

Exhibit J:
Appellant's request for appeal

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Via Email to: Rachel.Prelog@mesaaz.gov
Ms. Rachel Prelog
Principal Planner
City of Mesa Planning Division
55 North Center Street
Mesa, AZ 85201

**RE: Appeal to Mesa Board of Adjustment – Zoning Interpretation Dated June 16,
2021 – 1439 North Power Road – BOA 21-00628**

Dear Ms. Prelog:

Our law firm represents Power Road Park, LLC, the owner of approximately 7 acres of land located at 1439 North Power Road. On behalf of Power Road Park, LLC, we hereby appeal the subject Zoning Interpretation and request this matter be scheduled for public hearing before the Board of Adjustment.

The Zoning Interpretation is flawed in several respects. However, before the Board considers the ruling itself, Power Road Park hereby moves the Board to reject the Zoning Interpretation because neither Power Road Park nor its representatives ever submitted to the Zoning Administrator a written request for this Interpretation. The Submittal and Review Process for Code Interpretation published online by the Board of Adjustment provides as follows:

Should a more fully formal, written interpretation be needed,
a request for an Interpretation must be in writing.

(Emphasis Added)

In our considerable experience, a written request for a formal zoning ordinance interpretation allows an applicant to set forth his/her reasons in support of the requested interpretation before a decision is rendered. This is consistent with traditional notions of due process.

In this regard, we hereby request that the Zoning Administrator produce for inspection his official file relating to the 1439 North Power Road property. If there is no written request from Power Road Park for a formal interpretation of the Mesa Zoning Ordinance, then the Zoning Interpretation should be rejected by the Board.

The Zoning Administrator attempts to modify the Mesa Zoning Ordinance that a food concession is not an allowed use as Public Park and Recreational Facilities ("PPR Facilities") because it is a commercial use and that Section 11-86-3 of the Mesa Zoning Ordinance specifies that all uses in PPR Facilities are non-commercial. This reasoning contradicts the specific language of Section 11-86-3 quoted in the Zoning Interpretation which allows "food concessions" to be operated in Public Parks and Recreational Facilities.

The Zoning Administrator clearly ignores the specific language of Section 11-86-53 which defines PPR Facilities to include "picnic facilities . . . as well as related food concessions. . . ." There is no language in Section 11-86-3 which states that picnic facilities alone without playgrounds and recreational facilities are not an allowable use.

The Zoning Interpretation discriminates against mobile food vendors. Regardless of whether the subject land served food from a food concession building or from mobile food vendors, the amount of food to be provided and consumed would be limited to the number of persons who are picnicking at the park. Absent evidence that persons are purchasing take-out food to consume off premises, there would be no rational argument to be made that the property is being used primarily as a food concession or a food truck park.

The Zoning Administrator based his conclusion, that the subject property is being used primarily as a "food truck park," on pictures and complaints submitted by neighboring property owners without the benefit of any controverting evidence of the property owner. The Zoning Administrator has the authority to conduct a public hearing which will allow for neighbors and the owner to submit evidence to determine whether the primary use of the property is a food truck park. The Zoning Administrator's unilateral decision which did not allow the owner to submit evidence and testify at a hearing lacks due process generally required for determining the rights of a property owner.

The City of Mesa Mayor and Council Members adopted Ordinance No. 5623 on May 17, 2021. Attached hereto is a copy of Section 5-4-5 entitled "Operation Requirements" which appear on pages 6 and 7 of this Ordinance. A.R.S. Section 9-485.01(A)(1) allows a city or town by ordinance or resolution to restrict a mobile food vendor from operating within 250 feet of a residentially-zoned property. The City of Mesa in Ordinance No. 5623 enacted a 25-foot separation requirement. So, the Mayor and Council Members, as a matter of public policy, would allow a mobile food vendor to operate at a distance of 25 feet from residentially-zoned property. Ordinance No. 5623 became effective 30 days after its passage, or June 16, 2021. Ironically, the Zoning

Interpretation letter is dated June 16, 2021. The Zoning Interpretation purports to increase the 25-foot distance by disallowing food vendors from operating on the subject property which are located at a distance greater than 25 feet, thus flouting the City policy under Ordinance 5623.

Prior to issuance by the Zoning Administrator of the Zoning Interpretation, Power Road Park had submitted to the Mesa Planning Division a revised plan of development for the 7-acre parcel and had received from the Planning Division first round comments and requirements for additional information. The May 29, 2019 site plan has been superseded by the current site plan, a copy of which is attached hereto. Power Road Park has recently resubmitted to the City Planning Division this revised site plan and has responded to the comments and requirements from the Planning Division.

On behalf of Power Road Park, we respectfully request the Mesa Board of Adjustment to reject or overturn the Zoning Interpretation.

Yours very truly,

A handwritten signature in blue ink, appearing to read "FJ Slavin", is written over the typed name. The signature is fluid and cursive.

Francis J. Slavin

FJS/ps

would constitute an offense under one of the statutory provisions enumerated in this Subsection; or

- (d) Felony or misdemeanor involving moral turpitude.

5-4-5: OPERATIONAL REQUIREMENTS

- (A) It is unlawful for a person to operate a mobile food unit or act as a mobile food vendor at any location within the City in violation of this Section 5-4-5 or the City Zoning Ordinance set forth in Mesa City Code Title 11.
- (B) Fire Safety. A licensee must operate all its mobile food units in compliance with the Mesa Fire Code set forth in Mesa City Code Title 7 and state law relating to fire and explosion safety standards.
- (C) Annual Inspection. A mobile food unit equipped with cooking equipment or an appliance that produces smoke or grease-laden vapors, consistent with Section 319 of the International Fire Code, must be inspected annually by the City Fire Department for compliance with the Mesa Fire Code, or the licensee must provide evidence the mobile food unit passed such a fire inspection by a fire department of another municipality in this state within the preceding twelve (12) months.
- (D) Location.
 - (1) A person must operate a mobile food unit and any operational item a minimum distance of twenty-five (25) feet from a lot or parcel containing a residence, distance to be measured in a straight line from all points along the property line of the subject property to the nearest point of the mobile food unit and operational item, unless:
 - (a) The mobile food unit is vending solely ice cream products or similar frozen food novelties, is operating in a right-of-way in compliance with Subsection (E) below or on a private street in a manner that does not impede the flow of traffic, and is not parked within three hundred (300) feet of the same location for more than one (1) hour at a time during an eight (8) hour period;
 - (b) The mobile food unit is operating on private property with the express permission of that private property owner; or
 - (c) The mobile food unit is parked directly adjacent to a private property, either in a right-of-way in compliance with Subsection (E) below or on a private street in a manner that does not impede the flow of traffic, with the express permission of that private property owner.
 - (2) Private Property. A mobile food vendor must obtain the express permission of the private property owner to operate a mobile food unit on that private property.

- (3) City Property. A person must operate a mobile food unit in a legal parking space in a right-of-way, unless:
 - (a) The mobile food vendor has a separate licensing for use, services contract, or similar agreement, which will be entered into at the City's sole discretion and in accordance with applicable law; or
 - (b) The mobile food vendor has a special event permit or similar permission in accordance with the Mesa City Code.
- (4) Airports and Public Transit. A person must not operate a mobile food unit at any City airport or public transit facility unless the mobile food vendor has entered into separate licensing for use agreement or similar services agreement with the City, which will be entered into at the City's sole discretion and in accordance with applicable law.

(E) Parking. This Subsection applies to a mobile food unit operating in the right-of-way.

- (1) A mobile food unit must operate and park in a legal parking space in a location that allows for parking.
- (2) A mobile food unit and any operational item collectively must not use more than one (1) marked legal parking space when such lines are drawn unless the mobile food vendor has a separate agreement with the City to use additional marked legal parking spaces.
- (3) A mobile food unit exceeding twenty-four (24) feet in length must not park diagonally in a diagonal parking space and must not park in any manner that occupies more than one (1) diagonal parking space.
- (4) A mobile food unit must not operate with the serving window facing street traffic.
- (5) A mobile food unit must abide by all parking regulations, including posted time limits. If there are no time restrictions on the use of a marked legal parking space, a mobile food unit must not occupy a legal parking space for more than six (6) hours in a twenty-four (24) hour period. "Occupy" within this Subsection means within one thousand (1,000) feet of the place in which the mobile food unit was initially parked.
- (6) A mobile food unit must not occupy a legal parking space at a site with insufficient parking capacity as prescribed by applicable law and in compliance with A.R.S. Title 9, Chapter 4, Article 7.2 and includes that a mobile food unit must not occupy a legal parking space at a site when the occupation reduces the number of available parking spaces required for the principal use or uses of the site.



KEYNOTES

1. RETAIL/COMMERCIAL/INDUSTRIAL
2. WALKWAY/PLAZA
3. DRIVE/TO GO/STREET/STREET LIGHT/STREET LIGHT
4. LANDSCAPE/PLANTING
5. (S) PARKING/STREET LIGHT
6. STREETCART/STREET LIGHT/STREET LIGHT
7. STREETCART/STREET LIGHT/STREET LIGHT
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9. STREETCART/STREET LIGHT/STREET LIGHT
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29. STREETCART/STREET LIGHT/STREET LIGHT
30. STREETCART/STREET LIGHT/STREET LIGHT

CITY OF MESA PLANT DATA

PLANT NAME	RECOMMENDED	PLANT CODE
1. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
2. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
3. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
4. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
5. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
6. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
7. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
8. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
9. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
10. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
11. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
12. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
13. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
14. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
15. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
16. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
17. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
18. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
19. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
20. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
21. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
22. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
23. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
24. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
25. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
26. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
27. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
28. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
29. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES
30. TREE AND A SHRUB PER 25 X 7	17 TREES	22 TREES

PLANT LEGEND

SYMBOL	SCIENTIFIC NAME	COMMON NAME	SIZE	QTY
1. TREE	ACER PLATANUS	Boxelder	10' H	1
2. TREE	ALNUS INCANA	White Alder	10' H	1
3. TREE	AMELANORHIZA	Black Alder	10' H	1
4. TREE	AMELANORHIZA	Black Alder	10' H	1
5. TREE	AMELANORHIZA	Black Alder	10' H	1
6. TREE	AMELANORHIZA	Black Alder	10' H	1
7. TREE	AMELANORHIZA	Black Alder	10' H	1
8. TREE	AMELANORHIZA	Black Alder	10' H	1
9. TREE	AMELANORHIZA	Black Alder	10' H	1
10. TREE	AMELANORHIZA	Black Alder	10' H	1
11. TREE	AMELANORHIZA	Black Alder	10' H	1
12. TREE	AMELANORHIZA	Black Alder	10' H	1
13. TREE	AMELANORHIZA	Black Alder	10' H	1
14. TREE	AMELANORHIZA	Black Alder	10' H	1
15. TREE	AMELANORHIZA	Black Alder	10' H	1
16. TREE	AMELANORHIZA	Black Alder	10' H	1
17. TREE	AMELANORHIZA	Black Alder	10' H	1
18. TREE	AMELANORHIZA	Black Alder	10' H	1
19. TREE	AMELANORHIZA	Black Alder	10' H	1
20. TREE	AMELANORHIZA	Black Alder	10' H	1
21. TREE	AMELANORHIZA	Black Alder	10' H	1
22. TREE	AMELANORHIZA	Black Alder	10' H	1
23. TREE	AMELANORHIZA	Black Alder	10' H	1
24. TREE	AMELANORHIZA	Black Alder	10' H	1
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30. TREE	AMELANORHIZA	Black Alder	10' H	1