

**PLANNING AND ZONING COMMISSION  
MINUTES FOR MARCH 5, 2009**

**In Attendance:**

**Commissioners**

Tom Tilford (Chairman)  
Eric Hamblin  
Kay Hauser  
Carey Dobson (absent)  
Bobby Fite  
Donald Borg  
Steve Nicoll  
Nick Scienski (Vice Chairman)

**Staff**

Milton Ollerton, Director  
Mary Secord, Deputy Attorney  
Homer Rogers, Building Official  
Michelle Johnson, Exec Assistant  
Connie Shreeve, Admin Assistant  
Lonny Splawn, Code Enforcement  
Ferrin Crosby, County Engineer

**Work Session**

Scott Brumett from the Department of Real Estate gave the commission and staff training on subdivisions and timeshares. All items on the agenda were discussed.

**Commission Meeting**

**Item #1        Call to Order.**

Chairman Tilford calls the Planning and Zoning Commission meeting to order at 1:02 pm.

Chairman Tom Tilford states that it is customary at the beginning of each meeting to go over some procedures that were adopted earlier this year. Chairman Tilford states that any citizen wishing to address the planning and zoning commission shall state their full name and area in which they live prior to speaking. Each applicant shall receive ten minutes to relay information to the commission. Other citizens shall receive five minutes maximum to give their comments, opinions and recommendations. Redundant comments shall be minimized. The meetings go in an orderly fashion. If a speaker makes personal or antagonistic comments toward an individual the chairman will ask the speaker to stop.

**Item #2        Approval of Minutes from the February 5, 2009 meeting.**

Chairman Tilford opens for motion.

Commissioner Nick Scienski moves to approve the minutes from the February 5, 2009 meeting.

Commissioner Bobby Fite seconds the motion.

Voting is unanimous. Motion carries.

**Item #3        Consideration/Discussion/Possible Approval of a conditional use permit for Vernon Switch Wind LLC to install and operate seven (7) private meteorological assessment towers on Arizona State Land property. Location of property is Sec 9, 20, 22, 34, T10N, R27E, Sec 7, 13 T9N, R27E**

Chairman Tilford asks for staff report.

Milton Ollerton states that staff has reviewed this application and have found no concerns with it. The applicant also submitted a variance to go above the height limit for the county to allow a 197 foot tower. That variance was granted March 4, 2009 by the Board of Adjustments. The structures are temporary, used for a short time while the applicant assesses for commercial wind in the Vernon area. The company has assessed other areas of the county. Mr. Ollerton recommends that the commission approve the conditional use permit.

Chairman Tilford asks if the applicant is present and would like to come forward.

Amy LeGere, Vernon Switch Wind LLC states that the project is along Hwy 60 and is located entirely on Arizona State Lands. Ms. LeGere presents pictures of a typical wind tower and explains how they work.

Chairman Tilford asks if there is anyone from the public who wishes to speak on this matter. No one wishes to speak or comment on this matter. The public session is closed.

Chairman Tilford asks for questions or comments from the commission members. There are no questions or comments from the commission members.

Chairman Tilford opens for a motion.

Commissioner Nick Scienski moves to approve the conditional use permit for Vernon Switch Wind, LLC.

Commissioner Bobby Fite seconds motion.

Voting is unanimous. The motion carries.

This item will appear before the Board of Supervisors on April 7, 2009.

**Item #4            Consideration/Discussion/Possible Approval of a conditional use permit for Stanley Johnson and Dianna Nelson to add a manufactured home for residence of elderly parents. Location of property is House 68 RD 5575 CR 5020, Concho, AZ.**

Chairman Tilford asks Milton for staff report.

Milton Ollerton states that the property in question is 40 acres. Staff has reviewed this item and recommends approval of this item. The conditions would be that the applicants comply with all applicable building and septic permits and that the guest home cannot be used as a rental.

Chairman Tilford asks if the applicant is present and if they would like to come forward. The applicant is not present.

Chairman Tilford asks if there is anyone from the public who wishes to speak on this matter. There is no one from the public that steps forward. Chairman Tilford closes the public session.

Chairman Tilford asks for questions and comments from the commission members. There are no questions or comments from the commission members.

Chairman Tilford opens for a motion.

Commissioner Eric Hamblin makes a motion to approve the application based upon the conditions recommended by Staff.

Commissioner Nick Scienski seconds the motion.

Voting is unanimous. Motion carries. This agenda item will go before the Board of Supervisors on April 7, 2009.

**Item #5 Consideration/Discussion/Possible Approval that the offering and sale of shared vacation ownership interests (e.g., fractional/timeshare) in some or all of the lodging units in the Amberian Peaks Lodge and restaurant in Greer either (a) does not constitute a change in the current non-conforming use of the Amberian Peaks Lodge, which use includes transient rental occupancy, restaurant and retail/commercial operations; or (b) constitutes a change to another non-conforming use which is of the same or more restricted nature as the current non-conforming use as authorized under Apache County Ordinance, Article 10, Non-conforming uses. The Applicant plans to renovate and offer and sell shared vacation ownership interests in some or all of the lodging units in the Amberian Peaks Lodge while otherwise continuing the existing non-conforming use. Owners are Ann and Don Poyas.**

Chairman Tilford asks for staff report.

Milton Ollerton states that the owners of the Amberian Peaks Lodge and restaurant would like to have the commission give an opinion on whether the sale of shared vacation ownership interests are the same or more restrictive than the current non-conforming use. The applicant plans to renovate, offer and sell vacation ownership interests in some or all of the units in the Amberian Peaks Lodge while continuing their existing non-conforming use. This application was heard last month and was tabled and some further information was requested by the commission. Staff has spent considerable time with the applicant on this matter. The history of the property was in question. A conditional use permit was in place on this property for an expansion to add condominiums. The preliminary plat and final plat had been approved by the Planning and Zoning commission, although it had not been finished by the Board of Supervisors. The applicant submitted a letter requesting to withdraw the conditional use permit which helped to clarify what the intent was for this property. Staff also asked for a time share report and all of the documents that are required by the Department of Real Estate. The Department of Real Estate was asked to come and do training for the commission during the work session which happened on this date. The commission was to learn what time shares are and how they operate, and how they can fit into our regulations. There is one time share in the county, it is a subdivision that also has lodge units, and it is called Hidden Meadow Ranch. Based on research by staff, changing this to a time share would not increase the intensity of use on this property. Staff agreed that changing to a time share met the requirements of the non-conforming use. Staff recommends that the commission give a positive opinion on this matter.

Chairman asks Milton Ollerton what the commission is supposed to give an opinion on. Milton Ollerton states that the commission is asked to give an opinion on whether changing to a time share is the same or of a more restrictive nature as the current non-conforming use, which is a lodge and restaurant.

Chairman Tilford asks if the applicant is present and if they would like to come forward.

Ann Poyas, Owner, Amberian Peaks Lodge Mrs. Poyas states that this matter is for the commission's opinion and thanks the representative from the Department of Real Estate who came in. She paraphrases his comments that time share is more restrictive in nature than what they currently have with their nightly run lodge. They withdrew the conditional use permit for the condos, it was never acted upon. She requests that Item 5 and Item 6 be addressed separately. Chairman Tilford opens the public session for comments.

John Freeman – Greer, AZ - Mr. Freeman asks the commission if they have had a chance to read the legal opinion of Bill Ring, land use attorney. He deals with the technical content under Arizona law. It is not clear to Mr. Freeman why the commission is hearing this case today. It doesn't seem like a good idea for Apache County for several reasons. Asking for an opinion with positive results in an expectation, a perception of a positive outcome for the case if the commission decides positively which establishes a liability. If a positive opinion is given, it establishes a perception of a prejudicial process for those that might be in opposition when the case comes before the commission to be heard. The commission has already made a decision, what would be the point of hearing it? It taints the concept of a fair and unbiased hearing where all of the facts are publically available. It puts the county at risk of litigation from all sides. All cases to be heard require a site plan, after being reviewed with many considerations, the commission is authorized by county and state law to make a recommendation approval or not to the Board of Supervisors. Mr. Freeman doesn't find in either the Arizona Revised Statutes or Apache County Ordinance a reference authorizing a P&Z commission to render an opinion prior to actually seeing the case or providing anything but a recommendation to the BOS. He further states that he has not found anything authorizing a P&Z commission to change its function or staff, duties or responsibilities without a judicial oversight or direction. Mr. Freeman states that his opinion is that the commission should deny the request of providing an opinion until a formal case can be heard.

Jane Shupak, Greer, AZ - Mrs. Shupak states that she and her husband received information about this request in February, 2009 and have standing in this matter. A proper application which includes intent, site plan, impact statement etc. must be submitted in order to consider such requests. Asking for an opinion on this matter is not a customary practice for a P&Z commission. Approval of such a request would bias the commission in favor of future decisions of this type of development without understanding its significance on those who live in Greer. She states that she feels this type of project would adversely impact their property values and those of others. The Peaks is surrounded by residential properties. Two parcels of land involved had been previously approved for a different project. The BOAA approved a variance for the same which has been appealed. The legal process is presently on-going which makes the land encumbered.

Chairman Tilford closes the public session.

Chairman Tilford opens up for discussion among the Commissioners.

Commissioner Eric Hamblin states that it seem when they are working on subdivision plats they give opinions the first couple of times before they get the final approval. He states that as long as the applicant comes with all of the paperwork at the specific time, the commission says go-ahead.

Commissioner Bobby Fite states that in the work study held this day, the representative that was here explained to everyone that a time share is extremely more restrictive use than any other thing that could go on. The criterion to install a time share is very involved. They have to go through complete subdivision adoptions which are specific and then time share is very restrictive. They have to be approved by the county as well as the state.

Chairman Tilford asks Mary Secord if the commission can make this opinion.

Mary Secord states that the answer is in Article 10, the article that the applicant has sited and what the commission has been asked to review. The question is whether or not the use as time share is the same, more or less restrictive. Article 10, subsection 02 in the zoning ordinance is what she is referring to.

Chairman Tilford asks if in giving an opinion that the time share is more restrictive than its present use is the commission providing full approval for time share. If the state requires a time share plat, that plat is still going to have to be reviewed by all of the different departments; the commission is just a recommending body. The commission is asked to form an opinion that the use of time share is more restrictive than lodging. Mr. Tilford further states that as the chairman of the commission when a final plat comes through, there is a signature that is required by him, a signature required by Mr. Crosby and Mr. Ollerton, and by the Board of Supervisors. He will not Attest his signature to something he has not seen. He can form an opinion that says it is more restrictive but he is not approving a time share.

Chairman Tilford opens up for a motion.

Commissioner Eric Hamblin moves that the commission render an opinion as finding that the time share use is more restrictive than the existing non-conforming use at the lodge as requested under Article 10, subsection 2 of the Planning and Zoning Ordinance. This opinion does not extend to the approval of a time share at this property. It does not extend to any other requirements for subdivision or the Department of Real Estate. If there is a subdivision plat required, it must come back to the commission and follow proper procedures.

Commissioner Nick Scienski seconds the motion.

Voting is unanimous. Motion carries.

**Item #6 Consideration/Discussion/Possible Approval of a non-conforming use for the Amberian Peaks Lodge and Restaurant in Greer to construct additional lodging accommodations with the maximum coverage of the surface area of such additional structures being no greater than twenty percent (20%) of the total lot area as permitted by Section 308.08 of Greer Phase I Zoning Ordinance or up to 100% expansion if Amberian Peaks Lodge non-conforming structures of 296,104 sq. ft. as allowed under Apache County Ordinance, Article 10. Non-conforming uses, whichever is greater. The applicant plans to expand the Amberian Peak Lodge by adding additional accommodations up to the density permitted by Section 308.08 for the purpose of offering and selling shared vacation ownership interests in and/or engaging in the transient rental occupancy of such additional accommodations in accordance with the existing non-conforming use. Owners of the property are Ann and Don Poyas.**

Chairman Tilford asks for a staff report.

Milton Ollerton states that Article 10 which talks about non-conforming use says that non-conforming use can be expanded up to 100% of the floor area of the original business. The applicant wants to expand the project by 100%. The applicant is asking for an opinion from the commission for permission to expand 100% of The Amberian Peaks Lodge which is currently 26,104 sq ft. and expand that onto their property. There were originally 3 lots submitted with the application. A 1986 plat map shows that all of the houses surrounding belonged to the Peaks Lodge. After the ordinance was adopted they were split off from the main property and on some of them homes were built. On parcel 12I, one of the properties in question, nothing was ever built, it existed as a vacant lot. Unless it was looked up, the perception was that it was always a part of the Peaks. Customers of the Peaks continued to use the property in that way. The applicant has combined parcels 12A, 12B and 12I all back together. Because no fence was put up on 12I to distinguish it's separation from the Peaks it is hard to determine if it has lost its non-conforming use. The property continued to be used as it was always used as part of the Peaks Lodge. It is the opinion of staff that it did not lose its non-conforming status. With the three parcels combined there is adequate room to expand this property 100%. The commission has seen cases before this where the expansion was on property that the non-conforming use

expanded to the adjoining parcels because all of it appears to pertain to the original business operation. The commission has granted these in the past and staff feels that it appropriate at this time. Mr. Ollerton states that he wants to emphasize that in expanding 100%, the applicant still has to follow the section of the ordinance that regards conditional use permits, Section 308 of the Greer Zoning Ordinance. Staff recommends a positive opinion as long as the applicant follows Section 308. All areas of the Section and their requirements have been discussed with the applicant and they are agreeable to the requirements.

Chairman Tilford asks if the applicant is present and if they would like to come forward.

Ann Poyas, owner of The Peaks Lodge – The ordinance does not require that they receive an opinion from the commission; however in 2007 the commission set precedents by asking people who were qualified under the non-conforming use to come before Planning & Zoning for the purpose of transparency and working relationship with the County which they have maintained. They wish to let the commission know that they plan to exercise what is their right under Article 10 to expand. Mrs. Poyas is just wanting the commission to agree that they know that the Poyas' plan to exercise their right to expand. There is nothing in this request that involves any attempt that they are skirting any of the ordinance requirements. They have this request before the commission to let them know that they intend to exercise their right under Article 10.

Chairman Tilford opens the public session for comments.

Ginny Smith – Greer, AZ – Parcel 12I was purchased by the Cleveland's, public record shows that the property was for a single family residence. The intent of the owner previous to the Cleveland's was to build a single cabin, but because of a horse pasture near; they decided not to and sold the property to the Cleveland's who in turn sold it to the Poyas' as a single family residence.

John Freeman – Greer, AZ – Mr. Freeman states that he will not go through the same information as the preceding item but would like to have it referenced with this item. He further states that Article 10, Subsection 02 in no way allows the commission to change their mission, their legal responsibilities; it merely is a definition of restrictive use. P&Z commissions have no more right as he has seen through statutes and county ordinances to render an opinion as opposed to a recommendation. To do so the commission would have to change the Arizona Constitution. There is no factual basis that allows the commission the ability to change the commission's legal responsibility or mission. As Mr. Freeman understands it the commission can not offer an opinion as opposed to a recommendation after hearing the case.

Jane Shupak – Greer, AZ – Mrs. Shupak states that she concurs with Ginny Smith that the property (12I) had a private owner that was residential and now it is trying to be turned back into a business use. The two parcels have been previously approved for another project and the Board of Adjustments approved a variance for that project which has been appealed and the legal process is still on going.

Chairman Tilford closes the public session but reserves the right to question the applicant later if necessary.

Chairman Tilford opens up for discussion among the commissioners.

Chairman Tilford recalls Ann Poyas for a clarification question. Chairman Tilford asks Mrs. Poyas if the previous plan that was presented to the P&Z Commission and the Board of Supervisors and also the Board of Adjustments and Appeals has been withdrawn. Mrs. Poyas

responds that it has been completely withdrawn; the variance that was with it is null and void because the application has been withdrawn.

Commissioner Bobby Fite asks about the one specific piece of property that keeps being referred back to; is it primary residential property that is supposed to stay residential and what kind of bearing will it have on what the proposal is.

Milton Ollerton states that he doesn't know how the Assessor's office assesses the properties to come up with these determinations. As far as zoning goes, everything in Greer is agricultural general. The only permitted use in Greer is a single family residence. Parcel 12I was originally part of the Peaks property. Several pieces were sold off and homes were built on some of them and he would agree that after the homes were built that piece of property lost its non-conforming status because its use had changed. With parcel 12I, no house was built and no fence was put up around it to designate separation from the lodge. The perception of customers and everyone without specific knowledge of what goes on in the Assessor's office assumes that the property goes on as non-conforming use as part of the Peaks. This is the opinion of the staff.

Chairman Tilford asks Mary Secord her opinion of the letter that was received from a land attorney in last months meeting saying that you can't just add property to a non-conforming property and how does it fit with the situation the commission is dealing with now.

Mary Secord responds that in the letter there was no indication that the properties had been used in the same non-conforming use as the applicant had sought to use them for. In this case there is an indication that the additional lots had been a non-conforming use beforehand and had continued to be used in the non-conforming manner that was being sought by the applicant. They were not the same factual scenarios to the best of her knowledge.

Commissioner Nick Scienski states that Mr. Ollerton used the word perceived someone in the audience says that public records indicate something else so perception is one thing and a document is something else. The commission is supposed to keep in mind something that the applicant will bring before the commission at some future date. He is not sure what is required of the commission, what he is supposed to do.

Chairman Tilford states that per Article 10, the applicant intends to expand their property 100% and include two additional lots that they have now brought in. The two lots were sold off and have been reacquired by the applicant. The two lots had always been part of the lodge and that the lots never lost their non-conforming use. If the commission says the applicant can expand, the applicant must still present their project through the required steps.

Commissioner Nick Scienski asks if there is an issue with Parcel 12I, the parcel that was perceived to be part of the Peaks but was designated as a single family residence.

Milton Ollerton responds that Parcel 12I is one of the questions that have been asked.

Commissioner Don Borg asks Milton Ollerton if it is his opinion that the property had never lost its non-conforming use. Mr. Ollerton states that it is his opinion that the property never lost its non-conforming use. The property was vacant and was always vacant before, was always a part of the Peaks before. The property changed owners, but never changed the way it was used.

Commissioners Bobby Fite asks if either of the two owners could have had the property grandfathered in with the non-conforming use and used it in that manner even though the property was separate from the Peaks.

Mary Secord responds that she doesn't believe the owners could have done that. The requirements would be different for them than they were for the Peaks. As new owners they would have to comply with the new requirements. They purchased the land with a non-conforming use; the use stays with the land. They did not do anything with the land, so it is the opinion of staff that the property retains its non-conforming use status.

Commissioner Kay Hauser states that this is not the first time the commission has had this kind of thing on the agenda, to make an opinion on a non-conforming use expansion. Her understanding was that what Mrs. Poyas said it is not even required that the commission gives an opinion. Her further understanding is that the applicant just wants the commission to be aware of what they are going to do. The opinion they are being asked to give is to say basically thank you for letting us know, because this isn't doing anything. Now the applicant has to go out and do it.

Milton Ollerton states that he doesn't know that an opinion requires a motion. He states that if the commission does not want to offer an opinion then don't, say thank you and move on.

Chairman Tilford states that the commission will move on to Item #7 without stating an opinion.

**Item #7                    Consideration/Discussion/Possible Approval of a conditional use permit for HB Smith to build two (2) one (1) bedroom cabins on parcel to match existing cabins. Location of property is 221 CR 1126.**

Chairman Tilford asks for a staff report.

Milton Ollerton states that HB Smith has a .68 acre parcel of land that has a conditional use permit on it. He is asking to expand to add two cabins to the .68 acres. The property is located off of CR 1126. Staff has reviewed and walked the property several times with the applicant. He states that he has received one letter from a neighbor who is concerned with the ATV noise that is in the area. The neighbor recommends that the applicant use an electric golf cart instead of the ATV. Mr. Ollerton believes that due to the terrain in the vicinity of this parcel, he doesn't feel that an electric cart is feasible. Staff does not make the electric cart as a recommendation. The one condition that staff would recommend with their approval would be that when the foundations are created and sent to the Building Department that they be signed and certified by a structural or professional engineer.

Chairman Tilford asks if the applicant is present and would they like to come forward.

HB Smith, Owner , Heaven Scent Cabins – Greer, AZ - Mr. Smith gives the commission and staff a copy of a financial report that shows decline in business. One bedroom cabins are more in demand now because of the price of the cabin. To stay competitive in the new market, Mr. Smith feels that they must build the new cabins. Mr. Smith doesn't understand what the problem is with the ATV. He is the one who uses the ATV to deliver linens to and from the cabins in a housekeeping function. The ATV is licensed and legal.

Chairman Tilford opens the public session for comments. There are no questions or comments from the public.

Chairman Tilford closes the public session.

Chairman Tilford opens up for discussion among the commissioners.

Chairman Tilford states that he has had the opportunity to go out to the property on two different occasions and actually see where the cabins will be located and the set-up and design of them. It appears that the setbacks to the plan are met. It is a very, very straight forward plan, nothing out of the ordinary.

Chairman Tilford opens for a motion.

Commissioner Steve Nicoll moves to approve the conditional use permit for HB Smith to build 2 one bedroom cabins, including staff recommendations for the foundations to be certified by an engineer.

Commissioner Bobby Fite seconds the motion.

Voting is unanimous. The motion carries.

The Commission takes a five minute break at 2:07 pm and resumes at 2:13 pm.

**Item #8                    Consideration/Discussion/Possible Approval of a conditional use permit for Big Ten Cabins, LLC to expand the existing Commercial Resort Property to include a total of 25 cabins. Location of property is 45 ACR 1120 (Main Street) Greer, AZ.**

Commissioner Steve Nicoll excuses himself from this item for possible conflict of interest in this application.

Chairman Tilford asks for a staff report.

Milton Ollerton states that he has received several letters both in favor and against this project. Big Ten Cabins has operated for many years as a non-conforming use. At one point a previous owner of the property went to the Board of Adjustments and split off three lots, it created sub-acre lots and the variance was granted. The cabins on these lots continue to be rented as part of the Big Ten Cabins. Two of the cabins have been re-purchased by Big Ten Cabins and brought back into the group. There are ten units on this property already and the applicant seeks to add 15 more. As the staff studied Section 308 of the Greer Zoning Ordinance, all of the ordinances have been met as regards to the structure coverage, the roadway parking coverage, the open space and the parcel size. The applicant tried to locate the cabins in a manner to preserve trees and for convenience of parking. All of the parking requirements have been met; there is adequate parking for the cabins. The application is asking for several things that are consistent with a commercial resort property including maintenance, restaurant, office, guest services and gift shop. The Greer Zoning Ordinance is clear that those uses can be combined when calculating for parking. It does meet the requirements for parking for the restaurant and the cabins. County Road 1120 is not a county highway by definition in the engineering road standards; it does not require extra setbacks, the setbacks from the county road are proper. County staff had a concern about the front and rear property lines with most of the property showing to be side yards. Staff asked the applicant to consider the entire front line all along County Road 1120 as the front yard and the stair step as the rear yard lines. With a project like this they don't look at individual cabins to determine front and rear yards for a cabin, they look at the entire property to determine yard lines. On the North side of the property there is a conditional use permit in place for the entire parcel. In 2005 several other applications were applied for and were granted a conditional use permit. Staff considered each of these units. Mr. Ollerton went to the site on a Saturday and looked at the areas where these cabins would be located; he spoke to some of the neighboring property owners

and listened to some of their concerns. He relayed the concerns to the applicant and considered these things in the staff report. The Greer Zoning Ordinance is really clear on what it says is a permitted use and that is a single family residence site built on the property. That is the only permitted use in Greer, everything else requires a conditional use permit. For many years people have operated nightly cabin rentals in the Greer area. Previous attorney's offices have agreed to allow those uses to continue but they have been defined as non-permitted residential uses; they don't fit the definition of the permitted use. Most of these properties are with a management company to be used as commercial properties. A private home owner could enjoy more rights to his property that he rents out commercially. So a private home owner is in competition with a neighboring resort owner. In the opinion of staff, these units exist as non-permitted, non-conforming uses as they are used as rentals and do not require double setbacks. As far as traffic goes, staff considered that there are peak times in Greer for traffic concerns. To require a developer to plan for traffic and design an entire roadway, miles of roadway, to prepare for an event of high traffic volume, Mr. Ollerton feels that is a burden placed on a single developer. If the community of Greer wants to work out that issue they should come together as a community and consider a roadway improvement district and create a plan that addresses all of Main Street and have an opportunity to participate and benefit from the opportunity. In the ordinance 8 units per acre is what is allowed, this parcel is 3.15 acres, 25 units would be the max for this property. Septic issues were brought up; the septic is handled by the Greer Sanitary District the county does not have authority over this. The water issues are under the Arizona Department of Water Resources. Staff recommends approval of this application.

Chairman Tilford asks if the applicant is present and would they like to come forward.

Kevin Sewell – Greer, AZ, Doug Sandahl – Owner of Big Ten LLC, Keith Shreeve- Isaacson Engineering – Mr. Sewell states that they are there to answer any questions the commission may have. He thanks staff for the thorough analysis of the project, every point was covered that he thought he would have to address. Mr. Sewell asks to reserve the right to make their comments after the public comments.

Chairman Tilford opens up the public session.

Kathy Stewart – Greer, AZ – Mrs. Stewart states that there are 6 foundations in the ground in Greer. Some of them have been there at least 2 years if not 3. She hopes the commission would have those completed before more are started.

Bill Forare – Mesa, AZ, owner of former Big 10 Cabins, #6 – Mr. Forare states that he would like to have it insured that he continue to have a legal access road to his property. He is a member of the Bellinger Spring Water User Association which involves the integrity and safety of the spring water lines that cross the Big 10 property. Mr. Forare is concerned that the safety requirements will be met.

Dick Bruneau – Greer Fire District – Mr. Bruneau states that he distributed a letter from the GFD to the commission. GFD is not taking a position with respect to the use of this property. One issue they have is access to fire equipment. The driveway ingress and egress is adequate in the front of the property. Their concern is toward the rear of the property where the parking areas are snug; they prefer to deal with the applicant one on one to do some expansion or modify the roadway. Another issue is the Bellinger Spring Water User Association of which the GFD is also a member. There is a public water system that serves 5 customers including Greer Lodge. An easement was established that goes across this property. As the plat map is drawn, there is new construction on top of that easement and multiple septic lines that cross over that water line. Mr.

Bruneau presents this information on advice of legal counsel. He needs to make sure the rights of the Bellinger Spring Water User Associations are not violated or voided due to construction on this property.

Roland Adams – Greer, AZ – Mr. Adams states that he came to the meeting to voice his support for this project. Based on past projects with the Greer Lodge, he thinks it will create a nice addition. He believes that if the concerns that have been voiced are checked into and followed through on; he doesn't think there should be a problem with this project.

Brent Mitrisin – Greer, AZ – Mr. Choisser states that he owns property 102-12-061H. When he purchased the land he was told he was not allowed to build a bigger cabin or any more cabins on the property. He is confused as to how it has come from that to this expansion. He wonders why the offset on the north side of his property is 10 feet where everywhere else it is 20 plus feet.

John Freeman – Greer, AZ – Mr. Freeman states that his feeling is that it is about respect for property rights, respect for neighbors, community and respect for the law. The case today is to be decided under law. He states that density is not an entitlement. The project deserves closer scrutiny to ensure that they meet the objectives of the ordinance. Given the existing congestion, the fact that the proposal is in the middle of a residential area is already detrimental to the peace and comfort of the residential area. The neighbors feel that with this expansion their property value will diminish. The applicant must prove that the establishment, maintenance or operation of the use or building applied for will not be detrimental to the public health, safety, peace, etc. of persons residing or working in the neighborhood of such proposed use. In the perception of the adjacent property owners that approval of this project will be detrimental.

Debra Choisser – Greer, AZ – Ms. Choisser states that when they bought their property which was previously part of the Big 10 Cabins, they were assured that there would not be a large development surrounding them. They were not allowed to put more structures on their property. She believes that the amount of cabins that are proposed for this project is ludicrous. She believes that it is way too many for such a small amount of property. The incentive for them to purchase the land was to hope that the property would stay the same. Ms. Choisser thinks that the double setbacks should be enforced. The closeness of the structures is going to create the visual image of a development which is contrary to the spirit and interest of the Zoning Ordinance 308.03. She is also concerned with the Bellinger Spring Water Users Association with there being so many cabins on a small amount of land.

Katherine Kossaras – Greer, AZ – Mrs. Kossaras states that she and her husband own the property west of the Sutters. She contacted Bill Ring, a land use attorney, to go through the proposal and help her understand the staff report and the application. Ideas that Mr. Ring gave her and discussed were that he thought the staff report was a shallow review of the application. Mr. Ring believes that this case is not ready to be discussed or approved until more detailed information is provided. Some of those details might be the traffic statement, is there a business model that should have been requested. Mrs. Kossaras states that there should have been a drainage report done, it should be mandatory. She believes that the applicant should have to give up its non-conforming use status and all future land use must meet current zoning and not just grandfathered rights. The applicant shows that all surrounding properties are commercial; Mrs. Kossaras indicates that there are a lot of questions about that. Some properties have been nightly rental and some have not; she believes that this needs to be clarified. She believes that some areas should have the double setbacks. Without this additional information she doesn't know if the applicant has adequately planned this expansion and if it is a good land use decision.

Ginny Smith – Greer, AZ – Mrs. Smith states that there is a public safety concern for the people who live south of Big Ten, Greer Lodge and what used to be River Bend. There are only 5 exits into these properties altogether. If there was an emergency evacuation, there would be a real congestion problem causing residents and livestock to have a difficult time getting out. She states that people forget that open space is not parking space. Mrs. Smith distributes pictures of what the garbage area at Big Ten looks like to the commission and staff. The pictures show what the garbage looks like with just 10 cabins on the property. She believes that there is a significant issue about garbage that destroys the character of Greer. She would like to talk with Mr. Sewell and Mr. Sandahl about putting in pedestrian safety features.

Randy Nicoll – Eagar, AZ – Mr. Nicoll states that he is a contractor that does most of the work for Mr. Sandahl. He states that Mr. Sandahl's projects are first class, he is making it available for people to come to the mountains and enjoy what those of us who live here enjoy. The cabins are not any closer than would be seen at any resort. He states that if you look at the values of the properties from the time Mr. Sandahl came to the Greer area and look at what they are now, he has done nothing but improve the values of property in Greer.

Doug Sandahl – Owner of Big Ten Cabins – Mr. Sandahl states that 90% of the land in Greer is public land. There are 500 cabins in Greer and only 122 residences in Greer. It is a place where visitors from throughout Arizona go to enjoy the outdoor recreation on public lands. Mr. Sandahl's Greer Lodge properties offer an alternative to camping in a campground. Greer has a long history of cozy cabin rentals. There are over 30 cozy cabin rental projects scattered throughout Greer. Main Street is dominated with commercial properties; Big Ten is right in the middle of that. That the property is in the middle of a residential area is a misconception; this property is in the middle of the commercial corridor. This is not a high density project. There is only 16% lot coverage when 20% is allowed. The project meets or exceeds set backs, looped roadways for fire truck access, building separations and exceed the parking requirements. They have worked out issues with adjoining property owners. Mr. Sandahl buys all of his building materials from Apache County vendors. Big Ten will honor all easements and spring rights or other issues like them on this property.

Chairman Tilford closes public session.

Chairman Tilford opens up for discussion among the commissioners.

Chairman Tilford asks if the commission could hear what the variance was that was given to the property owners when the land was split off from the Big Ten Cabins.

Milton Ollerton states that when the property was split, they were told that those parcels could not build inside the setbacks. That was the only condition that related to these properties. It took away the non-conforming use of the Big Ten and required a conditional use permit for expansion.

Chairman Tilford asks Mr. Sandahl about the easement for Mr. Forare and the Bellinger Springs issues and what the plan is to deal with these issues.

Kevin Sewell answers that they are not issues. As Mr. Sandahl stated they will respect any existing easements. Mr. Sewell has researched the water easement issue. He further states that he has a meeting this evening with Mr. Sutter and Mr. Forare to discuss these issues. As for the fire district issue, the Big Ten will work with their department and work out any problems that might occur.

Chairman Tilford states that the fire district was concerned that the roads in the rear of the property did not allow for the turn around of the equipment.

Kevin Sewell states that they will certainly work with the fire district on this matter but that this day was the first they had heard of the concern for the turn around issue. He explains that Mr. Shreeve has designed the roads to allow for the turn around in the design; everything has a loop to allow for this.

Commissioner Eric Hamblin states that someone mentioned that there were 6 foundations in Greer, are they on the Big Ten property.

Milton Ollerton responds that they are.

Commissioner Bobby Fite states that under the Greer Phase I Zoning Ordinance Section 308-06 density up to 8 dwelling units per acre. The maximum guest unit density in hotels, motels, lodges and resorts could be up to 20 non-housekeeping units per acre. He states that he realizes these are housekeeping units, so it falls back to the 8 units per acre. His point is for clarifying to the people in the audience that if the units are non-housekeeping units, they are capable of 20 units per acre as long as they meet all of the criteria for their conditions.

Chairman Tilford states that during the work study portion of this meeting he asked a question of Mary Secord about the surrounding properties in which in Milton's opinion is non-conforming non-permitted use. Chairman Tilford asked if it was within the commission's authority to agree with this opinion. Mary Secord responded to the commission that it was within their authority to act on that opinion.

Chairman Tilford asks Ferrin Crosby, County Engineer for his opinion in talking about the road and traffic issues that has been talked about.

Ferrin Crosby states that the latest traffic count in Greer has not been taken off of the counters; however he has the count information for May 8, 2006. He acknowledges that there has been some development in Greer since then but this report will give everyone some idea of the traffic counts at that time. He states that he understands that the July 4<sup>th</sup> counts will be out of the ordinary as far as traffic and overall volumes. Typically when they do a traffic count they leave the counters up for 7 days. They take the averages of those 7 days and come up with the average daily traffic. Mr. Crosby points out that the weekend traffic is when there will be the highest volume of traffic so he will address that. These readings were taken in the area of Kattle Kate's. Between the hours of 6am and 8pm is when there is traffic on the road. There were 97 cars in one direction during this time frame. This number is doubled for both directions, so basically 200 cars in that one day. If you take this on an hourly basis, it is 14 cars per hour. Another place where they count is at the intersection of Hwy 373 and CR1120. That figure is roughly doubled, so roughly 400 cars per day, between the bridge and this location, about half of the traffic turns off or goes to another location on Main Street. Mr. Crosby talked with the guy who is in charge of gathering all of this traffic data and asked him what the idea would be for traffic counts in July when it would be peak of the tourist season. He responded that he would double the number. So the number would be 800 cars per day at the bridge and 400 cars per day at the vicinity of Kattle Kate's. Mr. Crosby relates an experience to give the audience an idea of what this would be like. If there were 800 cars parked at the high school in St. Johns and they all had to leave, there are 2 lanes that lead out; these 800 cars could be all out in 10 minutes. He understands that there is concern in the case of a fire. Every situation can not be anticipated. Mr. Crosby's feeling is that adding these cabins will not significantly impact the traffic.

Milton Ollerton states that in consideration of a motion, staff has discussed a drainage study for this property, it would be appropriate to make that a condition before it goes to the Board of Supervisors.

Commissioner Kay Hauser asks Mr. Sandahl if garbage screening and aesthetics is a problem. Mr. Sandahl responds that they will gladly do that.

Chairman Tilford opens for a motion.

Commissioner Bobby Fite moves to approve the application with the condition of the drainage study is done.

Commissioner Eric Hamblin seconds the motion

Voting is unanimous. Motion carries. This item will be heard by the Board of Supervisors when the drainage study is complete.

Chairman Tilford excuses himself from the meeting and turns the meeting over to Vice-Chairman Scienski. The commission takes a short break at 3:12 pm and resumes at 3:14 pm.

**Item #9                    Consideration/Discussion/Possible Approval of Article 10 Non-conforming use and adding Section 730 manufactured homes to Article 7.**

Vice-Chairman Scienski asks for a staff report.

Milton Ollerton states that Article 10 changes non-conforming use, building or lot section of the ordinance. Things have been added to this article to improve it and recommend that it be approved in this public hearing and allowed to go forth to the Board of Supervisors for approval. In Article 7, items 3 through 7, the building codes for manufactured homes, have been addressed here to be able to address these in different ways. No commercial uses of manufactured homes, requiring landings around each of the entrances that meet the code requirements, not allowing two single-wides to be connected are a few of the issues addressed. No. 1 states that all newly installed manufactured home shall be 15 years old. No mobile homes are permitted, which is defined as anything built in June 1976 or older. That is they year they changed the way mobile homes were built to be built to HUD standards. The county has many mobile homes in it. People get rehab permits for these homes, bring them in and then leave them. The mobile home is left to be beaten by the wind, destroyed and is trash. No. 2 is not allowing a manufactured home within 300 feet of a highway, excluding subdivisions that allow manufactured homes. Staff recommends approval of this ordinance.

Vice-Chairman Scienski opens the public session.

Ann Poyas – Greer AZ – Mrs. Poyas states she is concerned with Article 10. She had previously sent in two letters to the county about her concerns with Article 10. Mrs. Poyas states that they need a purpose statement. She states that Section C and Section D, Part 3 contradict each other and that Section E and Section F contradicts each other. She believes that the 9 months to rebuild/remodel is excessive; the law has always been 3 years. People need more time to do this. Mrs. Poyas recommends that this item be continued and looked at again.

Commissioner Kay Hauser excuses herself and leaves the meeting.

Ginny Smith – Greer, AZ – Mrs. Smith states that she believes that the 9 month time limit is reasonable, but research should be done on the year time limit around the state. She recommends that persons who apply for a non-conforming use permit have to sign a legal document stating that everything stated is true.

Kevin Sewell – Greer, AZ – Mr. Sewell states that he wants to have one point clarified. They applied for both River Bend and the Four Seasons properties in 2007 for acknowledgement that they were entitled to 100% expansion of a non-conforming use. Mr. Sewell wants to make it known that this new ordinance is not retro-active.

Doug Sandahl – Greer, AZ – Mr. Sandahl states that there is not a provision in the new article for 100% expansion. The new Article 10 would take away a right of property right from all legal non-conforming uses in Apache County. He thinks this flies in the face of Proposition 207.

Milton Ollerton states that staff will go back to Section J and take another look at it.

George Walsh – Vernon, AZ – Mr. Walsh states that since this is a public hearing on these two items copies of this information should be available for the public at the back of the room if they don't have the information in front of them. He asks if this Article is retro-active. In some of the amended articles approved in previous meetings, no mention is made of their being retro-active or not. This is a big concern to people these changes will effect himself included. He states that it is unfair about the 300 ft restriction for manufactured homes as opposed to having a stick built home. He states that not everyone can afford a stick built home and manufactured homes nowadays are built almost as well. He believes that this creates an unequal playing field.

Vice-Chairman Scienski closes the public session.

Vice-Chairman Scienski opens up for discussion among the commissioners.

Commissioner Eric Hamblin states that in his opinion this matter needs to be continued, there is still work to be done on this.

Commissioner Bobby Fite states that he has several problems with several issues in this item.

Vice-Chairman Scienski opens for a motion.

Commissioner Eric Hamblin moves to continue this item for 2 months.

Commissioner Bobby Fite seconds the motion.

Voting is unanimous. This item is continued for 2 months.

**Item #10            Consideration/Discussion of letter from Attorney General regarding open meeting laws.**

Vice-Chairman Scienski tells Milton Ollerton that Chairman Tilford asked that if possible this item be postponed until next month that he may participate as the chairman.

Milton Ollerton states that he doesn't know if it can be moved to next month, the Attorney General assigned a time limit on when it could be heard by the commission. He further states that the public has asked to make comments, so allow the comments as they may not want to return next month.

Vice-Chairman Scienski asks for a staff report.

Milton Ollerton states that the letter from the Attorney General's office is available in his office if anyone would like a copy of it. Two concerns were brought up to the Attorney General's office on open meeting laws. The Board of Adjustments and Appeals had their work sessions at El

Camino and the question was asked if that was the appropriate place to hold the work sessions. The Attorney General said that while it is not a violation of the open meeting law because it is properly noticed, it is probably not the best place to have a work session. So the open meeting law was not violated and they recommended that the work meeting not be held at El Camino and staff took this into consideration. The second concern was that a July meeting a year ago, only 5 members were here to make the quorum of the P&Z. On two items one person had to excuse themselves which left us with 4 members. The previous attorney's office said it was ok to move forward, the Attorney General's office said that it did indeed violate the open meeting law as there was no longer a quorum present. The remedy was that those items had to be considered again which was done immediately after they found out that this was a violation. One item that was heard that day was withdrawn and is no longer an issue. The second item went back to the commission and was heard again with a full quorum. Neither of these items had gone to the Board of Supervisors, so it was not hard to fix. The Attorney General stated that yearly training on open law meetings needs to be held. Mr. Ollerton states that that is already the case. Apache County Attorney Michael Whiting came to our work session last month and held training on open meeting laws. The last step was to put it on the agenda for public comment.

Vice-Chairman Scienski opens the public session.

George Walsh – Vernon, AZ – Mr. Walsh states he was present for the open meeting training and in his opinion it lacked quite a bit because immediately after Mr. Whiting left, Mr. Tilford asked everyone to sign in who wanted to be at the meeting. He suggests that the county purchase the Open Meeting Primer by Christopher Nunn of the Attorney General's office. Mr. Walsh doesn't feel that everyone on the commission is not as comfortable as they need to be at these meetings. One issue is that the work session is for the commission and staff to speak not the public. His opinion is that the training that the commission is getting is inadequate to help them to feel confident in their decision making.

Jane Shupak – Greer, AZ – Mrs. Shupak states that she has been coming to the P&Z meetings for about 2 years for personal reasons. When things that the commission is having a discussion and things are not clear, then they question the judgment of the commission. When things slip through the cracks then people start to lose their faith. She just wants to have faith in our county government.

Vice-Chairman Scienski closes the public session.

Vice-Chairman Scienski opens up for discussion among the commissioners.

Commissioner Bobby Fite states that in response to Mr. Walsh's comment about the commission being a little unsure of what the commission is doing. He believes if Mr. Walsh was up with the commissioners he would be a little unsure too. A lot of the issues before the commission are very, very legal issues which is why they talk with the county attorney's office to get some recommendations on these items. None of the members of the commission are attorneys.

Commissioner Eric Hamblin states that all of the members of the commission are laymen and that is the way the system was set up. The commission appreciates the comments and they do their best.

Vice-Chairman Scienski opens for a motion.

Commissioner Don Borg moves that this item be carried over to next months meeting.

Commissioner Eric Hamblin seconds the motion.

Voting is unanimous. Motion carries.

**Item #11 Consideration/Discussion/Review of Planning and Zoning policies and procedures.**

Vice-Chairman Scienski asks for a staff report.

Milton Ollerton states that this item was put on the agenda at the request of Chairman Tilford. Mr. Tilford wanted to consider requiring that the applicant be present to hear their item. Mr. Ollerton hesitates to consider this because if the applicant cannot appear physically for whatever reason, this occurs frequently, the county is left with the expense of re-publishing, re-sending out the information and having that item on the next month's agenda. He states that staff can step up their efforts to emphasize to the applicant the importance of being at the meeting or appear by telephone. The applicants risk not having their item adequately heard if they are not present if there are questions. Mr. Ollerton hates to add the expense to his department because the applicant is not present.

Vice-Chairman Scienski opens up the public session.

John Freeman – Greer, AZ – Mr. Freeman states that the process of the public hearing is to provide reasonable opportunity to the public to give input and have some review and get back information. He thinks that sometimes 5 minutes is not enough time to have for a complicated land use issue. Mr. Freeman suggests to the commission that a 5 minute minimum and then the chairman has the option of extending the time if the speaker is saying something of substance or the commission is wanting to hear. Mr. Freeman feels that among the Greer residents that there is a feeling that their interests, values and wishes and investments are not being represented by the P&Z Commission or various other county boards. He feels that the process is broken. Mr. Freeman states that there were 3 issues on the agenda at this meeting and the commission voted the opposite way that the people who spoke up wanted them to vote. Mr. Freeman wants the commission to go to Greer and talk about tax payers, property rights and zoning. He thinks that a discussion needs to be had away from the formal setting.

Doug Sandahl – Greer, AZ – Mr. Sandahl states that he would like to compliment Milton's department, it moves steadily with reaching out to get everyone's opinion. Mr. Sandahl hears from the community that the commission is doing a great job.

George Walsh – Vernon, AZ – Mr. Walsh recommends to the commission that to save tax payers money, maybe one of the procedures could be that the information be sent by electronic file instead of mailed through the post office. Mr. Walsh would like the attorney to look into the fact that the rules and procedures of this commission up to this date are not per statute. Statute 11804 requires that it be done by resolution which has never been done before. The rules and procedures that the commission have now are not by resolution.

Vice-Chairman Scienski closes the public session.

Vice-Chairman Scienski opens up for discussion among the commissioners.

Commissioner Eric Hamblin states that the commission is strapped by the Greer Zoning Ordinance; if the ordinance is imperfect it is impossible for a commission to render a perfect decision. The commission is strapped by the regulations and guidelines of the ordinance. Mr. Hamblin is 100% confident that everybody on the commission, though the citizens of Greer may

not feel so, makes the best decisions that they can based on the vehicle they have been given to make a decision by.

Commissioner Bobby Fite states that if this commission didn't have a lot of consideration for Greer these meeting would only be about 30 minutes long.

Commissioner Don Borg states that he lives in Concho Valley, he would be happy to trade homes with anyone in Greer at any time; he doesn't care what the situation is.

Vice-Chairman Scienski opens for a motion.

Vice Chairman Nick Scienski moves to continue this item to next month, the individuals who want to discuss this matter are not present.

Commissioner Bobby Fite seconds the motion.

Voting is unanimous. Motion carries.

**Item #12      Adjourn**

Vice-Chairman Nick Scienski calls for motion to Adjourn at 4:06 pm.

Commissioner Eric Hamblin motions to adjourn

Commissioner Nick Scienski seconds the motion.