

Mesa Council Chambers Upper Level – 57 E. 1st St.

Date: October 13, 2021 Time: 10:30 a.m.

MEMBERS PRESENT:

Chair Alexis Wagner
Vice Chair Nicole Lynam
Boardmember Adam Gunderson
Boardmember Heath Reed
Boardmember Troy Glover
Boardmember Ethel Hoffman

MEMBERS ABSENT:

Boardmember Chris Jones

(*Boardmembers and staff participated in the meeting through the use of audio conference equipment)

STAFF PRESENT:

Nana Appiah
Rachel Prelog
Michelle Dahlke
Lesley Davis
Alexis Jacobs
Jennifer Gniffke
Josh Grandlienard
Alfred Smith
Charlotte McDermott
Sarah Staudinger

OTHERS PRESENT:

Jon Paladini
Francis Slavin
Deb Tucker

1 Call meeting to order.

Chair Wagner declared a quorum present, and the Public Hearing was called to order at 10:31 a.m.

2 Take action on all Consent Agenda items.

A motion to approve the Consent Agenda was made by Boardmember Gunderson as read by Vice Chair Lynam and seconded by Boardmember Hoffman.

Items on the Consent Agenda

3 Approval of the following minutes from previous meeting:

***3-a Minutes from September 1, 2021 Study Session and Public Hearing.**

Vote: 6-0 (Boardmember Jones - absent)
Upon tabulation of vote, it showed:
AYES – Wagner-Lynam-Gunderson-Reed-Glover-Hoffman
NAYS – None
ABSENT – Jones
ABSTAINED – None

4 Take action on the following cases:

***4-a Case No.: BOA21-00758 (Continued to November 3, 2021)**

Consent Agenda Approved

Vote: 6-0 (Boardmember Jones - absent)
Upon tabulation of vote, it showed:
AYES – Wagner-Lynam-Gunderson-Reed-Glover-Hoffman
NAYS – None
ABSENT – Jones
ABSTAINED – None

***4-b Case No.: BOA21-00586 (Approved with Conditions)**

Location: District 1. 625 North Macdonald
Subject: Requesting a variance from the aggregate side yard setback and the required side yard setback to allow for an addition in a Single Residence-9 District with a Historic District overlay (RS-9-HD)
Decision: Approved with Conditions.
Summary: This item was on the consent agenda and not discussed on an individual basis.

A motion to approve case BOA21-00586 was made by Boardmember Gunderson as read by Vice Chair Lynam, with the acceptance of Findings of Fact and Conditions of Approval, and seconded by Boardmember Hoffman to approve the following conditions:

1. Compliance with all City Development Codes and regulations except as specified in this variance request.
2. Fire rating of the existing structure along the southern property line.
3. Obtain building permits for any new construction.

The Board's decision is based upon the following Findings of Fact:

- A. The minimum lot width in the RS-9 zoning district is 75-feet. The subject property is 61-feet wide.
- B. The minimum lot size in the RS-9 District is 9,000 square feet, The subject property is 8,712 square feet.
- C. The special circumstance is pre-existing and not created by the property owner.
- D. The previous property owners constructed additions to the existing home and the existing detached garage without building permits.
- E. The additions constructed by the previous property owners connected the main house to the detached garage making it all one structure. In doing so the structure no longer met RS-9 internal side yard setbacks and make the house an illegal non-conforming structure.

- F. On April 5, 2017, the Board of Adjustment approved a variance request to allow a carport and casita to have a 0-foot setback from the lot line at 463 North Grand (BA16-068). On April 8, 2014, the Board of Adjustment approved a reduction to the side yard setback for a new carport at 541 North Macdonald (BA14-022). On February 4, 2006, the Zoning Administrator approved a variance request to allow an encroachment into the required rear setback at 604 North Macdonald (ZA06-010TC). Strict application of the zoning ordinance will deprive the subject property of privileges enjoyed by other property within the same zoning district and within the same neighborhood.
- G. Based on previous approvals of similar variances within the neighborhood and within the RS-9 HD District, approval of this variance request to allow a reduction to the aggregate side yard setback and the minimum side yard setback does not grant special privileges inconsistent with the limitation upon other properties in the area or in the RS-9 HD District.

Consent Agenda Approved

Vote: 6-0 (Boardmember Jones - absent)

Upon tabulation of vote, it showed:

AYES – Wagner-Lynam-Gunderson-Reed-Glover-Hoffman

NAYS – None

ABSENT – Jones

ABSTAINED – None

Items not on the Consent Agenda

5 Take action on the following case:

5-a Case No.: BOA21-00823 (Denial)

Location: District 1. 939 E. Kael Street.

Subject: Requesting a Variance from the required rear yard setback to allow for an accessory dwelling unit in a Single Residence-35 District with a Planned Area Development Overlay (RS-35 PAD).

Decision: Continued to a future date

Summary: Staff member Josh Grandlienard presented case BOA21-00823 to the Board.

Chair Wagner: I do have a quick question or discussion with the Board. The applicant does list the other properties in the area have existing encroachments that have been approved by the Board in the past in the same Lehi area. Do you have any examples of that?

Staff member Josh Grandlienard: Yeah, so essentially, this area is actually outside of the Lehi Subarea. So, this is directly south, had it been located just north, literally north of Kael Street, it would be within that Subarea. But this is south of that, which is why it's in the RS-35 District rather than the standard RS-43. So it's a bit different.

Chair Wagner: The applicant was listing the neighborhood in the Lehi area, not their direct neighborhood? Well, thank you for that clarification. Are there any ways that the property owner has expressed that they could make adjustments to their plans to be within those bounds?

Staff member Josh Grandlienard: Not that they've spoke to me about. realistically, I brought out a scale and measured it. Theoretically, I could fit onto that eastern edition and met all setbacks, which

is why I included that as part of my staff report, but I did not have any direct contact with the applicant stating, you know, that he was willing to make that change. But he wanted the placement here, so that existing pool structure and wanting to combine that.

Boardmember Gunderson: I've got a just a couple questions. I'm looking at the map that was submitted by the applicant and it looks like they've indicated a number of properties that are south of Kael Street that include permanent structures. Are any of those cases approved for variances?

Staff member Josh Grandlienard: Not for variances. Those are all accessory structures that meet the conditions of an accessory structure. So it's most likely under 200 square feet or meets other conditions.

Vice Chair Lynam: What is the setback that would be required for an accessory structure?

Staff member Josh Grandlienard: If its under 200 square feet and under 10 feet it is allow within the setback. So, the existing pool structure is allowed. Due to the size of the RV structure and because it's an addition to the primary structure means that it is a required 30-foot setback from that rear property.

Vice Chair Lynam: If the accessory dwelling unit that they're putting behind the RV garage were detached is that still the 30-foot setback or is that a different setback?

Staff member Josh Grandlienard: It would have to meet the conditions of that accessory structure. So depending on sizing and things of that nature it could meet under that condition.

Applicant Bruce Preston: Yes, I'm Bruce Preston applicant. My address is 939 East Kael Street, Mesa, Arizona 85203. What the plan reviewer is saying is correct on the setback under the code of Mesa City Ordinances, there is actually a provision that allows a 10-foot setback beyond the 30-foot setback. So that would make it a 20-foot setback overall for the residence itself. What I'm asking for is a five-foot setback from that the property itself, the guest house, would be 15-foot off the property line, that existing pool structure has been there for 20 years. That is currently three foot eight off there, that pool structure was there before I moved into the property, creating the hardship. First of all, I wanted to address Boardmember Gunderson, your question, in regards to the houses, there's 23 examples that are 200 square feet or more, RV garages inside the setback that have been granted by a variance for the City of Mesa, I went and surveyed those myself. There is an additional inside my narrative, all of the setbacks that I pulled laser dimensions off of from property lines, to show that is a hardship within the neighborhood. And then by denying my request, you already have approved 23 cases inside of my neighborhood. Our neighborhood was provided to bridge the gap between Lehi and Mesa, those first seven lots are almost one acre lots for horse privileges. If I moved the addition to the east side of the house, I would no longer have a place for horses, we have horses on our property. We have chickens. That's a reason why we moved into Mesa, I'm a Mesa native, I want to ensure that Lehi and Mesa maintain what it was designed to do and what those seven lots were designed, hence why I'm trying to keep everything on the west side of the property. Any questions specifically that I can answer?

Boardmember Gunderson: So, I'm looking at your justification statement and I see the table that you included, of listing those properties that were identified on the map you provided. And that's what I was asking staff about, but I don't see any reference to Board of Adjustment cases.

Applicant Bruce Preston: I don't have the actual case numbers, but in order to build a permit, they would have had to go through this process for a variance if they were in the setback. Yeah, or they did it without a permit. Yeah, you know, that's, that's the tearing down houses now.

Boardmember Gunderson: What I am suggesting is that I want to see those cases and see what the findings were in those cases.

Applicant Bruce Preston: How do I go about trying to find the cases? I mean, I've given you all the addresses and the dimensions on how they encroach on the setbacks.

Chair Wagner: Are the cases being discussed still the cases in the other side of the neighborhood?

Boardmember Gunderson: No, these are specific cases that are south of Kael Street.

Applicant Bruce Preston: South of Kael Street, which is Amberwood Estates 2, which is the neighborhood that I am in.

Principal Planner Rachel Prelog: Staff does not have a list of BOA cases prepared for those examples. If you wanted to continue this item, we could research it further.

Chair Wagner: So, everything south of Kael is zoned the same as his house would be.

Staff member Josh Grandlienard: It is actually a variation of RS-35 and RS-15.

Chair Wagner: Mr. Preston would you be okay with us continuing this case so that we can further research the information.

Applicant Bruce Preston: I'm at the mercy of the Board of Adjustment, I guess. Unfortunately, this is really dependent. I mean, I've already been pushed out like three months trying to gain all this information to make my case and what we were supposed to start this year in construction is now being pushed all the way to March 2022. And I would like to get this going. Obviously, it is for a mother in law's suite for a specific reason and with everything going on with the pandemic. And both my wife and myself, we have two mothers. And unfortunately, right now my wife's stepfather is in the hospital in ICU in COVID. So that may become a reality quicker than not. So, I need to get construction. But I also understand that there's a process. So, I would urge the Board to take consideration today and look for approval but if that's not amenable, and you need more information, then we have to do what we have to do.

Boardmember Reed: I'd like to see if we can, you know, if there's presence of other cases in the area, if staff can research that looking at Exhibit A, it looks like some of these potential structures, it's hard to tell but it looks like they may be attached and are within the setbacks. So, I'd like to, you know, I would like to have all that information present, if possible, so we can make a good decision personally that's how I feel.

Principal Planner Rachel Prelog: Chair Wagner, if it's the prerogative of the Board to continue the item, we can do that research but I would just like to remind the Board that all the findings have to be met for a variance. In addition to just the special privileges granted to other property owners as well. So, we would have to consider alternative findings as well outside of this one topic.

Chair Wagner: Applicant, do you have any ways to maybe meet that five-foot difference? That's in discrepancy right now?

Applicant Bruce Preston: You know, ultimately, where the pool house is existing, and I'm taking the roof off, because there's a CMU wall there. But I mean, an alternative design would be to scrap the pool house that is currently in its position, continue the guest house and potentially relocate the pool equipment, which is an additional cost, you know, versus just reroofing the pool house. But then it would not be a continuous thing, a continuous accessory, of how staff is reviewing.

Principal Planner Rachel Prelog: Just for clarification, Chair Wagner, they would have to meet that 30-foot setback, it wouldn't just be a five-foot difference, because they're connecting it to their main structure, now it becomes part of the primary structure which has to meet those setbacks.

Applicant Bruce Preston: So, it would be a 30-foot setback, but under the City of Mesa Ordinance, there is an allowance to encroach another 10 feet beyond the 30 feet. So, it'd be a 20-foot setback and I'm asking for a five-foot variance from that 20-foot setback, which is already allowed for 50% of the occupancy structure. I can give you the actual code provision here, under Section 11-5-3(B)(2)(a)(iii)(6), of the City of Mesa Code Ordinance that allows for that. So, what I could do is if I relocate the pool structure, I would be meeting the five-foot variance request that I'm doing so that it would be 15-foot off the property line. So, it would not be just five feet, it would be the five-foot encroachment from the 20-foot that's already allowed. So, the building itself would be 15-foot off the property line.

Chair Wagner: This is the discrepancy that I would like a little bit more clarification on. Would staff be willing to pull up that photo of the of the property? This is your whole property, correct? And if we moved the requested new garage to the east side of the property how far would that encroach into your existing landscape?

Applicant Bruce Preston: It would, I would have to tear down the pasture fence and it would encroach into the pasture fence. Because I would have to then rotate the guesthouse from extending south over to east and I believe it was like 25 to 30 feet from there. Reducing my pasture over half what the pasture currently is for the horses.

Chair Wanger: The 30-yard setback is what it needs to be correct. So since the pool house is connected to this proposed new property that's attached to the house, that pool house then also has to be correct.

Principal Planner Rachel Prelog: And I think what the applicant is referring to is there's a provision in the code to allow 50% of a livable area to encroach within 10 feet of the rear property line. But as from my understanding that existing pool house was about three-feet, eight-inches off the property line. So, in essence it would still be the same setback as what we're talking about here is that three feet eight inches.

Applicant Bruce Preston: Correct. But if we demolish the pool house, the pool house would no longer be in play and the existing way the guest house is proposed, is the guest house itself, where you can see that little notch is 15 feet off the property line.

Chair Wagner: And that one still would need to be 30 or is 15.

Applicant Bruce Preston: That would need to be, per the code provision, it would allow it would need to be 20 feet.

Principal Planner Rachel Prelog: This is correct.

Boardmember Hoffman: Just for clarification, it's not clear to me first of all, that 30-foot setback from livable. Attaching to a garage does that meet the criteria for adjacent livable space?

Principal Planner Rachel Prelog: Chair Wagner, Boardmember Hoffman what they would like to do is attach the structure to the existing pool house. So connecting the main home to that pool house creating an accessory dwelling structure and a garage.

Boardmember Hoffman: So. the pool house is in between?

Principal Planner Rachel Prelog: It is at the very rear of the property.

Boardmember Hoffman: Oh, that's what I thought. But the new addition for the mother-in-law suite, if you will, right? Could that not be added on the east side of the house and maintain the garage and the pool house as it is because it looks like what the intent is to make those contiguous structures?

Principal Planner Rachel Prelog: That is what staff is suggesting, that there is opportunity on the east side of the property to construct the addition and meet code.

Boardmember Hoffman: Because that addition doesn't look like it would take up very much of the pasture space, if you will.

Applicant Bruce Preston: The mother-in-law quarters itself, you are correct. But in order to be able to park a vehicle for the mother-in-law and access that it would create a driveway into the pasture area, and I would no longer have to have horses on my property.

Chair Wagner: Does anyone on the Board have any further questions? All right, I'd like to close public hearing on case BOA21-00823 and open up Board discussion on this on this case.

Vice Chair Lynam: I would be interested in seeing the other cases that have been in the area and I am curious about that, but I don't know, as staff are saying, that we would have to meet all of the conditions. And I'm not sure that I see the hardship being met here is an outside condition. There is area to put this type of project on the site. I think there's different layouts of it that could be accommodated within the site. That won't create. I don't see any justification for an external hardship on this site. Because there is that ability and space to do it and ways of doing it without reducing the pasture and stuff like that too, if you're coming up with the right design attempts. So that's kind of my thoughts on it that I don't know that we can meet all the requirements to justify continuing it to the next session.

Chair Wagner: I agree that there is a way to do it in a way that would be within code. So that's the way that I am leaning. Does anyone else have anything?

Boardmember Gunderson: I've got a few thoughts on this one. I'm sympathetic to the argument that the applicant has made that this particular area of the City has been zoned specifically to create

that transition between the Lehi area that has space for agricultural and for animals and other parts of the City, and I think it would be a shame to force him to lose his agricultural spaces for his horses. It does seem like maybe there's a possibility of adding on what he wants to do, without encroaching on that space. But it also looks like, or at least the applicant has alleged that and pointed to 23 cases in his map that there are other properties that have similar encroachments. And so, I think, before making a final decision, I'd really like to compare this case to those other previously approved variances. And looking at the requirements for variance, the first two requirements are the two that I'm not so sure we meet here, special circumstances applicable to the property. This is a big lot. It's a rectangle, it's not that strange of a lot. But three and four, I think, very well might have been met in this case, just judging by the things that the applicant has included in its report, the fact that, you know, a strict application of the Zoning Ordinance will deprive such property of privileges enjoyed by other properties of the same classification. The applicant is alleging that, and I don't think we have enough information to really make a fair comparison because it wasn't included in the staff report. So, I don't know what those special circumstances were the applicant hasn't clearly alleged any. But it looks like the City may have found some in the past. I'd like to see what the Board has found in the past. So, I'm leaning more towards a continuance in this case and letting the applicant and City staff research this a little bit more before we make a final decision.

Boardmember Hoffman: I would concur that at this time, I don't feel comfortable making a decision without the additional information that Boardmember Gunderson spoke of as well. So I would like to see a continuance.

Chair Wagner: Alright, at this time, does anyone on the Board like to motion?

Boardmember Gunderson: Yeah, I guess I better do it. I move that we continue this to November, if that's feasible, otherwise, to the December hearing or a later hearing? I don't know maybe before I finished my motion, I should get some feedback from staff to see whether or not a continuance to November makes sense.

Principal Planner Rachel Prelog: Chair Wagner, Boardmember Gunderson, September 1 would be possible. But you could also continue it to a date uncertain.

Boardmember Gunderson: I'm moved that we continue this case to a date uncertain.

Boardmember Hoffman: I will second that motion.

Chair Wagner: All right. We will do a roll call vote specifically for this case. Boardmember Glover? Yes. Boardmember Gunderson. Yes. Boardmember Lynam. Yes. Chair Wagner. Boardmember Reed? Yes. And Boardmember Hoffman? So the vote passed six to zero in favor of continuing this case to our to a future date.

***5-b Case No.: BOA21-00628 (Denial)**
Location: District 5. 1439 North Power Road
Subject: Consider an appeal of an interpretation of the Zoning Administrator issued on June 16, 2021, that the current activities on the property do not conform to the Zoning Ordinance definition of Parks and Recreation Facilities, Public.
Decision: Appeal denied, uphold the Zoning Administrators interpretation
Summary: Planning Director/Zoning Administrator Dr. Nana Appiah presented case BOA21-00628 to the Board and appellant representative Francis Slavin presented to the Board.

Chair Wagner: All right, so we will now move to reopen the public hearing today for BOA21-00628. As stated before, for this one, the layout will be a little bit different. I've asked that each side have 10 to 15 minutes with one or two speakers to represent the whole group. When we get to that public speaker section of this hearing today.

Francis Slavin: I'd like to address the time limitations that you are proposing.

Chair Wagner: Okay let me speak with our lawyer really fast and I will get back to you.

Jon Paladini: So, I think I think for, for clarification, you're talking about the public comment portion, not the parties involved. So, you may want to clarify the time you're allotting and when I say parties, I mean, the City and the property owner, you may want to clarify the time allotted to the parties. And then the public comment section, I think is what you're talking about 10 to 15 minutes for opposed 10 to 15 minutes for in favor of.

Chair Wagner: All right, yes. So, the time limits that I was discussing previously, we'll have 30 minutes. For each side of the argument, the appellant will have 30 minutes and the City will have 30 minutes for their presentation portions, then we will have 15 minutes per side for the public comment section of this of this meeting.

Francis Slavin: Madam Chair, there are three legislators here today, I just want to make sure that the 15 minutes would include enough time for them to question, I would be okay with that. But in terms of our presentation, I will be making the presentation and part of my presentation will also involve Ray Johnson. So, we may be taking, it's going to stretch us to get 30 minutes. The reason I'm suggesting this is that in the staff report, we just got the staff report, is 12 pages long. Okay, and we got it Wednesday or Thursday, after hours. Okay, and there's a number of arguments within there that we need to you know, provide just also.

Jon Paladini: Mr. Slavin, if you could go to the microphone while you're doing this. I should have probably interrupted. Sorry, sorry about that. And just for also clarification, Madam Chair, when you're allotting 30 minutes per side, you're also allotting 10 minutes per side for a rebuttal, so it's a total of 40. So, you have the flexibility to allow for within that 40 more time for the primary presentation, and perhaps less time for rebuttal, if you choose to do that.

Francis Slavin: Thank you again for your record, and I apologize, sir, that I was not here. You're welcome. You're right. I'm sorry. Again, Francis Slavin. I'm on. I'm the attorney for the appellant and my address is 2198 East Camelback Road in the City of Phoenix. One of the things that we had addressed and I'm again, don't know if Jon is familiar with this or not and Mr. Paladini I should say, is that we objected because there was not a public hearing before the Zoning Administrator. So, one

of the things that was mentioned is that we could then have the time that we would have had in that public hearing before the Zoning Administrator to be able to address all the issues.

Chair Wagner: May I ask what time you asking for then?

Francis Slavin: Well, I think probably 45 minutes would be a more appropriate time for us. We'll try to take less, I realized that we're keeping you here after, everybody here after lunch, and that doesn't make sense either. We might have to take a break for that. But I would, I would refer you to the top of page seven of the staff report. And I will quote it says the BOA hearing is appellants authority opportunity to present its position and evidence that was in response to our complaint that there was not a public hearing so we were under the belief we would have the time necessary to do this. And because of the of the importance of this I thought you might want to also have a complete presentation by us.

Chair Wagner: Alright, as requested when the email that I have sent out previously, I don't remember the date. But the outline for today's hearing is going to be that each presentation is going to try to stay within the 30 minutes. I won't necessarily time it specifically. But if you could get it to that 30 minutes, I would be appreciative of it. That would not include the 10 minutes for each of your rebuttals and closing statements as well. And then each side as what I was discussing previously, each side for the public comment section will be increased to 15 minutes per side rather than just the three minutes per person.

Francis Slavin: Okay, if I may again, Chair in other words, the persons here who were in support, that would be a total of 15 as opposed to 10 minutes, correct?

Chair Wagner: Yeah, the 30 minutes and 10 minute rebuttal. Thank you.

Chair Wagner: Today I would like to introduce this case first. And we need to discuss a couple of items before we get to hearing the city presentation due to needing things on record for this case. This is an appeal from the Zoning Administrator's interpretation of the City of Mesa Zoning Ordinance interpreting the definition of public park and recreational facilities as it pertains to uses at 1439 North Power Road. Any boardmembers with a conflict of interest, will you please now declare the conflict and recuse yourself from this discussion? All right. Before we get to the City presentation and the appellants presentation regarding the appeal from the Zoning Administrator's interpretation of the City of Mesa Zoning Ordinance interpreting the definition of public park and recreation facilities as it pertains to uses at 1439 North Power Road, we will first need to determine as the Board of Adjustment whether the Zoning Administrator, Dr. Nana Appiah had the authority to issue this interpretation in the first place. I will allow five minutes from both the City and the appellant to present specifically on whether the Zoning Administrator had the authority to issue the interpretation in the first place. This is separate from the 30-minute presentation and rebuttal.

Planning Director/Zoning Administrator Dr. Nana Appiah: Chair, Boardmembers. Good morning, again, Nana Appiah the Planning Director and Zoning Administrator as well. The Mesa Zoning Ordinance is very specific and clear. And as I've shown in my presentation the Zoning Administrator has the authority to issue interpretations to either the public or residents of Mesa, or City departments. So, the Zoning Ordinance is very clear that the Zoning Administrator has the authority to issue interpretation either to residents or the public, City of Mesa departments and our governmental entities is very clearly stated that, so my interpretation was absolutely based in the requirements of the Mesa Zoning Ordinance and under my authority as a Zoning Administrator.

Francis Slavin: This is Mr. Slavin I'm speaking on behalf of the appellant. The Mesa Zoning Ordinance provides for the Zoning Administrator to be able to interpret and enforce the Zoning Ordinance when there is not a specific land use classification for a subject use, then he still has some authority, or I should say the ZA has the authority to determine if it fits in a specific land use category. It's not specifically described as it doesn't specifically involve the particular use. In this case, we have mobile food vendors, and we have mobile food units. There is absolutely no reference whatsoever in the Mesa Zoning Ordinance of mobile food units and mobile food vendors. So...

Chair Wagner: Mr. Slavin I'm going to interrupt you really fast. So specifically, right now we just want to discuss whether the Zoning Administrator had the authority to issue the interpretation.

Francis Slavin: Okay, thank you. The interpretation that has been issued is whether or not these mobile food units are allowed, if you will, in a public park. Okay, and so, there is nothing in your Ordinance that talks about mobile food units, it talks about food concessions, okay, that's the part let's talk about, but in terms of food concessions, there is no definition whatsoever with regard to food concessions. There's a reference to limited, special, limited restaurants, limited use restaurants. And so in the staff report it spends a lot of time on limited service restaurants. And if you look at that, it talks about it being establishment, being parlors, food bars, takeout restaurants, cafeterias, etc. These are trucks. These are vehicles again all I can tell you is there's nothing whatsoever in there now. Your Mayor and Council had the opportunity after House bill was passed that led to the adoption of ARS 9485. And the Mayor and Council did take it one step, and that was to talk about the limited separation distance. The state statute says you can legislate up to 250 feet, the Mayor and Council said 25 feet. Now they had the perfect opportunity to then legislate about mobile food units in mobile food vendors. They never took that opportunity. So what they did is they placed upon the Zoning Administrator the burden of extracting language from the Ordinance that would somehow then be able to apply to mobile food vendors. And I don't think they had. And so that puts him in a special category of having to appear to be acting on an administrative basis. But in fact, it's truly a legislative act. So, I don't think he has the legal authority to do that, quite frankly. And so that's my position. Thank you very much.

Chair Wagner: Thank you, Mr. Slavin. Alright, so now we will close the public hearing on this section of the case, and I will open discussion within the Board of Adjustment, determining whether the Zoning Administrator, Dr. Nana Appiah had the authority to issue the interpretation in the first place. Does anyone have any comment on that?

Boardmember Gunderson: I've just got a thought. If he doesn't, then neither do we. Right?

Chair Wagner: That's our next vote.

Jon Paladini: Madam Chair, if I have the liberty, we're going through the procedural steps, so the Board and the public understand, before we get to the substance of the issue to determine, again, did the Zoning Administrator have the legal authority to issue the interpretation in the first place? If the answer is no, the rest of the matter is moot. If the answer is yes, then you move to the second question, does the Board have the jurisdiction or authority to hear this matter? And decide on whether the Zoning Administrator made an error or correctly interpreted the zoning code? If the answer is no, the matter is over. If the answer is yes, then you move on to the substance where each side would make their arguments as to why or why not this interpretation is accurate. So that's kind of why we're going through these steps.

Chair Wagner: Thank you for that clarification. I would like to turn the Board to exhibit M in your documents. In exhibit M, it states that the Zoning Administrator in an administrative role has the authority to interpret the Zoning Ordinance to the public, City departments and other branches of government and subject to general and specific policies established by the City Council. As Dr. Appiah explained earlier, he was interpreting because he was asked to and I feel personally that based off of this role that's been outlined in Section 11-66-7, that he does have the authority to issue the interpretation. Is there any other comment on this?

Boardmember Hoffman: My feeling is to agree with you. The reason we have an individual in that kind of position is because circumstances come up, that can't necessarily be foreseen, and we've appointed somebody to use their best judgment and I believe that is what took place in this case so I would support, I guess.

Chair Wagner: I would like to motion that we vote in favor that the Zoning Administrator, Dr. Nana Appiah had the authority to issue the interpretation in the first place. Would anyone like to second that motion?

Boarmember Hoffman: I will second that motion.

Chair Wagner: All right, we are going to do all roll call.

Jon Paladini: Madam Chair, just so I can for the record keep it real clean. Your motion and to second is based on the language in the Mesa Zoning Code, Section 11-66-7(B)(1)(b)?

Chair Wagner: Correct. We will now move to our roll call vote. Boardmember Glover, yes. Boardmember Gunderson, yes. Vice Chair Lynam, yes. Chair Wagner. Boardmember Reed, yes. Boardmember Hoffman, yes. Boardmember Jones is absent today. The vote has passed unanimously with six in favor of approving that the Zoning Administrator Dr. Nana Appiah had the authority to issue this interpretation. Next, we will now do a roll call vote in regards to if we as the Board of Adjustment have the authority to review this appeal. I will now open this up to the public hearing section of this would either the City or the appellant like to present on this.

Charlotte McDermott: Good morning, Chair, Boardmembers, Charlotte McDermott, Assistant City Attorney for the City of Mesa. Regarding your question whether the Board of Adjustment has the authority to hear this interpretation. I want to go to the exhibits in the binder, Exhibit P1 is a State Statute 9-462.06 under that item statute G, a Board of Adjustment shall hear and decide appeals in which is alleged there is an error in an order, requirement, or decision made by the Zoning Administrator in the enforcement of the Zoning Ordinance adopted pursuant to this article. That is what is before this Board today. Dr. Appiah, the Zoning Administrator has issued an interpretation and the enforcement of these Zoning Ordinance. I'd also like to say under the Mesa City Code, Dr. Appiah as the Zoning Administrator can issue these interpretations, and those interpretations when they are appealed go to this Board, and that is pursuant to Mesa City Code. And I'd like to get to the reference under Mesa City Code the Zoning Ordinance 11-66-3 states that a Board of Adjustment, their duty is to hear and decide appeals from the action of the Zoning Administrator acting in either an administrative role or the hearing officer role in the interpretation of the provisions of this ordinance provided further Mesa City charter also grants this Board the authority to rule on appeals from administrative decisions. And for these reasons we the City believes that the Board of

Adjustment has the authority to rule on the appeal of the interpretation from the Zoning Administrator.

Chair Wagner: Thank you. I would like to move that we...

Jon Paladini: You need to give Mr. Slavin an opportunity.

Francis Slavin: I do not disagree with what you were just told by the Assistant City Attorney.

Chair Wagner: Thank you. I would now like to close the public hearing portion of this case and open Board discussion. Based off of what we have been presented with, I would like to move that the Board of Adjustments does have the authority to review this appeal today. Would anyone like to second that?

Boardmember Glover: I second.

Chari Wagner: All right now we will do a roll call vote Boardmember Glover, yes. Boardmember Gunderson, yes. Vice Chair Lynam, yes. Chair Wagner. Boardmember Reed, yes. Boardmember Hoffman, yes. All right. The roll call vote has passed unanimously was six yes, zero no's. I will now reopen the public portion of today's hearing and this is now where we will hear from both the appellant and the City. The appellant and the City will each have 30 minutes for their presentations. Questions from the Board and the appellant or City will not count against the 30 minute time limit. Closing statements are limited to 10 minutes for the appellant and City, with City having the option to reserve a portion of its 10 minutes for the rebuttal. First, we will hear from the Zoning Administrator today for the City's presentation.

Jon Paladini: Madam Chair just for procedural purposes. Are you, the Board allowed to interrupt the presentation with questions or would you prefer that questions are reserved?

Chair Wagner: Lets reserve questions for the end. Thank you.

Planning Director/Zoning Administrator Dr. Nana Appiah: The request before you or the appeal before you is very specific to the definition of park and recreation facilities and activities that are carrying on the subject property which is 1439 Power Road. Before I go into details of my presentation, I'm going to show you the location of the property. The City's General Plan designation and the Zoning Ordinance to lay the foundation for the discussion of actually the current activities going on on the property. So, looking at this the General Plan character designation on the property is Neighborhood and what is the intent of this neighborhood character designation. There are various character designations in the city. This is very specific to neighborhood and the intent or the goals of this character designation is basically to provide a safe place for people to live and also enjoy the neighborhood in a safe manner. There are other uses such as parks, schools, places of worship, which is very vital to all of us living in our community. Those are things that we do as part of living in a community.

The zoning designation, which helps implement the General Plan is Office Commercial. And the intent of this Office Commercial is to provide small-scale professional offices intended to really serve the general community, the immediate community, and also make sure any use is compatible to the surrounding neighborhood. Now, let's come back to the actual definition of parks and recreation facilities is defined in the Mesa Zoning Ordinance as parks, playgrounds, recreation

facilities, trails, wildlife reserves, and related open spaces, all of which are noncommercial. The word noncommercial is really critical in this definition. This classification also includes playing fields courts, gymnasiums, swimming pools, picnic facilities, tennis courts, golf courses, botanical gardens, as well as related food concessions or community centers within the facility. If you look at this definition, the word related is because as you all may be aware, when you have a public park in your community occasionally, you do get the ice cream truck coming over. You do have your snow cone stand. That doesn't take out the primary use of a public park we all know when we go to a park what defines a park and most parks or the parks as defined here are noncommercial because their primary uses that are listed here are noncommercial, you go to your park you sit down, you go to play frisbee or ball. However, commercial food concessions are commercial, the definition would not have said that is noncommercial. If food trucks or food concessions were supposed to be the dominant character uses in a public park. And also, be mindful as we go through this discussion. The focus of this discussion is basically limited to the definition of public parks and recreation facilities on this property.

Looking at zoning district, the Office Commercial does allow parks and recreation facilities in the Office Commercial, this is all you see listed as P in our Zoning Ordinance, anything listed as a P, it means is permitted. In this discussion, there will also be an issue or the definition of limited restaurants, which is what as a Zoning Administrator my determination of food trucks is falling under the definition of limited restaurants which are allowed in the Office Commercial. However, there is a limitation for it to be located in a building or commercial building. One example you go to commercial buildings, they have a cafeteria and those are allowed in the Office Commercial, and the size is also limited to 1,500.

So, looking at the example of parks, I think we all can walk to Pioneer Park right across the street. When you see Pioneer Park what comes in mind is a park. Occasionally we do have food trucks that are basically serving food which are commercial however, that does not become the dominant use, that has never been the dominant use in Pioneer Park. One example of a park, Steele Indian Park, when you see this, nobody has to tell you this is a park. Central Park in New York, there are so many activities that happen in Central Park. However, the dominant use and the activity that occurs is all the list of primary uses that are defined in the park so my next presentation I'm going to go through the factual background, activities and discussions that happened, that got us where we are today.

So, this discussion started back in 2019 where the appellants representative Mr. Lake basically met with me and discussed the possibility of using the property for food trucks and I told him, or in my discussion, I was very clear that food trucks fall under the definition of limited restaurants which are not allowed as a standalone unless it's within a commercial building or any other of his building, however, is also limited to 1,500. And so based on this discussion, we also discussed the possibility of having food trucks as a related use which is accessory in a public park. So after a discussion back in May 2019, Mr. Lake emailed me this site plan and it's very critical to look at this site plan. This site plan is a true park. It shows all the primary uses the main uses, you can see a splash pad, beach volleyball, and there were locations shown here as food concessions. There is no question, I mean my position has not changed, this site plan are you looking at absolutely is a public park. Food concessions as shown here is accessory as shown here, only limited areas. This food concessions were not shown to be the dominant use. So based on that I responded to Mr. Lake and I informed him based on the site plan that is emailed to me that falls under the definition of public park and recreation facilities.

Nothing really happened until December 2020, where planning staff and Code Enforcement were informed by the surrounding neighbors that there had been fliers and there's been other advertisement going around the community that the appellant is planning to hold a food truck event. I contacted Mr. Lake and informed him based on what we are seeing. If they plan to move forward. That activity will not fall under the definition of public park and recreation facilities and it doesn't conform to the site plan that I have given my decision, well not decision, I have basically a framed that based on the site plan, it falls under the definition of public parks and recreation facilities. So, with that there was a follow up with myself, the Director of Development Services (my boss), the Deputy City Manager (overseeing Development Services). We met with the applicant on the site. When we met with them on the site, none of the things that were shown on the site plan that were submitted back in 2019 had been constructed or shown. There were fire pits and other things. So, in this discussion, my position never changed. I informed the applicant that we have to look at the site plan that I responded to. And that site plan, if they do what is shown on the site plan, will fall under public park and recreation facilities. There were discussion as to what are the future intended uses on the property, and based on that discussion, there was a discussion about constructing a wall doing other improvement, which is not unique to any discussion that we have in the City. That's what I do daily people call me as to all the things they can do my compensation doesn't issue any formal approval and this discussion, there was no formal approval. I made it clear to the applicant of the definition of public park and recreation facilities. One of the things I also forgot to mention, after my discussion and the email communication with Mr. Lake, he actually went forward and submitted the plan to our Building Division for review, as well. That meant before I agreed, what the definition of a park would be or that the plan really fit. He went ahead and submitted that site plan for a formal review. So after discussing with them, in December 2020, they went ahead. Code Enforcement saw it, their evidence, the neighbors also, to basically move forward with a food truck event. There were continuous complaints from neighbors of trash, noise and its neighbors questioning what authority or what approval has been granted to allow this use. I made it clear to the neighbors that there has not been any City formal approval and the neighbors even question the definition of public park and recreation facilities. And my position on that with a site plan that was submitted back in 2019, that if they do this is the definition of public parks and recreation facilities.

So, with our continuous complaints, no formal approval, the Director of Development Services did ask me as the Zoning Administrator to have and issue in official writing of whether the activities are being conducted on the site fall within the definition of public parks and recreation facilities. In addition, as you can see here, representative for the property owner at 6822 Halifax also made a formal request for me to issue my interpretation. So, in June of this year, I did issue my interpretation, which is part of your packet of the definition of public park and recreation facilities, and whether the extensive use of food truck, food concessions being the dominant use, and the main use that is attracting people to their property falls under the definition of noncommercial and also, related use of public parks and recreation facilities. In July, the applicant or the appellant representative issued or sent a letter to appeal my interpretation which brings us before you this morning.

So, the next couple of slides I'm going to go back, I'm going to go through and provide responses to the appellant positions. Number one, the appellant says in their position that they never requested any request for interpretation formally to me as a Zoning Administrator. I said this area on the Zoning Ordinance is very clear as to my authority as a Zoning Administrator, that I can issue interpretation to their public, City departments and other governmental agencies. That's what I do daily. I get phone calls from neighboring property owners every day, asking me if an activity

happening by their house or in their neighborhood is allowed in the Zoning Ordinance. Second, there was also a specific request from the Director of Development Services and the surrounding resident's representative as well. In addition, there is no requirement in the Mesa Zoning Ordinance that requires specifically for a property owner to submit a formal request before I can issue an interpretation on an activity on a property. Number two, the applicant says that having been given the opportunity to submit a formal interpretation request for interpretation would have given them the ability, or opportunity for them to submit additional documents that may have influenced or may have steered my interpretation. And my interpretation was a unilateral decision. And also, I should have conducted a public hearing before I could issue my interpretation. Well, this Mesa Zoning Ordinance is very clear, as to my authority to issue interpretation either administratively without a public hearing, or through a public hearing. It depends on the issue, it depends on the amount of limited information, for me, in situations where there is limited information where I believe that having a public hearing will provide additional information that I may not have received, I call a public hearing. In situations where I have absolutely all information to make administrative determination, I do make the administrative determination. And in this situation, there was evidence from the neighbors, there was evidence from specifically our code enforcement and there was not even any discussion with the appellant or property owners where they deny not conducting the activities that we've talked about on the site. In addition, my interpretation was not made in isolation. I reviewed the goals and purposes of the General Plan, the Zoning Ordinance, and all the applicable State and Federal regulation for me to issue the interpretation. If you look at this, these are some of the advertisement or commercials that you see on the appellants Instagram. There was no way in this commission, as you see any recreation volleyball, the things that are really primary to the definition of public park that is noncommercial. The primary activity on this property is absolutely the food trucks that is what is drawing people to go to the site. One of the things you need to bear in mind, I'm sure most of you do have neighborhood parks in your community. There is a reason why the Zoning Ordinance classify that as noncommercial and non-main for extensive commercial uses that will not be compatible to surrounding communities. And there is also a reason why parks and recreation facilities are allowed in almost all the residential Zoning Districts. And the third position by the applicant or the appellant that my interpretation modifies the definition of public park and recreation facilities. And it also contracted sections of the Zoning Ordinance. They're very much aware of my duties and responsibilities as a Zoning Administrator. That interpretation did not modify any section of the Zoning Ordinance. I acted within my capacity. My interpretation was very specific to food trucks, or food concessions, whether they are the dominant or primary activities in the definition or within the definition of public parks and recreational facilities. So you know, I've said this again and again, there is a reason why the definition said all those are noncommercial and my interpretation faceted the definition of commercial what is the commercial use or what is commercial exchange of goods and services for either profit purposes. And number four, the appellant says my definition ignores Section 11-86-3 of the Zoning Ordinance, which is the definition of public park and recreation, and then another question is my interpretation ignores picnic facilities. You have a copy of my interpretation. There was no way that in my interpretation I ignore picnic facilities as allowed in a public park or recreation facility. My interpretation was very specific to food concessions and whether they are allowed as a dominant use in a public park or recreation facilities. There are several information that the applicant provided that even as we go through the discussion, may basically create a discourse as to the central issue before the Board. The central issue before the Board again, is the definition of public park and recreation facilities and whether food concessions as a related use can be the dominant use within a public park and recreational facilities, which are meant to be noncommercial. Number five, the applicant says my interpretation discriminates against mobile food vendors. And then basically the number of people on the site are those that are consuming.

Well, my interpretation does not consider whether it is a mobile food vendor or not, I did not discriminate against any food vendor on the property, whether it's a mortar building, whether it's a snow cone stand, my interpretation was very specific and narrowed again, to the definition of public park and recreation facilities. And as you look at the Zoning Ordinance, it's also very critical to know there are uses that are listed in our Zoning Ordinance and in various zoning district as well. There are some that allow certain uses, and there are some that prohibited uses, it does not discriminate, so long as those apply uniformly in the zoning district, is within the authority of the City. My interpretation, again, did not discriminate against mobile food trucks. It actually, as you know, as I've said here, my discussion even back in 2019, said, mobile food trucks as a related use are allowed as part of public park and recreation facilities so long as it is an accessory use. So, my interpretation, never discriminated against their use. And number six, the appellant says that my interpretation tends to increase the required 25-foot distance of food vendors from operating on the property. And my interpretation also flouts the City's policy that was adopted for Food Truck Ordinance. Then again, I want to make sure that everybody understand is my interpretation had nothing to do with this Ordinance. At the end of the day, they still have to meet the City Ordinance that was passed under 5623. My interpretation never mentioned anything about distance. My interpretation again was very specific as to the over dominance of food trucks, basically dominating the uses on the property, which takes it outside the noncommercial uses, and also makes it no longer as an accessory, it makes it the dominant or the primary uses on the property which falls under the definition of public parks and recreation facilities. I will make it clear again, if the applicant goes back to the site plan that was submitted back in 2019. My position on that has not changed. The applicant also says that before I issue my interpretation, they have submitted a revised site plan for a seven-acre parcel, basically, and that site plan supersedes the current site plan or the site plan that was submitted to me back in May 2019. Well, that is going to a rezoning process that is outside the jurisdiction of the Board of Adjustment. The rezoning process goes through Planning and Zoning Board and City Council for approval. As I'm talking, we are still discussing this, and this is outside the jurisdiction of the Board of Adjustment and I recommend that we do not discuss the zoning issue before the Board. So, for all the reasons that I've given you, your packet shows, all the commercials advertisement, it shows all the information and my discussion back from 2019 and discussion with the property owner. And with that, including looking at the goals of why the citizens of Mesa adopted the General Plan back in 2014. And why we also have a Zoning Ordinance that authorizes setting criteria for issue and interpretation. I recommend to the Board of Adjustment to deny the appeal and hold my interpretation. Thank you and our staff any questions you may have.

Chair Wagner: Thank you Dr Appiah. Does the Board of Adjustment have any questions for the Zoning Administrator? All right then, Dr Appiah would you like to issue a closing statement?

Planning Director/Zoning Administrator Dr. Nana Appiah: Chair, Boardmembers my closing statement is very critical for us as a City to continue to ensure public health and safety of our residents, including promoting businesses. This interpretation had nothing to do with not attracting businesses in the city. There are options and there are various opportunities that we could work with a property owner. The interpretation was based on the requirement of the Zoning Ordinance, and the authority that is given to me as a Zoning Administrator. So, with that, I'll close my remarks.

Chair Wagner: Thank you, we will now offer the appellant 30 minutes to hold their presentation.

Francis Slavin: Hello again, I'm Francis Slaven. I'm here appearing on behalf of the appellant at Power Road Park. So, what I think we just heard is that whether or not 1439 North Power Road is

operating as a public park, a recreational facility depends upon the number of mobile food vendors located there. You just heard that period, straight from the Zoning Administrator. And so, I would like to go back and go over some of the reasons why I don't think he has the authority to make this decision. I know you already talked about that. But I would like to put something on the record on that. Chair Wagner, thank you. First of all, as I mentioned before, there is no definition anywhere and I did not hear the ZA mentioned to you anywhere in this in the Zoning Ordinance, the term mobile food vendor or quote unquote, food truck, but that's what they're apparently called here in the City of Mesa. So, there's absolutely no regulations that pertain to food trucks operating here, then you won't find anything. Mr. Paladini, they won't find that Zoning Ordinance, okay. It's not their book, okay. Now, also, there's no regulation that says how many food trucks may be gathered at any given place at any given time. Nothing in the Zoning Ordinance talks about that and my mentioned to that is that after the House Bill 2371 came down again, there was plenty of opportunity for the City to legislate, and we wouldn't be here today, quite frankly. But that opportunity was not used, instead, again, it was placed on the shoulders of the Zoning Administrator to extract from the Zoning Ordinance an oral interpretation that basically puts in place regulation of food trucks, when it comes to public parks and recreation facilities. Again, the power that set forth that was put on the screen, and the Mesa Zoning Ordinance, the authority talks about that if there is, if he has the authority to do it, then fine. He has the authority, and he does it. But if he doesn't, then it has to be referred to the Mayor and Council, it can't be something that is not then set forth otherwise.

Now if there's no definition in the Mesa Zoning Ordinance. Then how does the food truck get a use classification? And according to your statute, again, according to your Ordinance, a use classification that may that is some authority is in the Zoning Administrator to determine their food classification. But if he can't find the food classification, then he's not allowed to do that. So what food classification was issued here and this is this is woven throughout the staff report, by the way, is not something that we had understood was part of the Zoning interpretation, but it appears to be something very important to the staff with regard to the interpretation that we're talking about today and that is the classification is that food trucks are limited service restaurants. They're limited service restaurants a food truck, a vehicle as the limited service restaurant. If you go to Article XIII of the Zoning Ordinance where it has the classifications, it has the classification limited-service restaurant, and this is something that is referenced in the staff report. It says here, establishments, establishments, where food and beverages may be consumed on the premises. So, a food truck is an establishment? According to the City of Mesa Zoning Administrator, where food and beverages may be consumed on the premises can be consumed on the premises. It's a truck taken out or delivered or taken out, it does fit. Food can be taken out from a food truck. Of course, that's what it's designed to do, but it's not delivered, but where no table services provided. That's that similarity. There's no table service provided, and then it talks about what classifications this includes, it says cafeterias. That's something that ZA mentioned. A cafeteria is a food truck is like a cafeteria a fast food restaurant? A food truck is a Wendy's or McDonald's or Taco Bell? Carryout sandwich shops? I came by a Subway on my way over here. This is Subway, a food truck? These are all common things we don't understand that our way of life every day, we come upon limited-service pizza parlors. A food truck is like a limited-service pizza parlor? Self service restaurants, snack bars and takeout restaurants. Those are the all the categories in there. How does a person logically, reasonably fit a food truck into that definition and make it a limited service restaurant? Sure, it provides limited service you can get takeout food there, but that's the extent of it. Now, he also mentioned that in and again, this depends upon the number of food trucks that are at this park. And I would like to say, refer to that is something why would call the food truck attraction because when you drive by a person sees a number of food trucks that attracts them to the site. Now I'd say

to you a stranger driving by sees the food trucks, notices that there is a park or there are picnic facilities there, and then notice people that are gathering and eating there is a public park they later return with their friends or their family to enjoy a picnic at the park. So, the fact that they drive by and see the food truck that somehow has something to do with whether or not this is a public park recreational facility. Okay, so then the question becomes how many food trucks does it take to produce this, what I call the food truck effect of the food truck attraction there's no empirical evidence at all. And then who decides that there's nothing in there at all that says that in the Ordinance. So, if I understand correctly, where the Zoning Administrator is going, where there is no food truck effect or attraction. Then the mobile food events become an accessory use to a picnic facility. So, this comes down to how many food trucks did it take in order to cross the line? How do you decide that as a Board? How do you decide that? There is a glaring omission. In the report that I'd like to ask of you. I hope I'm not getting too far off my 30 minutes. Okay. Would the Zoning Administrator or the Development Services Director have put on the record before you today? Here today the maximum number of mobile food units and mobile food vendors, which they believe would not cause the public park to constitute a Food Truck Park, how many? You haven't heard that yet. One, 5, 10, 15? Would it be based on a sliding scale, based on a number of acres, will it be based on the number of persons that come there for the picnic? Silly. Now, it's admitted, I believe by this administrator from what I've heard, and I'm trying to stay within what I understand he presented to you, and it set forth in the planning staff report that picnic facilities are considered to be public parks and recreation facilities. It was up on the screen, you saw their picnic facilities, and they talked about quote, related food concessions. That related food concessions as the most confusing part of this whole interpretation. So, I do understand that there was an email exchange in May of 2020 or 2021 between appellant's counsel and the Zoning Administrator as to whether or not a picnic facility isn't allowed use under public parks and recreation facilities, again, public parks and recreation facilities as a classification, the Zoning Ordinance, so that, and like Mr. Appiah, has stated, it's allowed virtually in every single Zoning District, public parks and recreation facilities. So, if it's, and there's no requirement, that there be a splashpad to go with the picnic facility, so that becomes a public park recreation facility. There's no requirement in there whatsoever. It mentions picnic facilities, separate from volleyball, separate from other activities and as Mr. Johnson will address you after I am concluded that there is a turf area where the children get to play. There is also fire pits, and I believe it was mentioned there were fire pits, which people can actually rent and sit around and, and roast marshmallows, and makes s'mores as for those of us remember s'mores around the campfire. And there are quite a number of those, and Mr. Johnson will address that that's part of a picnic facility. It's a public picnic facility. So, then we still get back around to the whole idea of more mobile food vendors. If you've got a picnic facility that's determined to be a public park or recreation facility, but then if there are too many food trucks there, and that's apparently decided by the Zoning Administrator because there's nothing empirical and anything he's told you as far as how that works, except you go by and you notice the food trucks. Is there a science here? Is there a real interpretation that's occurring? So, people bring their families it's a gathering place. Families come here with their children, they gather they play, they have a small true fair where they can go and they sit around the fire pits and they tell stories. They have enjoyable time and they come with their neighbors, they come with their friends. There's people coming here it's successful because it's a picnic facility. It's a gathering place. For you. For me for anybody here at all. It's a gathering place. If it's a gathering place. Then according to the Zoning Administrator, if you have too many food trucks, it no longer is a public park that makes no sense. Let me look through my notes a second. I think I'm through. That concludes my formal remarks. I may have some closing at the end. Chair Wagner, if I may, at the conclusion. That okay?

Chair Wagner: Thank you Mr. Slavin. Did you say that someone else was going to be presenting during your 30 minute time slot as well?

Francis Slavin: Yes. Ray Johnson.

Ray Johnson: Chair Wagner, Board. Appreciate the time I'm one of the appellants. My name is Ray Johnson. My business partner David Darling is also present but will not be presenting today. But just as a follow up in an in in collaboration with what Mr. Slavin has presented to today, there are a number of in consistencies in what the Zoning Director has presented in terms of what Power Road Park is and so I want to kind of walk you through that so you understand what it is I don't know if you've been there before if you had the opportunity to see it. But Power Road Park is located on Power Road between Brown and McKellips Road. We have frontage on Power Road our entire properties all of them are our frontage on Power Road. Power Road happens to be the busiest surface street in the City of Mesa, as per City of Mesa information. More cars drive on Power than any other surface street in the City of Mesa. US 60 is the only one that has a higher traffic count and so Power Road is a very busy street. And we, Mr. Darling and I, more than a dozen years ago, the property, two of the parcels were purchased. And there were a number of different interactions with the City in terms of how to develop that property and different changes of the market and things like that over the last 12 to 15 years. But ultimately, in that process a few years ago, we met with the neighbors who are here and you're going to hear from some of them today, I'm sure. But we met with the neighbors and we asked them what is it you want us to do with this land? Because they opposed everything. They didn't want anything. We said what do you want us to do? And they said build us a park. And we kind of laugh and said how can we build your park and then David, Mr. Darling and I sat down I said, how do you build a park? What do you do? How do you make it successful? And so in that genesis, we determined that we would build a private park open to the public that was a picnic facility where people could come and gather, they could come and sit, they could come and eat. They can come to bring food, they can just come and play we have we're in in in that process we put or we built and put together and put on our parcels, a picnic facility and which fully satisfies by the way the Zoning Code for parks and recreation. I'm an attorney. I did a lot of research about what parks and recs and what the Zoning Code required. Everything that we have put at our lot and on our parcels comply with the parks and recreations Zoning Ordinances with the City of Mesa. We have and I did some math before we have over 500 seats available for persons and this is the parcel specifically that we're talking about. That's an issue today just that parcel there's more there's more seats in this but just on that parcel, there's over 500 seats with tables. There are over 120 spots where people can stand at a table at a standing table like you might find at a bar or a restaurant, but a standing table where people can sit and they can eat, they can talk they can, you know play cards, whatever they want to do. We have over 140 other seats, benches and other places where people can sit and then we have, in that same area, we have 20 plus firepits with six seats around there, they're big adirondack chairs where people can sit down and they can enjoy themselves and sit and talk. Just like in any public park, you can rent a ramada at, you know, Pioneer Park or other parks. We allow people to rent and reserve those areas so that they can sit with their families or their friends and they can enjoy their time. Our primary resource in that park is the firepits we derive more income from that than anything else that we do. I think that's important because ultimately those firepits, and we don't require anybody to bring food or to sit there with food or anything else. Some of them come and bring s'mores from their own home. Some of them just sit and talk. We have people that come on say hey, is there any seating available? Sure, we have these seats available, and they say great, we'd love to sit down and just and just enjoy ourselves this evening. The point is, is that our picnic facility is one that's a gathering place. People come and I don't know what attracts them. It very likely could be that there are food trucks that

that they want to come and get some food from. But just the other night I've talking to somebody that was coming in the park they had their chick fil a bag and they came in and said hey, can you know, we just want to hang out. I said great. Enjoy yourself. The point is, is that this picnic facility is open to the public and gives them an opportunity to be able to enjoy their time together as a gathering place. We allow dogs on a leash they come people 1,000s of dogs right everywhere. Our neighbor his dog comes over all the time. The point is that we are, we have established a picnic facility which allows people to be able to enjoy themselves. Some of the amenities at this park as well. We have over at this point over 3,000 square feet at well at the time. 3,000 square feet now over 6,000 square feet of turf. It's available kids rolling around playing in the in on the turf enjoying themselves. We have lawn games that the kids can play. We have cornhole, people come there was a group that came the other night that just came in they didn't they didn't eat anything they just came played cornhole. There's an opportunity for people to come and enjoy. One of the people that you probably hear from is our next door neighbor, Mr. Sloan, he and his son came over the other night, his son jumped in the in the bouncy house that we had in the property for, I don't know a couple of hours, they enjoyed the park as well. The point is, is that we have an opportunity to be able to allow something that's a benefit and a blessing to the City of Mesa that gives families and neighbors and people in the community an opportunity to enjoy the gathering place. That's the genesis of the whole thing and I think it's important that you know that you understand why it's an important part and how it's being utilized. We had a group that asked us if they could come in and reserve some space, we said sure. It was for the Harris Elementary, which is one of the elementary schools in town. And Mr. Mike Oliver, who was the principal for 30 years there was retiring, and they had a big retirement party there. There were literally 1,000s of people that came through our park our Power Road Park, just to say hi to Mr. Oliver, and to tell him thank you. Many of them just came and shook his hand and enjoy their time there. Most of them didn't even look for food truck or look for something to eat or something to buy there. They were there to enjoy the park and the facilities and the opportunity to be able to have a gathering place together.

The other part I think that's important that you understand is the food truck laws within the state of Arizona. Now, I don't want to speak for the legislators that are here present. But you're going to hear from the Speaker of the House Mr. Rusty Bowers, you're going to hear from Mr. Kevin Payne, who is the author of the bill, the Food Truck Freedom Act, which was enacted in 2018 and signed by the governor on May 14, 2018. You're going to also hear from Miss Jacqueline Parker who is the state representative over our district. These individuals are going to talk about the law and how the state has already legislated food trucks. Mr. Appiah is a is a very nice man. We've enjoyed working with him. I think he's a, he's an excellent administrator for the City really. But one of the things that he has overstepped his bounds and is that he has now entered into an area of where the state law of Arizona dictates and defines and regulates what a mobile food vendor and a mobile food unit is, by the attempt of this the interpretation that we you have before you, specifically is intended to limit or prohibit the use of food trucks on a piece of commercial property. That's against state law. If the Board approves or accepts Mr. Appiah's presentation and interpretation today, you'll be found to be very likely found to be in violation of state law by that approval. The point is this. The state law has given the powers to the City to be able to regulate this in a very specific way. I don't know if you've had a chance to review Arizona Revised Statute 9-485 we refer to deny in our documentation and I'll just briefly look at it with you but in that, in that law, this is what it says it says. This is 9-485.01 says, state law it says in relation to a mobile food vendor or a mobile food unit, a city or town by ordinance or resolution may and that has two things that you may do, excuse me, that the City Council may do by ordinance or resolution one. It can prohibit or restrict a mobile food vendor from operating at a public airport or public transit facility or in an area zoned for residential use. Within 250 feet of an area zone for residential use by ordinance or resolution only. City of Mesa, as Mr.

Slaven explained, went ahead and enacted an ordinance and they said within 25 feet only they didn't choose 200 feet they chose 25 feet, we have always stayed more than 25 feet away from any residential area with our food vendors. Second, this is, and this is the other piece and I think this is the most important part, the city or town by ordinance or resolution may, number two continue to enact and enforce rights regulations and zoning codes on mobile food units or mobile food vendors that are not otherwise prohibited by law. The city may by ordinance or resolution only regulate and interpret the city's zoning code and enact city's zoning enforcement only by ordinance resolution unless it's already prohibited by state law. The City has not done that. This is an issue for the City Council. This is a question for the City Council. Mr. Appiah has overstepped his bounds he has stepped beyond, well beyond where he's where he can, because he is now trying to regulate or otherwise prohibit these food trucks from being on our commercial land.

Okay. The other things that I think that are important beyond the law. Number one, we had a meeting in December, on December 8th of 2020, and at that meeting, I was present, Mr. Darling was present, our attorney was present and then also present was Mr. Appiah, his boss, Christine Zielonka, who was one of the Assistant City Managers, her boss, Natalie Lewis, who is the Assistant City Manager, and Mr. Ryan Russell, who is the Code Enforcement or Code Compliance Director for the City of Mesa. That was who was at that meeting, we went to our park, we sat down in those adirondack chairs, and we sat around the fire pit. I turned the fire on, it was a little warm that day, so we turned it off. But we were there at the park, and we had a meeting and we talked about what the park was and we explained what our plan was we explained what we wanted to do, what our development plan was and how we want to develop the park. And Christine Zielonka, who was directing that meeting said, I can accept that this is a park, in essence I'm quoting her, I don't speak for her, but that's in essence what she said, I can accept this as a park. She turned to Mr. Appiah and she said, Nana, can you accept that this is a park as well? And he said yes, I can accept that this is a park, and we move forward with that. That was our approval and that was our, I mean, that was where we were we started that whole process. That was the point where we began to have those events and to bring food trucks on and to utilize that that picnic facility to its full extent. Based on that approval. We have relied on that continuously. We've had multiple communications and meetings via zoom in person and on the phone with Miss Christine Zielonka, with Mr. Nana Appiah, and with others, where we have talked about this park where we've talked about the park continuing to function and continue to move forward and be used. And as we have done that, we have relied upon that from day one, they have continuously supported it and said, please, you know, let's go ahead and develop this and move forward. But they have given us encouragement and they worked well with us, and we appreciate that. But we've relied on that, Mr. Darling, and I have now at this point spent more than \$1.3 million on this park and our plan is to spend another \$2 million on the park improvements. Splashpad other things, but that's part of the zoning case. But our plan is to continue to work to have a just Class A picnic facility. The City has refused, I have submitted personally to requests for permits to build wall paid for expedited. And the City has sent an email saying we will not issue any permits to you until everything is resolved. So, we are moving forward and we have we have continuously had the support of the city throughout this process have spent a lot of money in this process. And that reliance on what the City has encouraged us to do and has approved in their in their statements, including Mr. Appiah who said yes, I can accept that this is a park, and we move forward on that basis. Again, I appreciate the time and I hope that there's, you know, an understanding of what it is that we're talking about today. But I do want to just leave you with the fact that this is a picnic facility. It absolutely complies with park and recreation standards and as Mr. Slavin said, there is no room in state law for Mr. Appiah to determine whether we have food trucks on our on our commercial property, or whether there is a limited number, how many

trucks as he said, would tip that scale and somehow turn this into something different than a park. Thank you. You have any questions?

Boardmember Gunderson: So, I'm looking at the statute, the Arizona statute that you cited. And I realize this is kind of question was whether or not this is for us to interpret because we're supposed to be interpreting the Zoning Ordinance, but you brought it up a number of times. And so I just want to make sure I understand the argument. Sure. So, if I understand correctly, you're saying that this, this state has indicated the ways that the City can govern food trucks, and that they're governing it in a way that they're not permitted to do? Is that right?

Ray Johnson: Yeah, let me maybe clarify briefly that. So, if and again, Mr. Payne may be the better answerer of this but what it says is that, the state has said, look, food trucks are not to be regulated by cities and towns. They can park on any in any public parking space. They can park on any commercial land and the city or town are unable to regulate that or to change that or limit that except by ordinance or resolution.

Boardmember Gunderson: So, so as I read the statute, I'm looking at that statute right now. It specifically mentions in relation to mobile food vendor or mobile food unit, a city, town, main city or town, they may not, and then it lists four things. I don't know if you have that in front of you? It may not require a mobile food vendor property owner or lessee of a property to apply for and receive any specific permit that is not required for other temporary or mobile vending businesses. Correct? In the same zoning district? So, I don't think the city is doing that here. Right?

Ray Johnson: They do require a special permit, but, but it's compliance with the state law. Yes.

Boardmember Gunderson: I guess maybe I'll just take a step back then and asked, Is there any of these things that the City is specifically told that they cannot do that you believe they are doing?

Ray Johnson: Yes, they are restricting or prohibiting food trucks on a on a commercial, commercially zoned piece of property. That's what that statute allows the allows food trucks and it doesn't tell say how many you could put, 100 I suppose on there. It does not restrict or prohibit it does not allow a town to restrict or prohibit food trucks on a commercial piece of property or a public parking space anywhere in the state of Arizona. Okay, except by ordinance or resolution, the City could enact something, but they've chosen not to.

Boardmember Glover: Can I get a quick rundown you say you spent a lot of money on this property? Are we talking about actual onsite improvements that have been made? Kind of get a quick rundown.

Ray Johnson: So that's an interesting process and I'll just be brief with this. So, we have purchased, the fire pits, the chairs, the tables, these are all commercial grade. I mean, I just spent another \$27,000 on additional tables. You know, we have lights, we have lots of lots of equipment to be able to support that we have an administrative trailer that's there and some different things that that are all part of that in addition to that, part of what we did was we had been talking with Christine Zielonka and Mr. Appiah about some of the concerns with parking, the neighbors had raised concerns about parking on the street, the City we had been parking on a piece of City property that was next to ours. The City erected 15-foot fences around that and said stay out. So, people started parking on the street. We had some communication with Miss Christine Zielonka and Mr. Appiah about that and we said how can we resolve it. Miss Zielonka requested that we go and try and get a

lease agreement with a piece of property there were four acres just to the north of ours that were empty lot. And she requested that we go and see if we could maybe get a lease agreement with that person to be able to park there. We went and approached him. He said no, and actually Councilmember David Luna, who is over District 5 there, went and spoke with the Lutheran Church next door and they secured an agreement with the church to be able to have some parking at the church for us. But then we as we were talking with the gentleman who owned the land next to us. It he said but I may be willing to sell it to you. So we talked with Mrs. Zielonka. We said hey, listen, we might be able to buy this land and she encouraged us to move forward with that so that we would have additional parking. We entered into a contract with that and to purchase that land. We've paid a premium for it. It's residential, residentially zoned, which also allows for a park on it. But it's residentially zoned, we entered in the contract for that. And here's the here's one of the Kickers, the zoning interpretation was I read it, the day I signed the contract to buy that land. That's when I got it the same day, June 17. Mr. Appiah issue that after hours is when we received it on the 16th, and I read it on the next morning, after I'd already signed the documents to procure that land. So that's where most of the cost has been. But we have about \$400,000 worth of expenses in and on the land itself, in addition to the purchase the property to the north.

Boardmember Glover: Just one additional question. So, by description, it sounds like most of the improvements, and I'm looking for whether or not the statement is accurate, most of the improvements on the site are not permanently affixed. They're temporary tables, chairs, things that that get set up and then taken off. Is that accurate?

Ray Johnson: That is absolutely correct. And the reason for that is because the City won't issue any permits to us to do any development. We have no, it's an undeveloped lot. We just have a picnic facility, right? I mean, it's got dust control, so it has rock on it. We have lights that are run by generators. They sit on top of wine barrels with poles and there's picnic facilities and tables and places to sit and, and firepits but it's all run by generates all undeveloped, it's all surfaced with dust control.

Chair Wagner: Are people able to come and go freely and use this area as they wish?

Ray Johnson: Absolutely. We have two entrances. People can come and go as they want. We have no entrance costs. There's no cost to come or go. There's no requirements for anything. It's just an open it's a public park. It's open the public.

Chair Wagner: Durning all hours?

Ray Johnson: During all hours, and including all amenities. So, we're open. We open the gates about three or 3:30 in the afternoon and we close about 10 o'clock. I mean there's a there we try and have everything shut down by 10. We actually close the park about nine o'clock. But we try and have everything completed done all lights off in such a time but the gates are open through that time for you.

Chair Wagner: So, it is a gated area?

Ray Johnson: It's all it's all secured. Yes.

Chair Wagner: Okay, and then I do have a follow up question with the fire pits. Like you had mentioned that other parks other public parks, you can reserve those. But if they're not being used, you can just use them freely as this the same way with your firepits?

Ray Johnson: That's actually not true with City Mesa. You can't use a room you're not supposed to use, a ramada without reservation or paying for it is my understanding of the City Code. But those firepits we say that they're by reservation, but they regularly are, are taken or used by others that that don't necessarily have necessarily paid for them. So, the answer is yes.

Chair Wagner: And then that event where you had mentioned that someone had come and they were like, 1000s of people came to greet him. I don't I forget his name, I apologize. But you had mentioned that all these people came to utilize that as an event space. Was that something that they paid for? Or was that something that they were able to just do on their own?

Ray Johnson: Nope, we didn't charge anything for the for the event or for the, for the actual, I think there was some reservation of some, some seating areas that were done with in conjunction with that, but we don't, we didn't charge anything for the event itself. We've had several of those one, one in which a number of the City Officials went and were at the park as well. Some of the senior officials with the City that came in and did some congratulatory things with those that were having their event there. You know, so it's been utilized by many of the Senior City Officials as well, as a as a picnic facility. I don't believe any food was purchased. They just came in came and went.

Chair Wagner: Awesome, thank you. And then just one more question. And I was looking at this because you keep calling it a commercial because. It's zoned for commercial, and I was looking at the definition of parks recreation, specifically where it says that the parks, playgrounds, recreational facilities, trails, wildlife preserves, and related open spaces, all of which are noncommercial. How does this correspond with the commercial usage?

Ray Johnson: Yeah, I'm sorry, maybe I've missed use that in my in my vernacular. What I'm referring to is that the property or the parcel that we're at is an issue here is a commercial zone. So, it's OC Office Commercial. We don't consider our park, our picnic facility a commercial facility.

Char Wagner: And parks are able to be there in an OC zoned area, correct?

Ray Johnson: I'm sorry, I couldn't hear you with all the laughter.

Jon Paladini: Maybe I can help the Chair and the Board. So, in this zoning category of Office Commercial, one of the allowed uses is park and recreation facility, the definition of which there's the first sentence that you read, Madam Chair, the second sentence says this classification also includes playing fields courts, gymnasiums, swimming pools, picnic facilities, tennis courts, and golf courses, botanical gardens, as well as related food concessions or community centers within the facility. So, you don't so just so the Board is understanding, I believe the argument is, in its most basic form, and the question for the Board is, is this a picnic facility with a related food concession?

Ray Johnson: Thank you. Great clarification

Jon Paladini: Madam Chair, can I just make a couple of clarifications as well? On the presentation before you go to the rebuttals? Are you going to do the rebuttals or to hear from the public and then do rebuttals? What was your thought?

Ray Johnosn: Are there any further questions? Sorry?

Jon Paladini: I'm sorry, I didn't. Okay. Yeah,

Boardmember Hoffman: And my question is, obviously this is property that you own and you pay taxes on. Would you characterize the food I guess they're not concessions of food trucks as a primary source, the primary purpose of the food trucks is to bring in revenue to offset the costs to operate this as the park?

Ray Johnson: Absolutely not. Our primary source of revenue is actually the reservation process with our firepits, that's our primary source of revenue. The food trucks, they do provide some revenue, but that's not our primary source.

Boardmember Hoffman: So, what are the other things that you charge for other than like the reservations for the fire pits? What would you indicate that you don't always enforce?

Ray Johnson: Yeah, nothing. We don't charge for anything else. Just reservation of those of those specific areas as a reserved area in case someone wants to reserve like reserved seating or something before they come.

Boardmember Hoffman: And you're getting enough income off of those reservations to offset the cost of maintaining that property? I find that hard to believe, I'm sorry.

Ray Johnson: I haven't released any financials to you, but why do you find that hard to believe?

Jon Paladini: Before we proceed down this path, it may be a little outside of the scope of the Board's decision making in terms of, you know, ultimately, was the Zoning Administrator correct or in error? You know, in and so like I said, I think for the Board in its simplest form, the question is, is this a picnic facility with related food concessions or is it a commercial use not allowed in this particular zoning? I think, and I'm not trying to make your, make the argument for the City or the appellant, but I think that's what I'm hearing is sort of boiling it down to its basic form.

Boardmember Hoffman: I guess that's what I was trying to get to because I think that common lay person, if you will, would perceive a park as being primarily for some of the other uses that we're in the definition for family and places that that you go to kind of get away from the congestion of the city and that sort of thing and there may be concessions offered that's more as a value add to the park not necessarily something that is expected. I know that I have driven by your park, I can't say that it's been, I've noticed, much during the daytime but certainly in the evening there are lots of lights and lots of activity and lots of people which you know, from my perspective isn't what I would consider a park or family venue, if you will. And I don't think that having a lot of food trucks had seemed to me that the primary business was the food trucks not the enjoyment. And you know, I'm certainly trying to keep an open mind here but that's kind of what I was getting to it seemed more like a business operation than what I would consider a park to be. And like I said, I'm keeping an open mind, but anything that you could provide to convince me otherwise I would be welcomed to hear.

Ray Johnson: And I appreciate it respectfully. Here's what I would invite you to do. I mean, go by and see. There's a lot of kids running around. They're rolling around on the turf. There are families

there all the time. There's lots of people that come there that bring their own food and they bring their own s'mores in to eat to bring. They just come there to hang out again. Mr. Sloan came there the other day and he and his son they were just jumping on the bouncy house we had that's all they did. Right? I mean that is a family park. It's a family facility. Ever been to a Countryside Park? Is by my home; it's on Southern Avenue. If you go to Countryside Park, there's lots of areas around the families can be or that you can do things but the primary purpose of that park is what? Baseball right you got to pay for those baseball fields. You have to pay for him and there's concessions there and that's throughout the City of Mesa. Did you know what Pioneer Park put up there? Do you know at Pioneer Park there are 20 pedestals for food trucks that the City has put in at Pioneer Park to at the cost of \$100,000. By the way that they've put into Pioneer Park pedestals for food trucks. Those pedestals for food trucks are there specifically so that they can host this type this similar type events, and they do regularly. Ours just happens to be that we have concessions there every evening. And those concessions are there as an amenity to the park. I really, I mean, and I know you find hard to believe but there are 1000s of people that come to our park on a Friday or Saturday night; even during the week. On a, on a Friday or Saturday night we have 1000 people, per the Fire Marshal, for our two plus acres that he's put up there. And there's many nights where we have that many people there at a time. And so, we're we really do have a lot of people that come there for multiple of different activities. And that's why we provide all of those different amenities we have, as I've explained before, and it really it really is a family places a gathering place. As Mr. Slavin said, it's a gathering place for families, and we have people returning all the time. Like Mr. Sloan comes all the time. He and his wife.

Chair Wagner: Do you charge for the food trucks to be there? Or do you receive any compensation?

Ray Johnson: Yeah, so the food trucks are there by commission. Right, and like they do for any type of a of an event anywhere they go. It's based on a commission base.

Vice Chair Lynam: I know you said that you've got some turf that you've put on site, but there hasn't been any permitting for additional amenities at the site at this point? Correct. There hasn't been any additional permitting or any additional amenities built out on the site? Like for the preliminary site plan that had been shown?

Ray Johnson: Yeah, we're working with Mr. Appiah on the preliminary site plan, we did submit one back in March and the staff came back and said that it was an allowed use for those appropriate use for the area. And then there were some changes that were suggested as part of that. So that's, so yes, we are moving forward with full development. And with the opportunity and we're going to put a lot more amenities in a splash pad is one of those as well as permanent bathrooms and some other amenities. That that would be, I mean, like playground equipment, things like that.

Vice Chair Lynam: Is the park open for use at time when the food trucks are not there?

Ray Johnson: Unfortunately, we have to secure it at other times. Like I said, I'm an attorney, I work full time. My business partner, he is a medical sales rep. He works full time. And so our hours of operation are Monday through Saturday, from again, we open the gates about three or 3:30 and we close them at 10 o'clock.

Vice Chair Lynam: Is there any parking provided on the site at this point? It's an all neighborhood off street parking?

Ray Johnson: Oh, no, there's, we have over almost four acres of parking now. Yeah, that was what that was the majority that that park purchase was that \$900,000 is for parking. That's what the City asks us to do.

Chair Wagner: Are there any more questions from the Board? All right now I'm going to open this up for your closing remarks.

Francis Slavin: I apologize to you, representative Payne has to leave by one o'clock. Would it be appropriate if you could take him at this point in time? He actually has a medical procedure that he has to be to so...

Chair Wagner: I am going to refer to Jon Paladini.

Jon Paladini: So, you have two options Madam Chairman. You can allow for the rebuttals now, and then go to the public for public comment. Or you can go to the public for public comment, which is again, is that 15 minutes per side, and then hear rebuttals on from each side. That may be helpful that they can address on during the rebuttals comments from the public, as well as comments from each side. So, it may be actually more helpful for the Board to hear the public comment, and then hear the responses from the two parties. After you hear the public comment. Absolutely. If you, if you can, you can go in that order.

Chair Wagner: Okay, perfect. Next would be your closing statement. Would you like to make a closing statement before I open if for public comment?

Francis Slavin: I think it's going to be hard for me to do much more than what Ray Johnson did. I think he explained the whole thing to you very carefully. Again, what you're being asked to do is to approve of an interpretation that's based upon how many food trucks are allowed on the site. That's what it is. And I don't think there's a way to do that. There's just no way to do that legally, or just empirically. How does that happen? Because it's the Zoning Administrator stated, that based upon information is received hearsay information, whatever, driven by his own observations, that this is a quote unquote, food truck park. And therefore, it's not a public park. Yet, it's been approved as a public park, and it fits within the definition of public park recreation facilities because of the picnic facility. So again, it appears to us that this is an attempt to regulate the mobile food industry and I apologize for saying that but I think that's what it is. Thank you.

Chair Wagner: Thank you, so public testimony is the next item on our agenda. So public testimony shall be limited to a maximum of 15 minutes per side. We will first hear from statements from persons in support of the appellant. Supporters may either stand and be counted or present statements giving their reasons for support. I asked who will be presenting for the appellant today. Okay, perfect. If you guys would like to come present, that'd be fine. And then this will be the 15 minute time limit.

Kevin Payne: Thank you, Madam Chair. I'm Representative Kevin Payne, I wrote the food truck freedom bill that we're referring to. And the reason we went jump through these hoops on this food truck bill was every city had different ordinances, every county had different rules. Everywhere the food trucks went, they had to abide by these different rules, maybe take three trash cans with him when it went out on site, so they could abide by different trashcan sizes, you know, different hours of operation, how long they could stay on a particular site. So, we tried to make that universal throughout the entire state. So that it would be so much less confusing for the operator of the food

trucks. Now I admit, I am an operator of a food truck. I own one. I don't have a problem with that there are 1000s of food trucks here. I happen to be a representative and I did write a law. But I know a lot of the things that were there were food trucks were up against. So that was something I was able to do. We have school teachers at the legislature, we have farmers at the legislature, we have all kinds of occupations and we will we rely on them for their expertise. As the same thing happened here. We had numerous stakeholder meetings, where the League of City of Towns, where I was at all of them, as well as County Representatives, representatives from all different restaurants and things of those natures as well as food truckers. They were all there, they all had a say they all had a piece, and one of the things that never came up was the amount of food trucks that could be at any one location. But we did allow the cities to do ordinances. And as though they've already stated those ordinances have dealt with that to up to 250 feet from residents. If the city didn't do that ordinance, that's up to them, they can still do it. And I'm certainly open if we need to sit down and have some more stakeholder meetings, and based things on acres or population, we can do those things as well. So, I'm open to that. But right now, the law does not interpret the law does not allow this, what we're trying to do is illegal. So, with that I am open for questions. If there are any?

Boardmember Hoffman: Do you operate your food truck at this park?

Kevin Payne: Madam Chair, Boardmember Hoffman, I have not. I have never been at that park. I have been at Pioneer when they've operated, but I've never been at the park in question.

Boardmember Hoffman: Thank you.

Rusty Bowers: Thank you, Madam Chair and members. I'm Rusty Bowers and I represent District 25 in the legislature, which is across the street, across Power Road. And representative Parker represents the district in which the facility resides. I won't review but I totally agree with that the City has given the ability in those two restricted cases, that where they can read, they can restrict the use and declare different uses for food truck vendors and operations. And they have so far chosen not to do so. I agree that this is an inappropriate venue. And I represent not this district, this is in District 26, I believe. But it is a concerning to me that again, a different an inappropriate venue is being used to regulate food truck operators. I would like to ask you how many hours of operation does a parcel need to be open to be a park? Should we determine it by the minute that a person's on the park? Or using the park? How many people are at the park? How many hours they're being used at the park? In order for it to be a park? Do we would as you asked, and I thought very well, how many hours is the park available? Thus far its restricted because of the ongoing negotiations on the plan of the park. But to have active operation from five to nine, on weekends through the summer. Is eight hours a weekend during the summer, so we could do the math, how many days that it has been open, and how many hours has been open? And I have been by many times, and seen on those Saturdays and Sundays. How many people from Mesa enjoy coming to that park. It's a lot. They enjoy it very much. It's fulfilling and it is it seems to be doing a great public service. Then the question is, is the predominant use of the park for food trucks? Currently it would seem to be if you did by numbers of people, operation of the picnic area, how many people are sitting in seats, that that would be a great thing to, to delve into. What does it take for it to be predominantly a park at eight hours a week? And now they're looking at expanding their hours, I wish them good luck. This is a great industry, especially through the pandemic, it has proven to be extremely popular with the public. The City has helped and suggested opportunities for the owners, and in order to make an improve the operation of the facility. And I would again remind us that there's an appropriate way

to regulate food truck operators. And that is through the City Council, by ordinance and by a vote of the City Council. And I thank you for your time and I'd stand for any questions.

Jacqueline Parker: Thank you. Hello, Board. Before I begin, I just want to point out a letter that was sent to you from myself and representative speaker Bowers last week. I have here extra copies for everyone.

Jon Paladini: For the record we need your full name, please.

Jaqueline Parker: Oh, at the beginning, okay. Yes, thank you. Thank you very much. I'd like to start off by thanking the Board for letting me speak. My name is Jacqueline Parker. I'm an active and practicing attorney in the state of Arizona and I'm also an Arizona state legislator representing District 16, which covers a large part of Mesa. Was there more info? Like, Okay, thank you. Can I distribute copies of this to each of you to make sure it gets entered into the record officially?

Chair Wagner: Yes, you can give it to Lexi.

Jaqueline Parker: Okay, thank you very much. Continuing on. I also want to just take a second to talk about my background for a minute. So, I was born and raised in Mesa, Arizona, and I have an extremely personal interest in the wellbeing and development of the City. I live just down the street from the Power Road Park in question. And I have to say, I'm often disappointed by how unfriendly the City of Mesa has become towards small businesses. Today's events are not the only issues that have gotten my attention. However, the City of Mesa attempts to hinder and restrict food trucks is especially concerning as it threatens a direct violation of state law. I've been to the Power Road Park many times and it's one of the most entertaining family centered wholesome destinations in East Mesa. The entrepreneurs who started this park are developing inventive new ways to heal and unify our community after a devastating pandemic. If you follow the staffs' recommendation, to deny this appeal, and thereby adopt the interpretation of the Zoning Administrator, this body will in fact be in violation, of state law, and there are consequences for that.

In the interest of time, I'm only going to mention a couple of concerns in addition to those mentioned in the letter that was sent out last week by speaker Bowers, Representative Payne and myself. The first of which are, some errors or inconsistencies in the interpretation, the zoning interpretation document itself. So as an attorney, I take special issue not only with the reasoning of the zoning interpretation, which requires a series of illogical leaps to arrive at its conclusion, but more particularly with the final paragraph, in which the author admits to basing his recommendation on various pictures and complaints from the surrounding owners, that is subjective hearsay, rather than personal knowledge and observation. After hearing today's presentation, it further confirmed my belief that either Mr. Appiah has never been to the property, which I don't think is true, or he's directly misrepresenting the property to you in his presentation. For example, he showed only one photo of a row of food trucks. And that's actually the very most far corner of the food park that takes up like 20% of the park. The other 80% of the park, is what we've already discussed, it has, you know, the fire pits, the seating areas, the picnic stuff. There's no food trucks at all in most of the park. So that was very misleading, which is a great concern. I can further testify through my own personal knowledge that the park question does have, as its primary function, nonfood and vending related areas. In fact, just the other day I was at the property. There were about seven trucks on one side of the lot and the rest of the facility was filled with fire pits, picnic areas, expanses of turf, where kids were playing ball, bales of hay, photo stations, festive lighting and music, all of which were not concession oriented. I spent time there

conversing with friends by one of the fire pits, I didn't purchase anything. So, the suggestion that vending and food trucks are dominating the space and taking over other park-like components is completely inaccurate. The Power Road Park is by any reasonable interpretation a park, plain and simple, and the forced rezoning is just not appropriate. The second concern I have is with the process. Now this has been mentioned before, and I just want to reiterate that it is within the purview of the cities to enact and enforce regulations and zoning codes. However, there is a method prescribed in law in which cities are to establish such regulations. There are due process and transparency requirements in government in every layer. None of those were provided in this situation, forcing a clandestine rezoning based on a subjective staff interpretation. Based on the, you know, intensity of the concessions is not the proper legal process for this. As has been mentioned, when it comes to regulating food trucks or setting zoning standards, ARS clearly states that cities and towns have to go through the official ordinance or resolution process which requires public meetings, hearings, notice all that all that good stuff. And that's not what these proceedings are doing, frankly. Additionally, as has also been mentioned, state statute has defined what a food truck is. And the zoning director's interpretation as an outdoor restaurant is irrelevant and superseded by state law. As a member of the state legislature, in conclusion, I can assure you that it's not our preference to reach into the workings of local government. However, when local governments act to restrict the small business friendly environment that we strive to foster in Arizona, or to circumvent the due process procedures by letting staff unilaterally change definitions around it will be necessary to bind the cities through further state legislation and state action. And that's what is incumbent upon us to do. So, what the appellants in this case have created on Power Road is brilliant, it's fun, it's innovative, and it will likely represent the next significant direction of the restaurant industry and it will continue to have my further support as we go through this process and hopefully work with the cities. Thank you very much.

Chair Wagner: Thank you, Representative Parker. Does anyone have any questions?

Jeremy Lyon: Good afternoon. My name is Jeremy Lyon. I'm a North Mesa resident and a food truck owner operator, so I want to talk a little bit about profitability side, no one, I have a ton of time here. So, you know, I've heard comments about primary use of park and revenue of park and things. Owning and operating a food truck is not an easy business, it's a ton of work. There's a big commitment to preparation, food cost and otherwise. So, if we sit here today and look at TPT taxes, Maricopa County fees, City of Mesa peddlers license and the new mobile food unit license has come up as well. And I think we heard an individual talk about how this is different than a lot of different cities around as well. To say we are there making incredible amounts of profit would be entirely inaccurate. And what that does, as well as if you think the park is using that as a main revenue stream, that would be inaccurate as well, if they were we would not be in business there because the profitability margin would not be there. And that is simply again, based on what it looks like to own and operate a food truck. So, in all reality, we work very hard out there. It's a group of professionals that are small business owners, which I think America was built on. We service the industry, we treat the public with great customer service and respect. And we are really trying to just forge a path forward. without Power Food Park, I would say in 2020, we would have closed our business, it was an outlet and a vessel to try and remain some semblance of profitability through a very difficult pandemic. We continue to work hard in this industry. I would say that, you know, the ability to vend being so different in every city. All I know is a food truck owner operator, not a lawyer, not a separate city representative is that people are they're having fun. Whenever I've been to a park with my family, people are they're having fun. So, by definition, I do, I do think that we are vending in a park scenario, and it's very much appreciated, you know, to get that point of perspective. So that is my minute and 37 seconds. Any questions, comments?

Chair Wager: Any comment? Thank you.

Mike Sullivan: We're short on time. My name is Mike Sullivan. I'm a food truck owner out of Philadelphia decided to relocate my business out here. The food park that is in question right now has given me the opportunity to stay in business just as gentleman just stated to you. Without the food truck park we're limited to a lot of places we can go to unfortunately, with the gentleman over here stated that we're not discriminated against, we really are discriminated against the areas in Philadelphia, I get banned anywhere on the streets. With certain limitations out here, you can't do that. You have to have specific places on property, private property in order to do that. If it weren't for places like Power Food Park, I wouldn't be in business right here. So that's just something to consider. The other regulations have soared at the neighborhoods going through what they're going through. I have never seen since I've been there, I do vend there, I haven't seen any commotions. I haven't seen any fights. I haven't seen traffic jams. All I seen was people that came and enjoyed their time there, and families had a good time, they had good food. And they look forward to it. Otherwise, they wouldn't be there. So, I know I'm out of time. Thank you for listening.

Chair Wagner: Alright I am going to open it up for 15 minutes.

David Sloan: May we have a minute to circle up and try to organize with the change of the three minutes to the 15?

Chair Wagner: I will definitely allow that.

Jon Paladini: Madam Chair, if I could, while they're circling up, just make a couple of sort of, give some advice. There have been a couple of comments by the appellant or applicant in presentation and I want to make sure that the Board or advise the Board that when statements are made that if you uphold the Zoning Administrator's decision, it's illegal, or if you uphold this decision, there are consequences. I advise the Board to basically disregard those. The process where a Board of Adjustment, which says as you know is in a quasi-judicial capacity, is if a party aggrieved by the decision, disagrees with the decision, as you stated in your opening, they have 30 days to file an appeal to the Superior Court. That's the consequences as far as this Board is concerned. So, I want to make sure that you're aware of that. And the appeals are on the record. So, it's essential. That's why we have a court reporter. And we're trying to make very, very clean record in the anticipation that there might be an appeal from one side or the other. So, I just want to make sure that the Board understands that and I'm not implying, I don't want to, I don't want to imply that that sort of threats or, or, but I just want to make sure that the Board understands that any decision you make ends with the decision and if a party doesn't like it, they have the right to appeal to Superior Court. And that's kind of the end of it for you all.

Tim LoSota: Madame Chair, if it's okay, I'd like to start off for the opponents. Okay, my name is Tim LoSota. I'm an attorney in Phoenix. I'm in the same office building as Mr. Slaven the attorney for the applicant 2198 East Camelback Road, Suite, 305 in Phoenix. And I'm going to rush through my presentation because I want to save as much time as possible for you to hear from the actual residents of this area. But I do think a few technical points are in order. I didn't hear all of the City Attorney's remarks on this law, but after hearing the legislators talk, one thing I would say is if the law said, what they said it said, they would need to be here telling you what they think it says they could just say here's the statute, you can't do this. The law doesn't at all say what they say it says. And you know, I would submit I think they need to read it more closely. Because the law is clear. In

relation I'm going to quote word for word. This is the statute they're talking about. In relation to a mobile food vendor or mobile food unit, a city or town by ordinance or resolution may prohibit or restrict mobile food vendor from operating in an area zoned for residential use are within 250 feet of an area zoned for residential use. This clearly falls into that category. It's right next to a residentially zoned area. It's, it's well within 250 feet because it's right next door. Now they keep talking about well, they you know they need to do this by ordinance will. What do you call the Mesa City Zoning Ordinance that is a zoning ordinance? The City has done this. And the City has said, actually specifically, the City has said that you can either be within...this they passed a law just this last June, that said a mobile food vendor cannot be within 25 feet of a residential area or within an area that is prohibited to that mobile food vending operation in the Mesa City Ordinance. So just in June, the City again affirmed its Zoning Code, which says quite clearly, you cannot locate within 250 within the OC zoning area. So, this state law does not at all prohibit you from interpreting the ordinance in the way that Mr. Appiah has interpreted it, which is the only common sense way to interpret it. I think that based on the questions that were asked earlier, I think you understand, I mean, this is not a this is just not a public park. I mean, I'm not going to talk about that for too long. But you know, we've talked about the fencing, and oh by the way, it's only open while the food truck operation is going on, but the one thing we didn't talk about was the sign that they say they have the right to exclude or refuse service to anyone. Doesn't sound like a public park to me. If it were they wouldn't have the right to exclude people like that. And then there's the elephant in the room, which is the commercial use. I mean, clearly this is a this is a commercial operation. I'm surprised the applicant could even say that with a straight face that it's not a commercial operation. This is clearly a commercial operation. The zoning code is clear and in fact that's one of the reasons they talked for so long about why this you should really consider this, you know square peg round hole, and it's because the Zoning Ordinance is pretty it is perfectly clear. This, this does not fit the use now. I mean one of the other things I'd point out is that you know the other side has argued for example, that the Zoning Administrator does not have the legal power to interpret the Zoning Code. You heard him stand up there and say that, that is, I mean, I've never heard anything like that. I don't know why you'd have a Zoning Administrator if he could not do that. The Board disposed of that question quickly. But these other arguments are no better. You know the notion that well, if we just have a, you know, we'll throw up a bouncy house well, car dealerships have bouncy houses, restaurants have fire pits, they've got games for the kids. I've seen cornhole at a restaurant, it doesn't transform it into a public park. I think this body gets that. With that I'd, I'd be happy to answer any questions.

Chair Wagner: Does the Board have any questions at this time? All right. Thank you.

David Sloan: I hope I don't sound horrible on the microphone. Not very good at this. David Sloan 6822 East Halifax, I live immediately adjacent to the park I shared two property lines, I'm the Mr. Sloan that he referred to, guilty as charged. I have a six year old son loves bouncy houses. So just to be clear, obviously, I oppose this park. The fact that my kid likes bouncy houses is completely irrelevant. Not sure how that got roped into this, but apparently it did. I think that the technical grounds for this, you know, not being a park and for the, for all of this has been. It's been covered at nauseum. I would point out that the appellants in their own words have talked about the massive traffic and impact. They're describing this. I don't have to. We could just remember what they said. OC zoning is not for that. You guys know that? I don't have to say that either. But what I can add to this is, I live next door. And I can add the human element. Right? Of why do we have zoning? Why do we have that in the first place? The human side of sharing a property line with a commercial property owner who has no regard for the Zoning Code, and whose motto is clearly, it's easier to beg for forgiveness than to ask for permission. My six year old son, his bedroom faces the park. And

so I put him to bed and I read to him every night at eight o'clock. For the last nine months, I've had to do that over the sound of generators running big diesel trucks coming and going, car alarms chirping, people screaming and shouting, propane tanks clanging and banging and backup alarms beeping on their, their lawn tractors and cleanup equipment. I've gone to the park owners directly and we've had discussions I've asked them for remedy to this and they tell me we're within our right, noise ordinance says we can do whatever we want until 10 o'clock. I've been told to my face, Dave, your problem is that you live next to a commercial property. I gave up all of that when Ray started to begin any attempt in my discussion with what are you complaining about now? Because that's all you ever do is complain. The Zoning Code exists for a reason. This Board exists for a reason. The appellants have been actively skirting this law since day one. And that's why we're here today. I humbly ask you to deny their appeal. Thank you.

Ted Sparks: Ted Sparks live on Halifax down the street. I think the main reason we're here is some getting someone overlooked here is to determine whether or not this is a park. If any of you have been by there it is a vacant lot with rental fencing on it and a bunch of chairs and tables. It is not a park. Nobody has ever gone there to have a picnic. They go there to get their food and sit down at these tables and then have their picnic. If the food trucks were not there, they would not be there. Is no way this is a park there's even some definitions here. In the City Code 6-10-3A - parks shall be open to the general public every day of the year, from sunrise to 10pm. They don't come close to that. Section 6-10-4X - no person shall engage in any business activity of a peddler solicitor, mobile food vendor or other vehicle offering for sale or selling any goods or services in a park. There was a under Section 6-10-6 grounds for denial of permits 6-10-6D to the proposed permit use will be will unreasonably interfere with or shall disturb the peace or cause undue hardship on neighboring residents or businesses? This, I assure you it does. We are a small little community of unique community of one acre lots on a U shaped street. Our typical traffic count, the time of day that they're operating, down and at the end of that you may see two or three cars a day. I mean, our, when they're out operating, they've told themselves, they have 1000s of people. They have no place to put them. They're parking on both sides. They're coming around the "U". We're getting hundreds of cars through there every hour. Now, I wouldn't bring that up because it's not part of whether it's a park or not, except that that's a reason you can deny it because they are really creating a nuisance here. Thanks.

Craig Vossler: Good afternoon. My name is Craig Vossler. I live at 1451 North 71st Street. I'm at the bottom of the U. So, I get all the traffic is because there's only one way in and out on Halifax in Hobart. You've heard a number of names, Power Road Park, a food truck attraction, a picnic area, concessions, the property owners want you to believe that this is a park. Don't be misled by the name Power Food Park. It's not a park. It is a commercial business posing as a park and without a proper use permit that we know of. It's a play on words or semantics. Park. As in food trucks pull in and park. How many public parks have you been to that are locked up during the day with a chain link fence? Probably none right? Because it's not a park, hasn't been a park, isn't a park, and it shouldn't be a park. In July of 2019, there was a project narrative for an administrative site plan review (ADM 19-00541) for Power Beach Park. That's where all this stems from and that was submitted by attorney Sean Lake. What happened between July 2019 and December 2020? What became of Power Beach Park? We all know it became Power Food Park. Not Power Road Park, Power Food Park. Says so right on their signs. All the plastic signs on the chain link fence with commercial food trucks a money making operation whose idea was this. So, then what happens the property owners become very overly confident about how things are going. And they purchase the purchase an additional 3.8 acres to expand, dropping \$900,000 to make a request for NC rezoning before ever closing on the land. And now they are using it for a parking lot. Residential parking with

rock and chain-link fence around it for parking. That doesn't make a lot of sense. Meanwhile, from December 2020 to today the residential neighbors and surrounding neighborhood are being subjected to an increase in noise, lights, food smells and unsafe traffic. There's absolutely no respect for the for the neighbors or the neighborhood. So, to recap, the "so called" park doesn't belong at the entrance of a very unique large lot residential neighborhood. It's not a park to the owner skirted the City of Mesa planning process. The owners and their attorney Sean Lake knew full well what is required regarding the City's process. They had been through it at least three times. I've been dealing with these folks since 2007. 14 years. Protect our neighborhood and uphold Dr. Appiah's zoning interpretation because it's the right thing to do. And I know some of you some of our residents have put that they support this. This meeting they were in support of a Dr. Appiah's decision for denial. So hopefully that clears that up. Thank you.

Alan Tom: My name is Alan Tom. And I live 116 North Sunrise Street in Mesa. I'm proud I'm one of the older chinese families here in Mesa. We work very hard, my family, to get a good name for ourselves. We own a lot of commercial real estate, we get appropriate zoning laws before you've done anything. I've got two personal properties we own on Power Road. And two of them have restaurant tenants one just spent \$6 million to put what nice operation over there and the other 40 years ago put about \$3 million and I got to never wonder since in general, they do not sell food. But these properties generate 10s of 1000s of dollars in property taxes. Mesa gets a second year property tax on it. Also, they pay a restaurant industry brick and mortar ones, pay and collect a lot of sales tax which Mesa it gets a big chunk of that. I have employed for and part time over 150 employees a year my restaurant. I'm speaking to help myself and my property owner and that one the landlord I know they're being affected by this operation that should not be here on Power Road. They did not go through the proper zoning process and it's an eyesore inappropriate operation and Power Road you take Power Road from Baseline Road, all with McDonald, that's the biggest eyesore there is you know. Why if I do this, my family, the City Mesa shut me down in two or three months. I have no special favors and no special connections in Mesa. I always had by the rules and everything I do may certainly has an opportunity to keep attractive Power Road, Ellsworth Road, Signal Butte, Chrismon. There are all the other roads north and south, roll out development ,they're all, I'm all. I know is this the Board laws the law nobody's here to circumvent the law and also use a lot of snowball job and extract words out of law that doesn't really mean common sense. This is a no brainer common sense thing. I say again, if I did this Mesa was shut me down. Fine me. Take me to court, I know myself okay. I have no special privileges Mesa and one thing you know you have a house you got overgrown weeds there and inappropriate cars no tags are inoperable in a secure reasonable time to get cleared out and they're going to take your court and find you just for something like this but not right no here now for almost a year inappropriately over there with not the right zoning and everything and they've been taken away from my tenants. Us that right? That's not right at all. I've always played by the rules and I feel very emotional about this because Mesa has not treated me, given me nothing at all that I didn't deserve. And I won't play always played by would never buy a piece of property and that's it says this subject to this only that I want to get on with shall not money out for that so I'm a businessman and I don't need my attorney or my two children to represent me or my grandma or my son or daughter all three of them are attorneys. I know about attorneys okay. So my point is this. I'm just, I want to ask them, on our Board here, to do their duty responsibility to protect my tenants their and their business. They put millions in there. They cannot be like these food tuck operators have I paid too much rent. No, that's a food that's a business operation. Their period is not a park or Beach Park well. I they're not like the food truck industry are there goes down the road and pump out the building stores now there's ducks there. And they, if they got a lousy location, they got to accept all those things like I get out here, but

please, it's your responsibility to duty, protect that neighbor residential neighborhood, protect my property and protect my tenants, please. Thank you very much.

Jim Schaller: My name is Jim Schaller. I live at 6821 East Halifax Drive. I own the property adjacent to their parking lot. We've heard a lot about the noise and about all the traffic and all the commotion and everything like this. Those original plans that they showed us for park, I was excited for I have a two year old daughter, I was like, yeah, we're going to have a park a splash pad this and that. I feel like you know, one of those plans that we've shown, none of it has happened yet. With that we have these giant spotlights, we have all this extra traffic. During the times of this operation. I don't like taking my daughter outside my front yard. I'm scared because they, they get directed into the parking lot. They come out of the parking lot. And then they go straight down Halifax and turn around, hundreds and hundreds of cars throughout the weekend are doing this. And I'm scared to take my kid outside. I can't let my animals outside. And my whole thing is I just I have no problem with someone trying to support small businesses and things like that. I just feel lied to, we don't have a park. We have a state fair. That's how I look at it. I have generators going on all the time, got popcorn. It's not a nice park. I don't feel safe taking my kid over there. There's too many people. So, and with that, I can't take her over throughout the day. It's all gated off. We can't even go over there in the morning and enjoy a nice morning out because the whole place is gated off. It's not a park. It's a business. So that's all I have to say.

Chair Wagner: Now we will turn to the City for their rebuttal.

Principal Planner Rachel Prelog: Chair Wagner. Can I ask before we close this public hearing portion, we did receive several comment cards online that were requested to be read into the record. Would that be appropriate to do at this point?

Chair Wagner: Yes, I will do that now. For this case BOA21-00628 by Karen and Dave Paynter at 6701 East Princess Drive Arizona Mesa 85205. We have "This food Park has a negative impact on our neighborhood. This business belongs in a commercial environment not an on not a neighborhood. Please consider us neighbors when you make this decision. Many of us work hard all day stressed from the workload and traffic. We come home to relax enjoy our family yard and pets. With this expansion we instead get noise from crowds excessive lighting traffic strangers in our neighborhood, homeless people and finally crime. We don't want this environment would you want your family to experience this? whose own two small dirt lots as a park? Why?" From Laura Enosara at 6951 East Hobart Street Mesa, Arizona 85207. They oppose. "Dear Chair Wagner, Vice Chair Lyman & Board members, As a resident of Hobart Street I would like to strongly voice my opposition to the current activities that are being conducted on 1439 N Power Road. The owners of said property have no regard for obtaining the proper permits and doing business in a respectful way. I urge you to consider this appeal on BOA21-00628. I approve Dr. Appiah's interpretation, and from recent meetings and discussions with my neighbors, I know my opinions are shared by many who may have not been able to attend meetings write letters or emails." Russ and Marilyn Bernzen also oppose, and they say "We live at 6908 E Hobart St in Mesa Arizona across the street from the Power Road Power Food Park at 1349 and 1439 N Power Road. It is currently operating 6 nights a week. The City of Mesa Planning Director and Zoning Administrator Dr. Nana Appiah ruled on June 16, 2021, The Food Park is improper use for this property. On October 1st, 2021 without approval they expanded their operation to include the property at the corner of Hobart and Power Road. Please uphold Dr Nana Appiah's ruling and also support the City of Mesa in shutting down this Food Park immediately!" Those are those are the comments that we

received from online comment cards. I do have a an administrative question. For those that submitted comment cards but did not speak. Do I also need to read those in?

Principal Planner Rachel Prelog: I am going to defer to your counsel on how you proceed with the comments.

Chair Wagner: So those that are present here today have submitted these comment cards. Many of them have spoken right. Do I need to read what they have said?

Jon Paladini: No.

Chair Wagner: All right. So now we will turn to the City's rebuttal. And there'll be 10 minutes for this.

Assistant City Attorney Sarah Staudinger: Hi, Chair, Board members. My name is Sarah Staudinger. I'm an Assistant City Attorney with the City of Mesa. I want to start by bringing this back to the only issue that is before you today. And that is to decide whether to uphold Mr. Appiah's interpretation or not. And the specifics of the interpretation or whether the use on this property is a public park and recreation facility as defined in the Mesa Zoning Ordinance. That's the only issue before you today. You've heard about food truck regulations, you've heard about struggles of the food truck industry successes of the food truck industry, whether people like to eat up food trucks, that the property owner bought additional property in the area. None of that is before you the only thing before you is whether or not the use on the property is a public park and recreation facility in the Zoning Ordinance. So, I would like you to just redirect you back to that central issue. I would like to also state that there is no violation of state law or state statute happening here. You can read that state statute and you will see there is no prohibition of regulating food trucks in a commercially zoned area, that's not contained in the statute. And there is no violation of state law happening in these circumstances. And so, I'd also like to, in answering the only issue before you today, I'd like to direct you to your binders exhibits K through K4. You can flip through those. And you'll see those are all taken from the property owners own website, Facebook Page, Google Photos. That is how they advertise their own property. And when you look through that, ask yourselves what is the primary purpose of this property? what draws people to the property? It is not picnic tables, it is clearly commercial food trucks. So, it's a good analogy to make to say you cannot put a playset at a McDonald's restaurant and it becomes a park. You can't put cornhole at the yard, or Culinary Dropout or any of these other restaurants. That doesn't make it a park. So, what is the primary use that draws people to this lot? It is clearly not a park. It's clearly commercial food trucks. And for the appellant to say anything else to claim that it's a park is simply disingenuous and I'll turn it over to my colleague.

Assistant City Attorney Charlotte McDermott: Board, Chairman, I just wanted to add to some of the comments that Sarah made. The current the property in question today is zoned Office Commercial or OC. Under the OC - food trucks are permitted in two circumstances. The one before you today is under the definition of a public park and recreation facility. Under that definition, you have to first establish that you have a primary use as a park. Once you have established that you are allowed to have related food trucks or food concessions, but they have to be an ancillary use that cannot be the primary use of the property. The question before you again today is whether the current use of the property complies with that definition. The other way that food trucks are allowed in the OC zoning district is under the limited service restaurant definition or land use classification. In that land use classification they are allowed as the primary use. There has been

some questions whether the Zoning Administrator has the authority under the zoning code to make this determination that food trucks are limited service restaurant he does have that authority and that is further discussion discussed in his staff report on page three and four, and it's also in exhibits B1, and exhibit L. The ZA has this authority under the Zoning Ordinance, which was adopted by Council. The issue before you today again is the fact that that is the current use of the property being utilized as a public park and recreation facility, which allows food trucks as an ancillary use. The appellant also has a rezoning case that is going before the Planning and Zoning Board to rezone this property to a use classification that would allow food trucks as a primary use. That is not before this Board today. I also wanted to address a comment that was made that the City Staff circumvented or denied the appellant due process that is simply not true. Dr. Appiah has the discretion, Dr. Appiah issued an interpretation, and he has that authority to do so. I'm going to refer you to exhibit M. As the Zoning Administrator, he interpreted, interprets the Zoning Ordinance. And he may determine it which requests for interpretations may be decided through an administrative process or reviewed and decided through a public hearing process. He had determined based on the evidence that is on page six of his staff report, and there's an extensive list, it wasn't just based on some public comments from neighbors, he had determine based on the evidence on page six of the staff report that he had sufficient evidence and information to issue his interpretation administratively and not through a public hearing process. And he has the authority to make that determination. Once he issued the interpretation, he provided a copy to all interested parties, including the appellant. The hearing before you today is the opportunity for each party to present their case and their evidence to this Board for you to make a decision. This is due process. Additionally, after the Board renders its decision, the parties have the ability to appeal the decision to Superior Court. Again, additional due process. I just wanted to wrap up that again, the City has not circumvented the due process. And the appellant was received a copy of the interpretation. He appealed that decision. And that's why before you today for each party to present their evidence. And with that, I'll turn it over to Mr. Appiah.

Planning Director/Zoning Administrator Dr. Nana Appiah: Chair, Board members, there are a couple of comments that were made. That were misinformation to the Board that I would like to address. There was a comment that was made that back in December when myself, the Director of Development Services, our Deputy City Manager met with the applicant, I did accept the activities on the property as under the classification of public park and recreation facilities. When we went to the site, there was no food truck, there was nothing that was actually there. My conversation, and I stand by that conversation with the applicant with even the community as well, the site plan that was issued on May of 2019, if they follow and had built that that will fall under the definition of public parks and recreation facilities. And in that discussion the appellant was informed go submit revisions to their public parks and recreational facilities site plan that was presented. There was also a comment that the City has no issue permits. Well, the comments that were given to the applicant on the site plan, there has not been any responses to the question. Typically, when we issue review comments on projects, the applicant move forward and issue responses. Then again, the City is willing to work with the applicant if they will develop the site plan that was submitted in May 2019, which clearly as the Zoning Administrator determines, or has determined, that that site plan falls under the definition of public parks and recreation facilities, not a current activities that has been conducted on the property. Thank you.

Chair Wagner: Thank you. The appellants response to the public testimony.

Francis Slavin: Thank you Chair Wagner. I think that we just heard that the decision with regard to how to proceed under 9485 was done administratively by Mr. Appiah. That 9485 requires an

ordinance or resolution in order to be able to impose regulations with regard to mobile food units and mobile food vendors. There's no question about that. It states it. We went through that every court has an ordinance to a resolution, not an administrative decision by your Zoning Administrator. Now, and we've had three legislators who were very involved with this House Bill 2371, who have at least set forth their opinion as to how this thing was intended to work. They've also submitted to you a letter which we had no part in doing, by the way, they submitted your letter saying this matter could possibly be referred. I'm not saying anything. One way or the other. Mr. Palladini, as far as that goes, except simply, that's something that has some serious aspects to it. But most importantly, how do you decide what tips the scale between this being a commercial park or non commercial park? Ask yourself? How do you tip the scale? And it's kind of quoting it. It's a lawyer thing. And I don't mean to be offensive when I say this, but justice Potter Stewart, of the years of the United States Supreme Court said, how do you define pornography? And he said, basically, I know it when I see it. But that was not that was just something that was offered in jest. But I'm saying here is that how does a person define, is the food park a food truck park? Well, I know it when I see it. Is that the way our laws are intended to be interpreted? As I know it, if I see it, there has to be an end, there's an admission by the planning staff, that there's a certain level of food trucks that would be allowable on this site, that would not tip the scale, that it would not be the consuming attraction for this location. They didn't say what that number was. But they say there's a number. So, the Zoning Administrator says, I know it when I see it, I don't think that's going to be good enough for you to sanction, what happened here. That what happens if you say no to him, then this matter could go to the Mayor and Council for their review. If someone doesn't take it to court in terms of does this city and in protecting its citizens and allowing free enterprise to occur and allowing public gatherings in the city and in parks and parking spaces and downtown or wherever? So is this something that then the City would with the City Council would say, okay, that's up to us to work at this. And we're going to have to sit down with get a lot of input. Graph getting input, particularly from the mobile food industry, mobile food vending industry, because it's something that we see a lot about, but I'm not sure we fully understand it. Okay, so that becomes a process that would be ordinary and reasonable in in a typical democracy. But we have here but in order so it doesn't come down to one individual who has the authority and the power to interpret a Zoning Ordinance to the public, to make a determination based upon non record evidence, hearsay communications, driving by whatever else, not something that would be subject to, if you will cross examination by this Board. Board members are by ourselves. How does then a person with the thorough authorization of a zoning administrator? How does it come about that that person based upon his feelings, emotions, observations, but without objectivity? Without objectivity, which we've not heard yet, we have not heard the objectivity, which is how many trucks food trucks would be acceptable to Mr. Appiah so that this would be a public park, public park with a picnic facility where people gather and you heard the evidence, uncontested evidence from Ray Johnson that said that as people come here with their families, they come here with their neighbors, it's a gathering place. And we've heard members of this Board saying, I've driven by this, and I've seen it, why do people come here. So, they can get away from their TV sets and their cell phones and everything else are doing electronically to be able to come outside and enjoy themselves in a public gathering place. This is a very, very popular gathering place. So even though one of the council's stated this is clearly a commercial food drug Park. Based on what based on what you haven't heard, that it's not based upon anything except subjectivity. I submit to you that subjective subjectivity and comments which are subjective in nature, do not cause this part not to be public. And, and again, you heard what Ray Johnson said, when he met with Mr. Appiah, at the site, that it was determined that this was a public park. Okay. But my park, so what converted it from being a public park, to a commercial park? Yhe number of food trucks? You have no basis. You have no evidence upon which you can support that conclusion. And so, we would add, and you turn this down, it's like a video of it. It's like really under

this, this, these issues, they will make themselves they will move in a different direction, not through this Board, not through necessarily as a straighter, but they will make their way through another channel. And it will get resolved. Above all ultimately resolved. But today, you just don't have the authority to decide which one of you which one of you will say, I know that word, that word how the scale tips. There's a tipping point on this scale. I know it. I know it and therefore and identify what that tipping point is. Where is that tipping point? I want to thank you for indulging us. I don't think you probably expected to spend as much time as you did. I thank you for being very polite and courteous. And we would respectfully request that you turn down this decision and leave it up to the Mayor and Council to handle in the future. Thank you very much.

Chair Wagner: Thank you. We will now close the public hearing and turn to deliberations by the Board. So, during this time, the Chair will not recognize the appellant or persons in subject or opposition during the deliberations but a Board member may request permission from the Chair to ask for such persons to further question. Board members shall not debate or argue as an issue with persons other than Board members. The Board may take an application under advisement for later consideration or may defer action if additional evidence is needed or alternative solutions need to be studied. So does anyone want to start discussion today?

Boardmember Hoffman: I have a question for the City of Mesa staff. Are there any other privately owned parks public parks in the city?

Planning Director/Zoning Administrator Dr. Nana Appiah: Chair, Board members, Board member Hoffman, I am not aware of any privately owned public park, but then again, the question before you was more about the definition of public park and recreation facilities.

Chair Wagner: So, based off of what we've heard today I hold the opinion that this is not a public park because the food truck the food trucks are what are bringing people they're not the park facilities. The park is closed during the day it does not operate without the food trucks. It has signage showing that not everyone can come in and it's fenced the commercial firepits the commercial use of bringing in the food trucks turn this to a commercial usage of the park rather than a noncommercial usage of the park and per the verbiage of the definition of a park. Let me turn to that really fast but it says that it is based off of the definition of the of the park, the usage of it is not permitted because the food truck per usage is the parks, playgrounds, recreational facilities, trails, wildlife preserves, and related open spaces, all of which are noncommercial. This classification also includes playing fields courts, gymnasium, swimming pools, picnic facilities, tennis courts and golf courts, botanical gardens as well as related food concessions the use of the food concessions as the primary use of the park is what concerns me the most with this turning it from a park to not a park anymore. Does anyone else on the board have an opinion that they'd like to share?

Boardmember Gunderson: So I think I'm close with you in interpreting this it's difficult to pin down a clear rule based on the the only provision in the code that we have which is parks in this definition of parks and recreation facilities of public parks and recreational facilities but I will point out that the picnic facilities aren't listed amongst those that need to be noncommercial which stands out to me as somewhat significant but I still think that I'm convinced by the City's previous interpretation that where it says related food concessions or community centers within the facilities that that indication of related signifies that it's not the primary. And so, I'm still, it's not if for example, this was a primarily a picnic area that they charged admission to access the picnic area and then related to that there were some concessions. I might be inclined to say, yeah, this is still

within the definition of a park. But I think going back to what you said earlier I think it looks more to me like this is primarily a food concessions location and not a picnic area. And just to kind of address a lot of the commentary that we got today which was we don't have the authority to limit food trucks or to regulate food trucks. I think it's pretty clear to me that that's not what we're doing today we're not regulating food trucks. We're not saying that the food trucks aren't allowed here. This has nothing to do with the food trucks it has to do with the land the space that and how it's being used. Whether it was food trucks or whether it was other any other legal business that was going on there they still have to comply with the City Code and the OC zoning allows for limited uses one of those uses is a public park and I'm not convinced. I'm open to what you guys might think but it doesn't seem to me like this this is a park. it's that doesn't seem like it's primarily a picnic area. Doesn't even seem like it's primarily a set of fire pits. It seems like it's primarily a place for people to go and buy food. And that's where I'm at.

Boardmember Reed: I applaud the applicant for coming up with something creative. I think, in today's environment, creativity is necessary and appreciate especially in the City of Mesa, but looking at what the question is before us today, and I agree with what's been stated so far from my fellow Board members is what is the current use? What is the applicable use, that has been established on the property? And from the evidence that's been presented and submitted today, what I what I feel and what looks clear to me is the food trucks is the primary use, not the park. And when we're looking at other cases, you know, accessory uses are accessible. Buildings are coming on properties, you know, those, those uses are usually smaller. When it comes to a house, if we're looking at mother-in-law residence or detached garage, those accessory uses are primarily smaller than main use, which is the residential use of that property. So, when we're looking through the code, and looking under the OC, those limits use has got to be established. And those accessory uses can follow. So, when I look at that, to me, it seems almost clear that the park has not been established, it's so going through the zoning code to be heard by the P and Z commission. And I'm open to other discussions and other viewpoints. But that's just the evidence and information that I've gathered so far in my notes.

Boardmember Hoffman: I believe that the intent originally for this property was to be a park. And in the owners view, it's still that is still part of the intent. I think that with the pandemic that occurred with a lot of the restaurants being closed, etc. What became evident was this was an opportunity where families could go out and still gather and access food, etc. In this setting because it was outdoors. And you didn't have that congestion, initially at least. But clearly that that has changed the business model to kind of one that is being heavily marketed as a Food Truck Park, not a park. But food is that in the sale of food is the driver for this venue at this point in time. So, I think it's deviated from what its original purpose was, and gone from being more of a public use entity to a commercial enterprise. And I don't think that was the intent of the zoning. And I don't think that is in keeping with what that area, the expectations for that area and sensitivity to the owners of that area. So I would be inclined to agree with Board Wagner. And her decision or her explanation.

Vice Chair Lynam: I think I'm in agreement with the rest of the Board. That is our purpose here is to determine whether what is being used on the site right now meets the zoning that's there, whether it's food trucks or anything else that really is not part of what we're supposed to be interpreting at this point. I'm looking from the, what is currently being used on that. I'm looking through what zoning or what uses are allowed on that zoning. Yeah, it kind of a going back and forth on. Is it a public park, which is being used for that or is it a limited service restaurant, which then it would have some more restrictions on being allowed for the food truck portion. Even looking through the other uses on it if we're saying that it's a commercial park and not a public park,

commercial recreation is not allowed in that zoning. I've kind of was looking through all the different uses that could be that are listed for that zoning and really the only ones that would make what's going on there fit into would be the limited service restaurants or the park. Any of the other things that we could fit into either it's not allowed or it requires Special Use Permits that are not there yet at this point or would be considered a special event which it doesn't meet that require because it's not done within the four day time limit of a special event under the City requirements. In the City Ordinance, it does say that the hours of use for a park it shall be open to the general public every day of the year from sunrise until 10pm and that's in Section 6-10-3 this does not meet that requirement. It's not open every day to the public.

Jon Paladini: May I interject and I'm sorry, the citation to that part of the City Code deals with the definition of park is a City owned Park. So, I would sort of advise you that, that the definition of park in that section is only places City owned parks and doesn't apply to other parks.

Vice Chair Lynam: Well, if this is a private park that falls into the commercial private area, which I would think that doesn't meet the requirements of that zoning.

Jon Paladini: Well, again, I'm talking about that section of the City Code 6-10-3 only applies to City owned or City licensed, City controlled parks and this isn't that.

Vice Chair Lynam: okay. So yeah, we're kind of getting into Is it a public facility is a commercial facility. Really, I kind of see that it's not an open public park, it's very limited, it's owned, the park is only open when the food trucks are there. That makes me kind of go with leaning that that is the primary purpose of it is being the food facility and not a park use. The majority of yes, there are other things going there, I think the intent with the original plan site plan would fit in with what was there, but at this point where they're not really being that recreation area on the site are very limited, it seems the primary use of it is focus for the food. And even the signs on the site say that it is a food park, it really is being marketed for that. And that is the primary use of it. Um, so I think that looking through all the different things that it in, its allowed in that zone, I don't think it fits into any of the other ones. And the ones that does fit into would either be that it's a park and this does not seem like a park is the primary use of the site. And or if it's a limited service restaurant, then there are other things that it's still not complying with to make it allowable for that. So, I think at this point, what is there is not compliant with the current zoning.

Boardmember Glover: So being the last to weigh in on this. I agree with what's been said to this point, this, this use of the property in its present form, I have an extremely difficult time labeling this as a park or granted, it's a gathering place, but it's a place to go eat food from food trucks, that's the purpose. That's what's happening here. That's the driver for getting people there. I don't, you know, by the property owners own description of the facility. It's fenced in locked, so only certain hours from five till 10 or whatever, that it's open. And no permanent structures, no permanent facilities other than, you know, some temporary setups that really accommodate people eating food from a food truck at that site. So yeah, I have a hard time labeling it as a park at this point.

Vice Chair Lynam: So to chime back in real quick, give one more opinion that I do think this concept is a great concept and I like to see more of this, but I don't think this is the correct zoning to allow it. And I think it can be enhanced to create that or rezone. But I don't think with what the current zoning and current uses. I don't think it meets it but I love the concept. I would love to be able to do more of that because I think it is a good way to draw people together in the proper locations and the proper sites.

Chair Wagner: Any other comments? I move to deny the appeal and uphold the Zoning Administrator's interpretation that the City of Mesa Zoning Ordinance interpreting that the definition of public park and recreation facilities as it pertains to use is at 1439 North Power Road.

Boardmember Gunderson: I will second that.

Chair Wagner: Thank you. Now we will go to a roll call vote. Boardmember Glover, yes. Boardmember Gunderson, yes. Vice Chair Lynam, yes. Chair Wagner, yes. Boardmember Reed, yes. And Boardmember Hoffman, yes. All right. So, the vote to deny the appeal and uphold the Zoning Administrator's interpretation of the City of Mesa Zoning Ordinance interpreting that the definition of public park and recreational facilities as it pertains to uses at 1439 North Power Road passed unanimously with six yeses and zero nos. Now we will wrap up the public hearing. Do we have a motion to adjourn the hearing?

Vice Chair Lynam: I'll move to adjourn.

Boardmember Hoffman: I'll second that.

Chair Wagner: Alright, a motion was made by Vice Chair Lynam and seconded by Boardmember Hoffman. All those in favor say aye. Aye and any opposed say nay. The public hearing is now closed with a vote of six to zero.

6 Items from citizens present:

7 Adjournment.

Vice Chair Lynam moved to adjourn the Public Hearing and was seconded by Boardmember Hoffman. Without objection, the Public Hearing was adjourned at 2:03 p.m.

Respectfully submitted,



Rachel Prelog,
On behalf of Zoning Administrator (Dr. Nana Appiah)