is a permissible use of reasonable regulations to promote the general welfare of the community as part of its police powers.

See *Ranch 57 v. Yuma*, 152 Ariz. 218, 731 P.2d 113 (App.1986).

CONSTITUTIONAL ISSUES

[8] The Murphys have also raised several constitutional issues, some of which are raised for the first time on appeal. ****1079 *578** Generally, matters not raised below,

including constitutional issues, will not be considered on appeal. *Norcor of America v. Southern Arizona Int'l Livestock Ass'n*, 122 Ariz. 542, 544–45, 596 P.2d 377, 379–80 (App.1979). The issues raised by the Murphys do not fall within any exception to that policy. Therefore, we address only those issues raised before the trial court.

[9] The Murphys contend they were deprived of due process of law because they were not given adequate notice of the charges against them or the evidence upon which the charges were based. They also claim they were denied an impartial tribunal and a chance to present witnesses and refute adverse evidence. See *McClanahan v. Cochise College*, 25 Ariz.App. 13, 18, 540 P.2d 744, 749 (1975). The Murphys' description of their circumstances does not accurately reflect the record.

Hudson's initial complaint to the zoning administrator necessarily raised the issue of the legality of the Murphys' arena. Many letters were submitted to the zoning administrator on the Murphys' behalf, some of which indicate they were written at the Murphys' request. Hudson's appeal of the zoning administrator's decision necessarily concerned operation of the Murphys' roping arena. The record is silent as to any formal notice given to the Murphys prior to the board hearing. However, the transcript of that meeting confirms that a number of witnesses testified on their behalf, that the Murphys were present and participated in the hearing, and that they made no complaint as to any lack of notice or insufficiency of opportunity to be heard. The trial court record is similarly devoid of any complaints by the

Murphys. Accordingly, any applicable due process concerns were satisfied. See *Summit Properties, Inc. v. Wilson*, 26 Ariz.App. 550, 550 P.2d 104 (1976).

[10] The Murphys also contend that by limiting their use of the roping arena, Chino Valley has eliminated a legal nonconforming use without payment of just compensation through purchase or condemnation as required under A.R.S. § 9–462.02 and Arizona Constitution, art. 2, § 17. As previously discussed, there was sufficient evidence that the roping arena as used at the time of the hearing was not a legal nonconforming use because these activities would not have been permitted under the old code. Accordingly, the roping arena as used at the time of the hearing was not a lawful preexisting use for which compensation had to be paid.

CONCLUSION

This matter is reversed and remanded to the trial court with directions to enter judgment in favor of Chino Valley and reinstate the decision of the board of adjustment. Because we reverse, the trial court's award of attorney's fees against the Town of Chino Valley is vacated.

CONTRERAS, P.J., and KLEINSCHMIDT, J., concur.

All Citations

163 Ariz. 571, 789 P.2d 1072

Footnotes

- * Gordon, C.J., of the Supreme Court, was not present and did not participate in the determination of this matter.

SECTION 103 - DEFINITION OF TERMS

For the purposes of this Zoning Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. Words, phrases, and terms not defined in this Zoning Ordinance shall be given their usual and customary meanings except where the context clearly indicates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not permissive; the word "may" is permissive and not mandatory. Words used in the present tense include the future tense; words used in the future tense include the present tense. The word "person" includes individuals, partnerships, corporations, clubs, and associations and other forms of business enterprise. The following words or terms when applied to this Zoning Ordinance shall carry full force when used interchangeably; lot, plot, parcel, or premises; used, arranged, occupied, or maintained; sold or dispensed; construct, reconstruct, erect, place, or alter (structurally or otherwise), If more than one provision, standard, or requirement of any chapter of this Zoning Ordinance applies in all instances the most restrictive, provision, standard or requirement shall control.

DEFINED TERMS, PHRASES AND WORDS:

ABANDONMENT: The discontinuation of use for a period of one year.

ACCESSORY USE: A use of land or of a building or portion thereof customarily incidental and subordinate to and located on the same lot with the principal use.

ADJACENT: Adjoining or across a road from each other.

ADULT CARE CENTER: An establishment enrolling four or more adults where fees or other forms of compensation for the temporary care of the adults are charged, and which is licensed and approved to operate by the State.

AGRICULTURE: The production, keeping or maintenance, for sale, lease or personal use, of plants or animals useful to man, including the breeding and grazing of any or all of such animals; or lands devoted to a soil conservation or forestry management program. This includes farm stands for the temporary or seasonal sales of agricultural products grown on site or other grown on other properties owned or leased by the farm operator.

AGRITOURISM: Is the act of visiting a working farm, ranch, agricultural or horticultural agribusiness operation for the purpose of enjoyment, education or active involvement of visitors to experience a rural lifestyle. Visitors may participate in events and services related to agriculture which may take place on or off the farm or ranch, and that connect consumers with the heritage, natural resource or culinary experience they value. This may include but not limited to; farm stands or shops, U-pick, on-farm classes, fairs, festivals, pumpkin patches, wineries, barn dances, corn maze, hunting, fishing, guest ranches, agricultural tours, wildlife viewing or bird watching, wine tasting.

ALLEY: A passageway that has been dedicated or deeded for public use affording a secondary means of access to abutting property.

AMENDMENT: A change in the wording, context, or substance of these regulations or an addition, deletion, or a change in the zone boundaries or classifications upon the Zoning Map; Also a change in the wording, context, or other correction of a final plat.

ANALOGOUS: Similar or comparable.

ANIMALS:

- Livestock – animals, such as horses, ponies, mules, sheep, alpacas, goats, cattle; and large poultry, such as ostriches and emus.
- Fowl – chickens, ducks, geese, turkeys, and peacocks.
- Household – small domestic pets typically found in households, such as dogs, cats, hamsters, parakeets, parrots, rabbits, guinea pigs, and tropical fish.

ANTIQUUE: A collectible item, desired for its age, rarity or other unique feature.

APARTMENT: Any building or portion thereof that contains three or more dwelling units and, for the purpose of this Zoning Ordinance, includes apartment houses and apartment hotels.

APPLICANT: A person submitting an application for development.

APPLICATION FOR DEVELOPMENT: The application form and all required, accompanying documents and exhibits for development review purposes.

APPROVED PLAN: A plan, which has been granted final approval by the appropriate approving authority.

ASSEMBLY, CONSTRUCTION & PROCESSING PLANTS: Includes the following activities within a closed or partially closed buildings: machining, tooling, assembly, molding, decorating, cleaning, equipping, repairing, servicing, printing, publishing, welding, milling, planing, manufacturing, fabrication, processing, compounding, packaging, mixing, glazing, winding, binding, weaving, knitting, sewing, baking, cooking, roasting, pickling, brewing, distilling, salvage (but not wrecking), equipment, material and dead storage yards, plating, polishing, meat packing (no slaughtering except rabbits and poultry), animal treating, boarding, breeding and sales, warehousing (including elevators), freight yards, circuses and carnivals, race tracks, and stadiums.

ASSISTED LIVING CARE FACILITY: A residential care facility, including adult foster care, licensed by the State to provide supervisory care services, personal care services or directed care services on a continuing basis to a maximum of no more than ten full-time residents

AUTOMOBILE REPAIR (HEAVY): Heavy repair of automobiles, light & heavy trucks, recreational vehicles, cycles, and stationary or portable machinery entirely within enclosed buildings including the following:

- Any fabrication by means of welding, cutting, heating, bending, molding, forging, grinding, milling or machining.
- Vehicle frame repair.

The following items are not allowed:

- Any unscreened outside storage of parts, materials, or disabled vehicles;
- Any drainage or dumping of oil, fuel, grease, cleaning fluids, or hazardous materials on the pavement, gravel, ground, drainage system or in any other unauthorized place or method.
- Any hours of operation between ten (10) p.m. and six (6) a.m. is prohibited if the business property is within 300 feet from any parcel zoned or used for residential purposes. (2015 A407)

AUTOMOBILE REPAIR (LIGHT): General repair of automobiles, light trucks, recreational vehicles, cycles, and small stationary or portable machinery entirely within enclosed buildings or attached enclosures of solid material at least six feet in height, but excluding the following:

- Any fabrication by means of welding, cutting, heating, bending, molding, forging, grinding, milling or machining. (Such operations are permissible as an adjunct to repair only);
- Vehicle frame repair or major body or fender work;
- Any work on vehicles outside permitted structures or enclosures, unless on the service apron of a gasoline service station;
- Any unscreened outside storage of parts, materials, or disabled vehicles;
- Any draining or dumping of oil, fuel, grease, cleaning fluids or hazardous materials on the pavement, gravel, ground, drainage system or in any other unauthorized place or method;
- Any hours of operation between ten p.m. and six am. Within 300 feet of any parcel zoned or used for residential purposes;
- Any use or structure failing to comply with applicable local and state fire safety standards.

AUTOMOBILE & MACHINERY SALES: General sales of new and used automobiles, light trucks, recreational vehicles, travel trailers, mobile homes, boats, boat trailers, utility trailers, motorcycles, ATV's, bicycles and small stationary or portable machinery within enclosed buildings. Outside display of such vehicles or similar merchandise shall be permitted only as specified in Section 309 Automobile & Machinery Sales.

AUTOMOBILE SERVICE STATION: That portion of a building where flammable or combustible liquids or gases used as motor fuels are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles.

AUTOMOBILE STORAGE YARD: Includes storage of automobiles incident to a lawful towing business (but does not include automobile salvage or wrecking). The temporary storage of junked motor vehicles, if completely enclosed by a screen wall, is considered accessory to this use. Temporary storage in this context means storage for not longer than ninety (90) days.

AWNING: A roof-like cover that projects from the wall of a building for the purpose of shielding a doorway or window from the elements.

BASEMENT: A floor level below the main story of a building, wholly or partly below ground level, which may be used for habitation, household equipment or storage in compliance with the currently adopted building codes.

BED AND BREAKFAST: An overnight rooming or boarding house with breakfast where the host lives on the premises. Bed and Breakfast establishments are limited to two to five (5) bedrooms and must comply with parking requirements under Section 403.

BEDROOM: A private room planned and intended for sleeping, separated from other rooms by a door, and accessible to a bathroom.

BLOCK: That property fronting on one side of a street and so bounded by other streets, canals, railroad right-of-way, un-subdivided acreage or other barriers (except alleys) of sufficient magnitude as to interrupt the continuity of development on both sides thereof.

BOARDER OR ROOMER: An individual other than a member of the family occupying the dwelling unit or part thereof who, for a consideration, is furnished sleeping accommodations and may be furnished meals or other services as part of the consideration.

BOARDING HOUSE: See "ROOMING OR BOARDING HOUSE".

BOARDING STABLE: A structure designed for the feeding, housing or exercising of horses not owned by the owner of the premises for a consideration.

BUFFER: Undeveloped or landscaped property used to separate the activity from surrounding properties. Required landscaping or setbacks do not qualify as buffer.

BUILDING: A structure having a roof supported by columns or walls; or any structure used or intended for supporting or sheltering any use or occupancy.

-**ACCESSORY:** A subordinate structure, either attached or detached from the principal or main building or use occupied or devoted to a use incidental to the principal use.

-**ATTACHED:** A building which has a party wall or a common wall with another building.

-**CLOSED:** A structure completely enclosed by a roof, walls and doors on all sides facing the perimeter of a lot.

-**CLUSTER:** A technique in which attached or detached dwelling units are grouped relatively close together, leaving open spaces as common areas.

-**COMMUNITY:** A public or quasi-public building used for community activities of an educational, recreational or public services nature.

-**DETACHED:** A building having no party wall or common wall with another building.

-**FACTORY BUILT:** A structure, all or a major portion of which was factory assembled for permanent attachment to a lot and constructed in compliance with A.R.S. Section 41-2142 and certified as such by the Arizona State Registrar of Contractors, Building Codes Division.

-**HEIGHT:** The vertical distance above a reference datum measured to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roof. The height of a stepped or terraced building is the maximum height of any segment of the building, or as defined in the current adopted building code. The reference datum shall be selected by either of the following, whichever yields a greater height of building:

1. The elevation of the highest adjoining sidewalk or finished ground surface within a 5-foot (1524 mm) horizontal distance of the exterior wall of the building when such a sidewalk or ground surface is not more than 10 feet (3048 mm) above lowest finished grade; or
2. An elevation 10 feet (3048 mm) higher than the lowest finished grade when the sidewalk or ground surface described in Item 1 is more than 10 feet (3048 mm) above the lowest finished grade.

-**PRINCIPAL:** A building, or buildings, in which is conducted the primary use of the lot on which it is situated. In any residential district, any dwelling shall be deemed to be the principal building of the lot on which the same is situated.

CAMPGROUND: A plot of ground upon which two or more campsites are located, established, or maintained for occupancy by the general public as temporary living quarters for recreation, education, or vacation purposes.

CARPORT: A roofed structure to provide space for the parking or storage of motor vehicles and enclosed on not more than three sides.

CEMETERY: Property used for interring of the dead.

CHANGE OF USE: Any use which substantially differs from the previous use of a building or land.

CHILD CARE CENTER: A private establishment enrolling more than four children between the ages of two and five years of age and where tuition, fees, or other forms of compensation for the temporary care of the children is charged, and which is licensed or approved to operate as a child care center by the State.

CHURCH: A building or structure, or groups of buildings or structures, which by design and construction are primarily intended for the conducting of organized religious services and accessory uses associated with the church.

CLINIC: A health care establishment where patients are admitted for examination and treatment by one or more physicians, dentists, psychologists or social workers and where patients are not usually lodged overnight.

COMMERCIAL USE: See "*USE*".

COMMISSION: The Camp Verde Planning and Zoning Commission (See "*PLANNING COMMISSION*").

COMMUNITY DEVELOPMENT DIRECTOR: The Director of the Community Development Department for the Town of Camp Verde or his or her designated representative; also see "*ZONING ADMINISTRATOR*".

CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO): See Code of Federal Regulations for Environmental Protection Agency (EPA), Title 40, Volume 13, Part 122 (40 C.F.R. Part 122), as may be amended.

CONDITIONAL APPROVAL: An affirmative action by the Commission or the Town Council indicating that approval will be forthcoming upon satisfaction of certain specified stipulations.

CONDOMINIUM: A building or group of buildings, in which units are owned individually, and common areas and facilities are owned by all the owners on a proportional, undivided basis.

CONSIDERATION: An inducement to a contract.

CONSOLIDATION/COMBINING: The removal of lot lines between contiguous parcels.

CONTIGUOUS: Next to, abutting, or touching and sharing a common boundary or portion thereof.

COTTAGE INDUSTRY: See "*HOME OCCUPATION*".

COUNCIL: Camp Verde Town Council, acting under the authority of the laws of the State of Arizona.

COURT: A space, open and unobstructed to the sky, located at or above grade level on a lot and bounded on two or more sides by walls of a building or buildings.

CUSTOM: Pertaining to work, service or assembly done to order for individual customers for their own use or convenience.

CUSTOM SERVICE & CRAFT SHOPS: A use devoted primarily to the sale of a service or a product or products including the following: barber, beauty, massage, tailor and cleaning pickup; key and gun, photographic, fixit (home appliance, saw, mower, clock, radio, TV and similar); precision and musical instrument; and optical equipment.

DAY CARE CENTER: See "*ADULT CARE CENTER*" or "*CHILD CARE CENTER*".

DEVELOPMENT PROJECT: Any residential, commercial, industrial or mixed use subdivision plan or individual building development or remodeling plan which is submitted to the Town for approval.

DISTRICT: Refers to an area designated as a Zoning District.

DRIVE-IN/DRIVE-THROUGH RESTAURANT: Any establishment where food or beverages are dispensed through openings in the building or by service to customers in a vehicle.

DRIVEWAY: A private access for vehicles to a parking space, garage, dwelling or other structure usually serving a single parcel.

DUDE RANCH: A vacation resort offering activities typical of western ranches (such as camping, horseback riding and other outdoor events).

DWELLING UNIT: Any building or portion thereof that contains living facilities, including provisions for sleeping, eating, cooking and sanitation for not more than one family, or congregate residence for 10 or less persons.

-ACCESSORY DWELLING UNIT (ADU): A dwelling unit, either attached or detached, customarily incidental and subordinate to and located on the same lot with the principal dwelling unit used to house guests or relatives. ADU's must meet the applicable Zoning District requirements as to construction type and setbacks, are not to exceed 1000 square feet of livable building area or twenty-five (25%) of the total square footage of livable building area of the primary residential structure, whichever is larger. See Section 311 for ADU Rental requirements.

-CARETAKER LIVING QUARTERS:

- Living quarters located on the property to which the use pertains, is associated with the primary use and is limited to 1000 square feet.
- Quarters may be site built or manufactured housing and must comply with the currently adopted building standards or bear a label certifying compliance with the Federal Manufactured Housing Construction & Safety Standards Act.

Living quarters established on the property prior to the establishment of the primary use, shall comply with Section 601 D and apply for a Temporary Use Permit.

-DUPLEX: A building containing two dwelling units.

-MULTIPLE: A building containing three or more dwelling units.

EASEMENT: A grant of property rights by the property owner to and/or for access or other use by the public (public easement), a corporation or another person or entity (private easement).

ENGINEERING DESIGN & CONSTRUCTION STANDARDS: Standards and technical specifications for design and construction of public improvements to land required for engineering approval, including specifications for: streets; street curbs, gutters, sidewalks, and lighting; driveway standards; utilities including water and sewer; and drainage and grading. The Engineering Design & Construction Standards are on file with the Town of Camp Verde Clerk, and the Public Works Department as may be amended by the Town Council.

ELEVATION: (1) A vertical distance above or below a fixed reference level; (2) A flat scale drawing of the front, rear, or side of a building.

-FINISHED: The proposed or actual elevation of the land surface of a site after completion of all site preparation work.

ENCROACHMENT: Any obstruction in or on a delineated floodway, right-of-way or adjacent property.

ENTITLEMENT: The legal method of obtaining approvals for the right to develop property for a particular use.

EXCAVATION: Removal and/or recovery by any means whatsoever of soil, rock, minerals, mineral substances or organic substances other than vegetation, from water or land on or beneath the surface thereof.

EXISTING USE: The use of a lot, property or structure at the time of the enactment of a zoning ordinance.

EXTENDED CARE FACILITY: See "*LONG-TERM CARE FACILITY*"

FAMILY: One or more individuals occupying a dwelling unit and living as a single household unit.

FARM, FARMLAND: A parcel of land used for agricultural purposes.

FARM STAND: A temporary or seasonal sales area for the sale of agricultural products grown on site or grown on other properties owned or leased by the farm operator. Farm stand structures are subject to zoning clearance and building permit requirements.

FARM STRUCTURE: Any building or structure used for agricultural purposes.

FENCE: An artificially constructed barrier of any material or combination of materials erected in such a manner as to control entrance to, enclose, screen or mark the boundaries of a property.

FILL: Sand, gravel, earth or other materials of any composition whatsoever placed or deposited in such a manner as to give solidity or bulk.

FINAL APPROVAL: The last official action taken by the Town on an application which has been given preliminary approval, after all conditions and requirements have been met.

FLOOR AREA: The area included within the surrounding exterior walls of a building or portion thereof, exclusive of vent shafts and courts. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the useable area under the horizontal projection of the roof or floor above; also, the sum of floor areas of stories in multi-storied buildings.

FRONTAGE: That part of a lot line which is also a public or private road right-of-way line; also see "LOT LINE, FRONT".

FREIGHT YARD: A facility for loading, unloading of freight for current distribution and warehousing of freight.

GARAGE:

-**PRIVATE:** An accessory building occupied primarily by the passenger motor vehicles of the families residing on the same lot. This may include one commercial vehicle under five ton capacity. Non-commercial vehicles of persons not residing on the lot may occupy up to one-half the capacity of such garage.

-**PUBLIC:** Any building, other than that herein defined as a private garage, used for the storage or care of motor vehicles, or where any such vehicles are equipped for operation, repaired, or kept for remuneration, hire or sale.

GARBAGE: Anything discarded as worthless or useless, including but not limited to refuse matter from a kitchen.

GENERAL PLAN: A comprehensive plan prepared for development of the Town, recommended for approval by the Planning and Zoning Commission and adopted by the Town Council, and includes any part of such plan separately adopted and any amendment to such plan, or parts thereof.

GLARE: The effect produced by brightness sufficient to cause annoyance, discomfort, or loss in visual performance and visibility.

GOLF COURSE: A tract of land developed for playing golf, improved with tees, greens, fairways, hazards, and which may include clubhouses and shelters as well as driving ranges in conjunction with established golf course.

GOVERNMENT AGENCY: Any agency of a governing body created by a political division or subdivision such as Federal, State, County and Town.

GRADE: The degree of rise or descent of a sloping surface; Or the average elevation of the ground within a 5-foot radius from a structure.

-**FINISHED:** The final elevation of the ground surface after development.

-**NATURAL:** The elevation of the ground surface prior to man-made alterations.

GRADING: The excavation, removal, filling, movement, storage or relocation of material (other than mining or quarrying) which has the effect of changing the existing topography of the property or as may be defined further in the currently adopted building codes.

GRAFFITI: Unauthorized markings that have been placed upon any property through the use of paint, ink, chalk, dye, or any other substance capable of marking property. (See Town Code Article 10-2)

GROUND FLOOR: The lowest story in a building that is not more than four feet below finished grade, for more than 50% of the total perimeter, or not more than eight feet below finished grade, at any point.

GROUP CARE FACILITY: A facility or dwelling unit housing persons unrelated by blood or marriage and operating as a group family household/congregate residence.

GUESTROOM: Any paid or non-paid room used or intended to be used by a guest for sleeping purposes. Every 100 square feet (9.3 m2) of floor area in a dormitory shall be considered to be a guest room.

HEALTH CARE FACILITY: A facility or institution, whether public or private, engaged in providing services for health maintenance, diagnosis, or treatment of human disease, injury, pain, deformity or physical condition.

HEIGHT: See "*BUILDING HEIGHT*".

HOME OCCUPATION: An occupation, profession, activity or use located within a residence, garage or accessory building in a residential district, and which use is merely incidental to the residential use and does not change the character of the neighborhood by externally detectable lighting, noise, odor, traffic or appearance associated with the activity, with no more than one non-residential employee.

HOSPITAL: A facility providing primary health services and medical or surgical care to persons, suffering from illness, disease, injury, deformity and other physical or mental conditions and including, as an integral part of the facility, related facilities such as laboratories, outpatient facilities or training facilities.

HOTEL: Any building containing six (6) or more guest rooms intended or designed to be used, rented or hired out to be occupied for sleeping purposes by guests.

-**APARTMENT:** A building or group of buildings containing a number of independent suite of rooms for dwelling purposes and in which at least one common dining room is provided.

HOUSEHOLD: A family living together in a single dwelling unit, with common access to and common use of, all living and eating areas and all areas and facilities for food preparation and storage within the dwelling unit.

HOUSING UNIT: A room or group of rooms used by one or more individuals living separately from others in the structure, with direct access to the outside or to a public hall and containing separate toilet and kitchen facilities.

IMPROVED LOT: A lot having an improvement on it.

IMPROVEMENT: Any made-made, immovable item or structure, which becomes part of, placed upon, or is affixed to, real estate.

INFRASTRUCTURE: Facilities and services needed to sustain industrial, residential and commercial activities.

INSPECTOR: Official(s) charged with administration and enforcement of this Zoning Ordinance.

INSTALLED: Attached, or fixed in place, whether or not connected to the ground, a structure or a power source.

INTERMEDIATE CARE FACILITY: A facility which provides, on a regular basis, health related care and services to individuals, who do not require the level of care and treatment which a hospital or skilled nursing facility is designed to provide, but who, because of their mental or physical condition, require care and services beyond the level of room and board.

JOINT OWNERSHIP: The equal estate interest of two or more persons.

JUNK: Any old or discarded material, scrap, waste, reclaimable material or debris, whether or not stored or used in conjunction with dismantling, processing, salvaging, storage, baling, disposal or other use or disposition.

KINDERGARTEN: Same as Nursery School (See "*SCHOOL, NURSERY*") except when operated in conjunction with a school of general instruction and having accredited instruction.

LAND: Ground, soil or earth including improvements on, above or below the surface.

-**DISTURBANCE:** Any activity which alters the land topography or vegetation cover or any activity involving the clearing, cutting, excavating, filling or grading of land.

-**RECLAMATION:** Increasing land use capability by changing the land's character or environment, usually through drainage and/or fill.

LAND USE: A description of how land is occupied or used.

-**MAP:** A map indicating the desired and proposed location, extent and intensity of land uses acting as a guide for future development.

LANDSCAPE: (1) An expanse of natural scenery; (2) The addition of grasses, ground cover, trees, plants, and other natural and decorative features to land.

LAUNDERETTE (OR LAUNDRY FACILITY): An establishment that provides washing and/or drying machines on the premises for rental use to the general public for household laundering purposes.

LODGER: A transient renter whose meals may or may not be supplied in the cost of the rent.

LONG-TERM CARE FACILITY: A facility or distinct part of a facility or approved nursing home, infirmary unit of a home for the aged or other health care institution which provides 24-hour medical supervision for two or more people who are not related to the operators of such facility by marriage, blood or adoption.

LOT: A parcel of land established by plat, subdivision, or otherwise permitted by law, having its principal frontage on a dedicated street or street easement. A half-street dedicated from such parcel shall be qualification for street frontage.

-**AREA:** The total area within the lot lines of a lot, excluding any street rights-of-way.

-**MINIMUM AREA OF:** The smallest lot area established by the Zoning Ordinance on which a building or structure may be located in a particular district.

-**COVERAGE:** The portion of the lot that is covered by buildings and structures.

-DEPTH: The distance measured from the mid-point of the front and rear property lines.

-WIDTH: The horizontal distance between the side lines of a lot measured at right angles to its depth along a straight line parallel to the front lot line at the minimum required building setback line.

LOT LINE: A line of record bounding a lot, which divides one lot from another lot or from a public or private street or any other public space.

-ADJUSTMENT: Any land taken from one parcel and added to another adjacent parcel without creating any new lots or parcels.

-FRONT: The lot line separating a lot from a street right-of-way. The front line of a corner lot shall be the shorter of the two street lines as originally platted, or if such are equal, the most obvious front by reason of usage by adjacent lots. The front line of a through lot shall be that line which is obviously the front by reason of usage by adjacent lots. Such a lot exceeding 188 feet in depth may be considered as having two front lines.

-REAR: The lot line opposite and most distant from the front lot line or in the case of triangular or otherwise irregularly shaped lots, a line ten feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line.

-SIDE: Those property lines connecting the front and rear property lines.

LOT OF RECORD: A lot which existence and dimensions are acknowledged on a plat or deed at the County Recorder's Office.

LOT TYPES:

-CORNER: A lot abutting on two or more streets at their intersection or abutting on two parts of the same street forming an interior angle of less than 135 degrees. A corner lot shall be considered to be in that block in which it fronts.

-DOUBLE FRONTAGE: A lot which extends from one street to another street, existing or proposed, except where non-vehicular access easement has been established on such lot; also see "*THROUGH LOT*".

-HILLSIDE: Any lot or portion of a lot involving a part of a hill between the summit and the toe of the slope where the terrain has a natural slope.

-INTERIOR: A lot other than a corner lot.

-THROUGH: A lot with the front and rear lines abutting parallel streets; also see "*DOUBLE FRONTAGE LOT*".

MAINTENANCE: The repair, replacing or renovating of a part (or parts) of a structure, which do not require a building permit as specified by the Building Code as set forth in the Town Code.

MANUFACTURED HOME: A dwelling unit fabricated on a permanent chassis at an offsite manufacturing facility for installation at the building site, and bearing a label certifying it as built, or upgraded, to compliance with the Federal Manufactured Housing Construction and Safety Standards Act. It bears a mobile ID number and is larger than 400 square feet.

MANUFACTURING USE: See "*USE*".

MEDICAL MARIJUANA:

All parts of genus cannabis whether growing or not, and the seed of such plants that may be administered to treat or alleviate a qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

MEDICAL MARIJUANA DESIGNATED CAREGIVER CULTIVATION LOCATION:

- A Medical Marijuana designated Caregiver cultivation location or cultivation by a designated Caregiver refers to cultivation of Medical Marijuana by a Caregiver whose registration card indicates that the Caregiver has
- been authorized to cultivate marijuana plants for a qualifying patient(s) medical use, pursuant to the Arizona Medical Marijuana Act A.R.S.§ 36-2804.A.7.
- A Medical Marijuana designated Caregiver may cultivate Medical Marijuana for qualifying patient(s) within their own residence as a "Home Occupation" (see Part 3 Section 303) as long as all the conditions for a "Home Occupation" are met per the Planning & Zoning Ordinance and the Arizona Medical Marijuana Act A.R.S.§ 36-2804.

MEDICAL MARIJUANA DISPENSARY:

A non-profit Medical Marijuana Dispensary registered and certified pursuant to the Arizona Medical Marijuana Act A.R.S.§ 36-2804 that may also include a Medical Marijuana Infusion Facility.

MEDICAL MARIJUANA DISPENSARY OFF-SITE CULTIVATION LOCATION:

The one additional location, if any, where marijuana may be cultivated for the use of a specific Medical Marijuana Dispensary as disclosed pursuant to A.R.S.§ 36-2804. A Medical Marijuana Dispensary Off-Site Cultivation Location may cultivate Medical Marijuana for more than one Dispensary as allowed by Arizona Medical Marijuana Act A.R.S.§ 36-2804.

MEDICAL MARIJUANA INFUSION FACILITY:

A Facility that incorporates Medical Marijuana by means of cooking, blending, or incorporation into consumable/edible goods pursuant to Arizona Medical Marijuana Act A.R.S.§ 36-2804.

MEDICAL MARIJUANA QUALIFYING PATIENT:

A qualifying patient means a person who has been diagnosed by a physician as having a debilitating medical condition and also has a registry identification card issued by the Arizona Department of Health Services that identifies the person a registered qualifying patient pursuant to Arizona Medical Marijuana Act A.R.S.§ 36-2804.

MEDICAL MARIJUANA QUALIFYING PATIENT CULTIVATION LOCATION:

A Medical Marijuana Patient Location shall mean cultivation of medical marijuana by a qualifying patient pursuant to Arizona Medical Marijuana Act A.R.S.§ 36-2801 but shall only include a qualifying patient who is also a card holder, authorized to cultivate marijuana plants pursuant to the revisions of Act A.R.S.§ 36-2804.2.

MEMORIAL PARK CEMETERY: See "CEMETERY"

MINE: 1) A cavity in the earth from which minerals and ores are extracted; 2) The act of removing minerals, ores, or other natural resources.

MINING: The extraction of minerals, ores, rock materials, or other natural resources. The term also includes quarrying; well operation; milling, such as crushing, screening, washing and floatation; and other preparation customarily done at the mine site or as part of the mining activity.

MOBILE/MANUFACTURED HOME PARK: "Mobile/Manufactured Home Park: A parcel of land used (or designed) for the location of more than one Mobile/Manufactured Home that are or intended to be occupied as dwellings, upon lots which are not conveyable but no Accessory Dwelling Unit (ADU) authorized per section 311 shall be deemed a Mobile/Manufactured Home Park.

MOBILE HOME: A portable dwelling unit larger than 400 square feet and manufactured prior to June 15, 1976, designed and constructed to permit permanent occupancy as a residence and also to facilitate transfer from one site to another by means of a chassis with wheels and hitch or flatbed truck.

MODULAR HOUSING: Factory-built housing that is certified as meeting the state or local building code. It does not have a mobile ID. Modular housing is considered site-built housing.

MORTUARY: A building where the dead are prepared for burial or cremation. (All funeral automobile processions are to be confined to the mortuary premises).

MOTEL: See "HOTEL".

NET ACREAGE: The remaining ground area of a parcel after deleting all portions for proposed and existing public rights-of-way.

NEWSPAPER OF GENERAL CIRCULATION: A daily newspaper widely available and distributed in the local area (if one is published), or if no daily newspaper is published, a local weekly newspaper may be used.

NONCONFORMING USE: See "USE".

NONCONFORMING STRUCTURE: A building or structure that was in place prior to, and use provisions other applicable ordinances with which it now conflicts.

NONCONFORMING LOT OF RECORD: A parcel created and recorded prior to and use provisions and other applicable ordinances with which it now conflicts.

NUISANCE: Has the meaning set forth in Town Code Article 10-2. It is a nuisance, and is no less a nuisance because the extent of the annoyance or damage inflicted is unequal, for anything to be injurious to health, indecent, offensive to the senses or an obstruction to the free use of property that interferes with the comfortable enjoyment of life or property.

OCCUPANCY: The purpose for which a building, or part thereof, is used or intended to be used.

OPEN LAND CARNIVAL & RECREATION FACILITIES: Accessory uses pertaining to carnival and recreation activities within open land in association with religious or educational primary uses confined to same lot.

OUTDOOR RECREATION FACILITY: An area designed for active recreation, whether publicly or privately owned, including but not limited to parks, baseball diamonds, soccer and football fields, golf courses, tennis courts, swimming pools, equestrian facilities, archery and shooting ranges.

PARCEL: Real property with a separate or distinct number or other designation shown on a plan recorded in the office of the County Recorder, or real property delineated on an approved survey, parcel map or subdivision plat as filed in the office of the County Recorder and abutting at least one public right-of-way or easement determined by the Community Development Director or Council to be adequate for the purpose of access.

PERMIT: A document issued by a governmental agency granting permission to perform an act or service which is regulated by the Town, County, a State agency or the Federal Government.

PERMITTED USE: See "USE".

PERSON: Includes a corporation, company, partnership, firm, association or society, as well as a natural person.

PERSONAL SERVICES: Establishments primarily engaged in providing services involving the care of a person or his/her apparel, such as laundry cleaning and garment services, garment pressing, linen supply, diaper service, coin-operated laundries, dry cleaning plants, carpet and upholstery cleaning, photographic studios, beauty shops, barber shops, shoe repair, hat cleaning, funeral services, reducing salons and health clubs, and clothing rental.

PLANNED AREA DEVELOPMENT (PAD): For purposes of these regulations, a Planned Area Development is:

- a. Land under unified control, to be planned and developed as whole;

- b. In a single development operation or a definitely programmed series of development phases, including all lands and buildings;
- c. For principal and accessory structures and uses substantially related to the character and purposes of the development;
- d. According to comprehensive and detailed plans that include not only the locations of streets, utilities, lots, or building sites and the like, but also, site plans and floor plans for all buildings as intended to be located, constructed, used, and related to each other, and detailed plans for other uses and improvements on the land as related to the buildings; and
- e. With a program for provision, operation, and maintenance of such area, facilities, and improvements as will be available for common use by some or all of the occupants or visitors to the development site, but will not be provided, operated, or maintained at general public expense.

PORCH: An open, roofed, structural projection of which no portion extending into a front or side yard shall be enclosed by walls, screens, lattice or other material higher than 54 inches above the natural grade line adjacent thereto; which porch is to be used solely for ingress/egress or leisure purposes and not for occupancy as a sleeping porch or wash room.

PLANNING COMMISSION or COMMISSION: The Planning and Zoning Commission of the Town of Camp Verde.

PLANNING DEPARTMENT: The Community Development Department of Camp Verde, Arizona.

PROFESSIONAL USE: See "USE".

PROPERTY LINES: Those lines outlining the boundaries of properties on lots for the purpose of description in sale, lease, building development, or other separate use of property.

RECLAMATION PLAN: A document, in written words and/or illustrations, describing how land will be restored and made into suitable and useful condition for development or open space after a temporary use or activity on the land is finished or completed.

RECREATIONAL VEHICLE: A vehicular type unit primarily designed as temporary living accommodation for recreational, camping and travel use, which can be towed, hauled or driven and including but not limited to travel trailers, truck campers, camping trailers and self-propelled motor homes.

RESIDENTIAL USE: See "USE".

RESTAURANT: An establishment (other than a boarding house) where the public may procure meals, which are prepared therein.

REST HOME: See "LONG TERM CARE FACILITY".

REVOCABLE: Able to be voided or annulled by recalling, withdrawing, or reversing

RIGHT-OF-WAY: A strip of land acquired by reservation, dedication, forced dedication, condemnation or prescription and intended to provide space for the installation and maintenance of a road, sidewalk, trail, railroad, utilities, or other similar uses.

ROOMING OR BOARDING HOUSE: A dwelling, otherwise permitted in the District in which it is situated, containing no more than 5 guest rooms and in which food may or may not be served to the occupants thereof. Any dwelling in which more than 5 rooms are occupied as guestrooms shall be deemed to be a hotel.

SALES STAND: A booth or stall for the vending of products, established by Temporary Use Permit (Section 601.d), and consistent with the regulations of the district in which it is located.

SCHOOL: A place of general instruction having accredited instruction acceptable to the educational authorities within the school district of the jurisdiction.

-NURSERY: An establishment enrolling more than four preschool children and where tuition, fees, or other forms of compensation for the care and instruction of the children is charged, and which is licensed or approved to operate by the State.

SCREENING: A method of visually shielding or obscuring one abutting or nearby structure or use from another by fencing, walls, berms, or densely planted vegetation.

SETBACK: The distance between the street right-of-way line or a property line and the front, rear or side line of a building or any projection thereof; and which extends across the full width or depth of a lot, and in which no building or structure shall be constructed, except as provided in this Zoning Ordinance; also see "YARD".

SITE PLAN: The plan for development of one or more lots showing the existing and proposed conditions of the lot including but not limited to: topography, vegetation, drainage, floodplains, waterways, utility services, landscaping, structures and signs, lighting and screening devices; and any other information that may be required in order for the approving authority to make an informed decision.

SLEEPING ROOM: A room used for sleeping, other than a guestroom, in which no cooking facilities are provided.

SHIPPING CONTAINER: A standardized metal storage container designed and built for intermodal freight transport used to store and transport materials and products using different modes of transport. Also known as cargo container, freight container, ISO container, shipping, sea or ocean container or Conex box.

SPOT ZONING: Rezoning a lot or parcel of land to benefit the owner for a use that is incompatible with surrounding uses and does not conform with the adopted General Plan.

STIPULATIONS: Conditions under which a property or use are required to comply established by the Town as a qualification for approval.

STORAGE FACILITY Any multi-unit facility designated or used for the purpose of providing individual compartmentalized and controlled access stalls or lockers for the storage of customers' goods and wares

STORY: That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under-floor space is more than 6 feet (1829 mm) above grade, as defined herein, for more than 50 percent of the total perimeter or is more than 12 feet (3658 mm) above grade, as defined herein, at any point, such usable or unused under-floor space shall be considered as a story. Or as defined in the currently adopted building code.

FIRST: The lowest story in a building that qualifies as a story, as defined herein, except that a floor level in a building having only one floor level shall be classified as a first story, provided such floor level is not more than 4 feet (1219 mm) below grade, as defined herein, for more than 50 percent of the total perimeter, or not more than 8 feet (2438 mm) below grade, as defined herein, at any point. Or as defined in the currently adopted building code.

STREET: Any existing or proposed public or private area intended for vehicle circulation and access including any easement for public vehicular access, a street shown upon a plat approved pursuant to law, or a street upon a plat duly filed and recorded in the County Recorder's Office. A street includes all land within the street right of way whether improved or unimproved, that may include improvements such as pavement, shoulders, ditches, utilities, drainage structures, curbs, gutters, sidewalks, paths, parking spaces, traffic signals, and street lights. See Part Five, Section 501 for street classifications.

STRUCTURE: That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

TOWN: The Town of Camp Verde, Arizona, shall include the Town Council, Planning Commission and other Town officials.

UNCLAIMED PUBLICATION: Any newspapers, fliers, handbills, advertisements, signs or other papers that are in plain view; either along private or public roadways or on private or public property, that creates an unsightly atmosphere, which contributes to neighborhood deterioration and causes a public nuisance.

UNSAFE BUILDING(S) OR STRUCTURE(S): Structures or building service equipment that are or hereafter become structurally unsafe, unsanitary or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or that constitute a fire hazard, or are otherwise dangerous to human life or which in relation to existing use constitutes a hazard to safety or health, or public welfare, by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, or abandonment, as specified in the Town Code Section 7-2-108.1, technical codes or any other effective ordinance, are for the purpose of this section, unsafe buildings. A vacant structure that is not secured against entry shall be deemed an unsafe condition. Unsafe conditions and structures shall be taken down, removed or made safe, as the Building Official deems necessary and as provided in the Town Code. All such unsafe buildings are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedure specified in the Town Code Sections 7-2-108 2-5. Parapet walls, cornices, spires, towers, tanks, statuary and other appendages or structural members which are supported by, attached to, or a part of a building and which are in a deteriorated condition or are otherwise unable to sustain the design loads which are specified in the Town Code, are hereby designated as unsafe building appendages per Section 7-2-108.1.2. All such unsafe building appendages are public nuisances and shall be abated in accordance with Section 7-2-108.1 of the Town Code.

USE: The purpose for which a building, or lot, or structure, is arranged, designed, occupied or maintained.

-**ACCESSORY:** A use incidental to the principal use on the same lot.

-**CHARITABLE:** Property used by a nonprofit or philanthropic organization that provides a service beneficial to the general public or to a significant portion of the public for no fee or at a fee recognized as being less than that charged by profit-making organizations.

-**COMMERCIAL:** Activity carried out for pecuniary gain.

-**MANUFACTURING:** The act of transforming materials or substances into new products, either by mechanical or chemical means, including the assembling of component parts; or establishments engaged in the manufacturing of products by assembling of component parts or blending of materials.

-**NONCONFORMING:** A use or activity which was lawful prior to the adoption, revision or amendment of a zoning or other applicable ordinance, but which fails, by reason of such adoption, revision or amendment, to conform to the present requirements of a zoning or other applicable ordinance. A use operated in an otherwise lawful manner that does not conform to the provisions of the District in which located.

-**PERMITTED:** A use that is allowed in a Zoning District by reason of being listed among the "Permitted Uses" in the District, and is subject to restrictions applicable to the District.

PRINCIPAL OR PRIMARY The primary or predominant use of any Lot or parcel.

-**PRIVATE:** A use restricted to the occupants of a lot or building together with their guests.

-**PROFESSIONAL:** The rendering of services of a professional nature by: members of the professions licensed by competent authority; teachers in a school of general instruction; artists practicing the fine arts; consultants recognized by organizations of licensed professionals.

-**PUBLIC:** A use (or building) located on public land to serve public benefits (but not necessarily available for unrestricted public access).

-**RESIDENTIAL:** Shall be deemed to include single, duplex and multiple dwelling units, guest rooms, mobile/manufactured home parks, rooming and boarding houses, fraternity and sorority houses, convents, home for the aged and similar living accommodations.

-**SALES SERVICES:** A use intended for the sale of services (such as insurance or real estate) provided by professionals (not to include retail sales).

-**TEMPORARY:** A use established for a fixed period of time with the intent to discontinue such use upon expiration of the time period.

VARIANCE: A deviation from the literal requirements of a zoning district; requests for variances shall be in accord with Arizona Revised Statutes §9-462.06.G-2 as may be amended, and with Part Six, Section 602 of this Zoning Ordinance.

VEHICLE: The result of arranging materials and parts together for conveyance over roads (whether or not self-propelled). Such is not deemed a structure in qualifying for a building permit, but as being accessory to the principal use on a lot (except in connection with vehicular rental sales agencies and mobile/manufactured home parks).

VEHICLE, MOTOR: A self-propelled device used for transportation of people or goods over land surfaces and licensed as a motor vehicle.

VETERINARY SERVICES: Establishments of licensed veterinary practitioners primarily engaged in the practice of veterinary medicine, dentistry, or surgery for animals; and establishments primarily engaged in providing testing services for licensed veterinary practitioners.

YARD: An open space, other than a court, unobstructed from the ground to the sky, except where specifically provided by this Zoning Ordinance, on the lot on which a building is situated.

-**FRONT:** A yard abutting the front lot line as defined herein.

-**JUNK, SALVAGE:** Any area, lot, land, parcel, building or structure or part thereof used for the storage, collection, processing, purchase, sale or abandonment of wastepaper, rags, scrap metal or other scrap or discarded goods, materials, machinery including automobile salvage, recycling facilities or other type of junk.

-**REAR:** A yard abutting the rear lot line or rear alley.

-**REQUIRED:** The open space between a lot line and the buildable area within which no structure shall be located except as provided in this Zoning Ordinance; also see "*SETBACK*".

-**SIDE:** A yard abutting a side street (exterior side yard) or a common side boundary (interior side yard) lying between required front and rear yards.

-**WRECKING:** An open-land area used for dismantling or demolition of motor, machinery, equipment or similar and usually storage thereof.

ZONE/ZONING DISTRICT: A specifically delineated area or district within which regulations and requirements uniformly govern the land use, placement, spacing and size of land and buildings, and in which the same zoning regulations apply throughout.

ZONING: The dividing of a municipality into districts and the establishment of regulations governing the use, placement, spacing and size of land and buildings.

ZONING ADMINISTRATOR: The official responsible for enforcement of the Zoning Ordinance; also see "*COMMUNITY DEVELOPMENT DIRECTOR*".

ZONING MAP: The map of all zoning districts that is on file with the Town of Camp Verde, Clerk, and the Community Development Department.

ZONING REGULATIONS/ZONING ORDINANCE: The Planning and Zoning Ordinance of the Town of Camp Verde, Arizona.

Lands annexed into the Town shall be assigned temporary zoning designation until such time as Town zoning is adopted for the annexed area. Within six months from the effective annexation date, the property owners shall either accept the Agricultural zoning district designation or initiate rezoning on the subject property consistent with the adopted Town of Camp Verde General Plan.

A. District Boundary Determination:

District boundaries on the Zoning Map are intended to follow lot lines, subdivision lines, section lines or center lines of streets, alleys, or other right-of-ways (or extensions thereof), unless otherwise referenced by specific dimensions.

1. District boundaries may be established by designation subsequent to annexation of land into the Town and may be amended as a result of rezoning approval or other Town Council action. Boundary changes are in force as of the Council action's effective date and shall be recorded on a supplemental map until such time as a comprehensive Zoning Map update is approved.
2. Uncertainty of the location of a district boundary shall be determined by the Board of Adjustment and Appeals unless same can be resolved, to the satisfaction of the Inspector and persons of interest, by using the scale of the map. Where such boundary scales to within 25 feet of a common division line or a right-of-way, then it shall be deemed as following such division line or the center of the right-of-way, as the case may be.

B. Abandoned Rights-of-Way:

Where a public street or alley or other right-of-way is officially abandoned, any abutting district boundary shall be adjusted to extend to the centerline of the former right-of-way.

SECTION 203 - USE DISTRICTS

All incorporated areas of Camp Verde, subject to the provisions of this Ordinance are hereby divided into Use Districts which, together with the General Regulations/Provisions (where applicable), control the operation of uses and placement of structures. All structures built or placed on any site shall be constructed in accordance with the Town's adopted building codes and regulations; or bear a label certifying compliance with the Federal Manufactured Housing Construction and Safety Standards Act. No vehicle, including recreational vehicles, railroad cars or other structures not engineered for use as an accessory structure shall be placed on the property and used as an accessory structure. Any use or structure not specifically permitted by (or analogous to) District Provisions shall be deemed prohibited and unlawful as a principal or an accessory use or structure for the District

Use District Development Criteria (Section 204) are applicable to each respective District as minimum requirements necessary to maintain compatible parcel areas, dimensions, density, height, building bulk, setback, and related standards among the District's uses.

Use Districts and their order (from most to least restrictive) in applying the use provisions of the Zoning Ordinance are as follows:

- A. R1L DISTRICT** (Residential: single-family limited)
- B. R1 DISTRICT** (Residential: single-family)
- C. R2 DISTRICT** (Residential: multiple dwelling units)
- D. R-R DISTRICT** (Residential-Rural), (Formerly RCU)

B. R1 DISTRICT (Residential: single-family)

1. Purpose:

The R1 District is intended for single-family residential living, site-built, modular or manufactured housing. Mobile Homes Prohibited (See Part 3 Section 306.B.1.b.3).

2. Permitted Uses and Structures:

- a. Accessory Dwelling Unit (ADU).
- b. Agriculture and cultivation.
- c. Dwelling unit for one family on any one lot. (See B.1).
- d. Educational institutions (including private schools, provided they offer curriculum of general instruction comparable to similar public schools).
- e. Flood control facilities.
- f. Golf courses with accessory uses such as pro shops, shelters, and rest rooms.
- g. Historical Landmarks.
- h. Home occupations (See Section 303).
- i. Keeping of farm animals, limited (See Section 305).
- j. Open land carnival and recreation facilities (religious & educational institutions).
- k. Other accessory uses commonly associated with primary permitted use. (See Section 301 C.)
- l. Religious institutions (in permanent buildings).

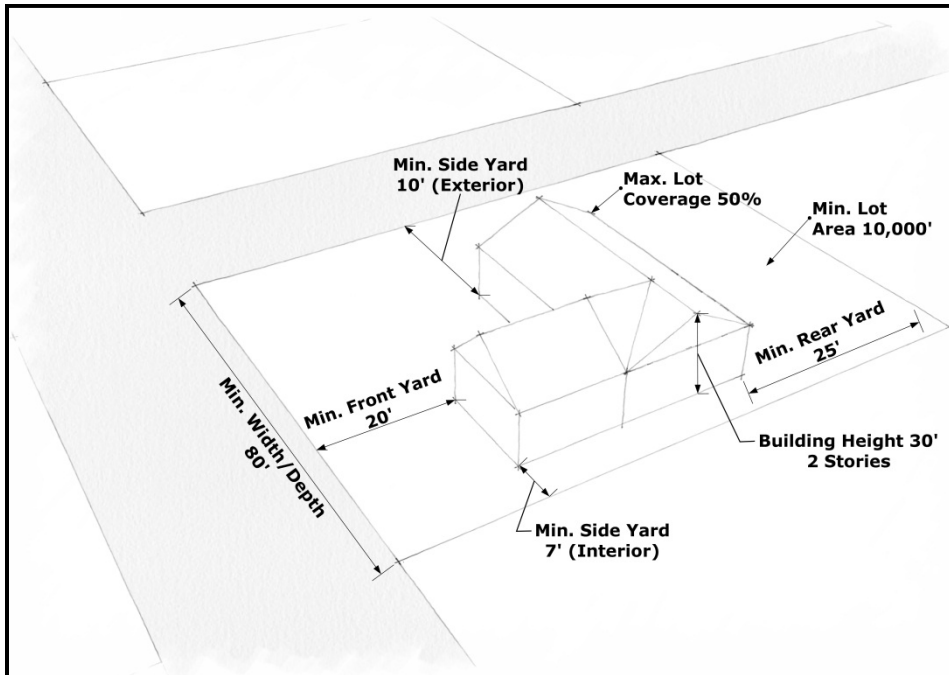
3. Uses and Structures Subject to Use Permit

- a. Community parks, playgrounds or centers.
- b. Government facilities and facilities required for the provision of utilities and public services.
- c. Bed and Breakfast.
- d. Temporary Use Permits, subject to administrative approval (See Section 601.C):
 - 1) Occupancy of temporary housing, including travel trailers, during the construction of a permanent dwelling is allowed during the 12-month period after issuance of a building permit.
 - 2) Model homes, temporary offices (construction and pre-construction sales offices/showrooms), construction sheds and yards incidental to a recorded residential development or other construction project (subject to District setbacks) for a period not to exceed 12 months.
- e. Mobile/manufactured home and recreational vehicle parks subject to the requirements of Section 306.
 - 1) Notwithstanding the foregoing, in the event a Planned Area Development (PAD) District is established per Section 203, this use may be included in any Development Plan thereunder and approved without being subject to a Use Permit application and hearing procedures set forth in Section 601.

Table 2-2: R1 Dimensional Standards

Zoning District	"R1"
Minimum Lot Area (sq.ft.)	10,000'(or as determined by suffix)
Minimum Width OR Depth (feet)	80' (or as determined by suffix)
Maximum Bldg Ht (stories)	2
Maximum Bldg Ht (feet)	30'
Maximum Lot Coverage (%)	50%
Minimum Front Yard (feet)	20'
Minimum Rear Yard (feet)	25'
Minimum Side Yard Interior (feet)	7'
Minimum Side Yard Exterior (feet)	10'

Figure 2-2: R1 Dimensional Standards



E. RS DISTRICT (Residential and Services)

1. Purpose:

The RS District is intended to permit limited services and similar non-residential uses in addition to residential dwelling units. Manufactured, Modular or Site Built. Mobile Homes Prohibited (See Part 3 Section 306.B.1.b.3).

2. Permitted Uses and Structures:

- a. A group or cluster of dwelling units (attached or detached) each having separate individual ownership and providing common services and recreation facilities under unified management.
- b. Agriculture and cultivation.
- c. Bed and Breakfast.
- d. Community parks, playgrounds or centers.
- e. Dwelling unit for one family on any one lot (See E.1).
- f. Educational institutions (including private schools, provided they offer curriculum of general instruction comparable to similar public schools).
- g. Flood control facilities.
- h. Golf courses with accessory uses such as pro shops, shelters, and rest rooms.
- i. Historical Landmarks.
- j. Home occupations (See Section 303).
- k. Hospitals, clinics, sanitariums, nursing homes and assisted living care facilities (intermediate, extended and long-term) for the care of humans.
- l. Keeping of farm animals, limited (See Section 305).
- m. Multiple dwelling units.
- n. Nursery schools; Day Care Centers (child or adult).
- o. Offices wherein only professional, clerical or sales services (such as real estate or insurance) are conducted.
- p. Open land carnival and recreation facilities (religious & educational institutions).
- q. Other accessory uses commonly associated with primary permitted use (See Section 301 C.)
- r. Personal services.
- s. Private clubs and lodges operated solely for the benefit of bona fide members.
- t. Religious institutions (in permanent buildings).

3. Uses and Structures Subject to Use Permit

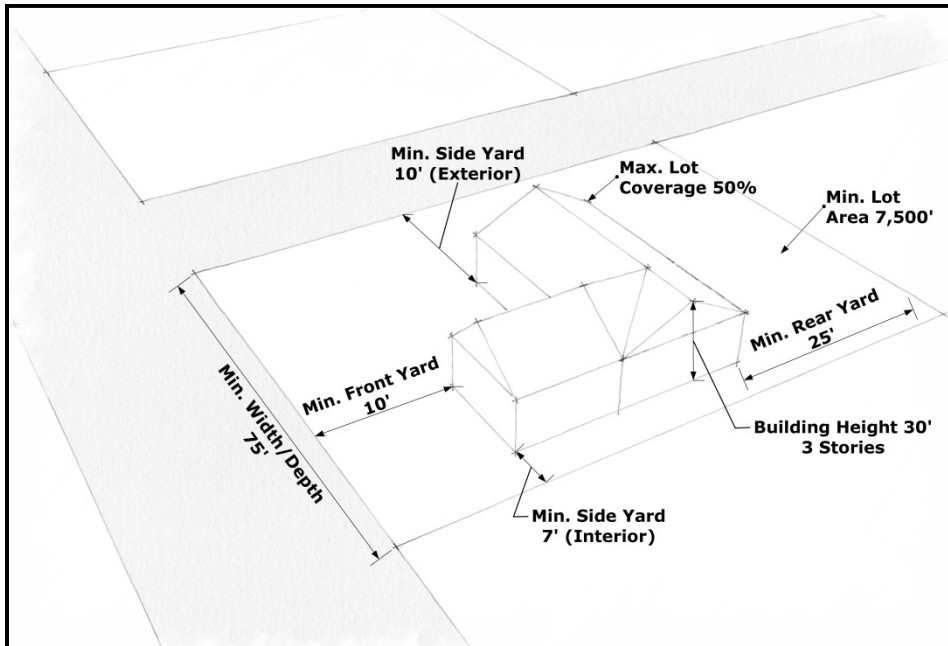
- a. Government facilities and facilities required for the provision of utilities and public services.
- b. Temporary Use Permits, subject to administrative approval (See Section 601.C):
 - 1) Occupancy of temporary housing, including travel trailers, during the construction of a permanent dwelling is allowed during the 12-month period after issuance of a building permit.

- 2) Model homes, temporary offices (construction and pre-construction sales offices/showrooms), construction sheds and yards incidental to a recorded residential development or other construction project (subject to District setbacks) for a period not to exceed 12 months.
- c. Outdoor recreation or assembly facilities.
 - d. Veterinary Services.
 - e. Mobile/manufactured home and recreational vehicle parks subject to the requirements of Section 306.
 - 1) Notwithstanding the foregoing, in the event a Planned Area Development (PAD) District is established per Section 203, this use may be included in any Development Plan thereunder and approved without being subject to a Use Permit application and hearing procedures set forth in Section 601.
 - f. Transmitter stations and towers for automatic transmitting.
 - g. Revival tents and similar temporary operations (See Section 601.D).

Table 2-5: RS Dimensional Standards

Zoning District	"RS"
Minimum Lot Area (sq.ft.)	7,500'
Minimum Width OR Depth (feet)	75'
Maximum Bldg Ht (stories)	3
Maximum Bldg Ht (feet)	30'
Maximum Lot Coverage (%)	50%
Minimum Front Yard (feet)	10'
Minimum Rear Yard (feet)	25'
Minimum Side Yard Interior (feet)	7'
Minimum Side Yard Exterior (feet)	10'

Figure 2-5: RS Dimensional Standards



F. C1 DISTRICT (Commercial: Neighborhood sales and services)

1. Purpose:

The C1 District is intended to permit limited business uses, as well as residential uses, to provide convenient supporting and service needs for nearby residents. Manufactured, Modular or Site Built. Mobile Homes Prohibited (See Part 3 Section 306.B.1.b.3).

2. Permitted Uses and Structures:

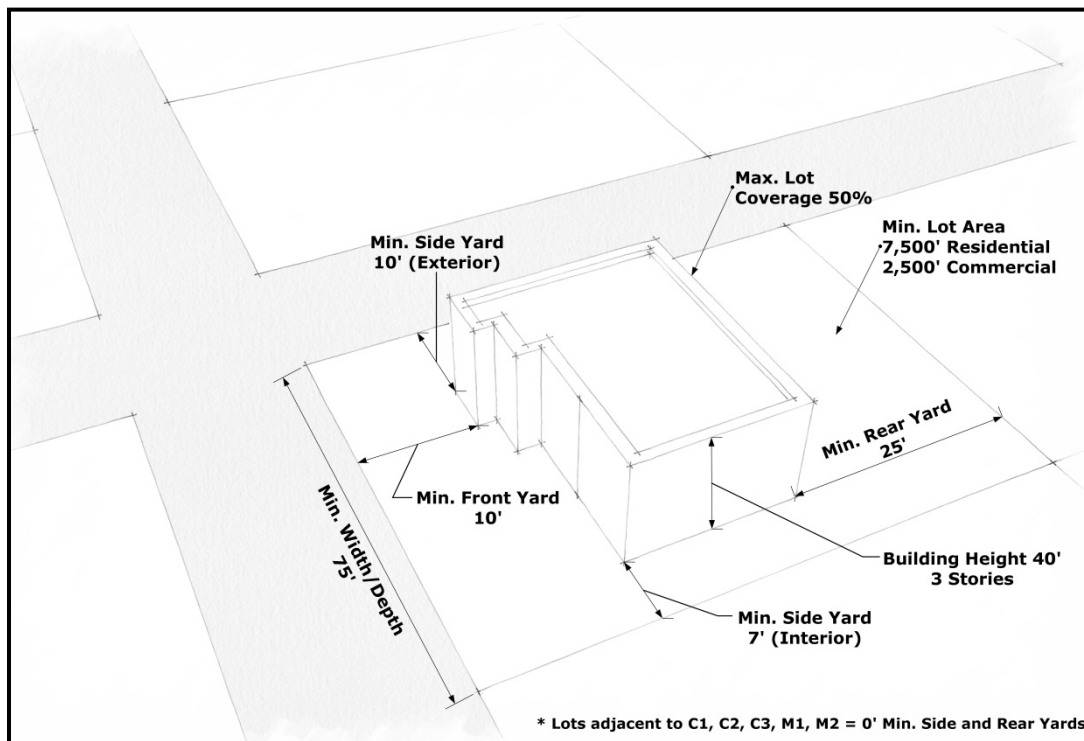
- a. Agriculture and cultivation.
- b. Antique Sales.
- c. Automotive service stations.
- d. Baking and confection cooking for on-site sale only.
- e. Bed and Breakfast.
- f. Business offices, banks and similar; including drive-through.
- g. Commercial art galleries.
- h. Community parks, playgrounds or centers.
- i. Custom service and craft shops.
- j. Dwelling unit for one family on any one lot (See F.1).
- k. Educational institutions (including private schools, provided they offer curriculum of general instruction comparable to similar public schools).
- l. Flood control facilities.
- m. Golf courses with accessory uses such as pro shops, shelters, and rest rooms.
- n. Group or cluster of dwelling units (attached or detached) each having separate individual ownership and providing common services and recreation facilities under unified management.
- o. Historical Landmarks.
- p. Home occupations (See Section 303).
- q. Hospitals, clinics, sanitariums, nursing homes and assisted living care facilities (intermediate, extended and long-term) for the care of humans.
- r. Hotels and motels with five or more guest rooms.
- s. Keeping of farm animals, limited (See Section 305).
- t. Laundrettes (limited to machines not exceeding 25 pounds capacity according to manufacturer's rating).
- u. Multiple dwelling units.
- v. Nursery schools; day care centers (child or adult).
- w. Offices wherein only professional, clerical or sales services (such as real estate or insurance) are conducted.
- x. Open land carnival and recreation facilities (religious & educational institutions).
- y. Other accessory uses commonly associated with primary permitted use (See Section 301 C).
- z. Personal services.

- aa. Private clubs and lodges operated solely for the benefit of bona fide members.
 - bb. Religious institutions (in permanent buildings).
 - cc. Restaurants and cafes, including drive-through.
 - dd. Retail sales.
3. Uses and Structures Subject to Use Permit
- a. Government facilities and facilities required for the provision of utilities and public services.
 - b. Outdoor recreation or assembly facilities.
 - c. Veterinary services.
 - d. Mobile/manufactured home and recreational vehicle parks subject to the requirements of Section 306.
 - 1) Notwithstanding the foregoing, in the event a Planned Area Development (PAD) District is established per Section 203, this use may be included in any I Development Plan thereunder and approved without being subject to a Use Permit application and hearing procedures set forth in Section 601.
 - e. Transmitter stations and towers for automatic transmitting.
 - f. Revival tents and similar temporary operations (See Section 601.D).
 - g. Temporary Use Permits, subject to administrative approval (See Section 601.C):
 - 1) Occupancy of temporary housing, including travel trailers, during the construction of a permanent dwelling is allowed during the 12-month period after issuance of a building permit.
 - 2) Model homes, temporary offices (construction and pre-construction sales offices/showrooms), construction sheds and yards incidental to a recorded residential development or other construction project (subject to District setbacks) for a period not to exceed 12 months.

Table 2-6: C1 Dimensional Standards

Zoning District	"C1"
Minimum Lot Area (sq.ft.)	7,500' Res., 2,500' Com.
Minimum Width OR Depth (feet)	75'
Maximum Bldg Ht (stories)	3
Maximum Bldg Ht (feet)	40'
Maximum Lot Coverage (%)	50%
Minimum Front Yard (feet)	10'
Minimum Rear Yard (feet)	0' (25' adjacent to residential zone)
Minimum Side Yard Interior (feet)	0' (7' adjacent to residential zone)
Minimum Side Yard Exterior (feet)	10'

Figure 2-6: C1 Dimensional Standards



G. C2 DISTRICT (Commercial: General sales and services)

1. Purpose:

The C2 District is intended to permit a broader range of business uses compatible with permitted residential uses in the District and surrounding vicinity.

Permitted Uses and Structures:

- a. Agriculture and cultivation.
- b. Antique Sales.
- c. Automobile & machinery sales (See Section 309 for outside display requirements).
- d. Automobile repair (light).
- e. Automotive service stations.
- f. Baking and confection cooking for on-site sale only.
- g. Bars, tap rooms and nightclubs.
- h. Bed and Breakfast.
- i. Bowling alleys and poolrooms.
- j. Business offices, banks and similar; including drive-through.
- k. Commercial art galleries.
- l. Commercial bath and massage.
- m. Commercial parking facilities.
- n. Community parks, playgrounds or centers.
- o. Custom service and craft shops.
- p. Dancing, art, music, business and trade schools (including permission for public recitals, concerts and dances).
- q. Dwelling unit for one family on any one lot (Manufactured, Modular or Site Built). Mobile Homes Prohibited (See Part 3 Section 306.B.1.b.3).
- r. Educational institutions (including private schools, provided they offer curriculum of general instruction comparable to similar public schools).
- s. Flood control facilities.
- t. Frozen food lockers.
- u. Golf courses with accessory uses such as pro shops, shelters, and rest rooms.
- v. Group or cluster of dwelling units (attached or detached) each having separate individual ownership and providing common services and recreation facilities under unified management.
- w. Historical Landmarks.
- x. Home occupations (See Section 303).
- y. Hospitals, clinics, sanitariums, nursing homes and assisted living care facilities (intermediate, extended and long-term) for the care of humans.
- z. Hotels and motels with five or more guest rooms.
- aa. Keeping of farm animals, limited (See Section 305).

- bb. Launderettes (limited to machines not exceeding 25 pounds capacity according to manufacturer's rating).
- cc. Miniature golf establishment.
- dd. Mortuary.
- ee. Multiple dwelling units and apartment hotels.
- ff. Nursery schools; day care centers (child or adult).
- gg. Offices wherein only professional, clerical or sales services (such as real estate or insurance) are conducted.
- hh. Open land carnival and recreation facilities (religious & educational institutions).
- p. Other accessory uses commonly associated with primary permitted use (See Section 301 C).
- ii. Personal services.
- jj. Pet shops within enclosed buildings for the display and sale of household pets and other small animals.
- kk. Private clubs and lodges operated solely for the benefit of bona fide members.
- ll. Religious institutions (in permanent buildings).
- mm. Restaurants and cafes, including drive-through.
- nn. Retail sales.
- oo. Sales (retail and wholesale) and rentals.
- pp. Theaters, auditoriums, banquet and dance halls.
- qq. Veterinary services.
- rr. Water distillation and bottling for retail sales only.
- ss. Microbreweries or Wineries for the manufacture and processing of beer or wine respectively for onsite consumption or wholesale distribution with the following limitations:
 1. All such manufacturing and processing activity shall be conducted within a completely enclosed building along with all materials used for manufacture – processing. Products ready for shipping must be stored within a closed building.
 2. A microbrewery in the C2 District may process and produce up to 150,000 U.S. Gallons of beer per year.
 3. A winery in the C2 District may process and produce up to 18,000 U.S. Gallons of wine per year.

2. Uses and Structures Subject to Use Permit:

- a. Government facilities and facilities required for the provision of utilities and public services
- b. Outdoor recreation or assembly facilities.
- c. Mobile/manufactured home and recreational vehicle parks subject to the requirements of Section 306.
 - 1) Notwithstanding the foregoing, in the event a Planned Area Development (PAD) District is established per Section 203, this use may be included in any Development Plan thereunder and approved without being subject to a Use Permit application and hearing procedures set forth in Section 601.
- d. Transmitter stations and towers for automatic transmitting.
- c. Revival tents and similar temporary operations (See Section 601.D).

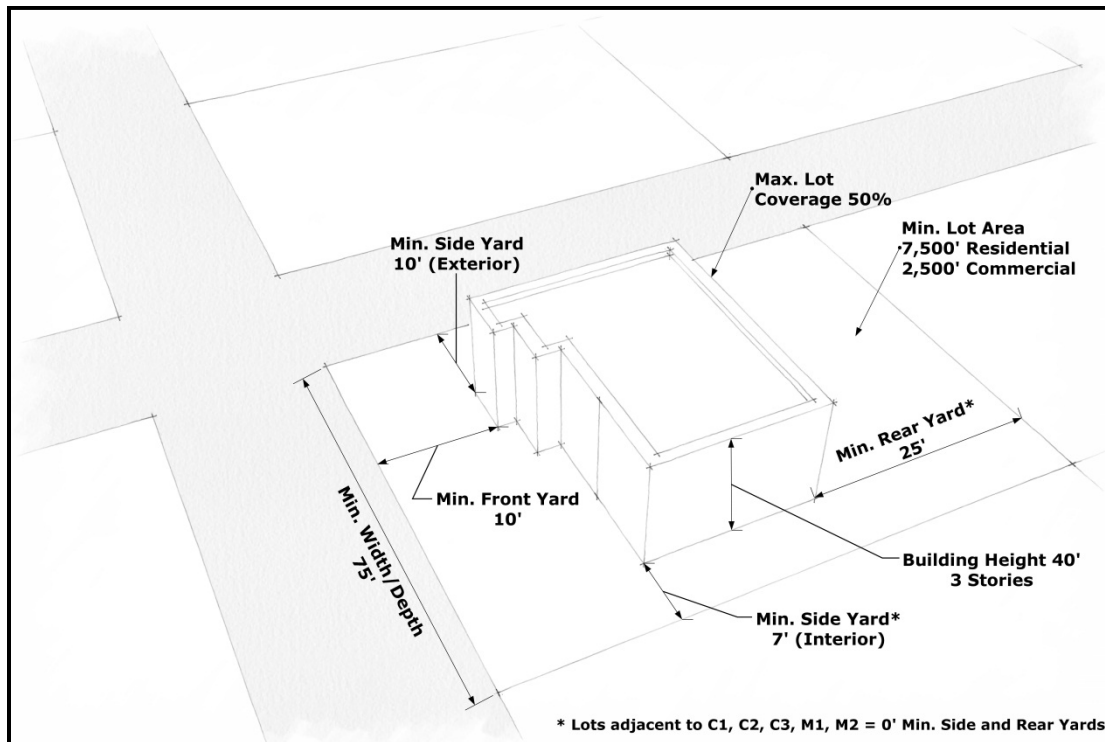
e. Temporary Use Permits, subject to administrative approval (See Section 601.C):

- 1) Occupancy of temporary housing, including travel trailers, during the construction of a permanent dwelling is allowed during the 12-month period after issuance of a building permit.
- 2) Model homes, temporary offices (construction and pre-construction sales offices/showrooms), construction sheds and yards incidental to a recorded residential development or other construction project (subject to District setbacks) for a period not to exceed 12 months.

Table 2-7: C2 Dimensional Standards

Zoning District	"C2"
Minimum Lot Area (sq.ft.)	7,500' Res., 2,500' Com.
Minimum Width OR Depth (feet)	75'
Maximum Bldg Ht (stories)	3
Maximum Bldg Ht (feet)	40'
Maximum Lot Coverage (%)	50%
Minimum Front Yard (feet)	10'
Minimum Rear Yard (feet)	0' (25' adjacent to residential zones)
Minimum Side Yard Interior (feet)	0' (7' adjacent to residential zones)
Minimum Side Yard Exterior (feet)	10'

Figure 2-7: C2 Dimensional Standards



H. C3 DISTRICT (Commercial: heavy commercial)

1. Purpose:

The C3 District is intended to accommodate a broad range of commercial sales and service uses, excluding certain activities and operations for which Industrial District zoning (PM, M1, M2) is required.

2. Permitted Uses and Structures:

- a. Agriculture and cultivation.
- b. Antique Sales.
- c. Assembly, construction and processing plants.
- d. Automobile & machinery sales. (See Section 309 for outside display requirements.)
- e. Automobile repair (heavy) (Ord 2015 A407).
- f. Automobile repair (light).
- g. Automotive service stations.
- h. Automobile Storage Yard.
- i. Baking and confection cooking for on-site sale only.
- j. Bars, tap rooms and nightclubs.
- k. Body and fender shops including a paint booth within closed building.
- l. Bottling plants confined to closed building.
- m. Bowling alleys and poolrooms.
- n. Business offices, banks and similar; including drive-through.
- o. Caretaker Living Quarters (Manufactured, Modular or Site Built.) Mobile Homes Prohibited (See Part 3 Section 306.B.1.b.3).
- p. Cleaning and dyeing plants within closed building.
- q. Commercial art galleries.
- r. Commercial ballrooms, arenas, gymnasiums, rinks, pools and indoor shooting galleries.
- s. Commercial bath and massage.
- t. Commercial parking facilities.
- u. Community parks, playgrounds or centers.
- v. Custom service and craft shops.
- w. Custom tire recapping.
- x. Custom warehouses within closed building and not including animals.
- y. Dancing, art, music, business and trade schools (including permission for public recitals, concerts and dances).
- z. Educational institutions (including private schools, provided they offer curriculum of general instruction comparable to similar public schools).
- aa. Flood control facilities.
- bb. Frozen food lockers

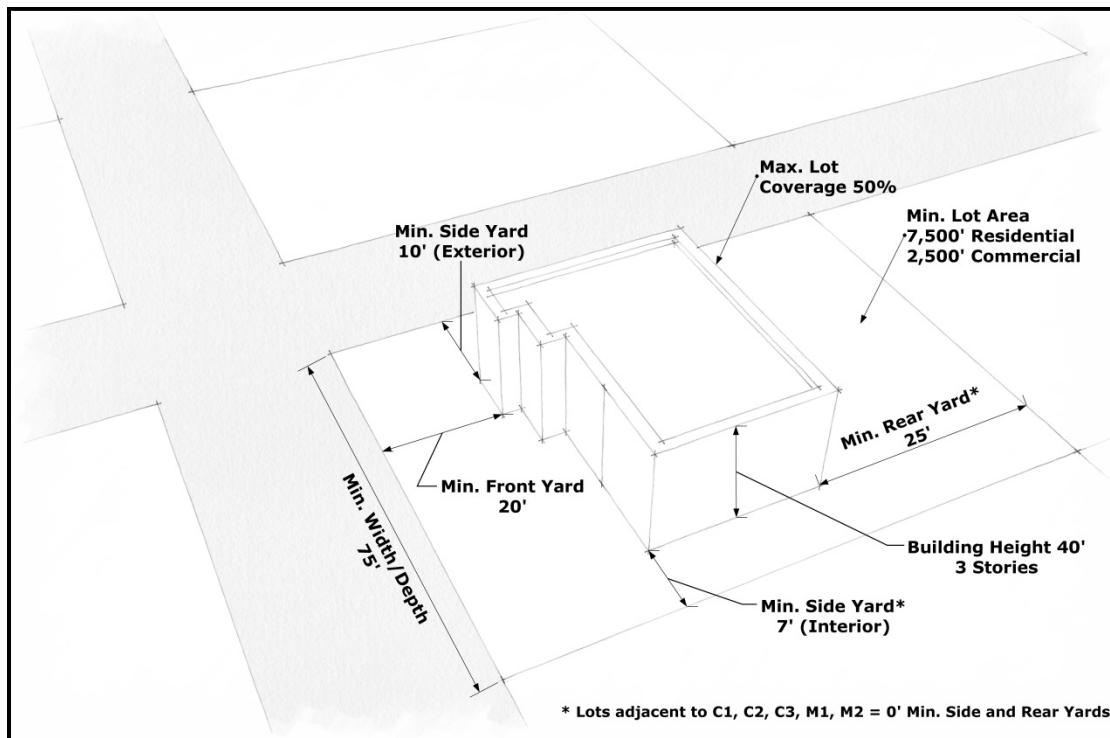
- cc. Golf courses with accessory uses such as pro shops, shelters, rest rooms.
- dd. Historical Landmarks.
- ee. Hospitals, clinics, sanitariums, nursing homes and assisted living care facilities (intermediate, extended and long-term) for the care of humans.
- ff. Hotels and motels with five or more guest rooms.
- gg. Keeping of farm animals, limited (See Section 305).
- hh. Launderettes (limited to machines not exceeding 25 pounds capacity according to manufacturer's rating).
- ii. Lumber yards (prohibiting sawmill operations).
- jj. Medical Marijuana Dispensary (See Part 3 Section 304), (Definition: See Part 1 Section 103)
- kk. Miniature golf establishment.
- ll. Mortuary.
- mm. Nursery schools; day care centers (child or adult).
- nn. Offices wherein only professional, clerical or sales services (such as real estate or insurance) are conducted.
- oo. Open land carnival and recreation facilities (religious & educational institutions).
- pp. Other accessory uses commonly associated with primary permitted use (See Section 301 C).
- qq. Personal services.
- rr. Pet shops within a closed building.
- ss. Private clubs and lodges operated solely for the benefit of bona fide members.
- tt. Public auction within closed building.
- uu. Religious institutions (in permanent buildings).
- vv. Restaurants and cafes, including drive-through.
- ww. Retail sales.
- xx. Sales (retail and wholesale) and rentals.
- yy. Storage Facility.
- zz. Theaters, auditoriums, banquet and dance halls.
- aaa. Transportation terminal and transfer facilities within closed building.
- bbb. Veterinary services.
- ccc. Water distillation and bottling for retail sales only.
- ddd. Microbreweries or Wineries for the manufacture and processing of beer or wine respectively for onsite consumption or wholesale distribution with the following limitations:
 1. All such manufacturing and processing actively shall be conducted within a completely enclosed building along with all materials used for the manufacture – processing. Products ready for shipping must be stored within a closed building.

2. A microbrewery in the C3 District may process and produce up to 300,000 U.S. Gallons of beer per year.
 3. A winery in the C3 District may process and produce up to 36,000 U.S. gallons of wine per year.
3. Uses and Structures Subject to Use Permit
 - a. Government facilities and facilities required for the provision of utilities and public services.
 - b. Outdoor recreation or assembly facilities.
 - c. Mobile/manufactured home and recreational vehicle parks subject to the requirements of Section 306.
 - 1) Notwithstanding the foregoing, in the event a Planned Area Development (PAD) District is established per Section 203, this use may be included in any Development Plan thereunder and approved without being subject to a Use Permit application and hearing procedures set forth in Section 601.
 - d. Transmitter stations and towers for automatic transmitting.
 - e. Revival tents and similar temporary operations (See Section 601.D).
 - f. Temporary Use Permits, subject to administrative approval (See Section 601.C):
 - 1) Occupancy of temporary housing, including travel trailers, during the construction of a permanent dwelling is allowed during the 12-month period after issuance of a building permit.
 - 2) Model homes, temporary offices (construction and pre-construction sales offices/showrooms), construction sheds and yards incidental to a recorded residential development or other construction project (subject to District setbacks) for a period not to exceed 12 months.
 - g. Cemeteries for human or animal internment (See Section 308).
 - h. Public stables, livestock breeding, boarding and sales.

Table 2-8: C3 Dimensional Standards

Zoning District	"C3"
Minimum Lot Area (sq.ft.)	7,500' Res., 2,500' Com.
Minimum Area/Dwelling (sq.ft.)	1 Caretaker d.u. only
Minimum Width OR Depth (feet)	75'
Maximum Bldg Ht (stories)	3
Maximum Bldg Ht (feet)	40'
Maximum Lot Coverage (%)	50%
Minimum Front Yard (feet)	20'
Minimum Rear Yard (feet)	0' (25' adjacent to residential zones)
Minimum Side Yard Interior (feet)	0' (7' adjacent to residential zones)
Minimum Side Yard Exterior (feet)	10'

Figure 2-8: C3 Dimensional Standards



J. M1 DISTRICT (Industrial: General)

1. Purpose:

The M1 District is intended to provide the type of industrial facilities that, while not necessarily attractive in operational appearances, are installed and operated in a manner so as not to cause inconvenience or substantial detriment to other uses in the District (or to adjacent Districts).

2. Permitted Uses and Structures:

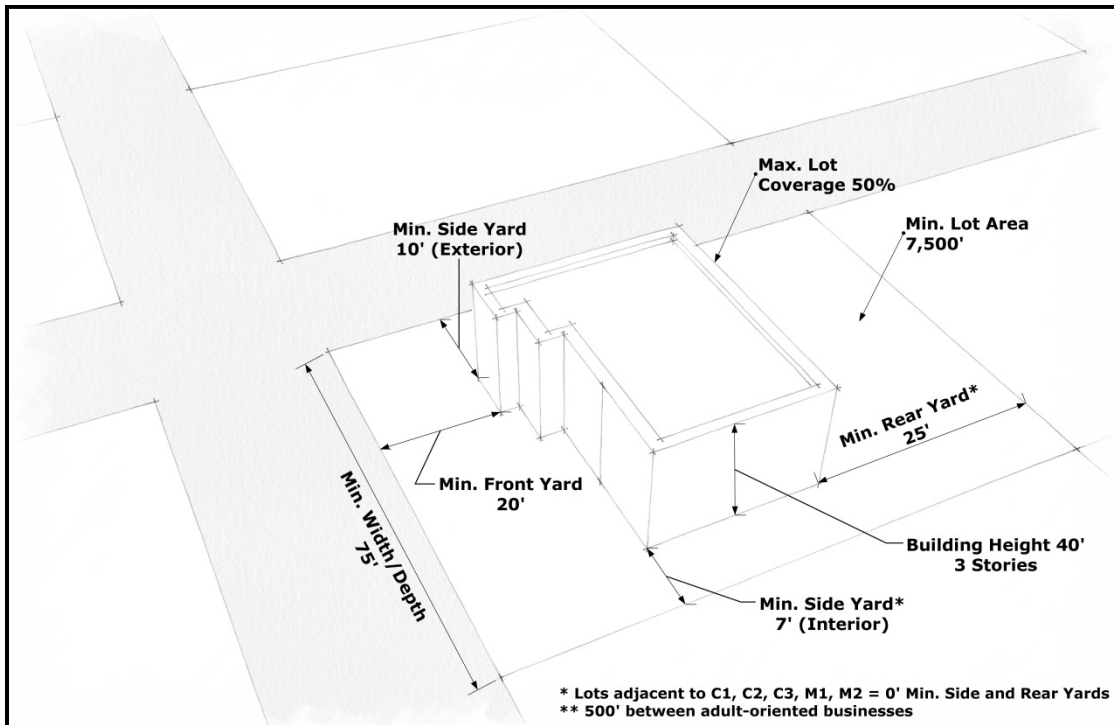
- a. Adult oriented businesses as defined in A.R.S. § 11-821H as may be amended, provided that no such adult oriented business shall operate in violation of A.R.S. § 13-1422 as may be amended or other applicable law nor be within 500 feet of schools, a church or an existing adult oriented business.
- b. Agriculture and cultivation.
- c. Assembly, construction and processing plants.
- d. Automobile repair (heavy) (Ord 2015 A407).
- e. Automobile repair (light).
- f. Automobile Storage Yard
- g. Body and fender shops including a paint booth within closed building.
- h. Bottling plants confined to closed building.
- i. Caretaker Living Quarters. (Manufactured, Modular or Site Built.) Mobile Homes Prohibited (See Part 3 Section 306 B.2.c).
- j. Cemeteries for human or animal internment (See Section 308).
- k. Cleaning and dyeing plants within closed building.
- l. Commercial parking facilities.
- m. Community parks, playgrounds or centers.
- n. Custom service and craft shops.
- o. Custom tire recapping.
- p. Dispensing of gasoline and similar petroleum products from exposed storage tanks (subject to requirements of Underwriters Laboratories Inc. or similar), provided no such tank shall be located closer than 25 feet to the lot boundaries.
- q. Flood control facilities.
- r. Frozen food lockers.
- s. Historical Landmarks.
- t. In-plant restaurants as an accessory use, and including roof or landscaped patio dining facilities.
- u. Keeping of farm animals, limited (See Section 305).
- v. Lumber yards (prohibiting sawmill operations).
- w. Medical Marijuana Dispensary Off-Site Cultivation Location/Facility.(see Part 3 Section 304) (Definition: See Part 1 Section 103)
- x. Mortuary.
- y. Motion picture productions, radio and television studios.

- z. Other accessory uses commonly associated with primary permitted use. (See Section 301 C.)
 - aa. Religious institutions (in permanent buildings).
 - bb. Retail sales.
 - cc. Storage Facility.
 - dd. Warehouses.
 - ee. Water distillation and bottling for retail sales only.
 - ff. Microbreweries or Wineries for the manufacture and processing of beer or wine respectfully for wholesale distribution.
3. Uses and Structures Subject to Use Permit
- a. Government facilities and facilities required for the provision of utilities and public services.
 - b. Transmitter stations and towers for automatic transmitting.
 - c. Temporary Use Permits, subject to administrative approval (See Section 601.C):
 - 1) Occupancy of temporary housing, including travel trailers, during the construction of a permanent dwelling is allowed during the 12-month period after issuance of a building permit.
 - 2) Model homes, temporary offices (construction and pre-construction sales offices/showrooms), construction sheds and yards incidental to a recorded residential development or other construction project (subject to District setbacks) for a period not to exceed 12 months.

Table 2-10: M1 Dimensional Standards

Zoning District	"M1"
Minimum Lot Area (sq.ft.)	7,500'
Minimum Area/Dwelling (sq.ft.)	1 Caretaker d.u. only
Minimum Width OR Depth (feet)	75'
Maximum Bldg Ht (stories)	3
Maximum Bldg Ht (feet)	40'
Maximum Lot Coverage (%)	50%
Minimum Front Yard (feet)	20'
Minimum Rear Yard (feet)	0' (25' adjacent to residential zones)
Minimum Side Yard Interior (feet)	0' (7 adjacent to residential zones)
Minimum Side Yard Exterior (feet)	10'

Figure 2-10: M1 Dimensional Standards



K. M2 DISTRICT (Industrial: Heavy)

1. Purpose:

The M2 Districts accommodate areas of concentrated fabrication, manufacturing, and industrial uses that are suitable based upon adjacent land uses, access to transportation, and the availability of public services and facilities. It is the intent of these districts to provide an environment for industries that is unencumbered by nearby residential or commercial development.

2. Permitted Uses and Structures:

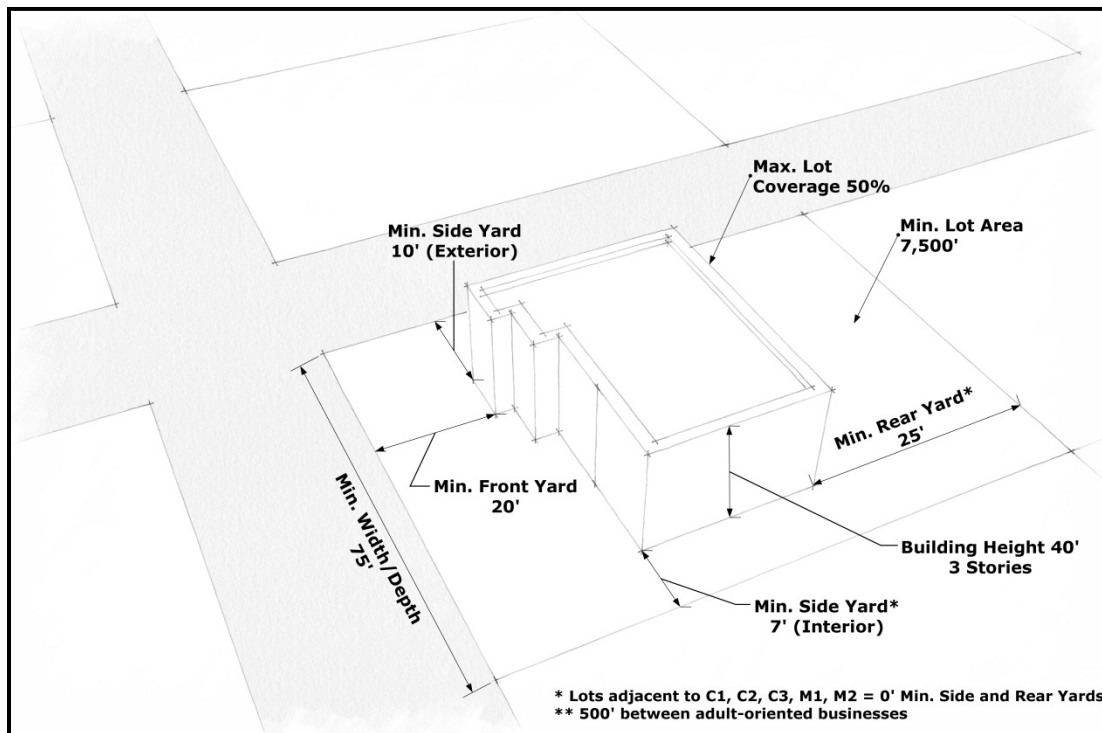
- a. Adult oriented businesses as defined in A.R.S. § 11-821H as may be amended, provided that no such adult oriented business shall operate in violation of A.R.S. § 13-1422 as may be amended or other applicable law nor be within 500 feet of schools, a church or an existing adult oriented business.
- b. Agriculture and cultivation.
- c. Assembly, construction and processing plants.
- d. Automobile repair (heavy) (Ord 2015 A407).
- e. Automobile repair (light).
- f. Automobile Storage Yard.
- g. Body and fender shops including a paint booth within closed building.
- h. Bottling plants confined to closed building.
- i. Caretaker Living Quarters (Manufactured, Modular or Site Built), Mobile Homes Prohibited (See Part 3 Section 306.B.1.b.3).
- j. Cemeteries for human or animal internment (See Section 308).
- k. Cleaning and dyeing plants within closed building.
- l. Commercial parking facilities.
- m. Community parks, playgrounds or centers.
- n. Custom service and craft shops.
- o. Custom tire recapping.
- p. Dispensing of gasoline and similar petroleum products from exposed storage tanks (subject to requirements of Underwriters Laboratories Inc. or similar), provided no such tank shall be located closer than 25 feet to the lot boundaries.
- q. Flood control facilities.
- r. Frozen food lockers.
- s. Historical Landmarks.
- t. In-plant restaurants as an accessory use, and including roof or landscaped patio dining facilities.
- u. Keeping of farm animals, limited (See Section 305).
- v. Lumber yards (prohibiting sawmill operations).
- w. Medical Marijuana Dispensary Off-Site Cultivation Location/Facility (See Part 3 Section 304), (Definition: See Part 1 Section 103).

- x. Mortuary.
 - y. Motion picture productions, radio and television studios.
 - z. Other accessory uses commonly associated with primary permitted use (See Section 301 C).
 - aa. Religious institutions (in permanent buildings).
 - bb. Storage Facility.
 - cc. Warehouses.
 - dd. Water distillation and bottling for retail sales only.
 - ee. Microbreweries or Wineries for the manufacture and processing of beer or wine respectively for wholesale distribution.
3. Uses and Structures Subject to Use Permit
- a. Government facilities and facilities required for the provision of utilities and public services.
 - b. Transmitter stations and towers for automatic transmitting.
 - c. Temporary Use Permits, subject to administrative approval (See Section 601.C):
 - 1) Occupancy of temporary housing, including travel trailers, during the construction of a permanent dwelling is allowed during the 12-month period after issuance of a building permit.
 - 2) Model homes, temporary offices (construction and pre-construction sales offices/showrooms), construction sheds and yards incidental to a recorded residential development or other construction project (subject to District setbacks) for a period not to exceed 12 months.

Table 2-11: M2 Dimensional Standards

Zoning District	"M2"
Minimum Lot Area (sq.ft.)	7,500'
Minimum Area/Dwelling (sq.ft.)	1 Caretaker d.u. only
Minimum Width OR Depth (feet)	75'
Maximum Bldg Ht (stories)	3
Maximum Bldg Ht (feet)	40'
Maximum Lot Coverage (%)	50%
Minimum Front Yard (feet)	20'
Minimum Rear Yard (feet)	0' (25' adjacent to residential zones)
Minimum Side Yard Interior (feet)	0' (7' adjacent to residential zones)
Minimum Side Yard Exterior (feet)	10'

Figure 2-11: M2 Dimensional Standards



L. PAD (Planned Area Development)

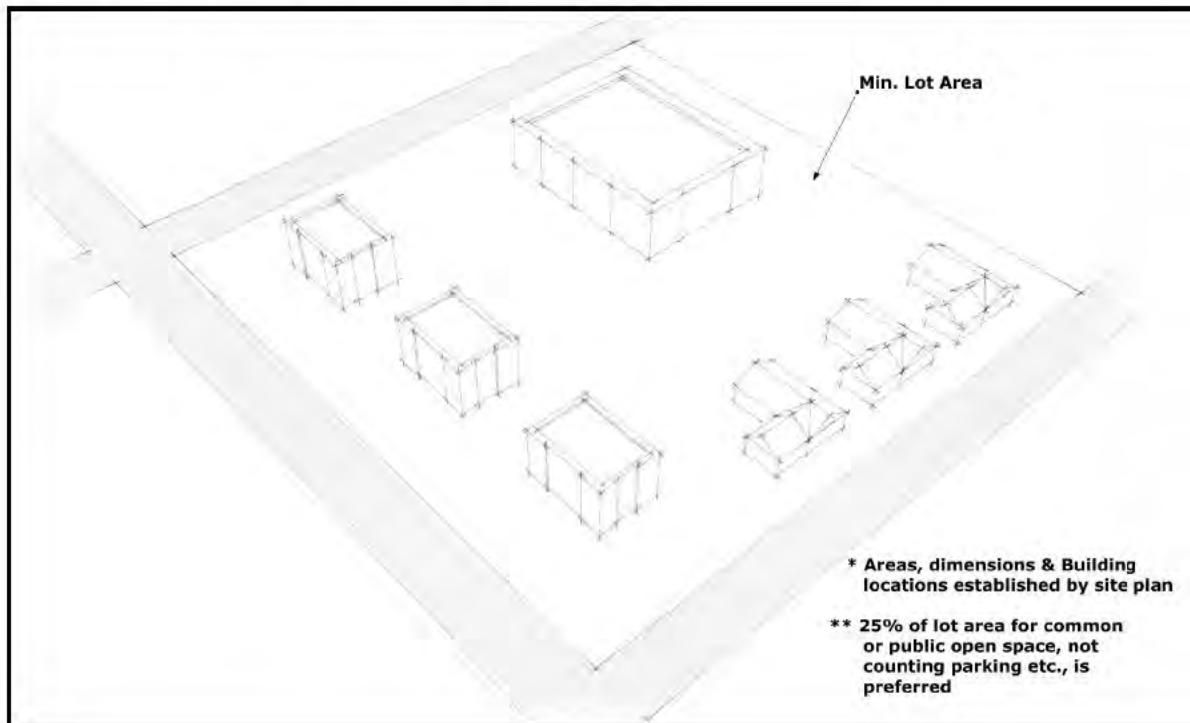
The Planned Area Development designation ensures orderly and thorough planning and review procedures that result in high quality project design and encourages variety in architectural design through techniques including, but not limited to, variations in building style, lot arrangements and site planning.

- 1) Purpose: A parcel of land planned as a unified project rather than as an aggregate of individual lots and may also provide for various types and combinations of land uses (such as single family and or multifamily housing, commercial centers, industrial complexes, and public or common spaces, with increased flexibility in site regulations). The greater flexibility in locating buildings and combining compatible uses make it possible to achieve economies of construction as well as preserving open space.
- 2) Scope: The Planned Area Development regulations that follow shall apply generally to the initiation and regulation of all Planned Area Development Districts. A PAD District may be added to an existing district to meet the intent of this Section or may be processed concurrently with a request to change an underlying zoning district. An approved PAD Development Plan/Site Plan shall be specific to that particular property as approved by Town Council upon recommendation by the Planning and Zoning Commission. A Development Plan/Site Plan must be submitted as per Site Plan requirements, Section 400 D1.
 - a. Where there are conflicts between PAD regulations and the general zoning, subdivision or other regulations, these regulations shall apply in PAD Districts unless the Council shall find, in the particular case, that the provisions herein do not serve the public to a degree at least equivalent to such general zoning, subdivision or other regulations.
 - b. It is intended to permit establishment of new Planned Area Development Districts for specialized purposes where tracts suitable in location, area, and character for the uses and structures proposed are to be planned and developed on a unified basis. Suitability of tracts for the development proposed shall be determined primarily by reference to the General Plan, but due consideration shall be given to existing and prospective character of surrounding development.
 - c. Within PAD Districts, regulations adapted to such unified planning and development are intended to accomplish purposes of zoning and other applicable regulations to an equivalent or higher degree than where such regulations are designed to control unscheduled development on individual lots, and to promote economical and efficient land use, an improved level of amenities, appropriate and harmonious variety, creative design, and a better environment.
 - d. Open Space Dedication: open space shall be included in all developments. A dedication of open space not less than twenty-five percent (25%) of a development project is preferred
- 3) PAD Major Amendments: A request for any major amendment to a PAD including amendments to the Development Phasing Schedule will be deemed major if it involves any of the following and must be approved by the Town Council upon recommendation by the Planning and Zoning Commission:
 - a. An increase in the approved totals of dwelling units or gross leasable area for the PAD District.
 - b. A change in zoning boundaries.
 - c. Any change which could have significant impact on areas adjoining the PAD as determined by the Community Development Director.
- 4) PAD Minor Amendments:
 - a. All request for amendments to a PAD that are not a PAD Major Amendment shall be deemed a PAD Minor Amendment.
 - b. A request for a Minor Amendment to a PAD with an amended site plan may be filed with the Community Development Department if the Community Development Director determines the request is not major, as defined above.
 - c. The request will be routed for comment to any affected Town departments or other agencies for comment.

Table 2-12: PAD Dimensional Standards

Zoning District	"PAD"
Minimum Lot Area (sq.ft.)	Established by Site Plan
Minimum Common/Open Space	25% of Site Area Preferred
Minimum Area/Dwelling (sq.ft.)	Established by Site Plan
Minimum Width OR Depth (feet)	Established by Site Plan
Maximum Bldg Ht (stories)	Established by Site Plan
Maximum Bldg Ht (feet)	Established by Site Plan
Maximum Lot Coverage (%)	Established by Site Plan
Minimum Between Buildings (feet)	Established by Site Plan
Minimum Front Yard (feet)	Established by Site Plan
Minimum Rear Yard (feet)	Established by Site Plan
Minimum Side Yard Interior (feet)	Established by Site Plan
Minimum Side Yard Exterior (feet)	Established by Site Plan

Figure 2-12: PAD Dimensional Standards



M. OS DISTRICT (Open Space Resource Conservation Zone)

1. Purpose:

The OS District is intended to preserve scenic and recreational areas for public and/or private use.

2. Permitted Uses and Structures

- a. Agriculture and Cultivation.
- b. Flood Control Facilities.
- c. Historical Landmarks.
- d. Public or Private Parks, Golf Courses, Golf Driving Ranges.
- e. Other Outdoor Recreational Facilities.

3. Uses and Structures Subject to Use Permit

- a. Public Utility Installation and Facilities.
- b. Change of Use: Any change in the status of use shall be approved by the Town Council upon recommendation by the Planning and Zoning Commission.

N. AG DISTRICT (Agricultural)

1. Purpose:

The AG District is intended to provide for the continuation and preservation of rural living quality on parcels of sufficient area to produce farm crops (and specified compatible principal or accessory uses and structures) including related agricultural business and support uses (See Section 301 C).

2. Permitted Uses and Structures

- a. Activities associated with the growing and sale of crops, trees, plants, vegetation, forage, grasses or other non-animal living organisms intended to be renewable and of beneficial use and recognized by the United States Department of Agriculture as a farm evidenced by a farm number.
- b. Additional dwelling units:
 - 1) Not more than two additional dwelling units may be located on any one lot expressly as the domicile(s) for persons or families related to the occupants of the principal residence by blood, marriage or adoption.
 - 2) Such additional dwellings, upon cessation of the multi-generational, "family farm" relationship by sale or otherwise, may continue to be occupied:
 - a) for other permitted accessory or Use Permit uses specified in the District; or
 - b) upon land division or subdivision into separate lots, each of which shall meet the area, setback and other requirements of the District.
- c. Dwelling unit for one family on any one lot (Manufactured, Modular or Site Built), Mobile Homes Prohibited (See Part 3 Section 306.B.1.b.3).
- d. Fabrication, storage and repair of equipment used in agricultural activity.
- e. Facilities used by the public for the sale of items permitted as identified above.
- f. Flood control facilities
- g. Historical Landmarks.
- h. Keeping of farm animals, limited (See Section 305).
- i. Other accessory uses commonly associated with primary permitted use.

- j. Owners of property activities not recognized by the United States Department of Agriculture as a farm evidenced by a farm number where such activities are conducted shall never under any pretext be denied or restricted their right to sell and dispose of their products subject to the following restrictions:
 - 1) Sales of other producers of food products may be sold only up to 40% of the total gross sales.
 - 2) Incidental sales of related items are allowed.
 - 3) Aerial application of any substance is prohibited.
 - 4) Processing or packaging activities, storing or loading, limited to products allowed under Item e.
 - k. Religious institutions in permanent buildings.
 - l. Storage and loading facilities for products.
3. Uses and Structures Subject to Use Permit
- a. Agri-Tourism. Application submission, required information, procedures and review are subject to Use Permit and criteria and specific showings of:
 - 1) Adequate points of direct ingress and egress for patron safety and direct emergency vehicle access;
 - 2) Ample on-site parking for normal business activity and provisions for special event overflow parking;
 - 3) Adequate separation distance, limitation of hours of operation, and/or additional measures to mitigate negative effects of lighting, noise, traffic, dust and other detrimental environmental factors on nearby residential uses or vacant residentially-zoned property.
 - 4) Provision for patrons' health, safety and comfort including but not limited to shade, first aid and water stations, sanitary facilities, food and beverages, trash receptacles/removal, and appropriate security.
 - b. Facilities for the temporary housing of agricultural workers employed to work at the location for which the Use Permit is issued (Manufactured, Modular or Site Built), Mobile Homes Prohibited (See Part 3 Section 306.B.1.b.3).
 - c. Schools and training facilities for the purpose of teaching agriculture.
 - d. Museums, displays, demonstration projects and research facilities associated with agriculture.
 - e. Activities otherwise restricted by 2c.
 - f. Activities associated with the raising of animals and livestock per the requirements of Section 305 of this Zoning Ordinance with the following restrictions:
 - 1) On site sales limited to those animals produced on site or raised on the property for at least one year.
 - 2) No processing or packaging for sale activities permitted unless otherwise allowable as per A.R.S § 3-562 as they exist now or as they are amended from time to time.
 - g. Activities in excess of the requirements of Section 305 or the restrictions contained in f. (1 or 2).
 - h. Parks, playgrounds, recreation areas, government facilities and facilities required for the provision of utilities and public services.
 - i. Temporary Use Permits, subject to administrative approval (See Section 601.C):
 - 1) Occupancy of temporary housing, including travel trailers, during the construction of a permanent dwelling is allowed during the 12-month period after issuance of a building permit.

D. Temporary Use Permits

Temporary Use Permits are provided through administrative review and approval to facilitate short- or restricted-term uses (such as, but not limited to: tents, carnivals, charitable events or similar uses/structures for public assembly in non-residential districts; and construction- or sales-related offices, storage yards or similar facilities including model homes, and sales stands of crops or agricultural products produced on-site in any District).

1. Temporary Use Permits may be granted by the Community Development Director or designee, after review by health and safety departments or agencies, and upon findings that the use and the manner of its conduct will not, considering its limited duration, be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general, and that the use will be in conformity with any conditions, requirements or standards prescribed by the Town Code or Council.
2. Approval may be conditioned by specific stipulations as to duration, conduct, mitigation of potentially detrimental effects and such other considerations as may be prudent for protection of the neighborhood and community.
3. Violation of the terms of the Temporary Use Permit approval constitutes grounds for its immediate revocation.
4. Decisions by the Community Development Director which result in the disapproval of a Temporary Use Permit may be appealed to the Board of Adjustment and Appeals, subject to an application for appeal being on file in the Community Development Department within 30 days of notification of the Community Development Director denial of the Temporary Use Permit application.

SECTION 602 - ZONING ADJUSTMENTS

Zoning matters decided by the Board of Adjustment and Appeals are intended to apply to specific properties or actions. Such decisions are not regarded as strict precedents; however, they may be considered in future matters under similar circumstances.

A. Variances

1. A variance from the Planning and Zoning Ordinance shall not be granted by the Board unless and until a public hearing has been conducted pursuant to Section 602. C, and until the property owner in a written appeal and at the public hearing demonstrates and the Board finds that all criteria required by subsections a. through e. have been met:
 - a. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same District;
 - b. That literal interpretation of the provisions of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same District under the terms of the Zoning Ordinance;
 - c. That the alleged hardships caused by literal interpretation of the provisions of the Zoning Ordinance include more than personal inconvenience and financial hardship and do not result from actions that are self-imposed or for economic gain by the applicant;
 - d. That granting the variance requested will not confer upon the applicant any special privilege that is denied by the Zoning Ordinance to other lands, structures or buildings in the same District; and

- e. That granting the variance requested will not interfere or injure the rights of other properties in the same District.
2. The Board MAY NOT:
 - a. Make any changes in the uses permitted in any zoning classification or zoning District, or make any changes in the terms of the Zoning Ordinance, provided the restriction in this paragraph shall not affect the authority to grant variances pursuant to this article.
 - b. Grant a variance if the special circumstances applicable to the property are self-imposed by the owner.

B. Appeals from Administrative Decisions

The Board, on deciding appeals from decisions of the Community Development Director (Zoning Administrator), is responsible for interpreting the meaning and equitable application of the Zoning Ordinance.

1. Appeals to the Board may be filed by persons aggrieved or by any officer, department, board or bureau of the Town affected by a decision of the Community Development Director, within a period of 45 days by filing, in writing, with the Community Development Director and with the Board, a notice of appeal specifying the grounds thereof.
2. The Community Development Director shall immediately transmit all records, pertaining to the action appealed, to the Board.
3. An appeal stays all proceedings in the matter appealed, unless the Community Development Director verifies to the Board after the notice of appeal is filed, that by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. Upon such certification, proceedings shall not be stayed other than by a restraining order granted by the Board or by a court of record on application and notice to the Community Development Director.
4. A person aggrieved by a decision of the Board, or a tax payer or municipal officer may, at any time within 30 days after the Board has rendered its decision, file a complaint in the Superior Court to review the decision. Filing of the complaint shall not stay proceedings upon the decision appealed, but the court may, on application, grant a stay, and on final hearing may reverse or affirm wholly or partly, or may modify the decision received.

C. Hearings

The Board shall fix a reasonable time for the public hearing of an appeal; and shall give public notice thereof, by both publication in a newspaper of general circulation in accordance with ARS 9-462.04 as it exists now or as it is amended from time to time, and by posting notices in conspicuous places close to the property affected, as well as due notice to the parties in interest, including first class mail notice to all owners of record of properties located within 300 feet of the subject property.

1. At the public hearing, any applicant may appear in person or by representative, and may present their appeal orally or by documentary materials, and submit rebuttal as may be necessary.
2. The chair shall have the power to administer oaths and take evidence in accordance with ARS 9-462.06, as may be amended.
3. The Board shall reach its decision within a reasonable time.

Attachment B

Appeal Application and Supporting Documentation

Pages 175-235



Land Use Application Form

RECEIVED
APR 21 2023

75
\$540.33

1. Application is made for:

- | | | |
|---|---------------------|----------------------|
| Zoning Map Change | Use Permit | Temporary Use Permit |
| Conceptual Plan Review | Preliminary Plat | Final Plat |
| PAD Final Site Plan Review | Variance | Appeal |
| Street Abandonment | Minor Land Division | Wireless Tower |
| Administrative Review | Lot Line Adjustment | Zoning Verification |
| Development Standards Review (Commercial) | Other: _____ | |

2. Project Name: Appeal of zoning interpretation on Motorcross

3. Contact Information: (a list of additional contacts may be attached)

Owner Name: Jason Jenkins
 Address: 1626 N Rustler tr
 City: Camp verde State: AZ Zip: 86322
 Phone: [Redacted]
 E-mail: [Redacted]

Applicant Name: Jason Jenkins
 Address: 1626 N Rustler tr
 City: Camp Verde State: AZ Zip: 86322
 Phone: [Redacted]
 E-Mail: [Redacted]

4. Property Description: Parcel Number 403-11-085 Acres: 1.11

Address or Location: 1626 N Rustler tr

Existing Zoning: R1-70 Existing Use: Residential-Motorcross

Proposed Zoning: _____ Proposed Use: _____

5. Purpose: (describe intent of this application in 1-2 sentences)

Appeal the interpretation on zoning that riding a dirtbike in the backyard is not an allowed use.

6. Certification:

I certify that I am the lawful owner of the parcel(s) of land affected by this application and hereby consent to this action. I have also attached a completed Permission to Enter form for consent to access the property regarding this action.

Owner: [Signature] Date: 04.21.2023

I certify that the information and attachments I have submitted are true and correct to the best of my knowledge. In filing this application, I am acting with the knowledge and consent of the property owner(s). I understand that all materials and fees required by the Town of Camp Verde must be submitted prior to having this application processed.

Applicant: [Signature] Date: 04.21.2023



Appeal

Application Instructions

Staff Use Only	
Application Number:	2003-0242
Received By:	B
Date:	21 April 2023
Fees Paid:	\$540.75
Complete:	<input checked="" type="radio"/> Y <input type="radio"/> N

RECEIVED
APR 21 2023

Even with the most careful drafting of a Planning & Zoning Ordinance, unforeseen complications can arise. Planning & Zoning Ordinances are often long and complex and even with the most experienced and well trained Enforcement Officer or Community Development Director, disagreement regarding interpretations of the Zoning provisions may result.

Required for an Appeal

Complete sets of these documents are required at the time of application.

The required quantities are shown next to each item. (See Part 6 Section 602 B)

Staff Use
only

- | | | |
|----|---|-----|
| 1. | Application submittal made within 45 days after decision has been rendered. | Y N |
| 2. | Letter of request for Appeal specifying the grounds. | Y N |
| 3. | Application fee as per the current fee code. | Y N |
| 4. | Completed <i>Land Use Application</i> . | Y N |

Appeals from Administrative Decisions

The Board of Adjustment & Appeals, on deciding appeals from decisions of the Community Development Director (Zoning Administrator), is responsible for interpreting the meaning and equitable application of the Zoning Ordinance.

1. Appeals to the Board of Adjustment & Appeals may be filed by persons aggrieved or by any officer, department, board or bureau of the Town affected by a decision of the Community Development Director, within a period of 45 days by filing, in writing, with the Community Development Director and with the Board, a notice of appeal specifying the grounds thereof.
2. The Community Development Director shall immediately transmit all records, pertaining to the action appealed, to the Board of Adjustment & Appeals.
3. An appeal stays all proceedings in the matter appealed, unless the Community Development Director verifies to the Board of Adjustment & Appeals after the notice of appeal is filed, that by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. Upon such certification, proceedings shall not be stayed other than by a restraining order granted by the Board or by a court of record on application and notice to the Community Development Director.
4. A person aggrieved by a decision of the Board of Adjustment & Appeals, or a tax payer or municipal officer may, at any time within 30 days after the Board has rendered its decision, file a complaint in the Superior Court to review the decision. Filing of the complaint shall not stay proceedings upon the decision appealed, but the court may, on application, grant a stay, and on final hearing may reverse or affirm wholly or partly, or may modify the decision received.

Hearings

The Board of Adjustment & Appeals shall fix a reasonable time for the public hearing of an appeal; and shall give public notice thereof, by both publication in a newspaper of general circulation in accordance with ARS 9-462.04 as it exists now or as it is amended from time to time, and by posting notices in conspicuous places close to the property affected, as well as due notice to the parties in interest, including first class mail notice to all owners of record of properties located within 300 feet of the subject property.

1. At the public hearing, any applicant may appear in person or by representative, and may present their appeal orally or by documentary materials, and submit rebuttal as may be necessary.
2. The chair shall have the power to administer oaths and take evidence in accordance with ARS 9-462.06, as may be amended.
3. The Board shall reach its decision within a reasonable time.

PART 6 Section 602 B

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B. Appeals from Administrative Decisions

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3. The Board shall reach its decision within a reasonable time.

May 12, 2023

RECEIVED

MAY 12 2023

**TO: John Knight
Community Development Director, Town of Camp Verde
473 S. Main Street, Suite 108
Camp Verde, AZ 86322**

**FROM: Jason Jenkins
Private Property Owner, Town of Camp Verde
1626 N. Rustler Trail
Camp Verde, AZ 86322**

SUBJ: Appeal of Zoning Interpretation Record of Interpretation 2023-02

RMKS: Pursuant to the application instructions (Page 1, paragraph 2), the following “Letter of Request of Appeal Specifying the Grounds” is provided to accompany the previously submitted Land Use Appeal form #2023-0242 in reference to Jason Jenkins’ submission filed on April 21, 2023.

Mr. Jenkins appeals Director of Community Development Knight’s (“Director Knight”), Zoning Interpretation 2023-02 (“Interpretation 02”) on two grounds. First, Mr. Jenkins was denied due process noting a lack of notice, lack of a hearing, and a decision rendered by an accuser, advocate, and final decisionmaker, that being Director Knight, in an agency adjudication. Second, Director Knight erroneously applied a zoning use prohibition that could apply when referencing the use of several separately owned parcels of land, but should not apply to the use of a single private parcel of land.

I. DUE PROCESS VIOLATION

The Planning and Zoning Ordinance of Camp Verde, section 604, states that enforcement of the Zoning Ordinance “shall be pursuant to the Town Code”. The Town Code references the Town Council’s authority pursuant to Title 9, of the Arizona Revised Statute (A.R.S.) § 9-462.01. Section 7-7-1 of the Town Code notes:

A. Violations of this Code and Zoning Ordinances of the Town may be filed under the criminal or civil enforcement procedures below or by any means stated including Section 1.8 of this Code. A person shall not be charged with both a civil and criminal offense for the same violation on the same date, but a subsequent violation against the same property or person may be charged as civil rather than criminal.

B. For the purpose of enforcement of this Code unless otherwise stated, there is hereby created the position of Code Enforcement Officer. The Community Development Director, or designee, acting as the Zoning Administrator (ARS 9-462.05C, as may be amended) shall administer and enforce this Ordinance, up to and including the issuance by the Marshall's Department of criminal charges against violators.

Camp Verde Town Code p. 101

Pursuant to the above, the Community Development Director has the authority to enforce the zoning ordinances, but the Director must follow proper enforcement procedures in doing so.

The Director must provide notice of a violation, but also notice of a hearing. A neutral arbiter must then act as the hearing officer. Section 7-7-3 of the Town Code describes the due process for a civil offense violation in part as such:

1. **Hearing Officer.** The Council shall periodically appoint a hearing officer to hear and determine zoning and code violations under the civil violation procedure. **The hearing officer shall not be an employee or member of any Town board or commission.**

2. **Filing a complaint.** Civil complaints shall be filed using either the uniform Arizona Traffic Ticket and Complaint form, or one substantially similar, which shall cite to this ordinance as well as the particular subsection of the zoning or code ordinance applicable to the alleged violation. Each subsection of the ordinance cited in the complaint shall be deemed a separate offense. Complaints may be sworn to any building inspector or zoning code officer for the Town. The citation shall contain the date and time of the alleged violation, and **direct the defendant to appear before the Hearing Officer at the specified time to enter a plea either admitting or denying the complaint.** Citations will be served by personal delivery upon the defendant by the responsible inspector or code enforcement officer, or by registered mail together with a summons, in the manner set forth in rule 3.4, Rules of Criminal Procedure. The citation will state that if the defendant fails to appear, the Hearing Officer will enter a default judgment against him in favor of the State, and impose sanctions not to exceed \$250 for each alleged violation. Subpoenas for witnesses shall be prepared and signed at the request of either the defendant or the State, and served by personal

service, certified mail, or first class mail, pursuant to ARS 13-4072, as may be amended.

3. Hearing Procedures. Unless otherwise modified therein, civil enforcement procedures herein shall follow the Arizona Rules of Court for Civil Traffic Violations. The Town Attorney or designee will present evidence of the charges in the complaint. The defendant may present evidence pro per or through counsel. The defendant will not have a right to a jury trial. If the Hearing Officer finds that the charges are proven by a preponderance of the evidence, judgment shall be entered against the defendant for the State, and sanctions imposed up to \$250 per offense. If the Hearing Officer finds the charges not proven, the case shall be dismissed. Any sanction shall be imposed immediately, without setting a sentencing date or probationary period, except that the Hearing Officer may allow the defendant a time to pay the sanction not more than 30 days from the hearing date.

Camp Verde Town Code p. 102-3, **emphasis added.**

An analogous set of facts took place in the 2017 Arizona Supreme Court case, *Horne v. Polk*. In that case the Yavapai County Attorney, Sheila Polk, was assigned as Special Attorney General where she issued an initial decision, participated personally in the prosecution of the case, and then made the final agency decision that was subject to deferential judicial review. In that case the Arizona Supreme Court noted *Lyness v. Pa. State Bd. Of Med* case and held:

[. . .] due process does not allow the same person to serve as an accuser, advocate, and final decisionmaker in an agency adjudication. This holding should not unnecessarily impede the efficient and effective functioning of administrative agencies. As noted, in most instances, agencies are free under Arizona law to generate their own processes regarding initiation, investigation, and prosecution of charges or complaints. The agency head may supervise personnel involved in such functions; but if she makes the final agency decision, she must be isolated from advocacy functions and strategic prosecutorial decision making and must supervise personnel involved in those functions in an arms-length fashion. See, e.g., *Lyness v. Pa. State Bd. of Med.*, 529 Pa. 535, 605 A.2d 1204, 1209, 1211 (1992) (“if more than one function is reposed in a single administrative entity, walls of division [must] be constructed which eliminate the threat or appearance of bias”; specifically, “placing the prosecutorial functions in a group of individuals, or entity, distinct from the Board which renders the ultimate adjudication”).

Horne v. Polk, 394 P.3d 651, 659 (Ariz. 2017).

No bias was alleged in that case, and none is alleged here. However, Mr. Jenkins was provided no notice for a hearing, because there was no hearing. The Town Council assigned no hearing officer to this matter. Director Knight accepted the complaint presented by a neighbor thus becoming the accuser, reviewed the complaint and applying the alleged facts to the law thus becoming the advocate, and rendered a final decision. Director Knight issued a record of interpretation ordering Mr. Jenkins to cease his use of a motocross track on his property declaring it not an accessory use. By not following the Town Code's Enforcement Procedures for Violations as outlined in Article 7-7, Director Knight violated Mr. Jenkins's right to due process.

II. ERRONEOUS INTERPRETATION OF THE ORDINANCE

Notwithstanding the above due process violation, Director Knight misapplied the zoning use ordinance to the particular facts in this case. The Director combined multiple issues and made a single ruling that should only apply to a single issue. Had there been a hearing, Director Knight would have been made aware of the additional facts in which he likely would have discovered his interpretation of the zoning ordinance to be in error. In Director Knight's Interpretation 02, the Director described the purpose as, "[t]o provide clarification regarding whether a motocross track is a permitted use or conditional use in the R1 Zoning District." (Interpretation 02 Page 1). However, in the neighbor's letter of inquiry dated February 6, 2023 from Rita Fambrough and Wallace Tetreault, their question of interpretation concerned a motorcycle track they alleged spanned 3 residential lots, not whether a motocross track "in general" was permitted use or conditional use in an R1 Zoning District. The complaint stated:

Could you please provide an opinion of and interpretation of land use for R-1 zoned property[.] sic. Interested mainly in the construction of a professional size

motocross race track built in a residential neighborhood across 3 residential lots, one of which is in probate.

Id.

Additionally, the complaint by Tetreault and Fambrough spurring the Director's review and decision refers to nuisance concerns emanating from the Cole's property, and the expansion of the track onto that property, not nuisance complaints from Mr. Jenkin's property. Mr. Jenkin's property does not border the Tetreault/Fambrough property. In fact, law enforcement responded to a noise complaint by Rita Fambrough on January 13, 2023, levied against Mr. Jenkins, but emanating from the Cole's property. See Camp Verde Marshal Office report # V23000279, attached. The complaint referred to riding dirt bikes and playing loud music. The responding officer "observed no obscene noise or unreasonably loud dirt bikes." The officer also noted that the call "appears to be related to previous harassment claim by Jennifer on 01/10/2023, reference DR# V23000186." (copy not provided).

Mr. Jenkin's original track behind his home has been in existence for over twenty (20) years, and was in existence prior to his owning of the property. It is used occasional and is and should be considered accessory use in an R-1 Zone. The Jenkin's property and the Cole's property does not have a fence between the two properties. There was a smaller motocross track on the Cole's property. At some point the Jenkins, because the Coles and the Jenkins were friendly neighbors, started riding from the Jenkins' motocross track onto the Coles' motocross track, thus connecting the two tracks. At no point was another parcel or property being used as a motocross track. There happens to be no fence between the Jenkins' property and the adjacent property on the opposite side of the Coles' property, but there was never any motorcycle riding on that property and no intent to ride on that property by the Jenkins. The Director has conflated the two separate issues of riding a motorcycle in a persons' R-1 Zoned backyard and riding a

motorcycle on 2 properties each with a motocross track, but connected because there is no fence between the two. To compound the error further, a third parcel was mentioned and included in the analysis used to determine the “scope” of the activity.

The issue in controversy was prompted as, and should have been limited to, whether a motocross track could expand onto multiple lots in an R1 Zone. However, the issue has been transformed and broadened to be whether riding a motorcycle on a dirt track by the property owner, property owner’s family, and property owner’s friends, is considered a permitted use, a use subject to permit, or a prohibited use. It is Mr. Jenkin’s position that his riding, and that of his family and friends, of dirt bikes/motorcycles on his property is permitted because it is an accessory, customary, or incidental use as defined in relation to an R-1 District Purpose and Uses “single-family residential living” zoning as noted in the Town of Camp Verde Zoning Ordinance.

The Director correctly notes section 203.B.2.k of the Town of Camp Verde Zoning Ordinance: “Other accessory uses commonly associated with primary permitted use” as a permitted use. The Director goes on to note that the use of the motorcycle track would need to be “customarily incidental and subordinate to the primary use of a single-family residential use.” Arizona Case law and that elsewhere, actually suggests that a motorcycle track is exactly that, “incidental” and “subordinate to” the primary use of a single-family residential use.

Generally zoning ordinances which provide for specific uses to which property may be put (single family residences here) also provide for additional uses which are usually denominated as ‘accessory’ or ‘incidental’ to the expressly permitted use. The word ‘customarily’ (Section 201(68), supra) is commonly used in regulations permitting or defining accessory usages and the courts have sought to determine, in the case of each allegedly accessory or incidental usage, whether it is customary to maintain it in conjunction with the specifically permitted use of the land, here single family dwelling. See generally: 1 Anderson, American Law of Zoning, 631—632, s 8.26.

Town of Paradise Valley v. Lindberg, 551 P.2d 60, 61 (Ariz. App. 1st Div. 1976)

Anecdotally, there are at least 4 motocross tracks in the backyards of residents of the Town of Camp Verde, used by their families and friends. In the 1976 Arizona Court of Appeals case *Lindberg*, the case involved a ham radio operator with a large ham radio antenna on his property. While this is different use than a motorcycle track, it's important to note the court's broad acceptance of many activities being considered as uses customarily incident to single family dwellings:

This is a hobby through which the 'ham' operator gains skill in science, electronics and radio technique. It is carried on purely for the development of the individual and not for any financial gain. Family hobbies, recreation and education are without question accessory uses customarily incident to single family dwellings. The words 'uses customarily incident to single family dwellings' mean the class of activity a family customarily does in or about their home. It does not limit the use to the identical activity chosen by the neighbors. As long as the activity is a form of family hobby, recreation or education it is permissible even though it may be unusual unless it is specifically excluded by a zoning restriction. The fact that not many people have amateur radio antenna no more precludes this use than the fact that not many people have tennis courts precludes their use (in Arizona we could also add swimming pools).' *Dettmar v. County Board of Zoning Appeals*, supra, 273 N.E.2d at 922. (Bracketed material added)

Id., 551 P.2d 60, 62 (Ariz. App. 1st Div. 1976)

The Arizona courts have interpreted "accessory use" in the past quite flexibly. In *State v. Owens*, (Ariz. App. 1st Div. 1977) the court noted the term "accessory use" as being "commonly and aptly" used in zoning ordinances because of its flexibility:

The concept of accessory use relieves a municipality from attempting to enumerate in the statute every possible approved use, and allows courts to determine on a case by case basis whether permission for the proposed use has been impliedly granted. See E. Bassett, *Zoning 100*; 1 A. Rathkopf, *The Law of Zoning and Planning Ch. 23 (3rd Ed.)*.' *City of Sheridan v. Keen*, 34 Colo.App. 228, 524 P.2d 1390, 1392 (1974).

As might be expected, the presently developed law relating to accessory uses of residential land reflects the diversity of the home-oriented activities of the American people. See generally, 3 Williams, American Planning Law, s 74.01 et seq. (1975), and in respect to a particular application in Arizona, See *Town of Paradise Valley v. Lindberg*, 27 Ariz.App. 70, 551 P.2d 60 (1976). As is stated in *Borough of Chatham v. Donaldson*, 69 N.J.Super. 277, 174 A.2d 213, 216 (1961):

'Use by a family of a home under our customs includes more than simple use of a house and grounds for food and shelter. It also includes its use for private religious, educational, cultural, and recreational advantages of the family. 1 Rathkopf, *The Law of Zoning and Planning*, (3rd ed. 1960), c. 23, pp. 56 and 57. Pursuit of a hobby is clearly customarily a part of recreational activities.' (Emphasis in original).

A great deal of the pursuit of happiness necessarily revolves around the home, and the difficulty with the flexible and otherwise valuable concept of accessory use when it is necessarily incorporated into a criminal charge like the present one is that it requires residents, on pain of incurring criminal penalties, to make fine legalistic determinations as to whether their otherwise innocent conduct is 'subordinate', 'incidental', and 'customary' to residential use of property. These are terms of legal significance, well known to lawyers and judges, the application of which in a specific case calls for a judicious balancing of the relevant operative factors. Even if we focus upon the requirement that the accessory use be 'customary', See *State v. Sanner Contracting Co.*, supra, we find that the courts have generally avoided a literal interpretation of this requirement and have adopted a loose construction. Williams, American Planning Law, supra at s 74.16. In the present case the requirement is virtually nullified by the provision permitting 'analogous' uses. s 400, Supra. Taken as a whole, the ordinance with its express allowance of accessory uses does not meet the test of defining an offense in a manner understandable by the average man. It requires a resident to speculate as to whether his use of his property is in violation of the criminal law.

State v. Owens, 562 P.2d 738, 740-41 (Ariz. App. 1st Div. 1977)

More importantly, concerning property rights, the Owens court stated:

When it is considered that zoning ordinances, being in derogation of common law property rights, will be construed in doubtful cases **in favor of a property owner**, *Phoenix City Council v. Canyon Ford, Inc.*, 12 Ariz.App. 595, 473 P.2d 797 (1970), the answer is at best highly uncertain. We note as did the Virginia court in *Wiley* that if the City wishes to limit or prohibit the outside storage of vehicles or other material, it is free to enact a specific ordinance to that effect.

State v. Owens, 562 P.2d 738, 742 (Ariz. App. 1st Div. 1977), **emphasis added**.

The above rulings suggest that if the Town of Camp Verde wants to limit motorcycle riding on a residential lot by the homeowner, it should enact a specific ordinance to that effect. A case in Vermont that reached the Vermont Supreme Court, *In re Laberge Moto-Cross Track*, while not binding in Arizona, found the Development Review Board specifically noted that the neighborly dispute was more properly characterized as a dispute over noise, which is similar to the complaint in our Jenkins case. Also, the court noted that the motocross track in dispute in *Laberge*, which covered about 1.5 acres on a single lot, was de minimis incidental use of property and should be permitted customary accessory use. See *In re Laberge Moto-Cross Track*, 189 Vt. 578 (2022). The facts in *Laberge* are analogous to the track on Mr. Jenkins' property.

Had the Director noted the difference in use of the motocross track that previously existed on Mr. Jenkins' property as being permitted and the expansion possibly not being permitted, then the decision may not have been in error. However, the Director went on to erroneously conclude that: "Based on the scale of the use, it is difficult to conclude that it is incidental and subordinate to a single-family use. The Director confirmed his conflagration of a single track on a single property with that spanning 3 parcels by stating, "the definition requires the accessory use to be '...located on the same lot with the principal use.'"

The Director points to *Murphy v. Town of Chino Valley*, 163 Ariz. 571 (App. 1989) as a similar fact pattern, but *Murphy* is easily distinguished from our instant case with Mr. Jenkins. In *Murphy* the court analogizes to a case in New Jersey, *Borough of Demarest v. Heck*, 84 N.J.Super. 100, 201 A.2d 75 (App.Div.1964).

In *Heck* the New Jersey court held that a riding academy was not an agricultural use, referring to testimony of: [A]nnoying dust, 'terrific' when there is 'violent riding'; disturbing noises caused by the horses, also by children

'hollering' and 'screaming' and by the blowing of automobile horns; illumination of the barns and excessive light from cars at nighttime; traffic congestion and hazards in the evenings and on Saturdays and Sundays; ... and weekend equestrian functions which were likened to a rodeo. *Id.* at 104, 201 A.2d at 77–78. Activity of this nature was held inconsistent with agricultural use of the property.

Murphy (1989)

The type of use in both *Heck* and *Murphy* are similar to commercial use or businesses and thus were not considered ancillary use. The use in *Murphy* involved competitive roping by up to 120 people with extensive lighting on 30' to 40' high poles. This is quite distinguished from the type and scope of usage conducted by Mr. Jenkins, which involves he and his family riding motorcycles on a dirt track with a few other friends occasionally, even after expansion onto one neighbor's track.

Based on the above, the Director concludes that a:

Motocross track is not listed as a permitted or conditionally permitted use in any zoning district. In addition, it can't be considered an accessory use. It is beyond the scale of a use that is customarily incidental and subordinate to a permitted use. And finally, the only use that could be considered similar in nature (outdoor recreation and assembly) is not allowed in R1 Zoning District.

See Interpretation 02.

This is an erroneous conclusion. A track that expands 3 parcels may be considered non-incidentual and could be similar to an (outdoor recreation and assembly) area, but not a motocross track on a single lot in one homeowner's backyard used by only friends and family. By conflating a track that crosses 3 lots after being expanded, with the original track that existed for twenty years on one lot, the Director has ruled illegal, any and all motorcycle tracks on private property in Camp Verde, unless they are permitted.

Mr. Jenkins' constitutional rights were violated by the Director not following due process when rendering his sweeping decision. The decision was also based on erroneous facts and conflated issues. This case should be immediately dismissed and the decision overturned so as not to interfere with Mr. Jenkins' lawful use of his property. If there is issue with the expansion of the track, this should be treated as a separate issue and addressed as such through proper due process. For the aforementioned reasons, this case should be dismissed and any injunction against riding of motorcycles on Mr. Jenkins' property should be withdrawn.

Sincerely,

Jason Jenkins

Private Property Owner, Town of Camp Verde

1626 N. Rustler Trail

Camp Verde, AZ 86322



ZONING INTERPRETATION
RECORD OF INTERPRETATION
2023-02

Subject of Interpretation: Motocross track as an allowed use

Regulation: Planning & Zoning Ordinances and Subdivision Regulations, Section 203 – Use Districts

Purpose: To provide clarification regarding whether a motocross track is a permitted use or conditional use in the R1 Zoning District

Background: The Town of Camp Verde, Arizona (the “Town”) adopted requirements for allowed uses of land as part of the Planning & Zoning Ordinances and Subdivision Regulations (the “Zoning Code”) in Section 203 – Use Districts. Under this section, *“Any use or structure not specifically permitted by (or analogous to) District Provisions shall be deemed prohibited and unlawful as a principal or an accessory use or structure for the District.”* The Zoning Code restricts the number, size, type, or manner of uses on any parcel so as not to impair the enjoyment or use of any nearby properties or violate other legal restrictions.

Each separate Use District includes a description of the purpose of the district, a list of permitted uses and structures, and a list of uses and structures subject to a use permit. If a use is specifically listed as a permitted use, then it is determined to be an allowed use with limited restrictions. If a use is listed as conditionally permitted, then that use is subject to a Use Permit which requires approval by the Planning and Zoning Commission and Town Council. The Use Districts also include as a permitted use, *“Other accessory uses commonly associated with primary permitted use.”* The purpose of this interpretation is to clarify whether a motocross track is a permitted use, conditionally permitted use, or an accessory use in the R1 Zoning District.

Property Dispute:

- A. **Location of Properties.** There are three properties that have a motocross track that is partially under construction. These include APN 403-11-084 (Grauer), APN 403-11-085 (Jenkins), and APN 403-11-086 (Cole). The track has existed on Mr. Jenkin’s property since at least 2015 (source – Google Earth). The track has recently been expanded and now extends into the Grauer and Cole properties. This expansion appears to have occurred sometime after February 2022 (source – Google Earth).
- B. **Requestor.** Mr. Tetreault and Ms. Fambrough live adjacent to the Cole property on APN 403-11-087. Specifically, they have requested the Town,

“... provide an opinion of and interpretation of land use for R-1 zoned property. Interested mainly in the construction of a professional size motocross race track built in a residential neighborhood across 3 residential lots, one of which is in probate.”
- C. **Neighbor Dispute.** Tetreault and Fambrough have expressed nuisance concerns related to the use of the track primarily related to dust and noise. The track is approximately 1 to 1.5



acres in size. According to Ms. Fambrough, it is used on a fairly regular basis (approximately once per week) by the property owners, their family members, and friends. The complaints that have been filed are related to nuisance concerns – primarily noise and dust. The neighbors have also raised concerns about the environmental impact of motorcycles in a flood zone including driving away animals, flooding, and soil erosion. In addition, they have stated that the track is sometimes used for gatherings with approximately 15 to 20 people in attendance with 5 or 6 people riding at a time. Although this track has existed on the Cole property for many years, this is the first time a formal interpretation of the Zoning Code has been requested.

- D. **Uses not specifically listed.** Key to this interpretation is a question of how the zoning ordinance addresses uses not specifically identified as permitted or conditionally permitted uses. The Camp Verde Zoning Ordinance, Section 203 states, “*Any use or structure not specifically permitted by (or analogous to) District Provisions shall be deemed prohibited and unlawful as a principal or an accessory use or structure for the District.*” Therefore, if a use is not specifically listed, it is generally considered as prohibited. Section 203 Use Districts provides some flexibility for uses or structures but only to the extent they are “analogous,” i.e., “similar” or comparable” as defined by Code. In other words, a use or structure must be listed as specifically permitted, or analogous to a specifically permitted use, otherwise it is prohibited in that district.
- E. **R1 District Purpose and Uses.** The zoning ordinance states in Section 203.B.1. that, “*The R1 District is intended for single-family residential living, site-built, modular or manufactured housing.*” Section 203.B.2. lists the following permitted and conditionally permitted uses:

2. Permitted Uses and Structures:

- a. Accessory Dwelling Unit (ADU).
- b. Agriculture and cultivation.
- c. Dwelling unit for one family on any one lot. (See B.1).
- d. Educational institutions (including private schools, provided they offer curriculum of general instruction comparable to similar public schools).
- e. Flood control facilities.
- f. Golf courses with accessory uses such as pro shops, shelters, and rest rooms.
- g. Historical Landmarks.
- h. Home occupations (See Section 303).
- i. Keeping of farm animals, limited (See Section 305).
- j. Open land carnival and recreation facilities (religious & educational institutions).
- k. Other accessory uses commonly associated with primary permitted use. (See Section 301 C.)
- l. Religious institutions (in permanent buildings).



3. Uses and Structures Subject to Use Permit

- a. Community parks, playgrounds or centers.
- b. Government facilities and facilities required for the provision of utilities and public services.
- c. Bed and Breakfast.
- d. Temporary Use Permits, subject to administrative approval (See Section 801.C):
 - 1) Occupancy of temporary housing, including travel trailers, during the construction of a permanent dwelling is allowed during the 12-month period after issuance of a building permit.
 - 2) Model homes, temporary offices (construction and pre-construction sales offices/showrooms), construction sheds and yards incidental to a recorded residential development or other construction project (subject to District setbacks) for a period not to exceed 12 months.
- e. Mobile/manufactured home and recreational vehicle parks subject to the requirements of Section 306.
 - 1) Notwithstanding the foregoing, in the event a Planned Area Development (PAD) District is established per Section 203, this use may be included in any Development Plan thereunder and approved without being subject to a Use Permit application and hearing procedures set forth in Section 601.

Note that there is not a use listed as Motocross track. Nor are there any uses which appear to be "analogous" or similar in nature. There is a listing under 2.j. of "Open land carnival and recreational facilities" but under the definitions section, it's clear that these must be associated with a religious or educational institution.

- F. **Accessory Use.** Section 203.B.2.k. lists, "Other accessory uses commonly associated with primary permitted use" as a permitted use. Section 103 includes a definition of an accessory use as "A use of land or of a building or portion thereof customarily incidental and subordinate to and located on the same lot with the principal use". For a motocross track to be considered a permitted accessory use under this definition, it would need to be customarily incidental and subordinate to the primary use of a single-family residential use. Based on the scale of the use, it is difficult to conclude that it is incidental and subordinate to a single-family use. In addition, the definition requires the accessory use to be "...located on the same lot with the principal use." The motocross track is actually located on three (3) lots so it would not meet this requirement.
- G. **Other Uses Considered.** The zoning ordinance does include one use that could be considered similar in nature. The use is listed as, "Outdoor recreation or assembly facilities". Under the Definitions in Section 103, this is defined as, "An area designed for active recreation, whether publicly or privately owned, including but not limited to parks, baseball diamonds, soccer and football fields, golf courses, tennis courts, swimming pools, equestrian facilities, archery and shooting ranges." A motocross track could fall into this definition. However, this use is not allowed in the R1 Zone. It is a conditional use in the RS, C1, C2, C3, OS, and AG zones. It is a permitted use in the M2 and PAD zones.



H. **Case Law.** The Arizona Court of Appeals dealt with a similar fact pattern in *Murphy v. Town of Chino Valley*, 163 Ariz. 571 (App. 1989). The Murphys operated a recreational use on their property, a roping arena.

The Appeals Court concluded that:

A roping arena, where the owners and numerous others participate in competitive roping, is not expressly within the scope of any of the listed uses for the zoning district. If the roping arena is to be considered a permitted use, it must come under the definition of an accessory use.

While the proposed use of a motocross track is very different from a roping arena, it does address the question of what an appropriate accessory use is. The Town of Camp Verde Zoning Ordinance defines "Accessory Use" as a use of land or of a building or portion thereof customarily incidental and subordinate to and located on the same lot with the principal use.

The Court of Appeals (in *Murphy*) found that it would be reasonable to conclude that a roping arena where friends and community members are invited for competitive and practice cattle roping events is not an accessory agricultural use. *Murphy*, 163 Ariz. 571, 577.

While the motocross track may differ in type and scale to the Murphy arena, the extent of the impact of this activity on the neighborhood is not disputed. There are complaints that the activities are noisy and result in excessive dust. The type of activity, including the sheer scale and impact on the nearby residential area, supports a finding that this is a recreational activity in nature rather than a mere accessory use.

Conclusion: Motocross track is not listed as a permitted or conditionally permitted use in any zoning district. In addition, it can't be considered an accessory use. It is beyond the scale of a use that is customarily incidental and subordinate to a permitted use. And finally, the only use that could be considered similar in nature (outdoor recreation and assembly) is not allowed in the R1 Zoning District.

Other Options: In order for this use to be allowed as a permitted or conditionally permitted use, the Town of Camp Verde would need to amend the Zoning Ordinance. An ordinance amendment can be initiated by a private property owner, town staff, the Planning and Zoning Commission or Town Council.

Appeal: Per Section 602, paragraph B, the Board of Adjustment may hear appeals of administrative decisions. Specifically:

"The Board, on deciding appeals from decisions of the Community Development Director (Zoning Administrator), is responsible for interpreting the meaning and equitable application of the Zoning Ordinance.

1. Appeals to the Board may be filed by persons aggrieved or by any officer, department, board or bureau of the Town affected by a decision of the Community Development Director, within a period of 45 days by filing, in writing, with the Community Development Director and with the Board, a notice of appeal specifying the grounds thereof.



2. The Community Development Director shall immediately transmit all records, pertaining to the action appealed, to the Board.

3. An appeal stays all proceedings in the matter appealed, unless the Community Development Director verifies to the Board after the notice of appeal is filed, that by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. Upon such certification, proceedings shall not be stayed other than by a restraining order granted by the Board or by a court of record on application and notice to the Community Development Director.

4. A person aggrieved by a decision of the Board, or a tax payer or municipal officer may, at any time within 30 days after the Board has rendered its decision, file a complaint in the Superior Court to review the decision. Filing of the complaint shall not stay proceedings upon the decision appealed, but the court may, on application, grant a stay, and on final hearing may reverse or affirm wholly or partly, or may modify the decision received."

Unless appealed, this decision is effective March 10, 2023, at 5:00 p.m. The appeal time will start 45 days from the date of publication of the decision. The deadline to file an appeal is April 24, 2023.



John Knight, Community Development Director

March 9, 2023
Date

Cc:

- Trish Stuhan, Town Attorney
- Gayle Mabery, Interim Town Manager

Attachments:

- Aerial Map of Affected Properties
- APN Map of Affected Properties
- Letter requesting interpretation
- Murphy v. Town of Chino Valley decision
- Relevant Zoning Code Section Excerpts
 - o 103 – Definitions
 - o 203 – Use Districts
 - o 602 – Zoning Adjustments





Map Layers Search Results Pr

4 Parcels were identified

Please Select:

Zoom To Clear Selection Download

- Parcel: 403-11-084
Grauer Michael &
██████████
Phoenix, AZ 850838669

- Parcel: 403-11-085
Jenkins Jason B
1626 N Rustler Tr
Camp Verde, AZ 863227500

- Parcel: 403-11-086
Martinez Cole E &
██████████ Rustler Tr
Camp Verde, AZ 863227500

- Parcel: 403-11-087
Tetreault Wallace J &
██████████ N Rustler Tr
Camp Verde, AZ 863227507

RECEIVED

FEB 6 2023

February 6, 2023

Mr. John Knight

Community Development

Planning and Zoning

Town of Camp Verde, Az

Could you please ask the town attorney to provide an opinion of and interpretation of land use for R-1 zoned property. Interested mainly in the construction of a professional size motocross race track built in a residential neighborhood across 3 residential lots, one of which is in probate.

We look forward to and appreciate your feed back

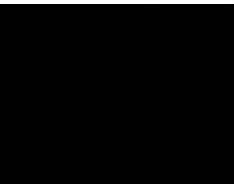
*Rita Fambrough
Wallace (Butch) Tetreault*

Rita Fambrough

Wallace (Butch) Tetreault

Neighbors on Rustler Trail


Camp Verde, AZ 86322



IN THE
SUPREME COURT OF THE STATE OF ARIZONA

**THOMAS HORNE, INDIVIDUALLY AND THOMAS HORNE FOR ATTORNEY
GENERAL COMMITTEE (SOS FILER ID 2010 00003); KATHLEEN WINN,
INDIVIDUALLY, AND BUSINESS LEADERS OF ARIZONA
(SOS FILER ID 2010 00375),
*Plaintiffs/Appellants,***

v.

**SHEILA SULLIVAN POLK, YAVAPAI COUNTY ATTORNEY,
*Defendant/Appellee.***

No. CV-16-0052-PR
Filed May 25, 2017

Appeal from the Superior Court in Maricopa County
The Honorable Crane McClennen, Judge
No. LC2014-000255
VACATED

Memorandum Decision of the
Court of Appeals, Division One
1 CA-CV 14-0837
Filed Feb. 23, 2016
VACATED

COUNSEL:

Dennis I. Wilenchik (argued), Wilenchik & Bartness, P.C., Phoenix,
Attorneys for Thomas Horne and Tom Horne for Attorney General
Committee; Timothy A. La Sota (argued), Timothy A. La Sota, PLC,
Phoenix, Attorneys for Kathleen Winn and Business Leaders of Arizona

Sheila Sullivan Polk, Yavapai County Attorney, Benjamin D. Kreutzberg
(argued), Deputy County Attorney, Prescott, Attorneys for Sheila Sullivan
Polk

Dominic E. Draye, Solicitor General, Jennifer M. Perkins, Assistant
Attorney General, Phoenix, Attorneys for Amicus Curiae Arizona Solicitor
General

HORNE v. POLK
Opinion of the Court

Paul V. Avelar, Timothy D. Keller, Keith E. Diggs, Institute for Justice,
Tempe, Attorneys for Amicus Curiae Institute for Justice

JUSTICE BOLICK authored the opinion of the Court, in which CHIEF JUSTICE BALES, VICE CHIEF JUSTICE PELANDER, JUSTICE BRUTINEL, and JUDGES ECKERSTROM, HOWARD, and WRIGHT joined.*

JUSTICE BOLICK, opinion of the Court:

¶1 In this case involving substantial consequences for alleged violations of campaign finance laws, we hold that due process does not permit the same individual to issue the initial decision finding violations and ordering remedies, participate personally in the prosecution of the case before an administrative law judge (“ALJ”), and then make the final agency decision that will receive only deferential judicial review.

I. BACKGROUND

¶2 On June 27, 2013, acting pursuant to A.R.S. § 16-924(A) (2011) *repealed by* 2016 Ariz. Sess. Laws, ch. 79, § 10 (2d Reg. Sess.), Arizona Secretary of State Ken Bennett determined that there was reasonable cause to believe that Attorney General Thomas Horne, Kathleen Winn, who served as Community Outreach Director of the Attorney General’s Office, and two campaign committees (collectively “Appellants”) had violated Arizona campaign finance laws, specifically A.R.S. §§ 16-901(14), -905, -913, -915, -917, and -919. The Secretary accordingly notified Solicitor General Robert L. Ellman, who appointed Sheila Polk as Special Arizona Attorney General because the Attorney General and one of his staffers were subjects of the notice, and “an appearance of impropriety would arise if the Arizona

* Justices Ann A. Scott Timmer, Andrew W. Gould, and John R. Lopez IV have recused themselves from this case. Pursuant to article 6, section 3 of the Arizona Constitution, the Honorable Peter J. Eckerstrom, Chief Judge of the Arizona Court of Appeals, Division Two, the Honorable Joseph W. Howard, Judge of the Arizona Court of Appeals, Division Two, and the Honorable Timothy M. Wright, Judge of the Gila County Superior Court, were designated to sit in this matter.

HORNE v. POLK
Opinion of the Court

Attorney General's Office investigated the alleged campaign finance violation."

¶3 Following investigation, pursuant to A.R.S. § 16-924(A), Polk issued a twenty-five-page order finding that Appellants had violated Arizona campaign finance statutes by illegally coordinating campaign expenditures, exceeding contribution limits, and collecting illegal contributions. Polk directed Appellants to amend their campaign finance reports and ordered Horne and his campaign to refund contributions totaling approximately \$397,000. The order stated that if the Appellants failed to take the specified actions within twenty days, "this Office will issue an Order Assessing a Civil Penalty pursuant to A.R.S. § 16-924(B). The violation of the contribution limit carries a civil penalty of three times the amount of money of the violation. A.R.S. § 16-905(J)."

¶4 Appellants requested an administrative hearing pursuant to A.R.S. § 16-924(A). After a three-day evidentiary hearing, the ALJ issued a decision finding that Polk had failed to prove illegal coordination and recommending that Polk vacate her compliance order.

¶5 Pursuant to A.R.S. § 41-1092.08(B) (2000), Polk issued her final administrative decision, which rejected the ALJ recommendation and affirmed her prior compliance order. Polk accepted all of the ALJ's findings of fact and rejected in part the ALJ's conclusions of law.

¶6 Appellants appealed to the Maricopa County Superior Court, challenging Polk's decision and the constitutionality of Arizona's campaign contribution limits. Neither side requested an evidentiary hearing. The court affirmed Polk's decision, finding that substantial evidence supported it and rejecting challenges to the statutory scheme.

¶7 Appellants appealed to the court of appeals. Polk's answering brief acknowledged a fact previously unknown to Appellants: "Admittedly, the Yavapai County Attorney was involved with the prosecution of the case, by assisting with the preparation and strategy." Appellants argued that Polk's role as advocate and adjudicator violated their due process rights.

¶8 The court of appeals affirmed the superior court, concluding that "[b]ecause there was evidence in the record supporting Polk's finding

HORNE v. POLK
Opinion of the Court

that Horne and Winn coordinated . . . , we find no abuse of discretion.” *Horne v. Polk*, 1 CA-CV 14-0837, at *5 ¶ 12 (Ariz. App. Feb. 23, 2016). The court rejected Appellants’ due process claim, relying on *Comeau v. Arizona State Board of Dental Examiners*, 196 Ariz. 102, 108 ¶ 26, 993 P.2d 1066, 1072 (App. 1999) (“An agency is permitted to combine some functions of investigation, prosecution, and adjudication unless actual bias or partiality is shown.”). *Horne*, 1 CA-CV 14-0837, at *5–6 ¶ 13. The court concluded, “In this case, appellants make no showing of actual bias. Accordingly, their due process rights were not violated.” *Id.* at *6 ¶ 13.

¶9 We granted review of the due process issue, which is of statewide importance and likely to recur. We have jurisdiction under article 6, section 5(3) of the Arizona Constitution and A.R.S. § 12-120.24. Because we consider only the constitutionality of the procedure under which Appellants’ statutory violations were determined, our review is de novo. *Gallardo v. State*, 236 Ariz. 84, 87 ¶ 8, 336 P.3d 717, 720 (2014).

II. DISCUSSION

A. Statutory Scheme

¶10 Arizona’s Administrative Procedure Act (“APA”), title 41, chapter 6, is generally silent about how agency charges or complaints are initiated. In the context of campaign finance violations, § 16-924(A) prescribes that where there is “reasonable cause to believe that a person is violating any provision of this title” in connection with a statewide office, the “secretary of state shall notify the attorney general.” The Attorney General, in turn, “may serve on the person an order requiring compliance with that provision. The order shall state with reasonable particularity the nature of the violation and shall require compliance within twenty days from the date of issuance of the order.” *Id.*

¶11 Section 16-924(A) further provides that the alleged violator has twenty days to request a hearing pursuant to the APA, for which administrative adjudication procedures are set forth in A.R.S. § 41-1092 *et seq.* Once the ALJ issues a decision, “the head of the agency, executive director, board or commission may review the decision and accept, reject or modify it.” A.R.S. § 41-1092.08(B). Where an agency has a board or commission whose members are appointed by the governor, it “may review

HORNE v. POLK
Opinion of the Court

the decision of the agency head . . . and make the final administrative decision.” A.R.S. § 41-1092.08(C).

¶12 Ordinarily, nothing in the APA would necessitate having an agency head make both an initial and final legal determination. Here, the interplay between the campaign finance statute and the APA placed Polk in the position of issuing the initial order and then making the final determination. She also participated in the prosecution of the case before the ALJ. And under these circumstances, there was no board or commission to review Polk’s final decision.¹

¶13 An aggrieved party may appeal an adverse agency decision to the superior court, but the court’s review is deferential. Section 12-910(E) provides that the court “shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.” The court affirms the agency’s factual findings if they are supported by substantial evidence, “even if the record also supports a different conclusion.” *Gaveck v. Ariz. State Bd. of Podiatry Exam’rs*, 222 Ariz. 433, 436 ¶ 11, 215 P.3d 1114, 1117 (App. 2009).

¹ Polk notes that the federal APA contains an exception allowing an agency head, unlike other employees, to both participate in investigative or prosecuting functions and participate or advise in the agency review or decision. 5 U.S.C. § 554(d). Arizona’s APA contains no such exception. Arizona’s APA tacitly recognizes the potential for conflict arising from agency officials performing certain multiple roles in the administrative adjudication process. Section 41-1092.06(B) provides that in the context of informal settlement conferences, the agency must be represented by “a person with the authority to act on behalf of the agency,” and the “parties participating in the settlement conference shall waive their right to object to the participation of the agency representative in the final administrative decision.”

HORNE v. POLK
Opinion of the Court

B. Due Process

¶14 Combining prosecutorial and adjudicative functions in the same agency official gives rise to due process concerns. A single agency may investigate, prosecute, and adjudicate cases, and an agency head may generally supervise agency staff who are involved in those functions. *See, e.g., Withrow v. Larkin*, 421 U.S. 35, 53 (1975) (“administrative agency [can] investigate facts, institute proceedings, and then make the necessary adjudications”). However, where an agency head makes an initial determination of a legal violation, participates materially in prosecuting the case, and makes the final agency decision, the combination of functions in a single official violates an individual’s Fourteenth Amendment due process right to a neutral adjudication in appearance and reality. That due process violation is magnified where the agency’s final determination is subject only to deferential review.²

¶15 The general parameters for due process are set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). There, the United States Supreme Court held that the constitutional sufficiency of administrative procedures is determined by three factors:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

² As Appellants did not raise or argue a distinct state constitutional claim, we have no occasion to determine whether the due process provision in Arizona’s Declaration of Rights, Ariz. Const. art. 2, § 4, provides greater protection in this context than the Fourteenth Amendment. *Cf. Garris v. Governing Bd. of S.C. Reinsurance Facility*, 511 S.E.2d 48, 54 (S.C. 1998) (holding that the state constitution provides greater procedural protections in administrative proceedings than federal due process).

HORNE v. POLK
Opinion of the Court

Id. at 335.

¶16 In this context, where the government seeks repayment of substantial campaign contributions that the private parties contend were legal (and, indeed, constitutionally protected), due process requires a neutral decisionmaker. Although Appellants have not alleged actual bias, once an official determines that a legal violation has occurred, that official can be expected to develop a will to win at subsequent levels of adjudication. At minimum, in the context of a regulatory agency adjudication, a process that involves the same official as both an advocate and the ultimate administrative decisionmaker creates an appearance of potential bias. *See, e.g., Botsko v. Davenport Civil Rights Comm'n*, 774 N.W.2d 841, 849 (Iowa 2009) (“[T]he primary purpose of separating prosecutorial from adjudicative functions” in an administrative agency “is to screen the decisionmaker from those who have a ‘will to win.’”). On the other hand, barring an agency head who makes an ultimate decision from having even general supervisory authority over agency employees involved in the prosecution of a case would unduly hamper agency operations. Due process will be satisfied if the agency head who serves as the ultimate adjudicator does not also serve in an advocacy role in the agency proceedings.

¶17 The right to a neutral adjudicator has long been recognized as a component of a fair process. One cannot both participate in a case (for instance, as a prosecutor) and then decide the case. Blackstone observed that a judge must not rule in a cause in which he is a party, “because it is unreasonable that any man should determine his own quarrel.” *Am. Gen. Ins. Co. v. Fed. Trade Comm’n*, 589 F.2d 462, 463 (9th Cir. 1979) (quoting Blackstone, *Commentaries on the Laws of England*, I, 91). In *In re Murchison*, 349 U.S. 133, 136 (1955), the United States Supreme Court recognized the due process principle that “no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome.” *Murchison* entailed a “one-man grand jury,” in which a judge acting as a grand jury charged two witnesses with perjury and then convicted them, which the Court held violated due process. *Id.* at 133–34. Because the judge was “part of the accusatory process,” he “cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused.” *Id.* at 137. “Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness.” *Id.* at 136; accord *Marshall v. Jerricho, Inc.*, 446 U.S.

HORNE v. POLK
Opinion of the Court

238, 243 (1980) (“[J]ustice must satisfy the appearance of justice, and this stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties.” (internal citation and quotation marks omitted)). The process was impermissibly tainted by the judge performing both prosecution and adjudication functions.

¶18 The Court in *Withrow*, 421 U.S. at 46, applied those principles to the administrative context. There, a state licensing board notified a physician that it would commence an investigative proceeding to consider possible violations of his medical license. *Id.* at 37–39. The physician challenged the board’s combined investigatory and adjudicatory functions as a due process violation. *Id.* at 39. The Court noted that although “situations have been identified in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable,” the “contention that the combination of investigative and adjudicative functions necessarily creates an unconstitutional risk of bias in administrative adjudication has a much more difficult burden,” given “the presumption of honesty and integrity.” *Id.* at 47.

¶19 The Court distinguished *Murchison* on the basis that there “the judge in effect became part of the prosecution and assumed an adversary position,” and observed that *Murchison* did not stand for the “broad rule that the members of an administrative agency may not investigate the facts, institute proceedings, and then make the necessary adjudications.” *Id.* at 53. The Court noted that an “initial charge or determination of probable cause and the ultimate adjudication have different bases and purposes,” thus the same agency may perform both functions. *Id.* at 58. However, the Court cautioned, “[t]hat the combination of investigative and adjudicative functions does not, without more, constitute a due process violation, does not, of course, preclude a court from determining from the special facts and circumstances present in the case before it that the risk of unfairness is intolerably high.” *Id.*

¶20 Here, the combination of prosecutorial and adjudicative functions not just in a single agency but in the same official presents “special facts and circumstances” creating an intolerable risk of unfairness. The initial determination of a legal violation here was not akin to a judge finding probable cause to proceed to trial and then reaching a final decision

HORNE v. POLK
Opinion of the Court

after an adversarial process in which the judge was not an advocate. Rather, under the statutory scheme, the Secretary of State made the probable cause finding. Polk then commenced investigation and issued a lengthy decision finding a legal violation and ordering compliance, which would have been a final determination had Appellants not appealed. In the subsequent ALJ proceeding, Polk admittedly “was involved with the prosecution of the case, by assisting with the preparation and strategy.” Thereafter, she issued a final administrative determination affirming her prior order and rejecting most of the ALJ’s conclusions of law. So we have here not only a single agency performing accusatory, advocacy, and adjudicatory functions, but the same individual performing all three functions. As *Withrow* characterized the circumstances in *Murchison*, “the judge in effect became part of the prosecution and assumed an adversary position.” *Withrow*, 421 U.S. at 53. Beyond even that, Polk was in the position to affirm the very determination and order that she initially issued. *See also id.* (describing denial of due process where judge could rely on his own “[personal] knowledge and impression . . . that could not be tested by adequate cross-examination” (internal quotation marks omitted)).

¶21 Other decisions further inform our analysis. *Concrete Pipe & Products of California, Inc. v. Construction Laborers Pension Trust*, 508 U.S. 602 (1993), pertains to pension plans, but its reasoning applies here. The federal statutory scheme entailed an adjudication of withdrawal liability by pension trustees, who have a fiduciary duty to the integrity of the pension plans, but the Court concluded that sufficient safeguards were present to ensure due process. *Id.* at 619–20. The initial liability determination was made by the trustees, who “act only in an enforcement capacity,” *id.* at 619, and whose decision was reviewed by a neutral arbitrator applying a preponderance of the evidence standard. *Id.* at 611. “Where an initial determination is made by a party acting in an enforcement capacity,” the Court ruled, “due process may be satisfied by providing for a neutral adjudicator to conduct a *de novo* review of all factual and legal issues.” *Id.* at 618 (internal quotation marks omitted). By contrast, “[c]learly, if the initial view of the facts based on the evidence derived from nonadversarial processes as a practical or legal matter foreclosed fair and effective consideration at a subsequent adversary hearing leading to ultimate decision, a substantial due process question would be raised.” *Withrow*, 421 U.S. at 58.

HORNE v. POLK
Opinion of the Court

¶22 Here the initial determination was subject to de novo review by the ALJ, but the ALJ's determination was not final. Rather, the initial decisionmaker returned to make the final decision. "Even appeal and a trial *de novo* will not cure a failure to provide a neutral and detached adjudicator." *Concrete Pipe*, 508 U.S. at 618. The superior court review available from the final agency decision here falls far short of that.

¶23 More recently, in *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1908–09 (2016), the Court found a defendant's due process rights were violated when a prosecutor who approved the decision to seek the death penalty later served as a supreme court justice in a habeas petition arising from the same crime. "Of particular relevance to the instant case, the Court has determined that an unconstitutional potential for bias exists when the same person serves as both accuser and adjudicator in a case." *Id.* at 1905. Where "a prosecutor who participates in a major adversary decision" or "a judge has served as an advocate for the State in the very case the court is now asked to adjudicate," a serious question arises concerning whether the adjudicator, despite best efforts, could untether from his or her previous position and render a fair judgment. *Id.* at 1906. Here, the fact that Polk "had a direct, personal role in the [Appellants'] prosecution," *id.*, likewise violates due process.

¶24 The reasoning of the *Williams* dissenters also supports our conclusion. Chief Justice Roberts distinguished the basis for the due process violation in *Murchison*, where "the judge (sitting as grand jury) accused the witnesses of contempt, and then (sitting as judge) presided over their trial on that charge." *Id.* at 1913 (Roberts, C.J., dissenting). In *Williams*, by contrast, it was "abundantly clear" that the justice "had *not* made up his mind about either the contested evidence or the legal issues under review," because he had not "previously made any decision with respect to that evidence in his role as prosecutor." *Id.* at 1914. Likewise, Justice Thomas observed in *Williams* that "[b]roadly speaking, *Murchison's* rule constitutionalizes the early American statutes requiring disqualification when a single person acts as both counsel and judge in a single civil or criminal proceeding." *Id.* at 1920 (Thomas, J., dissenting). He emphasized that a due process violation occurs only where the "same person . . . act[s] as counsel and adjudicator in *the same case*." *Id.* at 1919 (highlighting the separation between the original decision to approve the request to seek the death penalty and the current civil proceeding regarding timeliness of a stay action). In this case, Polk made her views on the evidence and legal

HORNE v. POLK
Opinion of the Court

issues very clear in her initial twenty-five-page order, and she subsequently affirmed that very order in the same case after participating in the prosecution.

¶25 These cases instruct that the combination of accusatory, advocacy, and adjudicative roles in a single agency official violates due process. Other courts have followed that instruction. Synthesizing the cases as we have, the Iowa Supreme Court held in *Botsko* that the conduct of the civil rights commission's director in advocating on behalf of the complainant and then participating in the commission's closed adjudicatory proceeding violated due process. 774 N.W.2d at 849–50. Therein, the court articulated the applicable constitutional boundaries. Applying *Withdraw*, it concluded that “there is no due process violation based solely upon the overlapping investigatory and adjudicatory roles of agency actors.” *Id.* at 849. “A more serious problem, however, is posed where the same person within an agency performs both *prosecutorial* and *adjudicative* roles.” *Id.*; see also *Am. Gen.*, 589 F.2d at 464–65 (the order “is infected with invalidity” because a commissioner participated as counsel in earlier proceedings, even though that participation may have been “superficial rather than substantial”); *Trans World Airlines, Inc. v. Civil Aeronautics Bd.*, 254 F.2d 90, 91 (D.C. Cir. 1958) (“The fundamental requirements of fairness . . . require at least that one who participates in a case on behalf of any party, whether actively or merely formally by being on pleadings or briefs, take no part in the decision of that case.”); *Nightlife Partners, Ltd. v. City of Beverly Hills*, 133 Cal. Rptr. 2d 234, 248 (Cal. Ct. App. 2003) (observing that combination of investigatory and adjudicatory functions is “fraught” with problems, especially where “these dual functions were not held by different sections of a single office, but by a *single individual*”).

¶26 Arizona jurisprudence is consistent with those authorities. In *Comeau*, a doctor retained by the board investigated the complaint, then made statements and asked questions before the administrative panel, but “was not on the panel and did not participate in the discussion that preceded the panel’s findings and recommendations.” 196 Ariz. at 108 ¶ 27, 993 P.2d at 1072. In *Rouse v. Scottsdale Unified School District No. 48*, 156 Ariz. 369, 371, 752 P.2d 22, 24 (App. 1987), the court stated that “[t]he precise question in this case is whether simply joining investigative/prosecutorial and adjudicative functions results in a partial decision maker. We hold that it does not.” To the extent that these functions are combined in a single

HORNE v. POLK
Opinion of the Court

agency, we agree that the potential for bias is not intolerable; if they are performed by the same individual, they violate due process. *Cf. Taylor v. Ariz. Law Enf. Merit Syst. Council*, 152 Ariz. 200, 206, 731 P.2d 95, 101 (App. 1986) (“A conflict of interest would clearly arise if the same assistant attorney general participated as an advocate before the council and simultaneously served as an advisor to the council in the same matter.”). In *Rouse*, the termination decision at issue was initiated by the staff, not the board that rendered the final decision; and “the board, at the time of the hearing, had little more than ‘mere familiarity with the facts.’” 156 Ariz. at 373, 752 P.2d at 26. Under such circumstances, the defendant still had a neutral adjudicator.

¶27 We hold that due process does not allow the same person to serve as an accuser, advocate, and final decisionmaker in an agency adjudication. This holding should not unnecessarily impede the efficient and effective functioning of administrative agencies. As noted, in most instances, agencies are free under Arizona law to generate their own processes regarding initiation, investigation, and prosecution of charges or complaints. The agency head may supervise personnel involved in such functions; but if she makes the final agency decision, she must be isolated from advocacy functions and strategic prosecutorial decisionmaking and must supervise personnel involved in those functions in an arms-length fashion. *See, e.g., Lyness v. Pa. State Bd. of Med.*, 605 A.2d 1204, 1209, 1211 (Pa. 1992) (“if more than one function is reposed in a single administrative entity, walls of division [must] be constructed which eliminate the threat or appearance of bias”; specifically, “placing the prosecutorial functions in a group of individuals, or entity, distinct from the Board which renders the ultimate adjudication”).

¶28 Although Appellants do not allege actual bias, the circumstances here deprived them of due process. Apparently unique in the context of Arizona administrative law, Arizona’s campaign finance statute, when joined with the APA, place a single official in the position of making both an initial and final determination of legal violation, with no opportunity for de novo review by the trial court. A quasi-judicial proceeding “must be attended, not only with every element of fairness but with the very appearance of complete fairness.” *Amos Treat & Co. v. Sec. & Exch. Comm’n*, 306 F.2d 260, 266–67 (D.C. Cir. 1962) (holding that a similar combination of functions violated the “basic requirement of due process”). Specifically, we hold that when Polk also assumed an advocacy

HORNE v. POLK
Opinion of the Court

role during the ALJ proceedings, the due process guarantee prohibited her from then serving as the final adjudicator.

III. REMEDY

¶29 Appellants argue that because there was no “valid” decision by the agency head within thirty days after the ALJ decision, we should reinstate the ALJ decision as the “final administrative decision” pursuant to A.R.S. § 41-1092.08(D) (“if the head of the agency . . . does not accept, reject or modify the administrative law judge’s decision within thirty days,” it becomes “the final administrative decision”). We disagree. The agency head took action within the deadline.

¶30 Rather, Appellants are entitled to a determination by a neutral decisionmaker. See *Williams*, 136 S. Ct. at 1910; *Botsko*, 774 N.W.2d at 853; *Nightlife Partners*, 133 Cal. Rptr. 2d at 248–49. We therefore remand the matter to the current Attorney General’s Office, which does not have a conflict, for a final administrative decision. We express no opinion on the merits of the case.

¶31 After filing their petition for review, Appellants submitted an amended request for attorney fees under A.R.S. § 12-348(A)(2), which allows an award of fees for a party that “prevails by an adjudication on the merits” in a “court proceeding to review a state agency decision.” Because the case is remanded, any fee award would be premature as no party has yet “prevail[ed] by an adjudication on the merits.” *Scottsdale Healthcare, Inc. v. Ariz. Health Care Cost Containment Syst. Admin.*, 206 Ariz. 1, 8 ¶ 29, 75 P.3d 91, 98 (2003) (alteration in original).

¶32 For the foregoing reasons, we vacate the decisions of the superior court and court of appeals, and remand the case to the Attorney General’s Office for further proceedings consistent with this opinion.

KeyCite Yellow Flag - Negative Treatment
Called into Doubt by *State v. Trachtman*, Ariz.App. Div. 1, July 31, 1997

114 Ariz. 565

Court of Appeals of Arizona, Division 1, Department A.

STATE of Arizona, Appellee,

v.

Tom OWENS, Appellant.

No. 1 CA-CR 2017.

Feb. 17, 1977.

Rehearing Denied March 23, 1977.

Review Denied April 12, 1977.

Synopsis

Defendant was convicted in a city court of willfully and unlawfully maintaining a nonpermitted use in a residential zone, and the conviction was affirmed by the Superior Court, Maricopa County, Cause No. LCA-16223, Paul W. LaPrade, J. On further appeal, the Court of Appeals, Nelson, P. J., held that the ordinance under which defendant was convicted was unconstitutionally vague.

Reversed and remanded with directions that complaint be dismissed.

West Headnotes (4)

- [1] **Constitutional Law** - Zoning, planning, and land use
Zoning and Planning - Validity of Zoning Regulations

Zoning ordinance was unconstitutionally vague to extent that, for purposes of criminal enforcement, it made it an essential component of criminal charge that landowner was not making "accessory use" of his property.

1 Case that cites this headnote

- [2] **Zoning and Planning** - Free or unrestricted use of property

Zoning ordinances, being in derogation of common-law property rights, will be construed in doubtful cases in favor of property owner.

1 Case that cites this headnote

- [3] **Constitutional Law** - Vagueness as to Covered Conduct or Standards of Enforcement; Offenses and Penalties

For criminal enactment to withstand challenge based on unconstitutional vagueness, offense must be defined in terms that persons of average intelligence can understand, so that such persons may know what the law commands or forbids.

- [4] **Zoning and Planning** - Power and duty to enforce

Though zoning ordinance was unconstitutionally vague for purposes of criminal enforcement, presumption that the ordinance was valid otherwise remained, and city was not precluded from pursuing civil remedies against persons it believed were maintaining nonpermitted uses.

3 Cases that cite this headnote

Attorneys and Law Firms

*565 **738 Harry J. Rubinoff, Asst. City Prosecutor, Phoenix, for appellee.

Kenneth J. Lincoln, Phoenix, for appellant.

***566 **739 OPINION**

NELSON, Presiding Judge.

The appellant was charged in the City Court of Phoenix with wilfully and unlawfully maintaining 'a non-permitted **use** in a residential zone to-wit: Outside storage of motor vehicles and junk, all in violation of Sections 409, 400 and 107B of the Code of the City of Phoenix.'¹ See Ch. 4 and Ch. 1, City of Phoenix, Arizona Code, Appendix A.

Appellant was found guilty of the charge and was sentenced to pay a fine of \$300.00 or to a jail sentence of 30 days. Appellant appealed his conviction to the Superior Court pursuant to A.R.S. s 22-371. The conviction was affirmed. Appellant has now appealed to this Court pursuant to A.R.S. s 22-375, which restricts our review to an examination of the validity of the subject ordinance. Appellant contends as he has in both courts below that the ordinance under which he was charged is void for uncertainty in that it fails to define and give notice as to what constitutes criminal conduct. Appellant also urges a companion contention that the ordinance unconstitutionally delegates to its enforcers the power to determine what is and what is not a violation of its terms without adequate standards or guidelines.

We note at the outset that there are basically two kinds of zoning ordinances, 'inclusive' and 'exclusive'. 1 Yokley, Zoning Law and Practice, s 4-5 (Third Ed. 1965). An 'inclusive' type of zoning ordinance specifies permitted **uses** and prohibits all other **uses**. The Phoenix zoning ordinance before us appears to be basically of this variety. An 'exclusive' type zoning ordinance, on the other hand, specifically prohibits certain defined **uses** of property and permits all other **uses**. Some ordinances contain both types of provisions. 1 Yokley, Supra 4-5.

With this in mind, we examine the ordinance provisions that appellant was charged with violating.

Section 406 defines the R1-10 Residential District in which appellant's house is located. It states in part:

'Sec. 406. RESIDENTIAL R1-10 DISTRICT ONE FAMILY RESIDENCE

The R1-10, One Family Residence District, is a district of single family homes designed to maintain, protect and preserve a character of development on lots with a minimum area of 10,000 square feet and with not more than one dwelling unit and customary accessory buildings upon one lot.

Dwelling groups shall also be allowed in the district on certain lot (sic) of excessive size, when developed consistent with the character of adjacent residential **uses** in the district.

A. PERMITTED USES

1. Same as RE-24.'

The permitted **uses** in the RE-24, One Family Residence District referred to above are found in Section 403. This section enumerates a variety of permitted **uses**, including, for example, churches, schools, parks, and foster homes. It describes the following additional permitted **use** at subsection A(8):

'8. Accessory **uses** and buildings. No accessory **use** shall be maintained in which there is solicitation of the recipient for a service or product, or the operation of the **use** so that it is commonly known as offering a commercial service or product.'

Chapter II of the Zoning Ordinance contains the following definition of 'accessory **use**':

'ACCESSORY **USE**: A subordinate **use** of a building, other structure, or **use** of land:

a. Which is clearly **incidental** to the **use** of the main building, other structure or **use** of land, and

b. Which is customary in connection with the main building, other structure, or **use** of land, and

***567 **740** c. Which is located on the same zoned lot with the main building, other structure, or **use** of land.'

Section 400 of the ordinance reads in part as follows:

'Sec. 400. General Provisions

The **use** districts, regulations, and the **uses** that are permitted in these **use** districts are hereby established. Any **use** that is not specifically permitted or analogous to those specifically permitted is hereby declared to be a prohibited **use** and unlawful. A **use** that is not permitted in any district shall be considered an accessory **use** in that district.'

Section 107(B) of the ordinance states that '(a)ny person who violates any provision of this ordinance shall be guilty of a misdemeanor' and specifies penalties to be imposed upon conviction. It further states that a violator shall be deemed guilty of a separate offense for every day a violation is permitted to exist.

We agree with the City that we may consider only the validity of the ordinance, and not the constitutionality of its application to appellant. *State v. Anderson*, 9 Ariz.App. 42, 449 P.2d 59 (1969). Appellant's assertion of unconstitutionality for vagueness is within the permitted scope of review. *State v. Jean*, 98 Ariz. 375, 405 P.2d 808 (1965).

In sustaining a variety of criminal enactments attacked as void for uncertainty or vagueness, courts have noted the inherent imprecision of language and the difficulty of defining criminal conduct in mathematically certain or axiomatic terms. *State v. Sanner Contracting Co.*, 109 Ariz. 522, 514 P.2d 443 (1973); *Johnson v. Phoenix City Court*, 24 Ariz.App. 63, 535 P.2d 1067 (1975); *State v. Cole*, 18 Ariz.App. 237, 501 P.2d 413 (1972). 'Total precision of expression is elusive and has never been demanded of the legislature.' *People v. Beaver*, 549 P.2d 1315, 1316-1317 (Colo.1976). In contrast to many cases, however, the present case appears to involve the purposeful **use** of general and flexible language.

The basic rule is that an offense must be defined in terms that persons of average intelligence can understand.

State v. Bateman, 113 Ariz. 107, 547 P.2d 6 (1976). This is so that persons of ordinary intelligence may know what the law commands or forbids. See Papachristou v. City of Jacksonville, 405 U.S. 156, 92 S.Ct. 839, 31 L.Ed.2d 110 (1972), and authorities cited therein. Appellee quotes the following proposition adopted in City of Tucson v. Stewart, 45 Ariz. 36, 58, 40 P.2d 72, 80 (1935):

'An ordinance of a regulatory nature

must be clear, certain and definite, so that the average man may with due care after reading the same understand whether he will incur a penalty for his actions or not. Otherwise it is void for uncertainty.'

The same test was quoted in *Thrift Hardware & Supply Co. v. City of Phoenix*, 71 Ariz. 21, 222 P.2d 994 (1950).

The crux of appellant's contention here is that in expressly permitting generally defined 'accessory **uses**' of residential property while at the same time prohibiting all but certain other specified **uses**, the City compels its residents to guess at their criminal peril as to what might or might not be a permitted 'accessory **use**.' We believe that the contention has merit and that the necessarily indefinite concept of 'accessory **use**' infects the validity of the zoning ordinance insofar (and only insofar) as violation of the ordinance is made the basis of criminal liability.

The term 'accessory **use**' is commonly and aptly **used** in zoning ordinances because of its flexibility:

'The concept of accessory **use** relieves a municipality from attempting to enumerate in the statute every possible approved **use**, and allows courts to determine on a case by case basis whether permission for the proposed **use** has been impliedly granted. See E. Bassett, *Zoning 100*; 1 A. Rathkopf, *The Law of Zoning and Planning* Ch. 23 (3rd Ed.).' City of Sheridan v. Keen, 34 Colo.App. 228, 524 P.2d 1390, 1392 (1974).

*568 **741 As might be expected, the presently developed law relating to accessory **uses** of residential land reflects the diversity of the home-oriented activities of the American people. See generally, 3 Williams, *American Planning Law*, s 74.01 et seq. (1975), and in respect to a particular application in Arizona, See Town of Paradise Valley v. Lindberg, 27 Ariz.App. 70, 551 P.2d 60 (1976). As is stated in Borough of Chatham v. Donaldson, 69 N.J.Super. 277, 174 A.2d 213, 216 (1961):

'**Use** by a family of a home under our customs includes more than simple **use** of a house and grounds for food and shelter. It also includes its **use** for private religious, educational, cultural, and Recreational advantages of the family. 1 Rathkopf, *The Law of Zoning and Planning*, (3rd ed. 1960), c. 23, pp. 56 and 57. Pursuit of a hobby is clearly customarily a part of recreational activities.'

(Emphasis in original).

A great deal of the pursuit of happiness necessarily revolves around the home, and the difficulty with the flexible and otherwise valuable concept of accessory **use** when it is necessarily incorporated into a criminal charge like the present one is that it requires residents, on pain of incurring criminal penalties, to make fine legalistic determinations as to whether their otherwise innocent conduct is 'subordinate', 'incidental', and 'customary' to residential **use** of property. These are terms of legal significance, well known to lawyers and judges, the application of which in a specific case calls for a judicious balancing of the relevant operative factors.² Even if we focus upon the requirement that the accessory **use** be 'customary', See State v. Sanner Contracting Co., supra, we find that the courts have generally avoided a literal interpretation of this requirement and have adopted a loose construction. 3 Williams, American Planning Law, supra at s 74.16. In the present case the requirement is virtually nullified by the provision permitting 'analogous **uses**.' s 400, Supra. Taken as a whole, the ordinance with its express allowance of accessory **uses** does not meet the test of defining an offense in a manner understandable by the average man. It requires a resident to speculate as to whether his **use** of his property is in violation of the criminal law.

There is support for our conclusion in the case of [Wiley v. County of Hanover](#), 209 Va. 153, 163 S.E.2d 160 (1968). There the appellant Wiley was charged with violating the county zoning ordinance by raising and harboring homing pigeons in a small building on his residential property. The county had an 'inclusive' zoning ordinance which permitted 'accessory buildings' and did not expressly prohibit the raising or harboring of pigeons or other fowl. The **use** of an accessory building under the ordinance had to be 'customarily **incidental**' to the **use** of the main building, the dwelling.

On Wiley's appeal from conviction the Virginia Supreme Court first noted that there was a failure of proof by the county as to whether the **use** in question was customarily **incidental**. The court then went on to state:

'Moreover, (citations omitted) an act creating an offense, to be valid, must specify with reasonable certainty and definiteness the conduct which is commanded or prohibited, so that a person of ordinary intelligence may know what is thereby required of him. (Citations omitted)

'Clearly, the ordinance here fails to meet this elementary requirement. It is certainly doubtful, to say the least, whether a person of ordinary intelligence would know from the language of the ordinance whether the keeping

of homing pigeons on his residential lot would be 'customarily **incidental**' to the **use** of his dwelling and therefore permitted, or whether such activity was prohibited.' [Wiley v. County of Hanover](#), supra at 163.

*569 **742 ^[2] We believe that this holding is sound and that it is logically applicable not only to an activity such as the keeping of pigeons but to the infinite variety of other **uses** that a residential landowner may make of his property. Looking to the charge in the present case, for example, which necessarily contains as a silent component an allegation that the **use** made by appellant of his land was not accessory, it could scarcely be contended that Some outside storage could never be a permitted, accessory **use**.³ As to old automobiles, See [Borough of Chatham v. Donaldson](#), supra. The question then becomes the debatable one of how much outside storage of cars or other material, however characterized, can be deemed accessory to the residential **use**. When it is considered that zoning ordinances, being in derogation of common law property rights, will be construed in doubtful cases in favor of a property owner, [Phoenix City Council v. Canyon Ford, Inc.](#) 12 Ariz.App. 595, 473 P.2d 797 (1970), the answer is at best highly uncertain. We note as did the Virginia court in Wiley that if the City wishes to limit or prohibit the outside storage of vehicles or other material, it is free to enact a specific ordinance to that effect.

The City has pointed to the definition of a 'junkyard' in the ordinance. It reads as follows:

'JUNK YARD: The **use** of a lot or portion thereof for the storage, keeping or abandonment of junk, dismantled automobiles, or other vehicles, or machinery, or parts thereof, including scrap metals, rags, or other scrap materials.'

This definition is included in the ordinance along with many other definitions such as 'restaurant' and other commercial and industrial **uses** apparently in connection with the portions of the ordinance providing for districts for such **uses** ('junk dealers' and 'yards' are confined to 'A-2' or heavy industrial districts). The term 'auto wrecking' is defined in the ordinance as 'same as 'junkyard'.

The appellant here was charged with and acquitted of

Conducting a non-permitted **use**; that charge is not before us. The charge which is before us is not the conducting or operation of a junkyard, as defined; it is Maintaining a non-permitted, and necessarily non-accessory, **use**. The problem of defining what is and what is not an accessory **use** remains. s 400 of the ordinance itself appears to recognize this in its statement that '(a) **use** that is not permitted in any district shall be considered an accessory **use** in that district.'

It bears emphasizing that nothing stated herein should be construed as indicating the invalidity of the Phoenix Zoning Ordinance as a whole or as otherwise applied. The only issue before this Court is the efficacy of the ordinance to charge a Criminal offense when an essential component of the charge is that the landowner is not making an accessory **use** of his property. The presumption that the ordinance is valid in other respects remains. [City of Phoenix v. Fehlner, 90 Ariz. 13, 363 P.2d 607 \(1961\)](#). Nothing herein restricts the City from

pursuing civil remedies against persons it believes are maintaining non-permitted **uses**.

It is unnecessary for us to consider appellant's alternative contention.

Appellant's conviction is accordingly reversed and the case is remanded with directions that the criminal complaint be dismissed.

HAIRE and DONOFRIO, JJ., concur.


All Citations

114 Ariz. 565, 562 P.2d 738

Footnotes

- ¹ The complaint originally alleged a violation of s 409; s 406 was later substituted for s 409 on motion of the City. Appellant was also charged with Conducting (as opposed to maintaining) a non-permitted (commercial) **use** in a residential zone. He was found not guilty of the latter charge.
- ² See Borough of Chatham v. Donaldson, *supra*, where the storage or parking of four old cars was held to be an accessory **use**.
- ³ Storage **incidental** to a construction project is expressly permitted. City of Phoenix, Arizona, Code, Appendix A, Ch. IV, s 403A.2.a. (1969).

8 Cases that cite this headnote

 KeyCite Yellow Flag - Negative Treatment
Declined to Follow by [Redington Ranch Associates v. Redman](#),
Ariz.App. Div. 2, March 12, 1987
27 Ariz.App. 70
Court of Appeals of Arizona, Division 1, Department
C.

TOWN OF PARADISE VALLEY, a Municipal
Corporation, et al., Appellants,
v.
Carl L. LINDBERG, Appellee.

No. 1 CA-CIV 2899.

June 22, 1976.

Rehearing Denied July 27, 1976.

Review Denied Sept. 14, 1976.

Attorneys and Law Firms

*70 **60 Roger A. McKee, Town Atty., Town of
Paradise Valley, Paradise Valley, for appellants.

Ben C. Pearson by Paul J. Prato, Phoenix, for appellee.

OPINION

NELSON, Judge.

Synopsis

A town appealed from a judgment of the Superior Court, Maricopa County, Cause No. C—282102, David M. Lurie, Former Judge, holding that a landowner was not required to obtain a special use permit in order to erect a 90-foot amateur radio tower next to his residence. The Court of Appeals, Nelson, J., held that the trial court was correct in concluding that erection of the tower was an incidental or necessary use to the permitted use of a single family dwelling.

Affirmed.

Procedural Posture(s): On Appeal.

West Headnotes (1)

[1] **Zoning and Planning** ⇒ Residence, Accessory
Uses

Erection of amateur radio tower in conjunction with homeowner's hobby as ham radio operator was incidental or accessory use to permitted use of single family dwelling, and special use permit was therefore not required for erection of such tower.

This is an appeal by the Town of Paradise Valley, its Town Manager, Oscar A. Butt, and a town building inspector, Roy Jacobson, from an order of the Superior Court directing them to issue a building permit to Carl A. Lindberg, the appellee, for the erection of a ninety (90) foot amateur radio tower adjacent to his family residence in Paradise Valley. The facts as found by the trial court are not disputed.

Lindberg applied for a building permit on July 27, 1973 to construct a Tri-Ex Sky Needle Amateur Radio Tower on his property in Paradise Valley. The tower had an extended height of 90 feet and a nesting height of 28 feet. He owned three adjoining five acre lots zoned for 'single-family dwellings and uses incidental or accessory thereto together with required recreational, religious and educational facilities'. Zoning Ordinance of Paradise Valley, Article IV, Section 401. The tower was to be erected on the middle five acre parcel, adjacent to his residence.

After being advised he would be required to obtain a special use permit, and after a series of negotiations and discussions, including the filing of the initial complaint in this lawsuit on September 19, 1973, Lindberg applied for a special use permit on March 8, 1974. The application was denied on May 9, 1974.

On May 30, 1974, Lindberg filed an amended complaint seeking mandatory relief in terms of an order directing the issuance of a building permit without the necessity of a special use permit, or in the alternative, an order directing the issuance of the special use permit, or a declaration that the Zoning Ordinance of the Town of Paradise Valley was improperly enacted.

After cross-motions for summary judgment were filed, the parties agreed to submit the matter to the court for decision on the merits, based upon the pleadings and exhibits stipulated into evidence, treating the memoranda in support of the motions for summary judgment as trial memoranda.

The court, on July 26, 1974, issued its judgment, together with findings of fact and conclusions of law, finding that a special use permit was not required for the construction of an amateur radio tower; that such a tower was an accessory use to the residence; that the height of 90 feet *71 **61 was under the general 100 foot height limitation found in the Paradise Valley Zoning Ordinance; and that Lindberg was entitled to the issuance of a building permit. The matter was brought here by Notice of Appeal filed on August 8, 1974. We affirm the judgment of the trial court.

While the appellants have presented three questions for review here, the appellee does not challenge the correctness of their position on the initial question presented, nor do we view the trial court's findings of facts and conclusions of law as adopting a position inconsistent with appellants' position on that question. That first question refers to Section 1003 of the Zoning Ordinance of Paradise Valley which provides that 'chimneys, spires, fire towers, and similar structures, where otherwise authorized under the provisions of this ordinance, may be erected to a height not exceeding 100 feet above the ruling grade.' The Town argues that this section in and of itself does not authorize the erection of a radio tower up to 100 feet in height. We agree. It allows the erection of an otherwise authorized radio tower to a height not exceeding 100 feet. The remaining questions deal with just such authorizations.

We will first deal summarily with one issue. The Town urged below, as it does here, that the installation of an amateur radio tower was governed by Sections 850—853 of the Zoning Ordinance of the Town of Paradise Valley. A reading of those sections indicates they are exclusively applicable to public utilities who seek to erect new poles, lines or other transmission facilities above ground in Paradise Valley. Mr. Lindberg is not a public utility, nor do the appellants argue that he is. While the words 'radio' and 'transmission' do appear in these sections, it is obvious that they refer to commercial ventures, and an

intent to apply them to the type of installation here sought cannot be read into these sections. Since the necessity of a special use permit depended upon the applicability of these sections, the court was clearly correct in his holding that Lindberg's amateur radio tower was not subject to the special use permit provisions of the Zoning Ordinance of the Town of Paradise Valley.

The primary question to be resolved here is whether the erection of an amateur radio tower in conjunction with a homeowner's hobby as a ham radio operator is an incidental or accessory use to the permitted use of the property, a single family dwelling. The trial court so found and we agree.

The applicable section of the Zoning Ordinance of the Town of Paradise Valley is Section 401, which says:

'The principal land use is single family dwellings and uses incidental or accessory thereto together with required recreational, religious and educational facilities.'

The definitional section of the Zoning Ordinance of the Town of Paradise Valley, Section 201(67) and (68), provides additional guidance. 'Use' is defined as 'the purpose for which land or a building is occupied, maintained, arranged, designed, or intended'. 'Accessory use' is defined as '(a) subordinate use customarily incident to and conducted on the same lot with the principal use or building including bona fide servant quarters'.

Generally zoning ordinances which provide for specific uses to which property may be put (single family residences here) also provide for additional uses which are usually denominated as 'accessory' or 'incidental' to the expressly permitted use. The word 'customarily' (Section 201(68), supra) is commonly used in regulations permitting or defining accessory usages and the courts have sought to determine, in the case of each allegedly accessory or incidental usage, whether it is customary to maintain it in conjunction with the specifically permitted use of the land, here single family dwelling. See generally: 1 Anderson, American Law of Zoning, 631—632, s 8.26.

*72 **62 While there is a paucity of cases in Arizona on this question, nine decisions from other jurisdictions involve the erection of a radio tower on land zoned for residential purposes. Five of these decisions upheld the

use as proper. [Village of St. Louis Park v. Casey](#), 218 Minn. 394, 16 N.W.2d 459 (1944); [Wright v. Vogt](#), 7 N.J. 1, 80 A.2d 108 (1951); [Appeal of Lord](#), 368 Pa. 121, 81 A.2d 533 (1951); [Skinner v. Zoning Board of Adjustment](#), 80 N.J.Super. 380, 193 A.2d 861 (1963); [Dettmar v. County Board of Zoning Appeals](#), 28 Ohio Misc. 35, 273 N.E.2d 921 (1971). Four decisions found that the erection of the radio tower was an impermissible use. [Presnell v. Leslie](#), 3 N.Y.2d 384, 165 N.Y.S.2d 488, 144 N.E.2d 381 (1957); [Kroeger v. Stahl](#), 248 F.2d 121 (3rd Cir. 1957); [Hohmann v. Thomsen](#), 32 A.D.2d 669, 300 N.Y.S.2d 781 (1969); [State ex rel. Carpenter v. City of Everett Board of Adjustment](#), 7 Wash.App. 930, 503 P.2d 1141 (1972).

Of the four decisions opposing the use, two (Hohmann and Kroeger) involve the use of the amateur radio tower in a business or commercial enterprise. The Washington decision (Carpenter), in what we view as a rather strained construction of the facts, found the tower to be a 'building' and thus governed by a 35 foot height limitation.

The only decision which actually holds that the erection of a ham radio tower is not an accessory use to a single family residence is [Presnell v. Leslie](#), supra. In that decision, Judge Van Voorhis filed a dissent indicating that in light of the fact that there were 146,000 ham operators in 1957, it was unreasonable to hold that such a use was not an incidental or accessory use. While there are no figures in the record here, it is safe to assume that the number of amateur radio operators in the United States has grown tremendously in the almost 20 years since Judge Van Voorhis' observation.

In any event, even if all four opposing decisions had been exactly in point, we are convinced that the reasoning found in the decisions allowing such a use is more persuasive. In [Dettmar](#), supra, there was a general height

limitation regarding church spires, chimneys, flagpoles, cooling towers, etc., such as we have here (Section 1003, supra), as well as a section regarding accessory use. In reversing the County Board of Zoning Appeals' denial of an application to construct a 64 foot tower, the court's language is representative of the rationale of the other courts similarly ruling, supra, and is the view we adopt: 'Appellant is an amateur radio operator. This is a hobby through which the 'ham' operator gains skill in science, electronics and radio technique. It is carried on purely for the development of the individual and not for any financial gain. Family hobbies, recreation and education are without question accessory uses customarily incident to single family dwellings. The words 'uses customarily incident to single family dwellings' mean the class of activity a family customarily does in or about their home. It does not limit the use to the identical activity chosen by the neighbors. As long as the activity is a form of family hobby, recreation or education it is permissible even though it may be unusual unless it is specifically excluded by a zoning restriction. The fact that not many people have amateur radio antenna no more precludes this use than the fact that not many people have tennis courts precludes their use (in Arizona we could also add swimming pools).' [Dettmar v. County Board of Zoning Appeals](#), supra, 273 N.E.2d at 922. (Bracketed material added)

The judgment of the trial court is affirmed.

HAIRE, C.J., and EUBANK, P.J., concur.

All Citations

27 Ariz.App. 70, 551 P.2d 60, 81 A.L.R.3d 1080

KeyCite Yellow Flag - Negative Treatment
Distinguished by In re Champlain Oil Co. Conditional Use Application,
Vt., February 21, 2014

189 Vt. 578
Supreme Court of Vermont.

In re LABERGE MOTO-CROSS TRACK.

No. 09-426

Jan. 6, 2011.

Motion for Reargument Denied Feb. 7, 2011.

Synopsis

Background: Neighbors appealed the town development review board's decision that landowners were not required to obtain a zoning permit or conditional use approval for a private recreational moto-cross track they built on their residential property in town's rural residential zone. The Environmental Court, Thomas S. Durkin, J., entered judgment for neighbors, finding that the track required a zoning permit, and landowners were required to obtain conditional use approval. Landowners appealed.

Holdings: The Supreme Court held that:

^[1] moto-cross track did not qualify as a "structure" requiring a permit, or

^[2] as a "substantial change" in use requiring conditional approval, within meaning of zoning regulations.

Reversed.

West Headnotes (8)

[1] **Zoning and Planning** - Scope and Extent of Review

In reviewing the environmental court's

interpretation of a local zoning ordinance, the appellate court applies a deferential standard.

2 Cases that cite this headnote

[2] **Zoning and Planning** - Applicability of general statutory construction principles

The appellate courts review zoning ordinances according to the general rules of statutory interpretation.

6 Cases that cite this headnote

[3] **Zoning and Planning** - Meaning of Language
Zoning and Planning - Ordinance as a whole, and intrinsic aids

The appellate court construes words in a zoning ordinance according to their plain and ordinary meaning, giving effect to the whole and every part of the ordinance, and if there is no plain meaning, the court attempts to discern the intent from other sources without being limited by an isolated sentence.

6 Cases that cite this headnote

[4] **Zoning and Planning** - Construction, Operation, and Effect
Zoning and Planning - Intention and purpose of enacting body

The appellate court adopts a construction of a zoning ordinance that implements the ordinance's legislative purpose and, in any event, will apply common sense.

7 Cases that cite this headnote

- [5] **Zoning and Planning**—Strict or liberal construction in general

Zoning laws are to be strictly construed in favor of property owners.

2 Cases that cite this headnote

- [6] **Zoning and Planning**—Entertainment and recreation; theaters
Zoning and Planning—Entertainment and recreation; theaters and clubs

Landowners' backyard moto-cross track, which rested directly atop earth without a foundation and only required minimal excavation, did not qualify as a "structure" under town's regulations for residential property in rural residential zone, and, thus, the track did not require a permit; modifications to landowners' property were much more akin to patios, driveways, and sidewalks, which were specifically excluded from the zoning regulations' definition of "structure," than buildings, mobile homes, tennis courts, silos, and certain pools, which were included in definition.

1 Case that cites this headnote

- [7] **Zoning and Planning**—Entertainment and recreation; theaters and clubs

Aggregation of dirt and tire-wear on landowners' lawn resulting in a moto-cross track did not constitute a "substantial change" in use of their residential property, as required for conditional use approval by town's zoning administrator, as landowners would have been able to ride their motorcycles anywhere on their own property without a permit before track was completed, provided they complied with existing noise and nuisance performance standards.

- [8] **Zoning and Planning**—Entertainment and recreation; theaters and clubs

Private recreational moto-cross track on residential property, which was not generally prohibited by town's zoning ordinances, did not have to qualify for a permitted customary accessory use to a residential use, or as a conditionally approvable "outdoor recreational facility," merely because it was not expressly permitted under the ordinances, as it was a de minimis incidental use of the property, and, thus, was not contemplated for exclusion by the regulations; track required minimal construction, no excavation or importation of materials, was limited to personal family use, and was essentially adjunct to an otherwise permissible recreation activity.

1 Case that cites this headnote

****591** Present: REIBER, C.J., DOOLEY, JOHNSON, SKOGLUND and BURGESS, JJ.

ENTRY ORDER

***578 ¶ 1.** The Laberges, landowners, appeal from an Environmental Court decision requiring them to obtain a zoning permit and conditional use approval for a private recreational moto-cross track they built on their residential property in rural Hinesburg. The Environmental Court reasoned that the network of earthen berms, connected by a single-lane dirt track, constituted a structure for purposes of the local zoning ordinance and thus qualified as the type of land development that would require a permit. Because we do not find the track to be a structure of the type contemplated by the zoning ordinances, we reverse.

¶ 2. In 1999, landowners bought an approximately eighteen-acre lot in the Town of Hinesburg. The lot, upon which they built their house in 2000, is located within the town's Rural Residential II zone. In 2002, landowners began riding motorbikes around their home, initially around the lawn, driveway, and meadow behind their house. In 2004, landowners limited riding to a designated area of about one acre. Repeated use of the motorcycles in the same space began to wear a track over the ground, and over the next two years, they incrementally improved the track, fashioning a series of earthen jumps and berms using a small lawn-tractor to shift on-site excavation materials left over from the earlier construction of their house and driveway. They undertook no additional excavation and brought in no materials from elsewhere. Landowners created the largest of the track's jumps by covering an existing rock pile *579 with a veneer of dirt. Landowners never obtained a zoning permit for the track, believing one was not needed. At the time of the current controversy, the three-to-four-foot-wide track ran approximately one half mile, snaking over roughly one acre of landowners' eighteen-acre parcel. At its closest point, the track passed within fifty feet of the neighbors' property line.

¶ 3. Landowners' family, friends, and guests used the track extensively after its initial creation. In August 2007, landowners' neighbors, the Fenwicks, sought enforcement of the town's noise-related performance standards, and the town zoning administrator issued a notice of violation for unreasonable noise generated by the motorcycles. On landowners' appeal, the town Development Review Board upheld the notice of violation, finding that the track was not a customary use. The Board, however, acknowledged what it considered to be landowners' "substantial efforts" to reduce noise on the property after the initial notice, including limiting use primarily to family members and confining most riding to a few hours a day, two days a week. Landowners also occasionally used the track on weekends, particularly **592 when weather prevented use of the track on scheduled days. Neither party further appealed this decision.

¶ 4. In 2008, neighbors asked the town zoning administrator to require landowners to obtain a zoning permit and conditional use approval for the backyard track. After the zoning administrator denied the request, neighbors appealed to the town Development Review Board, which determined that the "degree of improvements to the Laberge property simply [did] not rise to the level of requiring a zoning permit for 'land development,' " nor did the track or its contemporary use constitute a change in the residential character of the property. In its decision, the

Development Review Board specifically noted that the neighborly dispute was more properly characterized as a dispute over noise, which the town addressed in 2007. Following that 2007 decision, the noise level at the track had dropped significantly, and the town had received no further complaints.

¶ 5. Neighbors appealed the Development Review Board's decision to the Environmental Court. After a de novo trial, the Environmental Court determined that the track was not generally prohibited under the town's zoning regulations. Nevertheless, the court found that the track was a "structure," the construction of which constituted land development and thus required a zoning permit. The court further determined that because the track was not a specifically permitted use in the Rural Residential District II, landowners were required to obtain conditional use approval, apparently as an "outdoor recreational facility." Landowners appealed.

¶ 6. On appeal, landowners contend the Environmental Court erred in requiring a zoning permit for the track because it is an incidental recreational use not covered by the permitting requirements of the zoning ordinance. More specifically, landowners maintain that the track is not the type of "structure" contemplated by the town's zoning ordinance, and its creation did not rise to the level of land development that would necessitate zoning review. In the alternative, they argue that even if a motorcycle trail were a zoneable structure, conditional-use approval would not be required because riding motorcycles on a residential property should be a permitted customary accessory use. Lastly, landowners maintain that the court erred in its apparent conclusion that the track required a conditional use approval as an "outdoor recreational facility" because such facilities suggest more extensive development and greater ongoing use.

^[1] ¶ 7. In reviewing the environmental court's interpretation of a local zoning *580 ordinance, we apply a deferential standard. *In re Champlain College Maple Street Dormitory*, 2009 VT 55, ¶ 13, 186 Vt. 313, 980 A.2d 273 ("On review, we will uphold the Environmental Court's construction of an ordinance unless it is clearly erroneous, arbitrary or capricious." (quotation omitted)). In light of the statutory language at issue and our precedent, we find that the Environmental Court was correct in ruling that the track is not prohibited, but reverse the court's ruling because landowners' particular motorbike track does not require a zoning permit as it is a de minimis incidental use of property.

^[2] ^[3] ^[4] ^[5] ¶ 8. The starting point for our inquiry is to

determine if landowners' use of their property falls within the ambit of the town's zoning regulations. We review zoning ordinances according to the general rules of statutory interpretation. *In re 232511 Investments, Ltd.*, 2006 VT 27, ¶ 7, 179 Vt. 409, 898 A.2d 109. Thus, we construe an ordinance's "words according to their plain and ordinary meaning, giving effect to the whole and every part of the **593 ordinance. If there is no plain meaning, we attempt to discern the intent from other sources without being limited by an isolated sentence." *Champlain College*, 2009 VT 55, ¶ 13, 186 Vt. 313, 980 A.2d 273 (citation and quotations omitted). "We adopt a construction that implements the ordinance's legislative purpose and, in any event, will apply common sense." *In re Lashins*, 174 Vt. 467, 469, 807 A.2d 420, 423 (2002) (mem.) (citation and quotation omitted). Furthermore, zoning laws are to be strictly construed in favor of property owners. See *Champlain College*, 2009 VT 55, ¶ 14, 186 Vt. 313, 980 A.2d 273.

¶ 9. Under Hinesburg's zoning regulations, a zoning permit must be obtained before engaging in any activity constituting land development or a substantial change in use. Town of Hinesburg Zoning Regulations [hereinafter Zoning Regulations] § 4.1.1 (2005) ("No person shall undertake any *land development* as defined in Section 9.1 of this Regulation or a *change in use* ... without a valid zoning permit issued by a Zoning Administrator." (emphases added)). The definition of land development includes "the construction, reconstruction, conversion [or] structural alteration ... of any building or other *structure*." Zoning Regulations § 9.1 (emphasis added). A zoning permit is specifically required when someone "[c]onstructs, places or relocates a structure" or "[s]ubstantially changes or expands the use of lands." *Id.* § 4.1.1(1), (2). Thus, there are two key questions to address: (1) whether the track was a structure and, if not, (2) whether it constituted a substantial change in the use of the property.

¶ 10. The zoning regulations define "structure" as "anything constructed, erected, or placed and which requires a fixed location on the ground in order to be used, including, but not limited to, a building in excess of 100 square feet, mobile home or trailer, signs, manure lagoons and pits, silos, tennis courts, and swimming pools with an area greater than 100 square feet." *Id.* § 9.1. It exempts "sidewalks, patios, driveways, utility poles, compost bins, steps, planters, fences, or temporary docks or floats" from the definition. *Id.*

¶ 11. In its decision, the Environmental Court relied on the size of landowners' backyard track as a decisive factor in ruling the track a structure. The court found specifically

that the area covered by the track was greater than 100 square feet and noted that "a sizeable amount of earth material was relocated on the property, specifically for the berms and the jumps and the like." These are certainly factors to be considered, but those findings alone cannot support a determination that the backyard track represented the type of structure contemplated by the town's zoning ordinance, particularly when considered in light of the significant differences between landowners' recreational *581 track and the types of structures requiring a permit specifically enumerated in the zoning regulations. To begin with, the structures contained in the list—which includes among other things buildings, mobile homes, tennis courts, silos, and pools larger than 100 square feet—all run the risk of altering the character of the property to a significant degree. Their construction would require the use of building materials such as concrete, asphalt, metal, or wood. In contrast with these structures, almost all of which would be of a semi-permanent nature and would need materials to be imported onto the property, landowners' track was created through the incidental erosive impact of the motorbikes' tires and the subsequent movement of dirt already located on the property. Second, many of the permit-requiring structures on the town's list either pose independent health and safety risks—as with manure lagoons—or create the potential for increased **594 vehicular traffic to and from the property, as would be the case with a mobile home. Here, there has been no suggestion that landowners' recreational moto-cross track threatens the health or safety of surrounding neighbors, nor does its private residential use threaten to increase vehicular traffic to and from the property. Ridership is, in fact, limited primarily to landowners' immediate family.

¹⁶¹ ¶ 12. The modifications to landowners' property are much more akin to those items specifically excluded from the zoning regulations' definition of "structure." Among other things, the zoning regulations exempt patios ("[a] surface built at grade without a foundation or pier support"), driveways, and sidewalks. Zoning Regulations § 9.1. As with a patio, driveway or sidewalk, landowners' backyard track rests directly atop the earth without a foundation and only required minimal excavation. Here, it is evident that the town did not intend to require a permit for a lightly modified motorcycle track essentially created by riding the bikes, which is only used privately and rests exclusively on landowners' property. To accept the Environmental Court's definition of structure would subject to zoning review a multitude of de minimis residential activities never intended to be covered by zoning regulations. Activities such as covering a pile of unsightly rocks with dirt, or clearing a private path for walking, hiking, or cross-country skiing, or terracing

garden beds larger than ten-feet by ten-feet would suddenly require municipal permission. This is not the purpose of the ordinance's language.

¹⁷¹ ¶ 13. Turning to the question of whether the track constitutes a substantial change in use, it is important to recognize that landowners would be able to ride their motorcycles anywhere on their own property—provided they complied with existing noise and nuisance performance standards—without a permit. The aggregation of dirt and tire-wear on their lawn does not constitute a substantial change. Indeed, the Environmental Court observed that, “if the track didn’t exist, absent some argument that’s not yet been made today in court, the same use of landowners’ property could be had possibly without a zoning permit, most likely without a conditional use approval.” It follows that if the track is not a structure for the purposes of zoning, landowners’ otherwise permissible use of their property does not become a “substantial change of use” absent facts not at issue in this case, e.g., making the track public or using it for commercial purposes.

¹⁸¹ ¶ 14. While this ends our direct inquiry, we note one final issue raised by neighbors. The Environmental Court correctly ruled that the track is not generally prohibited by the Hinesburg zoning ordinances. It erred, however, in reasoning that the track had to qualify as a permitted customary accessory use to a residential use or as a conditionally approvable *582 “ outdoor recreational facility.” While it is true that the town’s zoning regulations contain a restrictive clause indicating that all uses that are not expressly permitted are prohibited, Zoning Regulations § 2.1, we have recognized that such regulations **595 cannot be considered to be entirely exhaustive, given the breadth of novel land-development possibilities a municipal body may face. See In re Scheiber, 168 Vt. 534, 539, 724 A.2d 475, 478 (1998) (affirming that private shooting range was not a zoneable structure even when regulations were silent on the subject and zoning ordinance contained a restrictive clause); see also Town of Salem v. Durrett, 125 N.H. 29, 480 A.2d 9, 10 (1984) (recognizing “the impossibility of providing expressly by zoning ordinance for every possible lawful use”); Tanis v. Twp. of Hampton, 306 N.J.Super. 588, 704 A.2d 62, 68 (App.Div.1997) (ruling that restrictive clause alone was not enough to prohibit use not expressly contemplated in local zoning ordinance in part because of “the impracticality of defining in advance every permissible accessory use”).

¶ 15. Our ruling in *Scheiber* is instructive on this point. There, we determined that a landowner’s construction of a

shooting range, which included the removal of trees and construction of “an earthen backstop or berm,” did not require a zoning permit. *Scheiber*, 168 Vt. at 535, 724 A.2d at 476. We affirmed the trial court noting that “certain recreational activities, such as target shooting of the kind in question, are de minimis uses of private property which are neither regulated nor contemplated by the zoning regulations.” *Id.* at 539, 724 A.2d at 478. We based this holding, in part, on the understanding that the “primary purpose of zoning is to manage municipal and regional growth and development in an organized fashion, not to regulate the incidental recreational activities of private property owners.” *Id.* at 538, 724 A.2d at 478; see 24 V.S.A. § 4302(a) (purpose of Vermont Planning and Development Act to encourage appropriate municipal and regional development). Landowners here have sought recreational pursuits similar to those we approved in *Scheiber* and in some ways have made an even smaller impact. They have not felled any trees nor built any structures. Their track required minimal construction and no excavation or importation of materials, it is limited to personal family use, and it is essentially adjunct to an otherwise permissible recreation activity. We find no reason to believe it was contemplated for exclusion by the zoning regulations. That said, if use of the track expanded beyond family—certainly if it ever were used by the public—or if landowners chose to increase the track’s size or scope, it would likely be more closely considered a structure or a substantial change in use within the meaning of the Zoning Regulations.

¶ 16. In closing, we note that the primary source of friction between these neighbors revolves around the noise created by the motorbikes. All of landowners’ neighbors are entitled to quiet enjoyment of their property as much as landowners are entitled to the benefits of the recreational uses of their own. The balance between the parties’ competing conceptions of enjoyment is a difficult one, but *583 one that was struck in this case through the application of local noise-related performance standards, with which landowners appear to now be complying. See Zoning Regulations § 5.12 (“No land or building shall be used or occupied in any manner so as to create any dangerous, injurious, noxious, or objectionable hazards by nature of ... noise ...”). The town’s zoning regulations cannot now be used to exact further concessions from landowners’ recreational use of their motorbikes by making a zoneable mountain out of a private moto-cross track. If neighbors experience a problem with unreasonable noise from landowners’ track, they are well within their right to file a complaint in accordance with town’s noise performance standards **596 or request a specific change in the town’s zoning bylaws.

Reversed.

All Citations

Footnotes

- * Section 5.8.1(2) of the Zoning Regulations defines permitted customary accessory uses, in relevant part, as “customary uses incidental to residential use, such as private garages, garden houses, tool houses, playhouses.” Meanwhile, a conditionally approvable use must fall into one of thirteen categories. See Zoning Regulations § 3.3.3. Among these categories, the only one potentially applicable to the present case is “[o]utdoor recreational facilities, which do not require large support structures, such as fishing and hunting preserves, and cross-country ski trails.” *Id.* § 3.3.3(4).

End of Document

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COPY



CAMP VERDE MARSHAL OFFICE

Deputy Report for Incident V23000279

Nature: NOISE PROBLEM
Location: C3

Address: 1604 N RUSTLER TRL
CAMP VERDE AZ 86322

Offense Codes: NDTB
Received By: COOLEY, F How Received: T Agency: CVMO
Responding Officers: JENKINS, J, CLEVINGER, J
Responsible Officer: JENKINS, J Disposition: CLO 01/13/23
When Reported: 11:13:10 01/13/23 Occurred Between: 11:13:10 01/13/23 and 11:15:51 01/13/23

Assigned To: Detail: PUBL Date Assigned: **/**/**
Status: Status Date: **/**/** Due Date: **/**/**

Complainant:

Last: FAMBROUGH First: RITA Mid: MARIE
DOB: Dr Lic: Address: N RUSTLERS TRL
Race: W Sex: F Phone: City: CAMP VERDE, AZ 86322

Offense Codes

Reported: NDTB NOISE DISTURBANCE Observed: NDTB NOISE DISTURBANCE
Additional Offense: NDTB NOISE DISTURBANCE

Circumstances

LT20 RESIDENCE/HOME/CARE FACILITY
BDCA BODY CAMERA ACTIVATION

Responding Officers: Unit :
JENKINS, J P30
CLEVINGER, J P22

Responsible Officer: JENKINS, J Agency: CVMO
Received By: COOLEY, F Last Radio Log: 13:11:04 01/13/23 CMPLT
How Received: T TELEPHONE Clearance: CRO CLEARED, RESPONDING OFFICER
When Reported: 11:13:10 01/13/23 Disposition: CLO Date: 01/13/23
Judicial Status: Occurred between: 11:13:10 01/13/23
Misc Entry: J.Collins and: 11:15:51 01/13/23

Modus Operandi: Description : Method :

CAMP VERDE MARSHAL'S OFFICE
Prepared for public release:
03/31/2023 # 230

Involvements

Date	Type	Description	Relationship
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Narrative

CAMP VERDE MARSHAL'S OFFICE

646 S 1ST STREET
CAMP VERDE, AZ 86322
(928) 567-6621

Narrative:

On Friday, January 13th, 2023, at approximately 11:13 hrs, I responded to the area of N Rustler Tr in Camp Verde, AZ, for a noise complaint. The caller, Rita Fambrough, complained that her neighbors are riding dirt bikes in the back yard and playing loud music.

On arrival to the area I observed no obscene noise or unreasonably loud dirt bikes. I made contact with the home owner, Jennifer Martinez, and her next door neighbor, Jason Jenkins. I explained to Jennifer there was a complaint of loud music and dirt bikes. Jennifer explained she allows Jason and his daughter Lillie to ride dirt bikes in her back yard. The riding area is on the back end of the property away from the homes and street. Jason admitted he was playing music but had not changed the volume prior to my arrival. The music could be heard but from the front street I could not make out what song was playing or the lyrics. The audible volume of the music during my time of scene was neither disruptive nor unreasonable.

Rita approached from her home next door at N Rustler Tr in Camp Verde, AZ, and began complaining to Jason regarding the bike riding and music. Rita was upset and Deputy J. Clevenger P22 and myself separated the parties.

Dep. Clevenger followed Rita back to her home while I remained with Jason. Jason expressed his frustrations to be about the neighbors and recent complaints they have gotten from them. Jason said he understands his rights and knows there is no town ordinance in place for noise during daylight hours. I talked with Jason about what could be perceived as reasonable or unreasonable levels of noise. He acknowledged he understood and rationalized with the concerns of the neighbors but continually reaffirmed that he was not violating any town codes or state

laws. I confirmed Jason had no other questions or concerns and then left to reconvene with Dep. Clevenger and Rita who were now in Rita's backyard.

Rita was complaining this was an on going issue with Jason and Lillee riding their bikes, Rita's neighbor Dianne Calderon, and Rita's spouse, Wallace Tetreault, were now present in Rita's backyard. Rita stated the bike riding creates noise issues and causes there to be a lot of dust and dirt in the air which makes it hard for her to breath. Shortly thereafter, Jennifer came into her backyard and stood at the four foot high chain link fence separating the two properties. Jennifer began complaining to Rita that she is being harassed and they need to stop. Dep. Clevenger and myself remained on scene and kept the peace while Rita, Dianne, and Wallace aired their concerns with Jennifer and visa versa.

All parties were able to air their grievances against each other while myself and Dep. Clevenger were present. Rita became frustrated talking with Jennifer and decided to discontinue the conversation. Rita and Wallace returned to their home. Dianne appeared to have resolved her issues with Jason before she went home. Jennifer returned to her home and while I was leaving Jason went back to his home. All parties were separated at the time I cleared the scene.

It should be noted that this call appears to be related to a previous harassment claim by Jennifer on 01/10/2023, reference DR# V23000186.

Case status: Closed

Completed By:
J. Jenkins P30/779
Deputy Marshal

Responsible LEO:

Approved by:

Date

ENTITY INFORMATION

Search Date and Time: 5/12/2023 9:21:02 AM

Entity Details

SQUARE FOOT RENTALS LLC	Entity Name:
L17029823	Entity ID:
Domestic LLC	Entity Type:
Active	Entity Status:
8/22/2011	Formation Date:
In Good Standing	Reason for Status:
8/26/2011	Approval Date:
8/22/2011	Status Date:
Perpetual	Original Incorporation Date:
Any legal purpose	Life Period:
Arizona	Business Type:
10/12/2011	Last Annual Report Filed:
	Domicile State:
	Annual Report Due Date:
	Years Due:
	Original Publish Date:

10/12/2011

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Statutory Agent Information

Name:

Alexander Saloum

Appointed Status:

Active 2/19/2020

Attention:

Address:

Agent Last Updated:

2/19/2020

E-mail:

Attention:

Mailing Address:

County:

Maricopa

Principal Information

Title	Name	Attention	Address	Date of Taking Office	Last Updated
Member and Manager	HEAD HOLDINGS LLC		[REDACTED] Maricopa County, USA		6/20/2018

Page 1 of 1, records 1 to 1 of 1

Address 

Attention:

Address:

County: Maricopa

Last Updated: 2/19/2020

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Entity Principal Office Address

Attention:

Address:

County:

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AUG 10 2023

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ATTORNEYS AT LAW

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JAMES B. MUSGROVE (1940-2018)
GRANT K. MCGREGOR (1959-2005)

August 8, 2023

File No. 13685.001

VIA CERTIFIED MAIL

EMAIL (John.Knight@campverde.az.gov)

John Knight
Community Development Director, Town of Camp Verde
473 S. Main Street, Suite 108
Camp Verde, AZ 86322

Re: Appeal of Zoning Interpretation Record of Interpretation 2023-02

Dear Mr. Knight:

This law firm represents Jason Jenkins (“Mr. Jenkins”) concerning his appeal of your Zoning Interpretation 2023-02 (“Interpretation 02”). In his letter dated May 12, 2023 subject titled: Appeal of Zoning Interpretation Record of Interpretation 2023-02 (“May 12, 2023 letter”) hereby incorporated by reference, Mr. Jenkins eloquently and persuasively argued his constitutional rights were violated by lack of due process, and your decision was incorrect because it was based on erroneous facts and conflated issues. Considering Mr. Jenkins’ reiteration of the facts stated in his letter, the analysis he provided, and the legal precedent he presented, this law firm concurs with his conclusion that this case should be immediately dismissed and the decision overturned so as not to interfere with Mr. Jenkins’ lawful use of his property.

In addition to the due process violation and the erroneously based decision, after reviewing Mr. Jenkins’ letter, it is also apparent that, although not formerly stated, Mr. Jenkins also raised the legal issue of his vested rights in being able to continue use of his land as he has since he acquired the land, and he was correct to raise that issue. When Mr. Jenkins states in his letter:

By conflating a track that crosses 3 lots after being expanded, with the original track that existed for twenty years on one lot, the Director has ruled illegal any and all motorcycle tracks on private property in Camp Verde, unless they are permitted.

May 12, 2023 letter.

Mr. Jenkins was arguing, based on the legal theory of vested rights, that he has the right to continue to ride his motorcycle on his land, as he has since he purchased the property, and as the property was used prior to his purchasing it. He has put the board of adjustments on notice in his letter/notice of appeal, without the need to specifically state this legal theory.

In Arizona Supreme Court case *Neal v. City of Kingman*, the Court explains:

We do not believe, and we do not hold, that § 9-426.06(D) requires that the notice of appeal contain any "magic words" or comply with technical rules of court pleading. We are aware that, in many appeals of this type, including the one under consideration, the parties are not represented by counsel at the administrative level. While the statute does not require that the notice of appeal specify the precise legal theory or theories upon which an appellant relies, it must, in some fashion, give fair notice of what will be challenged on appeal. While this could often be done by referring to a legal theory, it could also be done by setting forth the facts which form the basis of the complaint and the nature of the complaint itself.

Neal v. City of Kingman, 817 P.2d 937, 169 Ariz. 133 (Ariz. 1991)

Mr. Jenkins gave fair notice of what he was challenging on appeal by setting forth the facts which form the basis of his complaint. In doing so, Mr. Jenkins is in a strong legal position to take up any adverse decision by the Board of Adjustments on at least three separate actionable issues on appeal to superior court via special action, and plans to do so should his rights continue to be infringed upon.

Lastly, Mr. Jenkins has been prejudiced by the delay of the setting of this hearing. It was originally set for July 11, 2023 and apparently moved to August 22, 2023 due to an error by the town not providing notice pursuant to A.R.S. § 9-462.04(A)(5). Mr. Jenkins had prepared for the original hearing, scheduling witness and supporters, now not knowing if he can successfully make the same preparations.

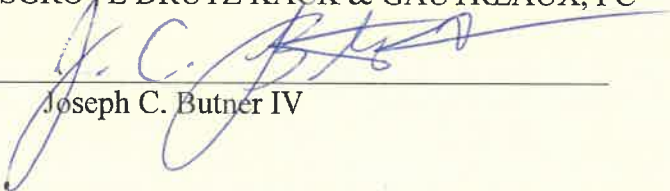
For the reasons stated above, and in conformance with Mr. Jenkins' notice of appeal, May 12, 2023 letter, this firm strongly recommends you immediately vacate the unnecessary upcoming hearing scheduled for August 22, 2023 and remedy the town's violation of Mr. Jenkins' constitutional rights in the same manner the county superior court, state appeals court, and or state supreme court would do, and dismiss this case with prejudice. Should you decide to go forth with a hearing before the board of adjustments, let this letter also serve as notice of appearance on behalf of Mr. Jenkins notifying the board that Mr. Jenkins will be represented by counsel undersigned below.

Please feel free to contact me concerning this matter.

Sincerely,

MUSGROVE DRUTZ KACK & GAUTREAUX, PC

By


Joseph C. Butner IV

JCB/ch

Community Development Director
August 8, 2023
Page 3

cc: Client, VIA EMAIL

Barbara.goodrich@campverde.az.gov

Ted.soltis@gmail.com

Virginia.Jones@campverde.az.gov (request clerk forward to Mayor and Town Council Members)

Attachment C

Pierce-Coleman Response To Due Process Question Raised by Applicant



PIERCE | COLEMAN

7730 E. Greenway Road, Suite 105
Scottsdale, Arizona 85260

2812 N. Norwalk, Suite 107
Mesa, Arizona 85215

Justin S. Pierce
Stephen B. Coleman
Aaron D. Armon
Trish Stuhan
Christina Estes-Werther
Jon M. Paladini
Dominic L. Versteegen
Allen H. Quist
Michelle N. Stinson

June 7, 2023

Board of Adjustment & Appeals
Town of Camp Verde
473 S. Main Street, Suite 108
Camp Verde, AZ 86322

Re: Jenkins Appeal of Zoning Interpretation
Due Process Claim

Dear Camp Verde Board of Adjustment & Appeals:

In his appeal of the Zoning Administrator's interpretation of the Zoning Ordinance, Mr. Jenkins claims that his due process rights were violated. Because this claim is strictly a legal claim, this firm has been asked to provide the Board with an analysis of the claim. In short: Mr. Jenkins has failed to establish a violation of his due process rights.

Article II, § 4 of the Arizona Constitution protects against deprivations of life, liberty, or property without due process of law. ARIZ. CONST. art. II, § 4. It is first important to note that Mr. Jenkins' due process claim is principally flawed since he has not been deprived of any property right (and certainly not deprived of life or liberty). Pursuant to Section 3-2-5 of Camp Verde's Town Code, John Knight, as Zoning administrator, is authorized and empowered to issue interpretations of the Town Zoning Code. He did so when he analyzed Section 203(B) of Camp Verde's Zoning Code.

When Mr. Jenkins appealed that interpretation, all proceedings and enforcement were stayed. CAMP VERDE, ARIZ., PLAN. & ZONING ORDINANCES AND SUBDIVISION REGUL. § 602(B)(3) (2021). Camp Verde continues to withhold enforcement pending the Board of Adjustment's decision as prescribed by Camp Verde's Zoning Code. *Id.* Therefore, Mr. Jenkins has not been deprived of his property.

The fundamental requirement of due process is the *opportunity to be heard* at a meaningful time and in a meaningful manner. *See, e.g., Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Huck v. Haralambie*, 593 P.2d 286, 288 (Ariz. 1979); *Watahomigie v. Arizona Bd. of Water Quality Appeals*, 887 P.2d 550, 557 (Ariz. Ct. App. 1994).

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Title 9 of the Arizona Revised Statutes outlines the procedure for municipal zoning ordinance interpretations and appeals. ARIZ. REV. STAT. §§ 9-462 to 462.09. First, a municipality’s legislative body must appoint a zoning administrator, who is entrusted with enforcement and interpretation of zoning regulations. ARIZ. REV. STAT. § 9-462.05(C) (“the legislative body *shall* establish the office of zoning administrator”) (emphasis added).

As a check on the zoning administrator’s interpretation authority, municipalities must also establish a Board of Adjustment, who has the authority to hear and decide appeals of the zoning administrator’s decisions. ARIZ. REV. STAT. § 9-462.06 (“the legislative body, by ordinance, *shall* establish a board of adjustment”) (emphasis added). In sum, the opportunity to be heard, as required by due process, is afforded through an appeal to the Board of Adjustment after the zoning administrator issues an interpretation of a zoning regulation.

Camp Verde properly followed these procedures. Mr. Knight issued an interpretation of Section 203(B) of the Town’s zoning code. Mr. Knight, applying his knowledge, expertise, and experience, concluded that Mr. Jenkins’ motocross track did not qualify as an accessory use to his R1 single-family residential dwelling. In Mr. Knight’s interpretation, he specifically explained the process of appealing before the Board of Adjustment. By appealing, Mr. Jenkins is afforded his right to be heard as required by due process.

Mr. Jenkins also incorrectly argues that Camp Verde violated this procedure by failing to appoint a hearing officer. The Arizona Revised Statutes explain that municipalities may, but are not legally required to, appoint a hearing officer to conduct hearings on zoning ordinances. ARIZ. REV. STAT. § 9-462.08 (“[t]he legislative body of any municipality *may* establish the position of hearing officer”) (emphasis added).

Mr. Jenkins cites an Arizona Supreme Court case, *Horne v. Polk*, 394 P.3d 651, 653 (Ariz. 2017) to support his claim that Camp Verde violated his due process rights.

In the *Horne* case, Yavapai County Attorney Sheila Polk was appointed as Special Attorney General to investigate whether various public officials had violated Arizona campaign finance laws. *Id.* Following her investigation, Ms. Polk issued a finding that the officials had violated the campaign finance laws and ordered them to refund unlawful contributions. *Id.* In response, the accused officials requested a hearing before an Administrative Law Judge (ALJ). *Id.* at 654. Ms. Polk personally participated in the prosecution of the case before the ALJ “by assisting with preparation and strategy.” *Id.* When the ALJ recommended that Ms. Polk vacate her findings, Ms. Polk instead issued a final determination rejecting the ALJ’s recommendation, a power she had under ARIZ. REV. STAT. § 41-1092.08(B). *Id.* Ms. Polk’s final determination was ultimately appealed to the Arizona Supreme Court, which held that “due process does not permit the same individual to issue the initial decision finding violations and ordering remedies, participate personally in the prosecution of the case before an [ALJ], and then make the final agency decision that will receive only deferential judicial review.” *Id.* at 653. The Court reasoned that the combination of these functions in a single official denied the officials’ due process rights to a neutral adjudication. *Id.* at 655. That denial was amplified by the fact that Ms. Polk’s decision was subject only to deferential review. *Id.*



Mr. Jenkins points to the *Horne* case to conclude that Mr. Knight violated his right to due process by investigating a complaint and issuing a zoning interpretation. The roles of Ms. Polk and Mr. Knight differ dramatically. Ms. Polk’s role prompted her to issue an *order* after her investigation. *Id.* at 653. Meanwhile, Mr. Knight’s investigation prompted him to issue an *interpretation* after his investigation.

Mr. Knight’s interpretation *is far from a final decision*, which he emphasizes in his interpretation by explaining his decision will not be effective for thirty days. Moreover, Ms. Polk personally participated in the appeals process by assisting the prosecution. *Id.* at 654.

On top of this, Ms. Polk had the discretion to accept or reject the ALJ’s decision. *Id.* Although Mr. Knight will present his findings and conclusions to the Board in Mr. Jenkins’ appeal, Camp Verde’s zoning code explicitly provides *that the Board of Adjustment independently decides appeals from decisions of the zoning administrator.*

Unlike Ms. Polk in the *Horne* case, Mr. Knight does not have the discretion to accept or reject the Board of Adjustment’s decision. Rather, Camp Verde’s zoning code explains that an aggrieved party may appeal the decision of the Board of Adjustment in the Yavapai County Superior Court. CAMP VERDE, ARIZ., PLAN. & ZONING ORDINANCES AND SUBDIVISION REGUL. § 602(B)(4) (2021). Mr. Knight does not act as the accuser, prosecutor, and final decision-maker. *Horne* is fundamentally different from the present case.

Mr. Knight and the Camp Verde staff complied with both the Town Code and the Arizona Revised Statutes. Mr. Jenkins will be afforded the opportunity to be heard in a meaningful manner before the Board of Adjustment. It can sometimes be a difficult task to review and interpret Town Code zoning requirements, but Mr. Knight acted in his role as zoning administrator to make a reasonable interpretation according to his training and experience. This body – the Board of Adjustment – is now tasked with review of that decision, acting in a quasi-judicial capacity to ensure the property owner’s due process rights are protected. That process complies with state law and due process requirements.

Please let us know if you have any further questions about the due process contentions. With regard to the separate claims regarding the substantive analysis of Mr. Knight’s interpretation, included as an attachment to this letter are summaries of the additional authorities provided by the property owner. The Town Attorney’s Office reminds the Board of Adjustment that the Board of Adjustment is the arbiter of the appeal and provides summaries of the cases cited to assist in the Board’s analysis. Again – this is a Board decision. The Town and its staff thank you for your service.

Very truly yours,

Trish Stuhan
For the Firm

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Enclosure: Case Summaries

SUPPLEMENTAL INFORMATION:
ACCESSORY USE INTERPRETATION – CASE SUMMARIES

Because Mr. Jenkins provided the Board with certain appellate court cases in support of his appeal, this office is providing the Board of Adjustment with summaries of the cases cited as well as other cases that may help the Board reach a conclusion that is sound and well-reasoned.

When reviewing the case summaries below, the question you should ask yourself is whether the facts and reasoning of the cases are similar to or different from the facts and reasoning in this appeal. Is the case so similar that it allows you to reach the conclusion as the Court did in its case? Or, are the facts and reasoning too different to this appeal to be helpful in your decision making?

Mr. Jenkins property currently falls within an R1 district under section 203(B) of Camp Verde's zoning code, which provides that "[t]he R1 District is intended for single-family residential living, site-built, modular or manufactured housing." CAMP VERDE, ARIZ., PLAN. & ZONING ORDINANCES AND SUBDIVISION REGUL. § 203(B) (2021). The Town's zoning code outlines various permitted uses and structures, including "[o]ther accessory uses commonly associated with primary permitted use." CAMP VERDE, ARIZ., PLAN. & ZONING ORDINANCES AND SUBDIVISION REGUL. § 203(B)(2)(k) (2021). An accessory use is defined as "[a] use of land or of a building or portion thereof customarily incidental and subordinate to and located on the same lot with the principal use." CAMP VERDE, ARIZ., PLAN. & ZONING ORDINANCES AND SUBDIVISION REGUL. § 103 (2021). Mr. Jenkins contends that his motocross track falls within this definition of accessory use, making it a permitted use on his R1 District property.

Mr. Jenkins cites *Town of Paradise Valley v. Lindberg*, 551 P.2d 60 (Ariz. Ct. App. 1976) to support his proposition that a motocross track is "'incidental' and 'subordinate' to the primary use of a single-family residential use." (Appeal of Zoning Interpretation, Page 6). In *Lindberg*, a homeowner sought to construct a ninety-foot amateur radio tower in the middle of his five-acre parcel of land, which was zoned for single-family dwellings. *Id.* at 60. The homeowner applied for a special use permit after being advised that the tower was not a permissible accessory use; however, his application was quickly rejected. *Id.* Ultimately, the Arizona Court of Appeals held that the construction of the tower was in fact an accessory use to the permitted use of a single-family dwelling and therefore did not require a permit. *Id.* at 61. The Court reasoned that such a use, although unusual, was becoming increasingly popular and could be considered a family hobby. *Id.* at 62 (relying on *Dettmar v. Cnty. Bd. of Zoning Appeals*, 273 N.E.2d 921, 922 (Ct. Com. Pl. 1971)). Therefore, it was deemed a customarily incidental accessory use. *Id.*

The question for the Board is: are the facts and reasoning of this case similar enough to the facts of this appeal so that the Court's conclusion helps the Board make a decision?

Additionally, it is important for the Board to know that the Arizona Court of Appeals has applied a different test than the one used in *Lindberg* and explicitly declined to follow *Lindberg*. See *Redington Ranch Associates v. Redman*, 737 P.2d 808, 809 (Ariz. Ct. App. 1987); *Sharp v. Cnty. of Pima*, No. 2 CA-CV 2004-0162, 2005 WL 6527090, at *4 (Ariz. Ct. App. June 6, 2005).

In *Redington*, the Court of Appeals considered whether a homeowner's use of a helicopter on his single-family residential property constituted a permissible accessory use, which was defined as "a use customarily incidental and subordinate to the principal use." 737 P.2d at 808–09. Believing that the *Lindberg* test focused only on whether a use was incidental, thereby reading the "customarily" requirement out of the ordinance, the Court declined to follow the *Lindberg* holding. *Id.* at 809.

Instead, the Court interpreted the ordinance using the rules of statutory construction, which is commonly used by Arizona courts. *See, e.g., Glazer v. State*, 423 P.3d 993, 995 (Ariz. 2018); *SolarCity Corp. v. Ariz. Dep't of Revenue*, 413 P.3d 678, 681 (Ariz. 2018); *Silk v. Blodgett*, No. 1 CA-CV 22-0506, 2023 WL 3591158, at *2 (Ariz. Ct. App. May 23, 2023).

Specifically, Arizona courts interpret statutes with the goal of effectuating the legislature's intent, which is best indicated by the statute's plain language read as a whole. *Glazer*, 423 P.3d at 614. Entirely reading "customarily" out of the statute, as the Court did in *Lindberg*, did not effectuate the legislature's intent. *See Redington*, 737 P.3d at 809.

The Court in *Redington* interpreted "*customarily incidental use*" to mean a common, incidental use and focused on the general purposes of zoning laws. *Id.* Under that interpretation, the Court concluded that while the use of a helicopter on a single-family residential property may be incidental to its principal use, it was uncommon. *Id.* The Court further reasoned that allowing the use of a helicopter on one property would be construing the code to allow all residences to use helicopters, which could have tremendous effects on noise, privacy, and safety. *Id.* Therefore, it was not a valid accessory use. *Id.*

Mr. Jenkins also cites *State v. Owens*, 562 P.2d 738 (Ariz. Ct. App. 1977) to support his assertion that Arizona courts flexibly interpret "accessory use." (Appeal of Zoning Interpretation, Page 7). The *Owens* case was a criminal prosecution of a zoning code violation. In that case, Owens was charged and convicted of violating Phoenix's prohibition on maintaining "a non-permitted use in a residential zone to wit: Outside storage of motor vehicles and junk." 562 P.2d at 739. The Court reversed the defendant's conviction, reasoning that the use of general language like "accessory use" in an ordinance imposing criminal liability violated the basic rule that offenses must be defined in terms easily understood by persons of average intelligence. *Id.* at 740.

Finally, Mr. Jenkins cites *In re Laberge Moto-Cross Track*, 189 Vt. 578 (Vt. 2011). In *Laberge*, landowners created a three- to four-foot-wide motocross track with a series of "earthen jumps and berms" using the property's existing dirt and rocks. *Id.* at 578. The landowners gradually developed the track over the course of eight years and invited friends, family, and guests to use the track. *Id.* At the time of the controversy, the track stretched across one acre of land (about one half mile) and came within fifty feet of the neighbors' property line. *Id.* at 579. The Vermont Supreme Court considered whether the track constituted land development or a substantial change in use, both of which required zoning permits under the Town's zoning regulations. *Id.* at 579–80.

Using the rules of statutory interpretation, the Court concluded that the term "land development" referred to the construction of a structure that required the use of building

materials like asphalt, concrete, wood, or metal. *Id.* at 581. Since the landowners' built their track using preexisting dirt and rocks, the Court deemed the track a "de minimis recreational activit[y]." *Id.* The Court similarly concluded the track did not constitute a substantial change in use because no formal structure was built, and the track was neither publicly accessible nor being used for commercial purposes. *Id.* The Court also appreciated the fact that the landowners made "substantial efforts" to reduce the track's noise and comply with the Town's noise-related standards. *Id.* at 583. Because of those efforts, the Court further felt the motocross track did not pose a threat to the health and safety of neighbors, since its use was limited. *Id.*

The question for the Board is the applicability of the Vermont court case to the question before the board, i.e., is Mr. Jenkins' motocross track an *accessory use* under the Camp Verde Zoning Code?

Staff and legal counsel for the Town will be available to answer questions or discuss these issues with the Board. But it is ultimately the Board's purpose in this appeal to use its best judgment, based on the law and the facts, to determine whether to uphold or overturn the Zoning Administrator's interpretation. The standard applied to the Board in making this decision is whether the Board's decision is reasoned, sound and sensible, and not arbitrary and capricious. The Town appreciates the Board's hard work in rendering its decision whether to uphold, deny, or modify the interpretation.

Attachment D

Sections 600, 601 and 602

2011 Planning and Zoning Ordinance



Planning & Zoning Ordinances And Subdivision Regulations

PART SIX. ADMINISTRATION AND PROCEDURES

SECTION 600 - DEVELOPMENT DECISION AUTHORITY

A. Introduction and Purpose

Development regulations are applied by the Town of Camp Verde in accordance with the Arizona Revised Statutes and procedures adopted herein.

The purpose of Part Six is to provide equitable, uniform processes for all persons to avail themselves of the Town's Planning & Zoning Ordinance. Part Six specifies the authority, responsibility and manner for making and evaluating development applications, rendering decisions, enforcing regulations and assuring open, public participation pertaining to the Camp Verde Planning & Zoning Ordinance.

B. Applicability

These procedures shall apply to:

1. All properties located in the Town to which the State's municipal planning and zoning enabling legislation extends; and
2. Any person or entity:
 - a. Owning land for which development entitlement or permit is sought, or who may be affected thereby, such as, but not limited to: zoning amendment, Use Permits, subdivision approval, site planning, and adjustments to otherwise applicable development regulations; or
 - b. Responsible for improvement, maintenance, prevention of hazard and general observance of the requirements of this Zoning Ordinance.

C. Town Council

As the governing body, the Town Council determines and oversees Town development policies for consistency with the adopted General Plan, considering public testimony, recommendations from the Planning and Zoning Commission or other advisory bodies, and staff where applicable. Council exercises the Town's legislative authority.

1. The Town Council, responsible for considering and acting upon applications for development entitlements may, from time to time, after public hearings and Planning and Zoning Commission report as prescribed herein, amend, supplement or change zoning boundaries, zoning text or subdivision text regulations. Any such proposed amendments may be initiated by the Planning and Zoning Commission, the Town Council or by application of property owners.
2. Council exercises final decision-making authority on recommendations received from advisory bodies or staff pertaining to applications including, but not limited to:
 - a. Use Permits; and
 - b. Subdivision plats.
3. Council appoints development guidance advisory bodies, the Planning and Zoning Commission (See Section 600D), with a membership of seven members, and the Board of Adjustment and Appeals (See Section 600E), with a membership of five members, appointed for terms of three years as stated in Article 4-1 of The Town Code.
 - a. The Council shall establish regular meeting dates, times and meeting place by Resolution in January of each year for the Commission and Board. The Chair of either body may schedule special meetings and work sessions subject to approval by the Town Manager.
 - b. Meetings of the Commission and Board are held as stated in Article 4-3 of the Town Code and shall be open to the public, with minutes of its proceedings, showing the votes of each member and records of its determinations, recommendations and other official actions kept and filed in the Community Development Department as a public record. The secretary of the Commission and Board shall be a member of the Community Development Department staff.
 - 1) For the Planning and Zoning Commission, at least four members shall be present to conduct a meeting.
 - 2) For the Board of Adjustments and Appeals, at least three members shall be present to conduct a meeting.
 - 3) In the event a quorum of four members or three members, respectively, are the total members present, then a unanimous vote must be cast to recommend approval or denial.

D. Planning and Zoning Commission

1. The Planning and Zoning Commission, established by Ordinance 87-A12 of the Town of Camp Verde, serves as the advisory body to Town Council on planning, zoning and zoning ordinance matters. The Commission, in particular, provides recommendations to Council on Zoning Ordinance amendments, Use Permits, General Plan Amendments, Preliminary Subdivision Plats and related considerations pertaining to Council's exercise of legislative authority.
2. Before any Zoning Ordinance text or rezoning amendments or Use Permits shall be considered by the Town Council, the request or amendment shall first be referred to the Planning and Zoning Commission for public hearing, report and written recommendation. The Commission's report shall include the reasons for its recommendation, based on its vote following the public hearing, and be transmitted to the Town Council in such form and manner as may be specified by the Town Council.
3. Upon receipt of Commission's report, the Council shall consider the recommendation on a Council Hears Planning & Zoning matters agenda as a:
 - a. public hearing item; or
 - b. consent agenda item to adopt the recommendation of the Planning and Zoning Commission without holding a second public hearing provided there is no request for public hearing or other protest from any member of the public or Town Council, in which event a public hearing will be held.

4. The Planning and Zoning Commission reviews Preliminary Subdivision Plats at their regular public meetings. The Commission's recommendations are forwarded to the Council for action.
5. In the event an item voted on fails to receive the required number of votes for approval, the item will be forwarded to the Council with a recommendation for denial. Nothing in this paragraph will prevent the Commission from continuing or tabling an item, unless specifically directed by the Town Council to vote on an item pursuant to 6. below.
6. The Town Council, by majority vote, may compel the Planning and Zoning Commission to place an item on a specific agenda for a vote.

E. Board of Adjustment and Appeals

The Board of Adjustment and Appeals, established by Ordinance 89-A33 of the Town of Camp Verde, serves in a quasi-judicial capacity, hearing and deciding appeals from the decision of the Community Development Director, or designee, pursuant to (Ord. 95-A107) and ARS 9-462.06, as may be amended.

Duties of the Board of Adjustment and Appeals, as set forth in ARS 9-462.06, include:

1. Hear and decide appeals in which it is alleged there is an error in an order, requirement or decision made by the Community Development Director, or designee, in the enforcement of the Zoning Ordinance by reversing or affirming, wholly or in part, or modifying the order, requirement, decision appealed from and make such order, requirement, or decision or determination as necessary.
2. Hear and decide appeals for variances from the terms of the Zoning Ordinance in accordance with the requirements and criteria of Section 602-A.

F. Administrative Authority

The Camp Verde Community Development Department is primarily responsible for the day-to-day administration of the Zoning Ordinance, Subdivision Regulations and other development-related regulations or guidelines.

The Community Development Director, or designee, coordinates with other Town departments, agencies and organizations participating in the planning and development process, and oversees and provides assistance to members of the public regarding the following:

1. Receiving applications, materials and fees pertaining to the filing of requests for zoning amendments, site plans, Use Permits, land divisions, subdivision plats, Temporary Use Permits, appeals to the Board of Adjustment and Appeals and other procedures set forth herein;
2. Rendering administrative decisions as herein specified, such as, but not limited to, Temporary Use Permits and non-conforming use determinations;
3. Participating in arrangements for public notice and hearings;
4. Assisting applicants and other interested parties in conducting citizen participation processes, preapplication conferences, and informal advisory consultations; and
5. Providing such other development process facilitation as may be required, in addition to providing information to the general public.

SECTION 601 - ZONING DECISIONS

A. Zoning Ordinance Amendment Applications and Hearings

Any amendment to this Zoning Ordinance, which changes any property from one zone to another, imposes any regulation not previously imposed, or which removes or modifies any regulation previously imposed shall be adopted in the manner set forth in this section.

1. **Applications for Zoning Ordinance text amendments, rezoning amendments, Use Permits, or other requests** requiring Town Council approval shall be filed in the office of the Community Development Department on a form provided, along with such supplemental information required by the Department, and shall be accompanied by a fee established by approval of the Town Council. No part of any such fee shall be refundable after an application is filed and such fee paid, except at the discretion of the Town Council.
 - a. The Planning and Zoning Commission shall hold a public hearing within 90 days of the date of a complete application submittal. After such hearing the Council may adopt the recommendation of the Planning and Zoning Commission without holding a second public hearing provided there is no objection, request for public hearing or other protest.
 - b. The Town Council shall hold a public hearing if requested by the party aggrieved, any member of the public or of the Town Council, or in any case, if no public hearing has been held by the Planning and Zoning Commission.
2. **Notice of the time and place** of Council or Commission hearing shall be given in the time and manner provided for:
 - a. Notice of public hearing before the Commission or Council for all amendments to the Zoning Ordinance text, the zoning map, Use Permits, or other requests, shall be done in accordance with the provisions of Arizona Revised Statutes 9-462.04 as they exist now or as they are amended from time to time. Such notice includes at a minimum the posting and publishing of public hearing notices as specified in the statute.
 - b. Written protests of any recommendation action taken by the Commission shall be filed in the office of the Community Development Department before noon on the Monday of the week preceding the Council meeting at which such amendment will be considered. If such written protest constitutes twenty percent (20%) or more of the immediate area involved in a request for rezoning as specified in ARS 9-462.04.H, as may be amended, a favorable vote of three-fourths of the Council shall be required.
 - c. A decision made by the Council involving rezoning of land which is not owned by the Town and which changes the zoning classification of such land may not be enacted as an emergency measure and such a change shall not be effective for at least 30 days after the final approval of the change in classification by the Council.
 - d. In the event an application has been denied by the Council, the Commission shall not consider a similar application within 12 months of the application date.
3. **Citizen review and participation process** is required for all zone change applications or Use Permit applications:
 - a. Prior to any public hearing, the applicant or an appointed representative shall arrange a meeting with the planning staff which identifies development issues as well as arrangements and scheduling for the neighborhood meeting described in subsection b below.

- b. The applicant or an appointed representative shall conduct a neighborhood meeting designed to inform adjoining residents and property owners about the proposed zone change, specific plan application or Use Permit.
 - c. At least 15 days prior to the scheduled neighborhood meeting, the applicant shall notify all property owners within 300 feet of the subject site by first class mail and post the actual property with meeting date and time. The notification shall include the date, time and place for the neighborhood meeting, as well as a description of the proposed land uses. The applicant shall provide an affidavit attesting to this notification being accomplished.
 - d. It is the responsibility of the applicant or their representative to conduct the meeting, provide an opportunity for a question and answer period by the audience, and identify a point of contact to the public for follow-up questions and comments.
 - e. The applicant shall prepare a written summary of the meeting by way of affidavit, including a list of attendees and the issues and concerns discussed and submit a copy of the summary, with a photo of the posting on the property and a copy of the meeting announcement letter, to the Planning Department within 15 days after the neighborhood meeting.
4. **Zoning Ordinance text amendments:** If the Town adopts any zone change or any amendment that imposes any regulation not previously imposed or that removes or modifies any such regulation previously imposed, it must comply with the citizen review process as set forth in ARS §9-462.03, as may be amended, and the public hearing notice procedures set forth in ARS 9-462.04.A as may be amended.

B. Site Plan Review and Development Standards

Key to obtaining compliance with the regulations of this ordinance and achieving the objectives of the Town's General Plan is the administrative review of Site Plans for new development as regulated in Part 4 Development Standards. The Site Plan entails preparation of drawings for proposed uses and buildings that conform to the Development Standards, depicting adequate grading/drainage and Appearance Compatibility (Section 402), landscape and screening (Section 402), parking and loading (Section 403), signs (Section 404) and outdoor lighting (Section 405) as required in these regulations.

The Site Plan Review process is administered by the Community Development Department in conjunction with other Town departments. The Community Development Director is authorized to approve minor modifications to strict adherence of zoning regulations due to physical constraints of the project site. Appeals may be scheduled for hearing by the Board of Adjustment and Appeals. Major development projects may also be referred to the Commission and Council for a hearing, review and approval, which hearing and review process is mandatory if so stipulated by prior Council action such as rezoning or PAD approval.

For non-residential and multi-family developments as described in Section 400B, additional review of Appearance Compatibility Drawings is required (Section 402 C). Appearance Compatibility Drawings are reviewed by Town staff simultaneously with the Site Plan Review process, in accordance with the process specified in Section 400C.

C. Use Permit Approvals

Use Permits are provided to ensure the orderly use of land in conformance with the General Plan and applicable Town standards where uses are proposed that may require special limitations or conditions to provide compatibility with other uses. The application for Use Permit approval is applicable to those uses that are specifically listed as "Uses and Structures Subject to Use Permit" in each Zoning Use District in Part Two Section 203.

1. Review and Approval

- a. Use Permits will be granted only upon a finding by the Council that the use covered by the permit, the manner of its conduct, and any structure which is involved, will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general, and that the use will be in conformity with any conditions, requirements, or standards prescribed by the Town Code or Council.
- b. Use Permits may contain specific limitations on the scope, nature and duration of the use, as deemed proper in accordance with the following criteria:
 - 1) Any significant increase in vehicular or pedestrian traffic;
 - 2) Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat, or glare at a level exceeding that of ambient conditions;
 - 3) Contribution to the deterioration of the neighborhood or to the downgrading of property values which, is in conflict with goals, objectives or policies of the General Plan;
 - 4) Compatibility with existing surrounding structures and uses; and
 - 5) Adequate control of disruptive behavior both inside or outside the premises, which may create a nuisance to the surrounding area or general public.
- c. The burden of proof for satisfying the above requirements shall rest with the applicant. A refusal of a Use Permit shall not be interpreted as the denial of right, conditional or otherwise.
- d. Where an application involves a definite development scheme, the applicant must submit a layout and landscape plan, building elevations and other pertinent data as may be requested, and the Council may condition the Use Permit to fully carry out the provisions and intent of the Zoning Ordinance.
- e. The Use Permit is valid and operable only for the specific use as granted and subject to any specified time limit. No use may be modified, changed, altered or increased in intensity, in any manner that conflicts with the Use Permit and/or required conditions of approval, without approval of a new Use Permit.

Within 30 days of any change, permittees shall notify the Community Development Department of any changes.

2. Duration and Voiding of Use Permit

- a. To secure the objectives of this Zoning Ordinance, Use Permits may be for a fixed time period, and a Use Permit does not grant a vested right beyond the term of the permit.
- b. The permittee must obtain building permits within six months from the date the Use Permit was issued. Failure to obtain a building permit or begin the use shall void the permit unless a delay to start the construction has been granted or an extension has been applied for with the Community Development Director prior to the expiration of the six-month period. Additional extensions must go to Council.
- c. If the use or uses for which a Use Permit has been granted are discontinued for a continuous period of six months, the Use Permit is voided.
- d. Violation of the terms of the Use Permit or this Zoning Ordinance voids the Use Permit.
- e. Decisions by the Community Development Director, which result in the voiding of the Use Permit, may be appealed to the Board of Adjustment and Appeals; subject to an application for appeal being on file in the Community Development Department within 30 days of notification of the Use Permit being voided.

D. Temporary Use Permits

Temporary Use Permits are provided through administrative review and approval to facilitate short- or restricted-term uses (such as, but not limited to: tents, carnivals, charitable events or similar uses/structures for public assembly in non-residential districts; and construction- or sales-related offices, storage yards or similar facilities including model homes, and sales stands of crops or agricultural products produced on-site in any District).

1. Temporary Use Permits may be granted by the Community Development Director or designee, after review by health and safety departments or agencies, and upon findings that the use and the manner of its conduct will not, considering its limited duration, be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general, and that the use will be in conformity with any conditions, requirements or standards prescribed by the Town Code or Council.
2. Approval may be conditioned by specific stipulations as to duration, conduct, mitigation of potentially detrimental effects and such other considerations as may be prudent for protection of the neighborhood and community.
3. Violation of the terms of the Temporary Use Permit approval constitutes grounds for its immediate revocation.
4. Decisions by the Community Development Director which result in the disapproval of a Temporary Use Permit may be appealed to the Board of Adjustment and Appeals, subject to an application for appeal being on file in the Community Development Department within 30 days of notification of the Community Development Director denial of the Temporary Use Permit application.

SECTION 602 - ZONING ADJUSTMENTS

Zoning matters decided by the Board of Adjustment and Appeals are intended to apply to specific properties or actions. Such decisions are not regarded as strict precedents; however, they may be considered in future matters under similar circumstances.

A. Variances

1. A variance from the Planning and Zoning Ordinance shall not be granted by the Board unless and until a public hearing has been conducted pursuant to Section 602. C, and until the property owner in a written appeal and at the public hearing demonstrates and the Board finds that all criteria required by subsections a. through e. have been met:
 - a. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same District;
 - b. That literal interpretation of the provisions of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same District under the terms of the Zoning Ordinance;
 - c. That the alleged hardships caused by literal interpretation of the provisions of the Zoning Ordinance include more than personal inconvenience and financial hardship and do not result from actions that are self-imposed or for economic gain by the applicant;
 - d. That granting the variance requested will not confer upon the applicant any special privilege that is denied by the Zoning Ordinance to other lands, structures or buildings in the same District; and

- e. That granting the variance requested will not interfere or injure the rights of other properties in the same District.
2. The Board MAY NOT:
 - a. Make any changes in the uses permitted in any zoning classification or zoning District, or make any changes in the terms of the Zoning Ordinance, provided the restriction in this paragraph shall not affect the authority to grant variances pursuant to this article.
 - b. Grant a variance if the special circumstances applicable to the property are self-imposed by the owner.

B. Appeals from Administrative Decisions

The Board, on deciding appeals from decisions of the Community Development Director (Zoning Administrator), is responsible for interpreting the meaning and equitable application of the Zoning Ordinance.

1. Appeals to the Board may be filed by persons aggrieved or by any officer, department, board or bureau of the Town affected by a decision of the Community Development Director, within a period of 45 days by filing, in writing, with the Community Development Director and with the Board, a notice of appeal specifying the grounds thereof.
2. The Community Development Director shall immediately transmit all records, pertaining to the action appealed, to the Board.
3. An appeal stays all proceedings in the matter appealed, unless the Community Development Director verifies to the Board after the notice of appeal is filed, that by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. Upon such certification, proceedings shall not be stayed other than by a restraining order granted by the Board or by a court of record on application and notice to the Community Development Director.
4. A person aggrieved by a decision of the Board, or a tax payer or municipal officer may, at any time within 30 days after the Board has rendered its decision, file a complaint in the Superior Court to review the decision. Filing of the complaint shall not stay proceedings upon the decision appealed, but the court may, on application, grant a stay, and on final hearing may reverse or affirm wholly or partly, or may modify the decision received.

C. Hearings

The Board shall fix a reasonable time for the public hearing of an appeal; and shall give public notice thereof, by both publication in a newspaper of general circulation in accordance with ARS 9-462.04 as it exists now or as it is amended from time to time, and by posting notices in conspicuous places close to the property affected, as well as due notice to the parties in interest, including first class mail notice to all owners of record of properties located within 300 feet of the subject property.

1. At the public hearing, any applicant may appear in person or by representative, and may present their appeal orally or by documentary materials, and submit rebuttal as may be necessary.
2. The chair shall have the power to administer oaths and take evidence in accordance with ARS 9-462.06, as may be amended.
3. The Board shall reach its decision within a reasonable time.

Attachment E

ARS 9-462.06 Board of Adjustment,

ARS 28-1171 Definitions

and

ARS 28-1174 Operation,
restrictions; violation; classification

(Pages 252-259)

ARS: 9-462.06. Board of adjustment

A. The legislative body, by ordinance, shall establish a board of adjustment, which shall consist of at least five but no more than seven members appointed by the legislative body in accordance with provisions of the ordinance, except that the ordinance may establish the legislative body as the board of adjustment. The legislative body may, by ordinance, delegate to a hearing officer the authority to hear and decide on matters within the jurisdiction of the board of adjustment as provided by this section, except that the right of appeal from the decision of a hearing officer to the board of adjustment shall be preserved.

B. The ordinance shall provide for public meetings of the board, for a chairperson with the power to administer oaths and take evidence, and that minutes of its proceedings showing the vote of each member and records of its examinations and other official actions be filed in the office of the board as a public record.

C. A board of adjustment shall hear and decide appeals from the decisions of the zoning administrator, shall exercise other powers as may be granted by the ordinance and adopt all rules and procedures necessary or convenient for the conduct of its business.

D. Appeals to the board of adjustment may be taken by persons aggrieved or by any officer, department, board or bureau of the municipality affected by a decision of the zoning administrator, within a reasonable time, by filing with the zoning administrator and with the board a notice of appeal specifying the grounds of the appeal. The zoning administrator shall immediately transmit all records pertaining to the action appealed from to the board.

E. An appeal to the board stays all proceedings in the matter appealed from, unless the zoning administrator certifies to the board that, in the zoning administrator's opinion by the facts stated in the certificate, a stay would cause imminent peril to life or property. On the certification proceedings shall not be stayed, except by restraining order granted by the board or by a court of record on application and notice to the zoning administrator. Proceedings shall not be stayed if the appeal requests relief that has previously been denied by the board except pursuant to a special action in superior court as provided in subsection K of this section.

F. The board shall fix a reasonable time for hearing the appeal, and shall give notice of hearing by both publication in a newspaper of general circulation in accordance with section 9-462.04 and posting the notice in conspicuous places close to the property affected.

G. A board of adjustment shall:

1. Hear and decide appeals in which it is alleged there is an error in an order, requirement or decision made by the zoning administrator in the enforcement of a zoning ordinance adopted pursuant to this article.

2. Hear and decide appeals for variances from the terms of the zoning ordinance only if, because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive the property of privileges enjoyed by other property of the same classification in the same zoning district. Any variance granted is subject to conditions as will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is located.

3. Reverse or affirm, in whole or in part, or modify the order, requirement or decision of the zoning administrator appealed from, and make the order, requirement, decision or determination as necessary.

H. A board of adjustment may not:

1. Make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the zoning ordinance provided the restriction in this paragraph shall not affect the authority to grant variances pursuant to this article.

2. Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.

I. If the legislative body is established as the board of adjustment, it shall exercise all of the functions and duties of the board of adjustment in the same manner and to the same effect as provided in this section.

J. In a municipality with a population of more than one hundred thousand persons, the legislative body, by ordinance, may provide that a person aggrieved by a decision of the board or a taxpayer who owns or leases the adjacent property or a property within three hundred feet from the boundary of the immediately adjacent property, an officer or a department of the municipality affected by a decision of the board, at any time

within fifteen days after the board has rendered its decision, may file an appeal with the clerk of the legislative body. The legislative body shall hear the appeal in accordance with procedures adopted by the legislative body and may affirm or reverse, in whole or in part, or modify the board's decision.

K. A person aggrieved by a decision of the legislative body or board or a taxpayer who owns or leases the adjacent property or a property within three hundred feet from the boundary of the immediately adjacent property, an officer or a department of the municipality affected by a decision of the legislative body or board, at any time within thirty days after the board, or the legislative body, if the board decision was appealed pursuant to subsection J of this section, has rendered its decision, may file a complaint for special action in the superior court to review the legislative body or board decision. Filing the complaint does not stay proceedings on the decision sought to be reviewed, but the court may, on application, grant a stay and on final hearing may affirm or reverse, in whole or in part, or modify the decision reviewed.

ARS: 28-1171. Definitions

In this article, unless the context otherwise requires:

1. "Access road" means a multiple use corridor that meets all of the following criteria:
 - (a) Is maintained for travel by two-wheel vehicles.
 - (b) Allows entry to staging areas, recreational facilities, trail heads and parking.
 - (c) Is determined to be an access road by the appropriate land managing authority.
2. "Closed course" means a maintained facility that uses department approved dust abatement and fire abatement measures.
3. "Highway" means the entire width between the boundary lines of every way publicly maintained by the federal government, the department, a city, a town or a county if any part of the way is generally open to the use of the public for purposes of conventional two-wheel drive vehicular travel. Highway does not include routes designated for off-highway vehicle use.
4. "Mitigation" means the rectification or reduction of existing damage to natural resources, including flora, fauna and land or cultural resources, including prehistoric or historic archaeological sites, if the damage is caused by off-highway vehicles.
5. "Off-highway recreation facility" includes off-highway vehicle use areas and trails designated for use by off-highway vehicles.
6. "Off-highway vehicle":
 - (a) Means a motorized vehicle that is operated primarily off of highways and that is designed, modified or purpose-built primarily for recreational nonhighway all-terrain travel.
 - (b) Includes a tracked or wheeled vehicle, utility vehicle, all-terrain vehicle, motorcycle, four-wheel drive vehicle, dune buggy, sand rail, amphibious vehicle, ground effects or air cushion vehicle and any other means of land transportation deriving motive power from a source other than muscle or wind.
 - (c) Does not include a vehicle that is either:
 - (i) Designed primarily for travel on, over or in the water.

(ii) Used in installation, inspection, maintenance, repair or related activities involving facilities for the provision of utility or railroad service or used in the exploration or mining of minerals or aggregates as defined in title 27.

7. "Off-highway vehicle special event" means an event that is endorsed, authorized, permitted or sponsored by a federal, state, county or municipal agency and in which the event participants operate off-highway vehicles on specific routes or areas designated by a local authority pursuant to section 28-627.

8. "Off-highway vehicle trail" means a multiple use corridor that is both of the following:

(a) Open to recreational travel by an off-highway vehicle.

(b) Designated or managed by or for the managing authority of the property that the trail traverses for off-highway vehicle use.

9. "Off-highway vehicle use area" means the entire area of a parcel of land, except for approved buffer areas, that is managed or designated for off-highway vehicle use.

ARS: 28-1174. Operation restrictions; violation; classification

A. A person shall not drive an off-highway vehicle:

1. With reckless disregard for the safety of persons or property.
2. Off of an existing road, trail or route in a manner that causes damage to wildlife habitat, riparian areas, cultural or natural resources or property or improvements.
3. On roads, trails, routes or areas closed as indicated in rules or regulations of a federal agency, this state, a county or a municipality or by proper posting if the land is private land.
4. Over unimproved roads, trails, routes or areas unless driving on roads, trails, routes or areas where such driving is allowed by rule or regulation.

B. A person shall drive an off-highway vehicle only on roads, trails, routes or areas that are opened as indicated in rules or regulations of a federal agency, this state, a county or a municipality.

C. A person shall not operate an off-highway vehicle in a manner that damages the environment, including excessive pollution of air, water or land, abuse of the watershed or cultural or natural resources or impairment of plant or animal life, where it is prohibited by rule, regulation, ordinance or code.

D. A person shall not place or remove a regulatory sign governing off-highway vehicle use on any public or state land. This subsection does not apply to an agent of an appropriate federal, state, county, town or city agency operating within that agency's authority.

E. A person who violates subsection A, paragraph 1 is guilty of a class 2 misdemeanor.

F. A person who violates any other provision of this section is guilty of a class 3 misdemeanor.

G. In addition to or in lieu of a fine pursuant to this section, a judge may order the person to perform at least eight but not more than twenty-four hours of community restitution or to complete an approved safety course related to the off-highway operation of motor vehicles, or both.

H. Subsections A and B do not prohibit a private landowner or lessee from performing normal agricultural or ranching practices while operating an all-terrain vehicle or an off-highway vehicle on the private or leased land.

Attachment F

Public Comments Received

(in order of receipt)

- a. Sam Quicke, July 14 and July 19, 2023 (emails); [\(page 264\)](#)
- b. Barbara-‘a n rustler trail home owner’, July 25, 2023 (emails); [\(page 265\)](#)
- c. Barbara Woodlief, July 30, 2023 (email); [\(page 268\)](#)
- d. Donna Wiehn, August 07, 2023 (hand delivered); [\(page 270\)](#)
- e. Concerned Resident, August 10, 2023 (U.S. Postal Service); [\(page 274\)](#)
- f. Elizabeth Rocha, August 14, 2023; [\(page 277\)](#)
- g. Bill and Diane Calderon, August 14, 2023; [\(page 279\)](#)
- h. Concerned citizen, August 14, 2023; [\(page 282\)](#)
- i. Ryan Nave, August 14, 2023; [\(page 284\)](#)
- j. Hollie Gross, August 14, 2023; [\(page 286\)](#)
- k. Rita Fambrough, August 14, 2023. [\(page 288\)](#)

a. Sam Quicke, July 14 and July 19, 2023 (emails);

BJ Ratlief

From: John Knight
Sent: Wednesday, July 19, 2023 11:01
To: Sam Quicke
Cc: BJ Ratlief
Subject: FW: Comments for BOA Appeal

Sam,

Thank you for your comments.

Just to confirm, you would like us to forward this e-mail to our BOA with the agenda and staff report, correct?

Thanks,

john

John Knight

Community Development Director, Town of Camp Verde
473 S. Main Street, Suite 108
Camp Verde, AZ 86322
928-554-0050 (main)
928-554-0053 (direct)

From: Sam Quicke <[REDACTED]>
Sent: Wednesday, July 19, 2023 10:58 AM
To: John Knight <John.Knight@campverde.az.gov>
Subject: Comments for BOA Appeal

Hello again and thank you,

Yes, that would be wonderful if you could include me previous email in the comments / BOA Packet. I'd like to add a few things:

I've been living in this neighborhood of Rustler Trl. For quite some time now. A lot of us own livestock and farm animals as well. I've already had an issue with the noise, and a complaint has been made regarding it. This land has already been used as a dirt bike track, and you can hear it clear on the other side of the block. It disturbs my livestock and they are effected by the noise to the point they run to the other side of the property when this person is running their dirtbikes with zero regard for the neighbors. This is absolutely unacceptable.

This does not belong in a residential neighborhood as there is plenty of access to trails and courses throughout the state, and doesn't need to be a burden on the close residents. Which will have a negative impact on members of this neighborhood and affect their quality of life / right to peaceful enjoyment of their property. Not to mention how this negatively impacts our property values. Who is going to want to move into a home where there's a racetrack next door?

I absolutely CANNOT condone something like this built near my home and the noise level that it produces. We've already had a preview of it in the neighborhood, and Camp Verde Marshall's office has already been called to this property regarding bike noise. It's also a massive eye sore in a beautiful neighborhood. Most of the neighbors here want to keep it peaceful and beautiful.

Thank you for giving me the opportunity to address this. I have other neighbors already aware of this and in the process of writing their own letters. Personally, my issue is the noise level and vicinity to the other neighbors. The impact it has on protected land and this is also an active estuary. Which also impacts wildlife.

I appreciate this being brought to my attention and being given an opportunity to express my opinion on the matter. I just cannot see any positives putting a racetrack in the middle of a residential neighborhood directly next to people's home and families. There are plenty of nice courses and tracks in the beautiful state of Arizona.

On Mon, Jul 17, 2023, 7:21 AM John Knight <John.Knight@campverde.az.gov> wrote:

Sam,

Thank you for your comments. I can include the e-mail below in the BOA packet if you like.

We accept comments via e-mail, hard copy, or in person at the meeting.

If you'd like to address your concerns in an e-mail, please send them to me by Monday, 8/14 and we'll include the info. in the BOA packet.

If you could title the e-mail "Comments for BOA Appeal", I'll be sure to add to the packet.

The meeting is 8/22 at 3pm if any of your neighbors ask.

Thanks,

John

John Knight

Community Development Director, Town of Camp Verde

473 S. Main Street, Suite 108

Camp Verde, AZ 86322

928-554-0050 (main)

928-554-0053 (direct)

From: Sam Quicke <[REDACTED]>
Sent: Friday, July 14, 2023 8:16 PM
To: John Knight <John.Knight@campverde.az.gov>
Subject: Regarding Application No. 20230242

Hello,

I am writing in response to an application to put a motocross track a few houses down in my neighborhood. The application No. 20230242. I am just wondering how to submit comments if I am unable to attend the board of appeals meeting. I live in this area and I would like to note that noise complaints have already been made regarding the use of this land already. You can check with the Camp Verde Marshall's office and see a history of complaints regarding motorbike noise already.

This has been an issue already regarding the noise for me personally as a neighbor and as well as former neighbors that I know on this section of the block. I am assuming this is why I've been contacted in regards to having a say about it. I'd like to submit in writing a pretty strong objection, as it's already disturbed me and my family more than once.

Any information would be great and perhaps I can just write an email? I appreciate the notice regarding this land and given my chance to have a say. Thank you.

b. Barbara-a n rustler trail home owner, July 25, 2023 (emails);

BJ Ratlief

From: John Knight
Sent: Tuesday, July 25, 2023 10:48
To: BJ Ratlief
Subject: FW: Community development disaster application 20230242

From: barbara
Sent: Sunday, July 23, 2023 1:29 PM
To: John Knight <John.Knight@campverde.az.gov>
Subject: Community development disaster application 20230242

I am writing in response to letter received regarding an appeal application #20230242 Jenkins.

When I initially opened this letter my very first thought was OH NO!!

Which is what compels me to write, to take time to prevent allowing this to even be considered.

N. Rustler trail is generally a beautiful quiet river backed dead end road. I have lived here for over ten years. I pay my taxes faithfully and should be entitled to a peaceful existence in my most expensive financial purchase. This is my home please don't make it a source of loud continual noise and traffic. This I can say, as the person requesting this appeal, had the selfish inconsiderate

Ongoing use of this property for months allowing the constant roar of dirt bikes from early morning on. That constant hum was unnerving and upsetting to myself family horses and pets. And also the unsafe arrival with above speed limit observed to this property by unlicensed bike owners.. It is unfair we should be subjected to that again! There will be continual noise etc complaints with residential code sitings for enforcement, should this be granted.

And my request, other than the prevention of this motor cross nightmare on my residential block, is that the individual who should unfortunately decide to approve this, have the same required motocross nightmare set up next to their quiet camp Verde or wherever home.

A n rustler trail home owner

[Sent from Yahoo Mail on Android](#)

c. Barbara Woodlief, July 30, 2023 (email);

BJ Ratlief

From: John Knight
Sent: Monday, July 31, 2023 07:44
To: BJ Ratlief
Subject: FW: Community development department application 20230242 Jenkins motor cross track in my neighbour hood...are you kidding me?

John Knight

Community Development Director, Town of Camp Verde
473 S. Main Street, Suite 108
Camp Verde, AZ 86322
928-554-0050 (main)
928-554-0053 (direct)

From: barbara woodlief <[REDACTED]>
Sent: Sunday, July 30, 2023 4:34 PM
To: John Knight <John.Knight@campverde.az.gov>
Subject: Community development department application 20230242 Jenkins motor cross track in my neighbour hood...are you kidding me?

This email in response to letter received from camp Verde town regarding an appeal application #20230242 Jenkins.

First I want to thank you for the notification and for encouraging me to read the town code laws for this beautiful rural area. I hope you are familiar , I am attaching findings within the town code laws I felt important. Chapter 3 land use,first paragraph.. camp Verde to maintain a rural setting. North rustler trail is a beautiful dead end street against the Verde river, frequented by much wildlife and a quiet home I have cherished for years. Most properties exceed 2 acres ,which according to camp Verde code laws ,classifies this as rural and should therefore remain as such.

I have unfortunately had the extreme displeasure of the constant noise and grinding of these motor bikes for months non stop until it was shut down. Not only the early morning noise, the added traffic of these motor bikes but the sound of bulldozers repeatedly creating some sort of terrain for this nonsense..It is disturbing to me, my family ,my livestock and all the wildlife in this rural setting!

A motor bike course track should NOT BE ALLOWED in this rural community under any situation. And should be placed near the sports complex or equestrian arena.

And unless anyone has experienced the noise and change to this neighborhood, they should not allow this to occur and should have this situation placed in their neighborhood to enjoy the ceaseless noise congestion and chaos it creates making North rustler trail no longer what the town code assures me it will be!!!!

Thank you

[Sent from Yahoo Mail on Android](#)

d. Donna Wiehn, August 07, 2023 (hand delivered)

BJ Ratlief

From: John Knight
Sent: Monday, August 7, 2023 10:30
To: BJ Ratlief
Subject: FW: Incoming Correspondence
Attachments: 08-07-2023 Donna Wiehn-Motorcross track.pdf

From: Virginia Jones <Virginia.Jones@campverde.az.gov>
Sent: Monday, August 7, 2023 8:55 AM
To: Virginia Jones <Virginia.Jones@campverde.az.gov>
Cc: Cindy Pemberton <Cindy.Pemberton@campverde.az.gov>
Subject: Incoming Correspondence

Mayor and Council (Bcc)

Attached is a letter that was hand delivered today to each Council Member with the Exception of Mayor Jenkins. Your Hard copy is in your box..

*Virginia Jones, CMC
Deputy Town Clerk
473 S Main Street
Camp Verde, AZ 86322
928-554-0023*

August 6, 2023

RECEIVED
AUG 07 2023

**Council Members: Cris McPhail, Marie Moore, Jessie Murdock,
Jackie Baker, Wendy Escoffier, Robin Godwin, John Knight**

re: issue of Tuesday, August 22, 2023, at 3:00pm

Dear Council Members and Community Development:

This letter is addressing the issue before the Camp Verde City Council on Tuesday, August 22, 2023, at 3:00pm, i.e. whether or not to allow a motocross track in a residential community on North Rustler Trail. The fact that this is even an issue before the city council defies human reasoning. Arizona is a huge state. There are hundreds of acres of empty land that could support this type of endeavor without infringing on the rights of homeowners in this community. Although all property owners have rights regarding their property, those rights extend only so far as not to infringe upon the rights of others in the community. All communities have rules, covenants, ordinances and regulations regarding noise, dust, and odor. Camp Verde should certainly not be the exception.

It is my understanding that this track not only encompasses Mr. Jenkins' land, but also two other adjoining properties, affecting not only the immediate neighbors, but the entire neighborhood.

It is also my understanding that copious amounts of dirt have been removed, or relocated, from the river floodplain. This should not only be a concern to Camp Verde, but also to the EPA.

I would ask that you give this issue your utmost deliberation, and render a

just and equitable disposition on this matter.

Thank you,

A handwritten signature in black ink, appearing to read 'D. Wiehn', written in a cursive style.

Donna Wiehn

██████ North Rustler Trail

Camp Verde, AZ 86322-7945

e. Concerned Resident, August 10, 2023 (U.S. Postal Service)

August 7, 2023

To: Camp Verde City Council members: Chris McPhail, Marie Moore, Jesse Murdock, Jackie Backer, Wendy Escoffier, Robin Godwin, John Knight

Re: Issue of Tuesday, August 22, 2023, at 3:00pm, Application number 20230242

Dear Council Members and Community Development:

This letter is addressing the issue before the Camp Verde City Council on Tuesday August 22, 2023 at 3:00pm i.e. whether or not to allow a motocross track in a residential community on North Rustler Trail. Please note the following concerns.

I would like to express my extreme opposition to this proposed Motocross track in an established Residential area within the Camp Verde Town boundaries, specifically in this instance on North Rustler Trail. A residential neighborhood in my opinion, should **NEVER** be considered for an off road Motocross track for several reasons. The first reason is the noise that is emitted by Motocross motorcycles. The motors are built to generate as much horsepower as possible and unfortunately this requires a low restriction exhaust which results in a **VERY LOUD THUNDEROUS EXHAUST** sound that can be heard for long distances. If you have ever been to a Motocross or Supercross motorcycle race you will know what I am referring to. The noise is **EXTREME!** Picture yourself living in the proximity of this noise and you can only imagine how annoying and disruptive it would be.

Second is the **DUST** created from the Roost off the rear wheel of these Motorcycles. They create an enormous amount of Horse Power and thus spin the rear tires on every turn and while accelerating on the Straight portions of the Track. This in and of itself is a valid reason that this track has no place being in a residential neighborhood. I believe there are EPA rules governing the dust issue as I am sure you are aware of, even for construction projects which are required to use water trucks continually to reduce or minimize the dust emitted. Again, imagine living in the proximity of continual Dust created by this type of Motorcycle track when being used by one or multiple Motorcycles.

This Track as it exists now, encompasses not only Mr. Jenkins' land, but also utilizes two other adjoining properties (Three Parcels total) effecting not only the immediate neighbors but the entire neighborhood. I am a firm believer that all property owners have rights regarding their property, those rights extend only so far as not to infringe upon the rights of others in the community. Obviously this is the exact reason that all communities have rules, covenants, ordinances and regulations regarding noise, dust, animal count as well as many other issues. Camp Verde should not be an exception.

In addition, there was a large amount of Dirt moved around and relocated within a Flood plain area. As I understand it, a Cease and Desist order was initially issued to stop this movement of Dirt but that in the end, a grading permit was issued after the fact. Not sure if there was a flood plain impact study completed or not.

In summary I repeat my strong objection to this motocross Track being allowed in an established Residential neighborhood. There are Millions of acres in Arizona to Ride off road Motorcycles as well as established Motocross Tracks that are far away from established neighborhoods and that will not create Noise and Dust concerns for neighbors. I am requesting that you give this issue your utmost deliberation and render a just and equitable disposition on this issue. It may help you in your decision by imagining this track is in your three next door neighbor's yards. How would you feel about this issue then? Common sense tells you that this track is a BAD thing for an established neighborhood. Please make the right decision and vote against allowing it.

Respectfully,

Concerned Resident on North Rustler Trail
Camp Verde, Arizona 86322.

f. Elizabeth Rocha, August 14, 2023;

To the Town of Camp Verde

RECEIVED

AUG 14 2023

My name is Elizabeth Rocha. I lived at 1604 N Rustler Trl for approximately 5 years.

Prior to purchasing the 1604 N Rustler Trl property, I was extremely concerned regarding the, at the time, small mounds right next to the fence line, on Jenkins property. I did not want to live next door to the slightest possibility of atv's, motorbikes, etc., primarily due to noise and dust, which would be a definite trigger for my anxiety. I also understood the environmental impact this would have on a riparian area, and just did not want to deal with neighbors who thought they would be entitled to destroy the riparian area, whether private or public. That said, I was assured by the previous owner, Holly Gross, that Jenkins strictly used this for non motorized mountain bikes. It was never a problem while I lived there. Had I known Jenkins/Martinez would create this professional track in a R1 zoned neighborhood, with no regard for neighbors or nature, I would never have sold to the Martinez's. I am aware that this is privately owned property & meander land, but it is a delicate, fragile eco riparian area, which deserves a level of stewardship that honors and protects this magical ancient land.

Going forward, I believe The Town of Camp Verde, can lead the way in raising awareness to all its residents regarding riparian areas and how we all can protect it!

Thank you in an advance for making the correct and land honorable decision.

Elizabeth Rocha

State of Texas
County of Baylor

Sworn to and subscribed before me on
the 3rd day of August, 2023

Nicholas Skarson
Notary Public's Signature
My Commission Expires 01-24-2027



g. Bill and Diane Calderon, August 14, 2023;

To The Town of Calaveras Verde

RECEIVED

AUG 14 2023

In response to the letter we received regarding the motorcross appeal we'd like to express a concern as a neighbor in the area.

One of the things that stood out to me in Jason's appeal was that the property's just ran together. Well there was a fence between them until the motorcross was built.

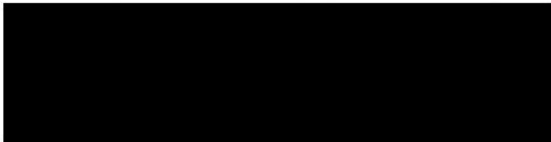
Our issues and I shared with them

Was the property value is affected with that motorcross track there.

Fire is a huge concern during dry months and the flood zone some of it is in, not knowing how that impacts it. Noise with the big bikes they were riding also was a concern.

Thank you for the time I'm sure that has went in to reviewing the information on what is the right decision for R1 property in a residential area.

Bill & Diane Calderon
Concerned neighbor



Sent from my iPhone

h. concerned citizen, August 14, 2023;

Motocross Appeal

8/22/2023

RECEIVED

AUG 14 2023

I am not sure why this appeal is proceeding as the completed packet was not turned in timely. It was 18 days beyond the stated deadline.

It was due on April 24th and turned in on May 12, 2023.

It gives the appearance of favoritism, given the relationship of the mayor and the appellant.

We have also been informed the mayor is speaking on behalf of appellant, which is clearly a conflict of interest. Especially since she is the one who appointed the Board of Appeals members.

Just, at this point, an observation by concerned citizens.

i. Ryan Nave, August 14, 2023;

RECEIVED
AUG 14 2023

Town of Camp Verde
Planning and Zoning Appeal Board.

In approximately 2004 or 2005, I was invited by Jason Jenkins to ride my bicycle on his downhill track, located in his back yard.

This track consisted of wooden plank ramps leading into a foam pit. It was **NOT** made of dirt ramps.

There were no dirt ramps at that time. I lived in that neighborhood for about 8 years .



Ryan Nave

Chandler, AZ



j. Hollie Gross, August 14, 2023;

RECEIVED
AUG 14 2023

Hollie D. Gross
[REDACTED] Finnie Flat Rd. [REDACTED]
Camp Verde, AZ 86322

August 3, 2023

Board of Adjustments and Appeals
Town of Camp Verde, AZ
473 South Main Street, Suite 106

Dear Board Members:

I am contacting you regarding Jayson Jenkins' zoning issue.

I resided at 1604 North Rustlers Trail from 1997 to 2015; this property is adjacent to Jayson's property. Jayson built tracks, constructed from dirt and wooden planks, at the back of the property. He also had a pit, full of foam rubber, that he would jump his bicycle into. Jayson would ride his bicycle on those tracks often.

I never observed Jayson riding a motorcycle, or any type of motorized recreational vehicle on the property during the 18 years I resided on Rustlers Trail.

Rustlers Trail was always a quiet and tranquil neighborhood to live in. The neighbors all were friendly, a real community. You could hang your sheets out in the fresh air to dry. If you forgot to lock your house from time to time, it was no big concern. The neighbors all looked out for one another; there was virtually no crime in the neighborhood. It was a wonderful place to live.

Thank you for your attention to this letter.

Respectfully,



Hollie D. Gross

k. Rita Fambrough, August 14, 2023.

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AUG 14 2023

Town of Camp Verde

Appeals Board

RE: Motocross Jumps in R1 Properties

We moved to our property at [REDACTED] N. Rustler Trail in 2003. We have enjoyed the calm, serene and beautiful land for those years . We watched the deer come up to our back fence, the raccoons, coyotes and skunks. Fished in the Verde River at the edge of our property and raised our grandson here.

2 years ago, the Martinez family moved in.

On January 6, 2023 I came home from the hospital after visiting my husband there and found that tons of dirt had been moved into their yard and jumps were being formed. Since they were gone for the weekend , I couldn't approach them about it. There were people there working on it. So, I called City Planning and development to find out if this was okay to do. I knew that Cole Martinez raced motorcycles and was planning on using it for that purpose. I was horrified about all the things that I was going to have to put up with if this was allowed.

1. Noise
2. Dust
3. Ecological impact
4. Fire from sparks since there are no spark arrestors on motocross style motorcycles.
5. De valuation of my home (according to reputable realtor 10-15% or upwards of \$60K)
6. Mud slides when the floods came. (Which they do every year.)
7. General ugliness of all that dirt

The Town came and put a Stop Work Order on the Martinez property. They did not have a permit to move dirt of that magnitude.

After issued a stop work order, they continued to work on it as soon as the city inspector left. Apparently, they were almost done when issued Stop work order, so they decided to just finish it! These are not people who respect authority or rules . Nor do they have any regard for neighbors. We live on a street owned by mostly seniors who have made their retirement here and have been here for 15-25 years. They moved in 2 years ago.

They came home and the retaliation started. We were subjected to revving motorcycles up and down the fence line against us, loud foul music played at decibels above 100 (specifically a song called "Fuck Your Neighbors) , foul Language thrown at us, our pictures taken each time we walked outside, neighbors who came to visit us were interrogated as to why they were here and what did they want ,they told us to move if we didn't like it, that they knew their rights, general harassment. This went on and on and some of it continues to this day. They hired a lawyer and filed harassment orders on myself and the man across the street complaining we call police on them too many times.

The city already had a stop work order on Jason Jenkins property unbeknownst to us. Someone else had complained. He had about 3-4 jumps that his daughter would use for a bicycle track. In January, 2023,

they removed the fence between Jenkins and Martinez property and decided to use it as a motocross track. They then removed a fence between the next lot, which was under probate at the time and uninhabited and started taking dirt from there to make more jumps. It now spans 3 lots and is about 150 to 200 ft from my patio. I have videos if anyone wants to view them.

This type of entertainment does not fit in with the Middle Verde Charter nor the western atmosphere of the Town, and already has been ruled by the City Planning and Development as illegal. We asked for the Town Attorney to rule on it also. She agreed that it was not allowed by rules of R1 property.

We are hopeful you will agree and put this to rest.

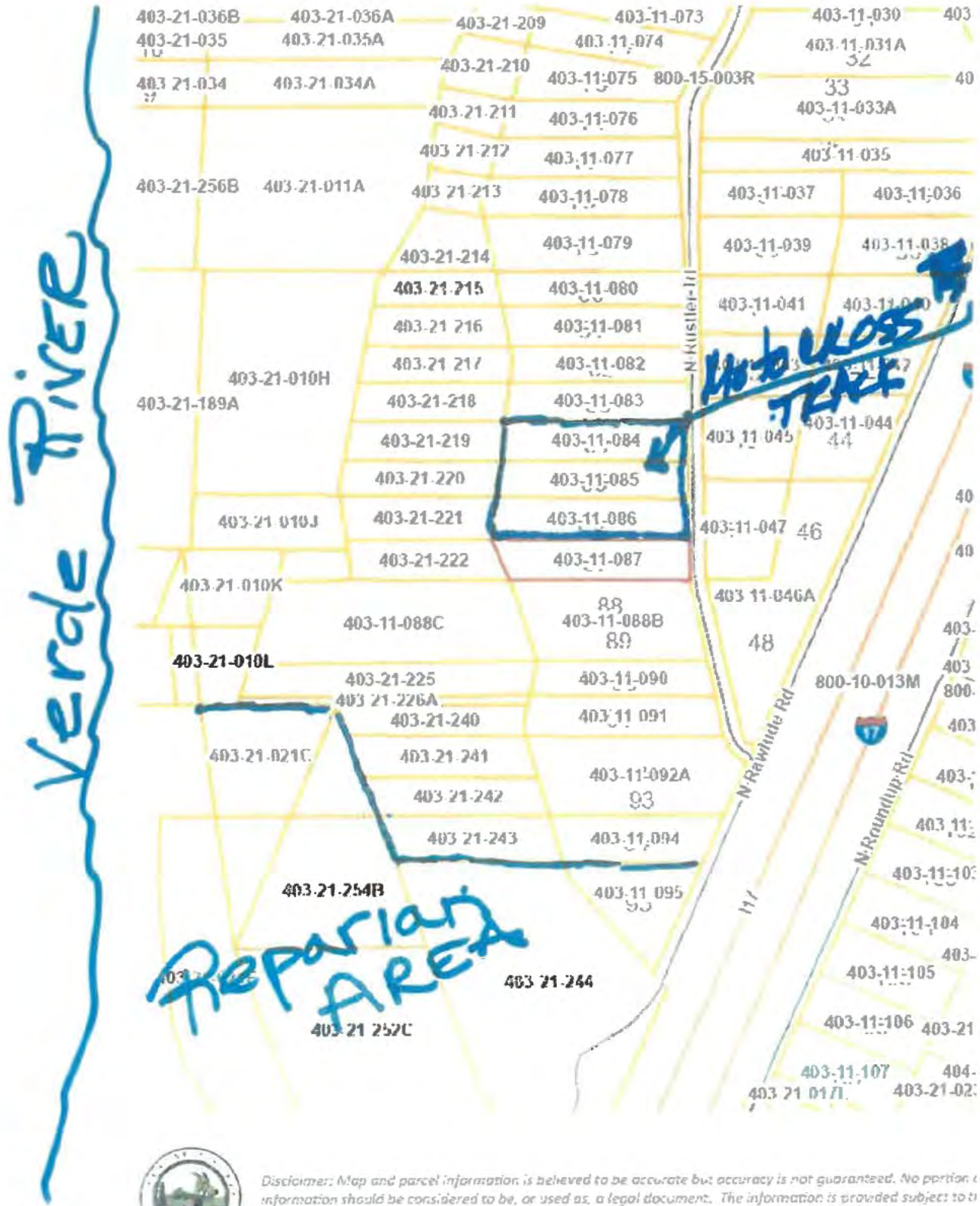
Thank you



Rita Fambrough

██████████ N. Rustler Trail

Camp Verde



Disclaimer: Map and parcel information is believed to be accurate but accuracy is not guaranteed. No portion of information should be considered to be, or used as, a legal document. The information is provided subject to the condition that the user knowingly waives any and all claims for damages against Yavapai County that may arise from use of this data.

Map printed on 08/15/2023

Photo Taken in January 2023

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Of Motocross track being constructed at
Martinez/ Jenkins/ Grauer Properties



14. Disorderly conduct; classification

Person commits disorderly conduct if, with intent to disturb the peace or quiet of a neighborhood, family or or with knowledge of doing so, such person:

Engages in fighting, violent or seriously disruptive behavior; or

Creates unreasonable noise; or

Uses abusive or offensive language or gestures to any person present in a manner likely to provoke immediate retaliation by such person; or

Engages in any protracted commotion, utterance or display with the intent to prevent the transaction of the business of a lawful meeting, gathering or procession; or

Refuses to obey a lawful order to disperse issued to maintain public safety in dangerous proximity to a fire, explosion or any other emergency; or

Recklessly handles, displays or discharges a deadly weapon or dangerous instrument.

Disorderly conduct under subsection A, paragraph 6 is a class 6 felony. Disorderly conduct under subsection A, paragraph 1, 2, 3, 4 or 5 is a class 1 misdemeanor.

- B. The written permission shall specify the period for which permission is granted, and shall set forth the name of the grantee shall be signed by the grantor, shall state grantor's interest in the property and, if the grantor is not the owner thereof, the owner's name.
- C. Any person loitering, driving, or parking a vehicle described in this section on property shall, upon request of any peace officer, display the written permission issued under the terms of this Article.
- D. It is the intent of this Section to prevent the unauthorized use of vacant lots, parking lots, or other property, privately or publicly owned areas by persons for unauthorized or illegal purposes which could create a public nuisance or interfere with the comfortable enjoyment of life or property by the entire community or neighborhood or by a considerable number of persons.
- E. No person charged with violating this Section shall be convicted and such charge against him or her shall be dismissed if he or she subsequently produces in court the aforesaid written permission.

Town of Camp Verde

SECTION 11-1-5 NOISE (2014-A399)

Ordinance

It is hereby declared to be a public nuisance to allow unnecessary, excessive and annoying noises from all sources subject to its police power. At certain levels noises are detrimental to the health and welfare of the citizenry and in the public interests shall be systematically enforced per the following criteria:

A) Definitions.

The following words, terms and phrases, when used in this Section 11-1-5, shall have the meanings ascribed to them in this Section 11-1-5, except where the context clearly indicates a different meaning:

"A" band level means the total sound level of all noise as measured with a sound level meter using A-weighting network. The unit is the dB(A).

Ambient noise means the all-encompassing noise associated with a given environment, being usually a composite of sounds from many sources, near and far. For the purpose of this Section 11-1-5, ambient noise level is the level obtained when the noise level is averaged over a period of fifteen (15) minutes without inclusion of noise from isolated identifiable sources, at the location and time of day near that at which a comparison is to be made. Averaging may be done by instrumental analysis in accordance with American National Standard S. 13-1971, or may be done manually as follows:

- 1) Observe a sound level meter for five (5) seconds and record the best estimate of central tendency of the indicator needle, and the highest and lowest indications.
- 2) Repeat the observations as many times as necessary to ensure that observations are made at the beginning and the end of the fifteen (15) minute averaging period and that there are at least as many additional observations as there are decibels between the highest high indication and the lowest low indication.
- 3) Calculate the arithmetical average of the observed central tendencies.

town.

- (2) Any aircraft operated in conformity with, or pursuant to, federal law, federal air regulations and air traffic control instruction used pursuant to and within the duly adopted federal air regulations shall be exempt from the provisions of subsection (a) of this subsection (I) as well as the other regulations of this Section 11-1-5. Any aircraft operating under technical difficulties, in any kind of distress, under emergency orders of air traffic control or being operated pursuant to and subsequent to the declaration of an emergency under federal air regulations shall also be exempt from the provisions of subsection (a) of this subsection (I) as well as the other regulations of this Section 11-1-5.

necessary noise.

- (1) Notwithstanding any other provision of this Section 11-1-5, and in addition thereto, it shall be unlawful for any person without justification to make or continue, or cause or permit to be made or continued, any unnecessary, excessive or offensive noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.
- (2) The factors which will be considered in determining whether a violation of the provisions of this Section 11-1-5 exists will include, but not be limited to, the following:
- a) The volume of noise;
 - b) The intensity of the noise;
 - c) Whether the nature of the noise is usual or unusual;
 - d) Whether the origin of the noise is natural or unnatural;
 - e) The volume and intensity of the background noise, if any;
 - f) The proximity of the noise to residential sleeping facilities;
 - g) The nature and zoning of the area within which the noise emanates;
 - h) The density of the inhabitation of the area within which the noise emanates;
 - i) The time of the day or night the noise occurs;
 - j) The duration of the noise;
 - k) Whether the noise is recurrent, intermittent or constant;
 - l) Whether the noise is produced by a commercial or noncommercial activity;
 - m) Whether it is a pure tone noise; or
 - n) Whether it is an impulse noise.

commencement of action, citation, contents.