

EXHIBIT 1

SECTION 423. "CF" ZONE, COMMUNITY FACILITY.

A. PURPOSE.

CF Districts are intended for schools and a variety of other public and private institutions and facilities which generally benefit a community.

B. PERMITTED USES.

1. Parks.
2. Cemeteries.
3. Public Schools.
4. Public Hospitals and Clinics.
5. Fair Grounds and Clinics.
6. Airports.
7. Government Administration, Services and Maintenance Facilities.

C. CONDITIONAL USES.

1. Recreational Vehicle Parks, subject to the provisions of Section 409.
2. Any use determined by the Zoning Administrator to be similar to those listed above and not detrimental to the public health, safety and general welfare.
3. Any existing use in a Community Facility District shall not be converted to another permitted use, except by Conditional Use Permit.

D. PROPERTY DEVELOPMENT STANDARDS.

Due to the uniqueness of this zoning district rigid property development standards are not applicable. This zoning district will be applied to the appropriate existing land uses and any new development in areas which are zoned CF will be subject to review and specific development standards will be applied by the Development Review Board on an individual basis.

E. GENERAL PROVISIONS.

The general provisions of Section 404 shall apply to all uses with the following conditions:

1. Section 404.M.1 (Storage and parking of Manufactured Homes, House Trailers), shall not apply in reference to activities related to the Verde Valley Fair Grounds.
2. Section 404.V.1 (Noise), due to the type of uses which are conducted at Community Facilities a Temporary Use Permit will be obtained from the Zoning Administrator to exceed the allowable noise levels in Section 404.V.1 in accordance with the following:

The Zoning Administrator shall obtain approval from the City Police Department, Fire Department, and County Health Department. A time limit shall be established for each use conducted under the Temporary Use Permit and Public Announcements shall be made to inform the General Public.

F. SIGNS.

Signs for development in the Community Facility Zoning Districts shall be subject to approval by the City Design Review Board. The provisions of the sign ordinance shall be used as a guideline when considering signs in areas zoned CF.

G. PARKING AND LOADING.

Plans for Parking and Loading areas for uses in CF Zoning Districts shall be subject to review and approval by the City Development Review Board. The provisions of Section 406 shall be utilized as guidelines when approving such plans.

H. ZONING CLEARANCE.

The provisions of Section 303 shall apply.

I. DESIGN REVIEW.

The provisions of Section 304 shall apply to all uses other than single family residences and individual manufactured homes.

J. CODE REVIEW.

The provisions of Section 305 shall apply to all uses other than single family residences.

K. LANDSCAPING REQUIREMENTS.

The provisions of Sections 407 shall apply to all uses other than single family residences.

EXHIBIT 2

SECTION 104. PLANNING AND ZONING COMMISSION.

A. ESTABLISHMENT; COMPOSITION; TERMS OF MEMBERS; VACANCIES; COMPENSATION OF MEMBERS.

There is hereby established a Planning and Zoning Commission of the City of Cottonwood, to consist of seven (7) members, each of whom shall be a resident of the City of Cottonwood, to be appointed by the City Council, with at least two (2) of whom shall be qualified by design-related background, training or experience, including architecture, landscape architecture, interior design, planning, fine arts or other design-related background. The members of the Commission shall be appointed for a term of three (3) years. In the event of a death, resignation or removal from the Commission, the vacancy shall be filled by the Council for the unexpired term. Members of the Commission may, after public hearing, be removed by the Council for inefficiency, neglect of duty or malfeasance in office. The Council shall file a written statement of the reasons for removal. A member absent from three (3) regular meetings or a cumulative total of five (5) regular or special meeting within a calendar year shall constitute the constructive resignation of that member, and said vacancy shall be filled by the City Council, with the option that said member may apply in writing to the City Council for consideration of reinstatement. All members shall serve without pay. However, members of the Commission may be reimbursed for actual expenses incurred in connection with their duties upon authorization or ratification by the Commission and approval of such expenditures by the City Manager.

B. POWERS AND DUTIES.

It shall be the duty of the Commission to formulate and administer any lawful plan duly adopted by the Council for the present and future growth and development of the City of Cottonwood, pertaining to the use of land and buildings for any purpose, to make or cause to be made a continuous study of the best present and future use to which land and buildings shall be put within the City of Cottonwood and in cooperation with adjacent areas and to recommend to the Council revisions in such plans which, in the opinion of the Commission, are for the best interest of the citizens of the City of Cottonwood to hold public hearings where necessary; to make recommendations to the Council on all matters concerning or relating to the creation of zoning districts, the boundaries thereof, the appropriate regulations to be enforced therein and amendments of this Ordinance; to carry out the specific duties as associated therewith and commonly known as "Planning and Zoning". The Commission is also authorized to confer and advise with other city, county, regional or state planning commissions. The Planning and Zoning Commission shall have the authority to approve, conditionally approve or disapprove all applications for Design Review as required by Section 304 of the City of Cottonwood Zoning Code, based on the Criteria as approved by the City Council or any other applicable Design Policies or Guidelines as established through the legal authority of the City of Cottonwood.

C. SELECTION OF OFFICERS.

The commission shall elect a Chairman and Vice-Chairman from among its own members, who shall serve for one (1) year and until their successors are elected and qualified. The Chairman shall preside at all meetings and exercise all the usual rights, duties and prerogatives of the head of any similar organization. The Chairman shall have the power to administer oaths and to take evidence. The Vice-Chairman shall perform the duties of the Chairman in the latter's absence or disability. Vacancies created by any cause shall be filled for the unexpired term by a new election.

D. QUORUM; VOTING.

Four (4) members shall constitute a quorum. The affirmative vote of a majority of members voting shall be required for passage of any matter before the Commission. A member may abstain from voting only upon a declaration that he has a conflict of interest, in which case such member shall take no part in the deliberation on the matter in question.

E. RULES; REGULATIONS; RECORDS; MEETINGS.

The Commission shall make and publish rules and regulations to govern its proceedings and to provide for its meetings. Meetings of the Commission shall be open to the public. The minutes and records of all Commission proceedings shall be kept and filed as public record in the office of the City Clerk.

EXHIBIT 3

SECTION 302. CONDITIONAL USE PERMITS.

A. PURPOSE.

Every zoning district contains certain buildings, structures and uses of land which are normal and complementary to permitted principal uses in the district, but which, by reason of their typical physical or operational characteristics, influence on the traffic function of adjoining streets or similar conditions are often incompatible with adjacent activities and uses. It is the intent of this Ordinance to permit Conditional Uses in appropriate zoning districts, but only in specific locations within such districts that can be designed and developed in a manner which assures maximum compatibility with adjoining uses, and where such uses will not be detrimental to the health, safety or welfare of the public. It is the purpose of this Section to establish principles and procedures essential to proper guidance and control of such uses.

B. GENERAL REGULATIONS.

1. Zoning district regulations established elsewhere in this Ordinance specify that certain buildings, structures and uses of land may be allowed by the Commission as Permitted Conditional Uses in a given district subject to the provisions of regulations. The Planning and Zoning Commission is empowered to grant and to deny applications for Use Permits and to impose reasonable conditions upon them.
2. Any building, structure or use existing on the effective date of this Ordinance which is reclassified as a Permitted Conditional Use by this Ordinance for the district in which it is located shall be considered as meeting the conditions which would otherwise be imposed upon such use by this Ordinance and its continuance shall not be subject to issuance of a Conditional Use Permit; provided, however, to the extent that such fails to conform to the requirements of this Ordinance, it shall be considered nonconforming as described in this Ordinance and its continuance shall be governed by all nonconforming use regulations applicable thereto.

C. CONDITIONAL USE PERMIT APPLICATION.

Application for a Conditional Use Permit (CUP) shall be filed with the Zoning Administrator on a form provided by the City. The application shall be forwarded to the Planning and Zoning Commission by the Zoning Administrator and when required by the Commission, shall be accompanied by a detailed site plan and related exhibits showing all information necessary to demonstrate that the proposed use will comply with the required findings and all special conditions as well as other regulations and requirements of this Ordinance. The applicant shall furnish the Commission any additional information it may consider relevant to investigation of the case.

D. COMMISSION ACTION AND FINDINGS.

1. It is the express intent of this Ordinance that any use for which a Conditional Use Permit is required shall be permitted as a Principal Use in the particular zoning district, provided that the required findings and all special conditions and requirements of this Ordinance are met.
2. Notification: Notice of the Conditional Use Permit applicant shall be posted on the property. The notice shall set forth the time and place of the public hearing and include a general explanation of the matter to be considered and a general description of the area affected.
3. A Conditional Use Permit granted pursuant to the provisions of this section shall thereafter run with the land and shall continue to be valid with successor ownership of the property provided the use is maintained in compliance with the conditions, stipulations and terms of the permit. If a use ceases to exist for six (6) months or more, the property owner shall be notified that the CUP shall be subject to possible revocation as described in this Section. The Planning and Zoning Commission can grant an extension to the CUP where the intent to continue the use in the same manner is demonstrated.
4. A Conditional Use Permit may be subject to review and possible revocation where a violation of the conditions of approval is indicated and where the required findings for revocation, as described in this Section, are demonstrated.
5. Conditions of Approval: The Commission may designate such conditions in connection with the Conditional Use Permit as it deems necessary to secure the intent and purposes of this Ordinance and may require such guarantees and evidence that such conditions are being or will be complied with.
6. Required Findings: A Conditional Use Permit shall only be granted if the approving body determines that the project conforms to the required findings in this Section. If it is determined that it is not possible to confirm the required findings for the proposed CUP, whether as submitted or through conditions that may be required, the application shall be denied. The specific basis for any decision shall be considered as the basis for the findings to approve, approve with conditions or deny the Conditional Use Permit:
 - a. General Findings: The location, size, design and operational characteristics of the proposed use shall not be detrimental to the health, safety or welfare of the surrounding properties or occupants, nor be substantially or permanently injurious to neighboring property;

- b. Compatibility with Surrounding Uses: The proposed use shall be compatible with surrounding uses in the vicinity with respect to the intensity of activity, times of use, scale of buildings, anticipated traffic, parking requirements, architectural and site improvements, landscaping, outdoor lighting and other property development standards;
- c. Traffic and Circulation: The proposed use shall have adequate access to public streets and highways to carry the type and quantity of traffic which may be generated by the subject use; and on-site circulation, including driveways, drive aisles, parking and loading facilities, and pedestrian and bicycle facilities, shall be provided in a manner which is adequate, safe, efficient and convenient;

E. APPEALS.

1. Any applicant or resident of the City of Cottonwood who is dissatisfied or aggrieved by the decision of the Planning and Zoning Commission may appeal such decision to the City Council by filing a written Notice of Appeal with the City Clerk, no later than fifteen (15) days from the date of the decision.
2. Notice of the appeal shall be made in the same manner as for the Conditional Use Permit, including timeframes indicated, posting on-site and publication of a legal notice.
3. Upon notice of a valid filing of an appeal, the Community Development Director shall thereafter prepare and submit a report to the City Council regarding the case that describes the reasons for the actions taken in the issuance or denial of the Conditional Use Permit. The City Council shall hold a public hearing and either uphold the action of the Planning and Zoning Commission, reverse the action, or make a decision of its own findings. The City Council may designate such conditions in connection with the permit as it deems necessary to secure the intent and purpose of this Ordinance and may require such guarantees and evidences that such conditions are being, or will be complied with.
4. The Council's decision shall be final and shall become effective immediately. Notice of the decision shall be mailed to the applicant at the address shown on the application.

F. TIME LIMITS.

1. Conditional Use Permits shall become effective fifteen (15) days after approval by the Planning and Zoning Commission, but in the event an appeal is filed, said permit shall not become effective until a decision is arrived by the City Council.

2. Any Conditional Use Permit issued by the Planning and Zoning Commission shall be commenced within six (6) months from the date of approval and diligently pursued, otherwise it shall be subject to revocation as per this Section.
3. No person shall re-apply for the same or substantially the same Conditional Use Permit on the same or substantially the same plot, lot or parcel of land within a period of six (6) months from the date of denial or revocation of said Use Permit.

G. REVOCATION.

1. A Conditional Use Permit granted pursuant to this Section may be revoked by the Planning and Zoning Commission, after holding a public hearing to determine whether any condition, stipulation, or term of the approval of the Conditional Use Permit has been violated.
2. The Zoning Administrator shall notify the permittee of a potential violation of a Conditional Use Permit by certified mail. If no attempt to bring the violation into conformance is made within fifteen (15) days after notification, and no attempt has been made to contact the City department providing the notification, a review of the Conditional Use Permit shall be scheduled with the Planning and Zoning Commission at their next available meeting at which time the CUP shall be subject to possible revocation.
3. The property owner and permittee, if separate, shall be sent notification of the hearing regarding possible revocation by certified mail at least thirty (30) days in advance of the hearing date.
4. Any Conditional Use Permit issued by the Planning and Zoning Commission shall be subject to revocation procedures if the conditions of approval have not been implemented within the required time frame or properly maintained thereafter. The Planning and Zoning Commission may revoke the CUP if it makes any of the following findings:
 - a. That the use is in substantial violation of the conditions of approval for the Conditional Use Permit, or there is or has been a violation of or failure to observe the terms or conditions of approval for the CUP, or the use has been conducted in violation of the provisions of this Ordinance;
 - b. That approval was obtained by means of fraud or misrepresentation of a material fact;
 - c. That the holder of the permit has failed to initiate construction or undertake the use in question within the six (6) month period following the effective

date of the permit. An extension of time for up to six (6) months or longer may be approved by the Commission where the permit holder has submitted a written request that adequately demonstrates their intent to proceed with establishing the use in a timely manner;

d. That an established use has ceased to exist or has been suspended for six (6) months or more; or

e. That the use to which the permit applies has been conducted detrimental to the health, safety or general welfare of the public, or so as to be considered an ongoing or habitual nuisance.

5. Appeal of Revocation: A permittee whose Conditional Use Permit has been revoked through these procedures may appeal such decision to the City Council according to the procedures for appeal described in this Section.

H. FEES.

The application for a Conditional Use Permit or appeal of such shall be accompanied by a filing fee in an amount established by a schedule adopted by resolution of the Council and filed in the office of the City Clerk. No part of the filing fee shall be returnable. Payment of the filing fee shall be waived when the petitioner is the City, County, State or Federal Government.

EXHIBIT 4



Official Minutes of the Planning and Zoning Commission Meeting
Held March 17, 2008 6:00 p.m. at the
City of Cottonwood Council Chambers
826 North Main Street, Cottonwood, Arizona

Item #1 - **Call to Order**

Chairperson Gillespie called the meeting to order at 6:00 p.m.

Item #2 - **Roll Call**

Chairperson Gillespie	Present	Commissioner Kevin	Present
Vice Chairperson Kiyler	Present	Commissioner Lovett	Present
Commissioner Fisher	Present	Commissioner Smith	Present
Commissioner Gonzales	Present		

Staff Present:

George Gehlert, Community Development Director
Wes Ballew, Planner
Charlie Scully, Planner
Carol Hulse, Planning Technician

Public Present:

See attached sign-in sheet.

Consideration of minutes of the February 25, 2008 Commission meeting.

Commissioner Kevin moved to approve the 2/25/08 minutes as written. Commissioner Gonzales seconded the motion and it carried unanimously.

PCU 08-002 Consideration of a request for a 24-hour materials processing plant for processing and removal of mining slag on a 12.25 acre portion of a site located on the Verde Valley Fair Association property north of Hwy. 89A between 6th and 12th streets in a C-F (Community Facilities) zone. The application also includes a request for alternative surfacing improvements for interior parking and access areas as set forth by the Cottonwood Zoning Ordinance Section 406.C.2c and for the placement of 80-foot tall storage silos and catwalk structures. APN: 406-42-097M (a portion of). Owner: Verde Valley Fair Assoc. Applicant: Minerals Research & Recovery, Inc. Agent: Thomas C. Oakes.

Director Gehlert gave a lengthy presentation explaining the staff memo and projecting aerial photos, site plan, site photos, and photos of the surrounding area. During the presentation, he noted that the proposed height of the silos was reduced from eighty to fifty feet.

He explained that the plant would consist of seven silos and a bagging house connected by a conveyor and catwalks. It would take about eighteen months to set up the plant and about fifteen years to process and remove the slag. Director Gehlert explained the request for the conditional use permit, the recommended stipulations, and the reviews.

He noted that conditional use permits do not go to the City Council unless there is an appeal.

Director Gehlert reported that he and Commissioner Smith traveled to Ajo to view the MRR (Minerals Research & Recovery) plant there and they toured the slag operation in Clarkdale that afternoon.

Director Gehlert reviewed the public process to date, which included three Planning and Zoning Commission meetings, two updates to City Council, and two community meetings. He said staff sent two separate mailings to surrounding property owners. The second mailing went to property owners within a 1,000-foot radius of the proposed project. Summaries of the community meetings were posted on the city website.

Director Gehlert reviewed the packet contents noting the packets contained numerous letters and emails received from the public about the proposal and explained an addendum to the staff memo that was a response to several issues raised at the second community meeting. Some of those issues were access, noise, lighting, and dust.

Director Gehlert said the General Plan highlights removal of the Slag Pile and commented that this proposal is a new experience for the city. He said the applicants and the fire department talked about access to the eighty-foot tall structure.

Director Gehlert reminded the Commission that this is a Conditional Use Permit application and, if they approve it, they should think about performance standards because this would be a capital-intensive project.

Director Gehlert projected additional photos of the site and surrounding areas. He said he was confident about the applicant's ability to contain dust and was more concerned about the current condition of the ground and the dust problem that currently exists. He projected a picture he took recently of the vacant area and the enormous dust cloud that the wind stirred up. He suggested that the applicant could possibly address that issue in the beginning.

Director Gehlert highlighted the following items for the Commission.

- NOISE - The applicant's noise study demonstrated that the noise level at 1,000 feet was in the upper 40 decibels range. The Ordinance allows 52 decibels maximum at the neighborhood. The city would stipulate that the noise not exceed 52 decibels at the edge of the neighborhood. Director Gehlert noted that this is not an industrial area and asked the Commission if they felt this was good enough. Sound mitigation options he mentioned were additional sound barriers on site, constructing a building to house equipment, and staggered hours of operation with most of the noise occurring during the day. The twenty-four hour activity would be confined to the indoor limits of the bagging house.
- SECURITY – The applicant is not suggesting any security at night.
- ACCESS - A variety of alternate access points were discussed. Staff supported the Aspen Street access because there is not a tangible proposal for the alternatives and no property owner has been willing to commit to a long-term lease. MRR is willing to reconstruct Aspen Street. The City already has plans to reconstruct Sixth Street. That route takes them to a signalized intersection (at Hwy. 89A). He noted, however, that the Aspen Street access would put the trucks closer to residences on Aspen.

- RECLAMATION – Director Gehlert explained MRR’s offer to contribute to a reclamation fund.
- DUST – Director Gehlert said MRR could work with the city on that issue. However, he suggested that the Commission might want to stipulate that no materials be brought on site for processing.
- PROP 207 WAIVER – Director Gehlert explained it would be a measure to protect the city from a lawsuit if MRR came back later requesting expansion, such as more hours, and were denied.
- SOUND STUDY – licensed professionals hired by the applicant performed the sound study.

Chairperson Gillespie said the Commission wanted to hear from the Fire Department.

Points of Fire Marshal, Rick Contreras’s presentation were as follows.

- The proposal is in compliance for fire/life safety.
- The contractor has done everything the Fire Department asked them to do.
- The MRR staff is trained in rescue. They will place a crane on top. If the proposal were approved, the Tucson Fire Department would train the Cottonwood Fire Department for rescues of this type.
- The open-air buildings are exempt from the fire sprinkler ordinance.
- The requirement to install fire hydrants would enhance the neighborhood.
- One concern is the possibility of explosion as in the Georgia sugar plant case. MRR would have to provide proof that this material is not explosive.
- If a situation arose requiring rescue in a silo, Sedona Fire Department has confined space training and they would be called under mutual aid; the same as if someone was in a manhole on Main Street.
- Mr. Contreras assured the Commission that if the project were approved, the Fire Department would make certain that the project complies with their requirements before the plant opens. Every department submits a list of conditions to the contractor and the plant would not open unless those conditions were met.
- The highest structure in the project is eighty feet. The four-story addition at the hospital is seventy-two and one half feet tall.

Chairperson Gillespie invited the applicant to speak.

Tom Hurkett, representing Minerals Research and Recovery (MRR), addressed the Commission and confirmed he had read the staff memo addendum. He listed prior issues and said the addendum addressed those issues.

Other points of his presentation were as follows.

- He met with the Fire Department to resolve their access and rescue issues.
- ACCESS: MRR explored three alternate access points for general operations. However, none was suitable, primarily due to private ownership. Additionally, the Public Works director preferred the Aspen to Sixth Street route.
- UPGRADE ASPEN STREET: they would remove the portion of Aspen Street from their plant entrance to Sixth Street and reconstruct it to accommodate the weight of their trucks.

- **BUFFER FOR THE FIVE HOMES THAT FACE WEST ADJACENT TO THE PROJECT:** MRR agreed to provide a buffer but they requested a meeting with the residents to be certain that what they install is to their wishes.
- **REMEDICATION:** MRR offered to provide a per-ton amount over the course of the operation for mediation, which is not the City's responsibility. If mediation were unnecessary, the fund would go to the City.
- **LIGHTING:** proposed lighting is within the limits of the Ordinance.
- **DUST CONTROL:** Mr. Hurkett showed specific areas for different parts of the operation on the site plan. They would use reclaimed water at the crusher for dust control and every transfer point from the dryer forward would be enclosed. The entire operation would be licensed under ADEQ and would be under their scrutiny. Dust control would be closely evaluated as part of the detailed engineering.
- The construction process would take about eighteen months and would include activities that occur at most construction sites. Reclaimed water trucks would be used to suppress dust during construction.

Chairperson Gillespie opened the floor to the public and called upon people who submitted request-to-speak forms. He invited people who were for the project to speak first.

Barbara Bower said she lives in one of the five homes that face the proposed project and she showed pictures of the views. She made the following points.

- If the sound barrier were placed near her fence, it would block the views. She preferred placement nearer the silos.
- The slag pile currently screens businesses on Sixth Street from her view. She wants guarantees that those businesses would be required to install screening when the slag pile is removed.
- Alternate route through fairgrounds would not be safe because of the activities there and the Kid's Park.
- The dust from the proposed operation would not be as bad as the dust is now from the open field.
- She is not concerned about noise. The fairgrounds is loud until 1:00 a.m. but she cannot hear vehicles, etc.
- Her primary concern is how views would be affected.
- The alternate route to Seventh Street does not connect well.

Cedar Earles spoke in favor pointing out the following:

- Jobs are needed.
- She grew up here and from a youth perspective, we need improvements.
- Noise would not be a problem. Her husband is a trucker and brings his truck home in this neighborhood without complaints.
- If the alternate access using Twelfth Street were chosen, the traffic light at Twelfth and Hwy. 89A would need adjustment.

Dr. Bob Richards said he is very much in favor of the proposal and cited the following.

- This is a prime example of recycling.
- He requested a stipulation that, regardless of the access chosen, a route be defined to keep the trucks on commercial streets.

The following people spoke against the proposal.

Kia Chapman opposed the project because of trucks and fifteen years of construction with accompanying noise. She implored the Commission to give the request careful consideration.

Cathy Ransom agreed the slag pile should be removed. However, she expressed the following.

- Twenty-four hour operation not reasonable – twelve-hour operation would be.
- Real estate value would probably decline.
- If the fairgrounds benefits, they should remunerate to the homeowners if values plummet.
- Noise abatement walls spread sounds more broadly (based on her experience living near a freeway).
- Backup alarms are annoying.
- The city should monitor on a random basis at least twice a month to test decibel levels.
- Concerned about dust.
- Concerned about contaminants in dust.
- Concerned about availability of reclaimed water.
- Wants project done right.

Merlyn Brown's points were:

- Three entities will make money at the expense of others around them.
- Trucks would have to turn left against traffic at Sixth Street.
- Aspen Shadows would “go to hell” if it is across from a slag processing plant.

Carol Farmer declined her opportunity to speak saying others have said what she had to say.

Tamara Nieto owns rental property in the area. She reported that the Ajo Copper News had an article in the April 2000 issue that stated that local residents objected when MRR tried to get a permit for lesser air quality. She expressed concern that MRR would try to alter whatever is approved.

Mr. Hurkett responded to Ms. Nieto's report saying they have to follow state regulations and ADEQ has specific rules. He explained that they had one incident where they had to fire an employee who then filed several complaints against MRR. He reiterated that the plant here would be more modern than the Ajo plant. Ms. Nieto asked if there would be dust at the silo. Mr. Hurkett said there would not.

Ernie Strauch introduced himself as a Past Vice Mayor of Sedona. He was concerned about potential heavy metals, quality of the reclaimed water, and where the reclaimed water goes after use.

Mr. Hurkett explained that a lab in California did heavy metals testing using a leach test. He said the Commissioners had a copy of the report in their packets. The only metals reported were chromium and barium and those were barely detectable. He said the water would come from the City of Cottonwood and go back into the soil from a retention basin. Fire Marshal Rick Contreras added that the reclaimed water quality is Class A. Vice Chairperson Kiyler noted it is used to irrigate landscaping at Cottonwood Ranch.

Margot Soderstrum asked about the decibel level, which Director Gehlert explained would be within 52 decibels at the property limits. Ms. Soderstrum said a person could go deaf at 6 decibels. Director Gehlert noted that normal speech is 60 decibels.

Barbara Chavez began by thanking staff for the notification letter. She said she is a 4-H member, extolled the virtues of 4-H for children, and explained that the Verde Valley Fair Association (VVFA) is a 501C-3 non-profit. Her points were:

- No signed agreement with the VVFA.
- No core test completed.
- Where would money come from for cleanup?
- Not opposed to slag removal but we need to be responsible when we look at these kinds of things.
- Think about the children and long-term effects of what may be under the slag.

Becky Drake said:

- In favor of slag removal.
- Concerns are noise, dust, traffic, and what the property under the slag would become after the removal.
- Property owners are buffered between the businesses on Sixth Street by the park, fairgrounds, and slag pile.
- What would the land be zoned?
- Are there plans to move the fairgrounds?

Director Gehlert interjected that the General Plan highlights the potential of the area but gives no specific uses. The area constitutes a very large block of relatively undeveloped property in the middle of the city. It could be a good town-center project but that is for the next generation to decide. It will be a slag pile as long as the slag pile is there. The slag pile is a major obstacle to development.

Ms. Drake also addressed news articles about MRR in Ajo. She said the residents said they were “plagued” by the dust. She said that even though the toxicity may not there she wondered about restrictions for the particle dust.

Mr. Hurkett said he did not know the specific levels. He explained that Pima County Air Quality regulates Ajo and ADEQ regulates this jurisdiction. He said that MRR has never received a citation from the Pima County Air Quality Board. They restrict non-toxic dust particles as well as toxic.

Ms. Drake preferred hours of 8:00 a.m. to 5:00 p.m. for normal crushing and allowance for extended hours from 6:00 a.m. to 10:00 p.m. fifty days per year.

Chairperson Gillespie closed the floor to the public and opened it for Commission questions and discussion.

Discussion throughout the lengthy hearing was mostly about the issues of access, hours or operation, dust, contamination, lighting, ownership and agreements, and providing jobs. Points of discussion on each topic are listed below (not chronological).

ACCESS

The Commission, staff, and Mr. Hurkett discussed various access routes. Summarized discussion points follow.

Proposed access using Aspen, 6th, Hwy. 89A.

Pro:

- Applicant favors this route and is willing to rebuild that portion of Aspen to standards for truck traffic.
- Commissioner Smith said he had a copy of a document dated 1983 that states their right to access to Aspen Street.
- The city engineer prefers this route.
- There is a preexisting easement (Aspen Street to Sixth Street) and a preexisting right to the slag.
- Adequate turning radii.
- Is logical (when you look at the site plan).

Con:

- Unpopular with neighbors on Aspen.
- Trucks would have to turn left onto 6th Street.

Alternate access through fairgrounds to 12th Street by the Kid's Park.

Pro:

- Would remove plant traffic from Aspen.
- Commissioner Smith said the Fairgrounds Association is benefiting yet they and Lindner are not making accommodations.
- Commissioner Smith stated his opinion that one truck an hour through the fairgrounds, even during activities, should not be a problem.

Con:

- It is private property and the owner (Verde Valley Fair Association) does not want that.
- It would put trucks closer to the houses.
- May not be doable.

Alternate access on Bed Rock's paved road to 12th Street.

Pro:

- Route would not go through any residential.
- Route would skirt the fairgrounds and not go through it.
- Trucks would reach a signalized intersection at 12th and Hwy. 89A.

Con:

- There was discussion about how to skirt the slag pile and it appeared it would be problematic.
- Access at 12th Street would be close to a major intersection and turning movements would be a concern.
- Fire Marshal, Rick Contreras, said fire trucks require a 29-foot turning radius and the trucks accessing the plant could be longer.

City-owned right of way near 12th Street

Commissioner Smith talked about a city-owned right-of-way in that area and the possibility of MRR using it for access but did not seem to know exactly where it was. Director Gehlert speculated that it was additional frontage right-of-way along Twelfth Street acquired during recent street improvements. There was not enough information about this to warrant further discussion.

During the discourse on access, Commissioner Smith expressed his opinion that he would prefer the Twelfth Street route but it may not be doable. Chairperson Gillespie said the logical access route is Aspen-Sixth-Hwy. 89A. Mr. Hurkett said MRR would continue to work on the access issue.

HOURS

After the February meeting, MRR analyzed the need for a nighttime operation. The conclusion was that they would need unrestricted primary crushing from 6:00 a.m. to 6:00 p.m. They would need unrestricted secondary crushing from 6:00 a.m. to 10:00 p.m. They would need 24-hour bagging and truck loading but those would be indoors.

Chairperson Gillespie and others expressed definite opposition to any 24-hour operation.

DUST

Mr. Hurkett said the plant is dust free and no workers are required to use breathing equipment unless they are in a silo for maintenance and the plant would not be operating at that time.

CONTAMINATION

Commissioner Kevin asked if MRR would excavate down to bare ground during set up of the plant. Mr. Hurkett said not in the construction phase. They would not know if they would be close to bare ground until they are into the detailed engineering phase. He explained that during excavation for the roadway they would not be within ten feet of bare ground but they could dig on down (for a core sample to test for contamination). However, that would not tell them what is in another area of the property.

Mr. Hurkett pointed out that if there is contamination under the slag now, it is already leaching into the soil and polluting the environment. Additionally, it cannot be cleaned up until the slag is removed.

LIGHTING

Commissioner Lovett questioned if the lights at Bed Rock bothered the neighborhood and there was no response to indicate that they do.

OWNERSHIP & AGREEMENTS

Vice Chairperson Kiyler asked if anyone from the fairgrounds was present. When no one said they could legally represent the fairgrounds, he asked Mr. Hurkett about signed agreements between MRR and the fairgrounds. Mr. Hurkett said there is none. He said the Fair Association's attorney failed to show at the last Fair Association meeting when they were supposed to sign documents.

Chairperson Kiyler reiterated his disappointment that no one was there from the VVFA. He asked why they are considering a conditional use permit with no agreement in place. Director Gehlert responded that it is because they have a hearing application. Mr. Hurkett stated that, legally, they do not need a written agreement with the VVFA because the owner of the slag has a perpetual right to process the slag as they see fit. However, MRR is trying to obtain a lease from VVFA on property adjacent to the slag to process but it is not required. Mr. Hurkett said they have a notarized document on file from the VVFA authorizing the conditional use permit application. They also have a written agreement with the owner of the slag.

JOBS

- Jobs are needed. People are already calling for jobs. The Clarkdale plant has 300 applications on file.
- Vice Chairperson Kiyler urged Mr. Hurkett to hire local truckers.

MISCELLANEOUS

- Current owner of the slag removed about 30,000 tons of slag per year for a few years. There was bulldozing and truck loading at night and there were no complaints.
- Slag is more durable than chip seal and would only be used on the interior roads. Outside street construction would be asphalt.
- The applicant would sell material on site. There was a question about on-site sales in a CF (Community Facilities) zone.
- The plan is to have the silos fifty feet tall. The conveyors would still be about twenty-five feet above the silos, or seventy-five feet. The exact height would not be know until they do detailed engineering but they hope to be at seventy two feet. They never intended to have eighty feet tall silos. The eighty feet number represented the highest point, which would be the conveyor.

Vice Chairperson Kiyler commented to the audience that if they have a problem they should document it in writing to the city including the date, time, and description of the problem. He addressed comments at the neighborhood meeting that indicated people thought it was already a "done deal." He assured the crowd that the Commission does nothing outside of that meeting room.

Chairperson Gillespie called upon each Commission member for comments.

Commissioner Smith:

- In favor of the project with stipulations.
- They would make a huge initial investment and the stipulations should be tight and go for years.
- Did not feel they could review them once a year – it should go five years unless there were complaints.
- Any change extending hours, change in equipment, change in trips per day, etc. should come back to the Commission and the Council for approval.
- Stipulations should include unannounced random inspections by the city.
- Any change in access routes from the Aspen-Sixth Street-Hwy. 89A route should come back for approval.

Commissioner Lovett:

- Wants the slag pile removed but in a manner that is least obtrusive to the neighbors yet benefits MRR.
- She expressed confidence in MRR but wants to make stipulations the best they can be for everyone.

Commissioner Fisher:

- Concurred with Commissioner Lovett and wants the slag pile removed.
- Acknowledged that it would put a burden on the people that live close by.
- Concerned about hours and who would handle any requests for extension of hours. Director Gehlert said any request for extension of hours would come back to the Commission. The purpose of the Prop. 207 waiver would be so the Commission would not be forced to approve such a request.

Commissioner Kevin:

- Concurs that slag pile should be removed.
- Did not believe dust and noise would be issues for the processing operation.
- Concerned about trucks going out on Aspen.
- Preferred access onto Twelfth Street and suggested teamwork between the city and MRR to secure that access.

Commissioner Gonzales:

- Believed Aspen-Sixth Street access was most logical.

Vice Chairperson Kiyler:

- Reiterated about his disappointment in the lack of representation from the VVFA.
- Believed slag pile should be removed although it had been there almost 100 years.
- Wants stipulation that trucks must use a specific route and agrees it should be the same route used by Phoenix Cement's trucks.
- Had mixed feelings about noise and dust.
- Wanted numerous inspections during the first two years.
- Suggested first review occur four or five years from approval date.
- Wanted to see documentation about who has the right to remove the slag.
- Thanked and complimented Mr. Contreras for his presentation.

Chairperson Gillespie:

- The project presented is a good project, overall.
- Removal of the slag pile would be a benefit to the city.
- Wanted to tie down the stipulations.
- One-year review for two or three years.
- No 24-hour a day operation at all.
- Changes could be requested at the periodic reviews.
- How MRR conducted their operation and the number of legitimate complaints would affect granting changes.
- The neighborhood would be a good watchdog.

Staff and the Commission discussed possible stipulations if the proposal were approved. Some points that emerged during that discussion were:

- If truck drivers deviate from the stipulated route, the city has no ordinance or other means to enforce the stipulation. Enforcement would be a function of MRR through their contracts with trucking companies.
- If stipulations are violated, the operation could be shut down.
- There would be 10-15 truck roundtrips per day and 10-15 loads loaded per day.
- An area is set aside for retail and an office with access to them.
- The scale would be a private scale.
- The City Council would deal with money and liability issues such as the amount of contribution to a remediation fund and maintenance of Aspen Street after the appeals process is exhausted.

Chairperson Gillespie motioned to approve PCU 08-002 with the following seventeen (17) stipulations.

- 1. Approval of the request subject to development in conformance with the site plan dated 2-14-08, revisions in the letter from MRR dated 3/9/08 except those specified below, and subject to modifications as may be required by the Commission, the Fire Department, or other Staff.***
- 2. That all emergency response issues be addressed to the satisfaction of the Cottonwood Fire Marshal.***
- 3. That the applicant be allowed to use the crushed slag for surfacing, in lieu of chip seal, subject to approval by the Public Works Director.***
- 4. That an agreement be reached with the City of Cottonwood for maintenance to Aspen and 6th Street. Agreement to be approved by the City Council, Public Works Director, and the City Attorney.***
- 5. That the applicant work with staff and the neighbors in addressing night lighting; and providing additional buffering improvements adjacent to the residential areas to the east, for review and approval by the Design Review Board.***
- 6. That the applicant address the issue of back up beepers at the site and provide a solution that reduces impacts to residential areas.***
- 7. That all other reasonable sound reduction measures be addressed (sound walls, enclosures, etc.).***
- 8. That all activity be conducted between the hours of 6:00 a.m. to 10:00 p.m.***

9. *That all necessary emergency response training for Fire Department personnel and MRR's personnel be completed before plant operation begins.*
 10. *That the ADEQ permit be obtained before plant operation begins.*
 11. *That all access ways to silos, catwalks, and staircases be secured when plant is unattended with a means of access provided to the Fire Department.*
 12. *That MRR establishes a truck route from the plant to Aspen Street to Sixth Street to Hwy. 89A to SR 260 to I-17 (same route that CTI trucks use) and enforces use of that route.*
 13. *That drainage is contained within retention areas on site.*
 14. *That MRR execute and provide a Proposition 207 waiver to the City.*
 15. *That MRR provide necessary crosswalks and signs on Aspen Street as designated by staff.*
 16. *That no other material be imported to the site for processing.*
 17. *That the CUP be reviewed by the Commission in one (1) year.*
- Commissioner Gonzales seconded and the motion carried unanimously.*

EXHIBIT 5

ARTICLE I – ADMINISTRATION

SECTION 101. SHORT TITLE.

This Ordinance shall be known as “The Zoning Ordinance of the City of Cottonwood”.

SECTION 102. PURPOSE.

The purposes of this Ordinance are to secure safety from fire, panic and other dangers; to provide adequate light and air; to lessen congestion in the streets; to prevent the overcrowding of land; to avoid undue concentration of population, to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; to provide for the social, physical and economic advantages resulting from comprehensive and orderly planned use of land resources; and to otherwise promote the health, safety, convenience and general welfare of the citizens of the City of Cottonwood, Arizona.

SECTION 103. INTERPRETATION AND APPLICATION.

In its interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements for the promotion of a comprehensive plan and for the promotion of the public health, safety and general welfare. It is not intended by this Ordinance to repeal, abrogate, annul or in any way impair or interfere with existing provisions of other laws or ordinances, except those specifically repealed by this Ordinance, or with restrictions placed provided that where this Ordinance imposes a greater restriction on land, buildings or structures than is imposed or required by such existing provisions of law, ordinance, contract or deed, the provisions of this Ordinance shall control.