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**IN THE SUPERIOR COURT OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

AARON SHEARER; and  
GREENBEEPRODUCE.COM LLC d/b/a GREEN BEE  
PRODUCE,

Plaintiffs,

vs.

CITY OF SCOTTSDALE, a municipal corporation; and  
BOARD OF ADJUSTMENT of the CITY OF  
SCOTTSDALE,

Defendants,

Case No.

CV 2016-015529

**VERIFIED COMPLAINT FOR  
STATUTORY SPECIAL ACTION  
AND DECLARATORY AND  
INJUNCTIVE RELIEF**

**I.**

**Introduction**

1. This is a civil rights lawsuit on behalf of a small business, Greenbeeproduce.com LLC d/b/a Green Bee Produce, and its owner and statutory agent Plaintiff Aaron Shearer, who wishes to promote and direct customers to her farmers market with temporary signs. Under the City of Scottsdale's ("Scottsdale") ordinances regulating the display of signs ("Sign Code"), Plaintiffs are forced to submit to an unconstitutional prior restraint in the form of a permitting process that gives



administrative officials unbridled discretion to determine if, where, and how long Plaintiffs will be allowed to place temporary signs. Meanwhile, other temporary signs, because of the messages they convey, can be placed without being subject to the same permitting process and, in some cases, no permitting process at all.

2. Defendant City of Scottsdale's Sign Code, on its face and as applied by the Board of Adjustment in its September 7, 2016, decision against Plaintiffs, unconstitutionally prohibits or burdens Plaintiffs' rights to free speech and equal protection of the laws. The City's Sign Code is also impermissibly vague, imposes an unconstitutional prior restraint, and is unequally and arbitrarily applied.

3. The City's Sign Code imposes different rules on signs based on the "communicative content" of signs, in direct contradiction to the U.S. Supreme Court's rulings. The Sign Code restricts certain types of signs based on (a) "the topic discussed or the idea or message expressed," *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015), (b) the speaker's "economic motive," *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011), and (c) "the identity of the speaker." *Id.* These and other aspects of the Sign Code violate the freedom-of-speech and equal protection guarantees of the state and federal constitutions.

## **II.**

### **Parties, Jurisdiction, and Venue**

4. Plaintiff Greenbeeproduce.com, LLC d/b/a Green Bee Produce ("Green Bee Produce") is a Limited Liability Company formed under the laws of Arizona, with its principal place of business in Maricopa County, Arizona.



5. Plaintiff Aaron Shearer is a United States citizen and is the registered agent for Green Bee Produce.

6. Defendant City of Scottsdale is a municipal corporation organized under the laws of the State of Arizona.

7. Defendant Board of Adjustment is a board of adjustment, as defined by A.R.S. § 9-462(A)(1), and is an administrative agency established under A.R.S. § 9-462.06.

8. This Court has jurisdiction over this action and its claims as provided by A.R.S. §§ 12-123, 12-124, 12-1831, and 9-462.06; Rule 4, Ariz. R. P. for Special Actions; Rule 57, Ariz. R. Civ. P.

9. Venue is proper pursuant to A.R.S. § 12-401 and Rule 4(b), Ariz. R. P. for Special Actions.

### **III.**

#### **Facts Common to All Claims**

##### **A. Green Bee's Farmers Market**

10. Plaintiffs operate a temporary mobile farmers market that sells produce grown by Arizona farmers.

11. Plaintiff Shearer began operating Green Bee Produce in the parking lot at 16116 McDowell Mountain Ranch Road, Scottsdale, Arizona, in 2012.

12. McDowell Mountain Ranch Community Association ("The Association") owns 16116 McDowell Mountain Ranch Road ("McDowell Mountain Ranch").

13. Plaintiff Shearer received permission from The Association to operate the farmers market on its property. Plaintiff Shearer also has permission from The Association to place signs on its property to help promote the farmers market and let its residents know where it is located.



14. During 2012 and 2013, the market ran every Sunday from September through April.
15. To help direct customers to the weekly markets and advertise them, Plaintiff Shearer placed signs on private property owned by The Association as well as in public rights-of-way.
16. Plaintiff Shearer operates Green Bee Produce at Mountain McDowell Ranch pursuant to a special event permit. Scottsdale Zoning Ordinance (“SZO”) § 7.900, et al. (since revised and recodified at Chapter 22 of the City Code).
17. On or around May 24, 2014, Green Bee Produce received a compliance notice for placing signs in rights-of-way.
18. The notice stated that, “per special event permit, the only allowed signs are directional signs showing ingress to the parking lot and signs must be placed only on the property where the event is occurring.”
19. On or around May 26, 2014, Plaintiff Shearer submitted a request for 16 to 24 off-premises signs for Green Bee Produce but was granted only 4 signs at locations determined by the Special Events Committee.
20. On or around January 30, 2015, Plaintiff Shearer obtained a special events permit to operate Green Bee Produce at McDowell Mountain Ranch and was granted the use of 1 off-premises sign.
21. Finding 1 off-premises sign to be inadequate, Plaintiff Shearer requested an additional 7 off-premises signs for Green Bee Produce on or about February 23, 2015. Plaintiff Shearer’s February 23, 2015, request was denied.



22. On or around March 30, 2016, Plaintiff Shearer submitted an application for a special events permit on behalf of Green Bee Produce, seeking to operate a farmers market at McDowell Mountain Ranch. With Green Bee Produce's permit application, Plaintiff Shearer requested 13 off-premises signs and provided a map indicating desired locations for sign placement.

23. The Special Events Committee approved only 8 signs at locations it deemed acceptable.

24. SZO § 7.928 allows the decision of any special conditions of the Special Event permit to be appealed to the Zoning Administrator. The Zoning Administrator is authorized to enforce and interpret the number of locations of off-premises signs proposed as part of a special event permit application.

25. On behalf of Green Bee Produce, Plaintiff Shearer duly appealed the Special Events Committee's denial of her requested signs and locations to the Zoning Administrator.

26. On or around June 30, 2016, the Zoning Administrator issued a decision that denied Plaintiff Shearer's request for 13 total signs, again limiting Green Bee Produce to 8 signs at locations designated by the Special Events Committee.

27. SZO § 1.805 allows for an appeal of the interpretation or decision of the Zoning Administrator to the Board of Adjustment.

28. On or around July 5, 2016, Plaintiff Shearer, on behalf of Green Bee Produce, appealed the Zoning Administrator's June 30, 2016, decision.

29. Exhibit 1 is a true and correct copy of the Board of Adjustment Report.

30. On September 7, 2016, the Board of Adjustment voted 5–1 to uphold the Zoning Administrator's decision.



31. Exhibit 2 is a true and correct copy of Plaintiff Shearer's slideshow which was presented to the Board of Adjustment at the September 7, 2016 Board of Adjustment hearing.

32. Exhibit 3 is a true and correct copy of the Board of Adjustment's Marked Agenda for September 7, 2016.

33. The only dissenting vote was registered by Board of Adjustment Vice Chair Paul Garry, who stated that the City Sign Code "is unconstitutional, and I think therefore an abuse of discretion by the Zoning Administrator ... ."

34. Board of Adjustment Member Paul Donahoe voted to uphold the decision, but stated, "I agree with Vice Chair Garry about, you know, there's constitutional issues, I'm going to vote in favor of the decision that was made."

**B. Scottsdale's Sign Code**

35. The City of Scottsdale's Sign Code is contained in Article 8 of the Scottsdale Zoning Ordinance.

36. The Sign Code defines "sign" as "[a]ny device for visual communication which is used or is intended to attract the attention of the public, when the display of this device is visible beyond the boundaries of the public or private property upon which the display is made." SZO § 8.200.

37. No signs "may be placed or maintained in the city" except as provided in the Sign Code. SZO § 8.102(I).

38. An "illegal sign" is "[a]ny sign erected without first obtaining an approved sign permit, other than nonconforming signs." SZO § 8.200.



39. A “commercial sign” is a “sign erected for a business transaction or advertising purpose.” SZO § 8.200.

40. A “noncommercial sign” is “[a]ny sign that is not a commercial sign, including, but not limited to, any traffic management or street sign erected by any governmental entity; any flag or badge or insignia of the United States, State of Arizona, Maricopa County, City of Scottsdale, or official historic plaque of any governmental jurisdiction or agency; any sign erected for a governmental use (including the posting of notices required by law), or any sign pertaining to a candidate for public office, or it supports or opposes a ballot measure, a governmental issue, political party, or relating to views about social, economic, or governmental relationships.” SZO § 8.200.

41. Unless exempted by the Sign Code, a sign permit is “required before the erection, reerection, construction, alteration, placing, or installation of all commercial signs.” SZO § 8.303(I).

42. A “temporary sign” is “[a]ny sign, banner, pennant, or valance constructed of cloth, canvas, light fabric, cardboard, wallboard or other like materials. Any sign not permanently attached to the ground, wall or building, intended to be displayed for a short period of time only.”

43. An “off-premises sign” is a “sign which is located on property other than where a business is located, the product is sold, or the service is offered.” SZO § 8.200.

44. Unless exempted by the Sign Code, a sign permit is required before “off-premises sign” may be placed. SZO § 8.102(I); SZO § 8.303(I).

45. The Sign Code prohibits all signs in the “right-of-way” except for:

- a. Signs for traffic management. SZO § 8.102(III)(A).
- b. Signs identifying street names. SZO § 8.102(III)(B).



- c. Qualifying directional event banners for city-sponsored events. SZO § 8.102(III)(C).
- d. Signs in a community sign district created by City Council for all or part of the Downtown Area or redevelopment area. SZO § 8.102(III)(D).
- e. Signs erected by a governmental entity for a governmental purpose. SZO § 8.102(III)(E).
- f. Signs that support or opposes a candidate for public office, or a ballot measure. A.R.S. § 16-1019, SZO § 8.106(VI), and SZO § 8.601(I)(L)(6),

46. “Right-of-way” is not defined by the Sign Code, nor is a definition provided elsewhere referred to or expressly incorporated into the Sign Code.

47. Violations of the Sign Code are subject to “a civil sanction not greater than two thousand five-hundred dollars (\$2,500.00) except if the violation is for a non-permitted use or a conditional use permit stipulation then the mandatory minimum civil sanction shall be five hundred dollars (\$500.00).” SZO § 8.104; SZO § 1.1401; SZO § 1.1402.

48. If a second or subsequent violation occurs within 2 years of the date of the first civil citation, the violation shall be deemed a criminal misdemeanor. SZO § 1.1401(B)(1).

### **C. Special Events Signage Permitting Process**

49. The provisions of the Sign Code apply to special event signs. SZO § 7.930.

50. Scottsdale has categorized and continues to categorize Plaintiffs’ signs as special event signs under its Sign Code.

51. A “special event” is “a temporary outdoor use on private property which extends beyond the normal uses and standards allowed by the Zoning Ordinance.” SZO § 3.100.



52. Under the Sign Code, the holder of a “special event” is allowed to display signs to “support, promote and/or advertise the event/activity.” SZO § 8.537(I)(A).

53. In order to be permitted to display signs, a special event applicant “shall prepare and submit an application, consisting of a complete list and description of all signs, including directional signs, banners, pennants, flags, balloons, lighting, hot/cold air balloons and other features associated with the event/activity, and proposed times for erecting and removing the signs.” SZO § 8.537(I)(B).

54. Signs for “special events” are subject to the following criteria:

- a. Names and logos of sponsoring agency(ies) or business(es) shall be limited to twenty (20) percent of the total area of lettering identifying the activity or event. SZO § 8.537(I)(B)(1).
- b. All banners, pennants and flags shall be limited to twenty-four (24) square feet and shall be suspended no higher than thirty-six (36) feet above grade, except that all banners, pennants and flags suspended over roadways or driveways shall be no higher than eighteen (18) feet above grade and maintain a minimum clearance of fourteen (14) feet. Banners are allowed in the Downtown Area only. SZO § 8.537(I)(B)(2).
- c. All signs, banners, pennants and flags spanning private walkways must maintain a minimum clearance of seven (7) feet six (6) inches. SZO § 8.537(I)(B)(3).
- d. Temporary off premises directional signs shall be limited in sign area to six (6) square feet for each sign. The total number and location of such signs shall be approved by the general manager. SZO § 8.537(I)(B)(5).



55. A “special event” application for signs is “reviewed and approved by the general manager.” SZO § 8.537(I)(B).

56. Because Scottsdale does not presently employ a general manager to discharge the duties set forth in SZO § 8.537(I), the Special Events Committee acts as “general manager” for the purposes of SZO § 8.537(I).

57. Unless a “special event” application for signs is approved by the relevant authority, a “special event” may not use on-premises signs.

58. Unless a “special event” application for signs is approved by the relevant authority, a “special event” may not use off-premises signs.

#### **D. Commercial Speech Exemptions to the Sign Code**

59. Provided they are placed on Friday at 12:00 noon through Monday at 12:00 noon, auto dealerships are allowed signs “for promotional events,” including miniature balloons, pennants, and banners, without a permit. SZO § 8.600(I)(A).

60. Signs erected to identify temporary sales areas for Christmas trees and other holiday-oriented items do not require a permit, so long as they are erected before Thanksgiving Day and are removed before New Year's Day. SZO § 8.303(II)(C).

61. “Off-premises open house directional signs” with a maximum area of 4 square feet and a maximum height of three feet do not require a permit provided the open house signs comply with SZO § 8.601(I)(D), and are used only when a salesperson or homeowner or homeowner's agent is present during the time of the open house.



**E. Noncommercial Speech Exemptions to the Sign Code**

62. Temporary noncommercial signs are subject to different rules than temporary commercial signs under the Sign Code.

63. Temporary noncommercial signs, including political signs, do not require a permit. SZO § 8.601(I)(L); SZO § 8.303(I).

64. Temporary noncommercial signs may be placed for 120 days without a permit. SZO § 8.601(I)(L)(1).

65. Temporary noncommercial signs can be 16 square feet with a height of 10 feet. SZO § 8.601(I)(L)(2), (3).

66. If placed behind a dedicated scenic corridor, temporary noncommercial signs can be 32 square feet. SZO § 8.601(I)(L)(2).

67. No distinction is made between on-premises temporary noncommercial signs and off-premises temporary noncommercial signs. SZO § 8.601(I)(L); SZO § 8.200.

68. A political sign that complies with A.R.S. § 16-1019 may be placed in a right-of-way that is owned or controlled by the City of Scottsdale if:

- a. The sign supports or opposes a candidate for public office or it supports or opposes a ballot measure.
- b. The sign is not placed in a location that is hazardous to public safety, obstructs clear vision in the area or interferes with the requirements of the Americans with Disabilities Act.



- c. The sign has a maximum area of sixteen square feet, if the sign is located in an area zoned for residential use, or a maximum area of thirty-two square feet if the sign is located in any other area.
- d. The sign contains the name and telephone number or website address of the candidate or campaign committee contact person.

69. A political sign that complies with A.R.S. § 16-1019 may be placed without permit or approval in locations Plaintiffs were denied permission by Defendants to place signs. A.R.S. § 16-1019; SZO § 8.106(VI); SZO § 8.601(I)(L)(6).

70. So long as a sign walker complies with A.R.S. § 9-499.13, the sign walker may hold a commercial sign without permit or approval in locations Plaintiffs were denied permission by Defendants to place signs.

#### IV.

##### Count One

##### Content-based, speaker-based, and motive-based speech restrictions [U.S. CONST. amend. I – ARIZ. CONST. art. II § 6]

71. Plaintiffs reallege, adopt and incorporate by reference all of the preceding paragraphs as though fully set forth herein.

72. The First Amendment to the U.S. Constitution provides that “Congress shall make no law ... abridging the freedom of speech.” The First Amendment is made applicable to the states by the Fourteenth Amendment.

73. Article II, section 6 of the Arizona Constitution provides that “[e]very person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right.”



74. These provisions together prohibit the government from imposing different regulations or restrictions on expression based on the content of that expression, the identity of the speaker, or the speaker's motive, unless such regulations are narrowly tailored to advance a compelling government interest.

75. Scottsdale's Sign Code imposes different burdens, restrictions, and regulations on signs based on the content of the messages conveyed by those signs. The only possible way for Defendants to enforce Scottsdale's Sign Code is to read the content of the signs to determine which set of regulations apply. Scottsdale's Sign Code requires permits for some signs, no permits for other signs, and imposes different restrictions on the locations where, or times during which, signs may be displayed, based on the content of those signs.

76. SZO §§ 8.102(I),(III), 8.104, 8.106(II)(A),(B), 8.200, 8.303 and 8.537, facially and as enforced by Defendants, violate Plaintiffs' right to free speech and expression guaranteed by Article II, section 6 of the Arizona Constitution and the First and Fourteenth Amendments to the United States Constitution.

77. Defendant Board of Adjustment's denial of Plaintiffs' sign request violates Plaintiffs' right to free speech and expression guaranteed by Article II, section 6 of the Arizona Constitution and the First and Fourteenth Amendments to the United States Constitution.

78. Defendants, acting under color of state law, have deprived, are now depriving, and unless enjoined by this Court, will continue to deprive, Plaintiffs of their right to free speech and expression guaranteed by Article II, section 6 of the Arizona Constitution and the First and Fourteenth Amendments



to the United States Constitution. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights.

79. For all of those reasons, defendants' acts and omissions violate Plaintiffs' rights under the United States and Arizona Constitutions.

**V.**  
**Count Two**  
**Prior restraint on speech**  
**[U.S. CONST. amend. I – ARIZ. CONST. art. II § 6]**

80. Plaintiffs reallege, adopt and incorporate by reference all of the preceding paragraphs as though fully set forth herein.

81. The only way to exercise speech rights by using signs as a means of communication in rights-of-way and on private property in the City of Scottsdale is to obtain the City's prior approval in the form of a permit—except in cases where the City's Sign Code excuses certain messages from a permit requirement.

82. But for Defendants' enforcement of the Sign Code, Plaintiffs would engage in expression by placing signs as described above to advertise and direct customers to their farmers market. The existence of a permitting process that subjects Plaintiffs to civil and criminal penalties for failure to obtain a permit chills Plaintiffs' speech, and the threat of criminal conviction induces Plaintiffs to self-censor. The permitting process, therefore, is a prior restraint on Plaintiffs' speech.

83. On its face and as enforced by Defendants, the permitting process set forth at SZO § 8.537 fails to provide narrow, objective, and definite standards to guide the licensing authority.

84. Defendants, acting under color of state law, have deprived, are now depriving, and unless enjoined by this Court, will continue to deprive, Plaintiffs of their fundamental right to free speech and



expression in violation of Article II, section 6 of the Arizona Constitution and the First and Fourteenth Amendments to the United States Constitution. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights.

85. SZO §§ 8.102(I),(III), 8.104, 8.106(II)(A),(B), 8.200, 8.303 and 8.537, facially and as enforced by Defendants, impose an unconstitutional prior restraint on Plaintiffs' right to free speech and expression guaranteed by Article II, section 6 of the Arizona Constitution and the First and Fourteenth Amendments to the United States Constitution.

86. For all of those reasons, defendants' acts and omissions violate Plaintiffs' rights under the U.S. and Arizona Constitutions.

**VI.**  
**Count Three**  
**Equal Protection**  
**[U.S. CONST. amend. XIV – ARIZ. CONST. art. II § 13]**

87. Plaintiffs reallege, adopt and incorporate by reference all of the preceding paragraphs as though fully set forth herein.

88. The Fourteenth Amendment to the United States Constitution states in relevant part that “[n]o State shall ... deny to any person within its jurisdiction the equal protection of the laws.”

89. Article II, section 13 of the Arizona Constitution provides, “No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.”



90. Defendants single out for separate and unequal treatment different types of signs based on their content. Defendants not only provide a separate set of regulations that apply to commercial signs than those that apply to non-commercial signs, Defendants also provide a separate set of regulations for certain types of commercial signs than those that apply to other types of commercial signs.

91. On its face and as enforced by Defendants, the permitting process set forth at SZO § 8.537 singles out for separate and unequal treatment different types of signs based on their content and the identity of their speaker.

92. Defendants, acting under color of state law, have deprived, are depriving, and unless enjoined by this Court will continue to deprive Plaintiffs of their right to equal protection of the laws in violation of Article II, section 13 of the Arizona Constitution and the Fourteenth Amendment to the United States Constitution. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights.

93. SZO §§ 8.102(I),(III), 8.104, 8.106(II)(A),(B), 8.200, 8.303 and 8.537, facially and as enforced by Defendants, violate Plaintiffs' fundamental right to equal protection of the laws and equal treatment under the law guaranteed by Article II, section 13 of the Arizona Constitution and the Fourteenth Amendment to the United States Constitution.

94. For all of these reasons, Defendants' actions and omissions violate Plaintiffs' rights under the U.S. and Arizona Constitutions.



**VII.**  
**Count Four**  
**Due Process**  
**[U.S. CONST. amend. XIV – ARIZ. CONST. art. II § 4]**

95. Plaintiffs reallege, adopt and incorporate by reference all of the preceding paragraphs as though fully set forth herein.

96. The Fourteenth Amendment to the United States Constitution states in relevant part that “[n]o State shall ... deprive any person of life, liberty, or property, without due process of law.”

97. Article II, section 4 of the Arizona Constitution provides, “No person shall be deprived of life, liberty, or property without due process of law.”

98. Defendant City’s Sign Code does not provide a person of ordinary intelligence with a reasonable opportunity to know what types of signs are prohibited.

99. The definitions of different types of signs, or lack thereof, and subsequent set of regulations that depend on such definitions are so vague that they fail to give people of ordinary intelligence reasonable notice about what signs are permitted and what signs are forbidden. This imprecision gives Defendants virtually unconstrained, arbitrary, standardless, and unfettered discretion in interpreting the Sign Code and subjecting Plaintiffs to the continued threat of civil and criminal sanctions.

100. Defendants, acting under color of state law, have deprived, are depriving, and unless enjoined by this Court, will continue to deprive Plaintiffs of their right to due process of law in violation of Article II, section 4 of the Arizona Constitution and the Fourteenth Amendment to the United States Constitution. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights.



101. For all of these reasons, Defendants' actions and omissions violate Plaintiffs' rights under the U.S. and Arizona Constitutions.

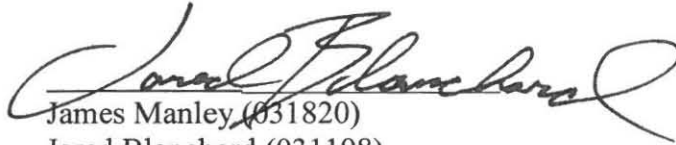
### **REQUEST FOR RELIEF**

To serve the interests of equity and justice, Plaintiffs request that this honorable Court award the following relief:

- A. Issue a declaratory judgment that SZO §§ 8.102(I),(III), 8.104, 8.106(II)(A),(B), 8.200, 8.303 and 8.537, on their face, violate Plaintiffs' state and federal constitutional rights to Freedom of Speech, Due Process of Law, and the Equal Protection of the Laws.
- B. Issue a declaratory judgment that SZO §§ 8.102(I),(III), 8.104, 8.106(II)(A),(B), 8.200, 8.303, and 8.537, as applied, violate Plaintiffs' state and federal constitutional rights to Freedom of Speech, Due Process of Law, and the Equal Protection of the Laws.
- C. Preliminarily and permanently enjoin Defendants and their agents and employees from enforcing SZO §§ 8.102(I),(III), 8.104, 8.106(II)(A),(B), 8.303, and 8.537.
- D. Issue an order pursuant to A.R.S. § 9-462.06 and Rule 1(b), Ariz. R. P. for Special Actions, reversing the Board of Adjustment's decision on appeal and commanding the Board of Adjustment to interpret the Sign Code in a truly content-neutral fashion;
- E. Award attorney fees pursuant to A.R.S. §§ 12-341.01 and 12-348(A)(3), Rule 4(g) of the Ariz. R. P. for Special Actions, 42 U.S.C. § 1988, and the private attorney general doctrine.
- F. Award costs pursuant to A.R.S. § 12-341 and 42 U.S.C. § 1988; and
- G. Order such additional relief as may be just and proper.



**RESPECTFULLY SUBMITTED** this 5th day of October, 2016 by:

A handwritten signature in black ink, appearing to read "Jared Blanchard", written over a horizontal line.

James Manley (031820)

Jared Blanchard (031198)

Aditya Dynar (031583)

Veronica Thorson (030292)

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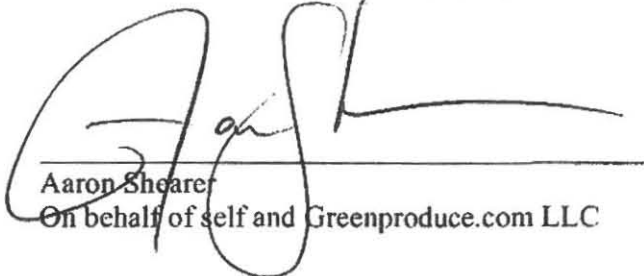
*Attorneys for Plaintiffs*



VERIFICATION

I, Aaron Shearer, make the following verification pursuant to the requirements of A.R.S. § 12-1803. I have read the foregoing complaint, know the contents thereof, and verify that it is true of my own knowledge, except the matters stated therein on information and belief, and that as to those matters, I believe the complaint to be true.

Pursuant to Rule 80(i), Arizona Rules of Civil Procedure, I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Aaron Shearer  
On behalf of self and Greenproduce.com LLC



**Exhibit 1**



# BOARD OF ADJUSTMENT REPORT



Meeting Date: 9/7/2016  
Item No.: 4

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## ACTION

Green Bee Produce ZA Appeal  
9-BA-2016

**Request to consider the following:**

Applicant appeal of the Zoning Administrator's written decision dated June 30, 2016 regarding special event signage for Green Bee Produce, a temporary mobile farmer's market.

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## FARMER'S MARKET OWNER

Green Bee Produce

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## APPLICANT CONTACT

Aaron Shearer  
Green Bee Produce  
425-785-5400

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## LOCATION

McDowell Mountain Ranch Community Center Parking Lot  
16116 N. McDowell Mountain Ranch Road

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## BACKGROUND

### History

- In March 2016, the Green Bee Produce Farmer's Market submitted a special event request to hold a farmer's market on various dates, predominantly Sundays beginning in October 2016, located in the parking lot of the McDowell Mountain Ranch Community Center. The farmer's market consists of one vendor with several tent canopies to display and sell produce items. The request was approved in April 2016 and issued a special event permit to allow the markets until the end of April 2017. A condition of the permit limited off site signage to a total of 8 directional signs: 1 directional sign along Paradise Lane, 3 along



McDowell Mountain Ranch Road, 3 along Thompson Peak Parkway and 1 along Bell Road, all located within a one mile radius.

- The event request included a total of 13 signs with proposed locations ranging in distance from on site to up to two miles away from the market. The Special Events Committee (SEC) approved 8 locations, based upon turning radius and located within a one mile distance, but did not approve 5 locations located more than a mile away based upon the long standing interpretation and approach on temporary off premise signage which allows locations deemed necessary for safe traffic flow. Off premise signage may be necessary due to the anticipated event attendance (large volume of vehicles) or event location (hidden, off major streets). The applicant appealed this decision to the Zoning Administrator which upheld the SEC's decision in the letter dated June 30, 2016 (Attachment #1).
- On July 5, 2016 the applicant filed for an appeal of the Zoning Administrator's decision per the provisions of Section 1.805. of the Zoning Ordinance.

### **Zoning/Development Context**

The subject event is a temporary, mobile farmer's market planned to be held beginning in October 2016 on various Sundays from 8am to no later than 2pm in the parking lot of the McDowell Mountain Ranch Community Center located on the northwest corner of McDowell Mountain Ranch Road and Paradise Lane within a residential area.

The zoning for this site is Planned Convenience Center with an Environmentally Sensitive Lands Overlay District (PCoC ESL). This District allows for permitted special events. The zoning to both the north and west is Single Family Residential (R1-5 ESL). The zoning to the east is Single Family Residential (R1-10 ESL & R1-18 ESL). The zoning to the south is Townhouse Residential (R-4 ESL).

### **Zoning Ordinance Requirements**

Section 7.930 of the Zoning Ordinance states that the provisions of Article VIII (Sign Requirements) shall apply to special event signage.

Section 8.537.I.B.5. of the Zoning Ordinance states that temporary off premises directional signs shall be limited in sign area to six square feet for each sign and that the total number and location of such signs shall be approved by the general manager. A general manager position currently doesn't exist in a planning and development capacity and that decision role has been delegated to the Special Events Committee.

Section 7.928. of the Zoning Ordinance allows the decision of any special conditions of the Special Event permit be appealed to the Zoning Administrator. The Zoning Administrator is authorized to enforce and interpret the number and locations of temporary off premises directional signs proposed as part of a Special Event permit application.

Section 1.805. of the Zoning Ordinance allows for an Appeal of the interpretation or decision of the Zoning Administrator to the Board of Adjustment.



### **Code Enforcement Activity**

There has been no recent Code Enforcement activity regarding the proposed special event.

On January 27, 2015, the City received a complaint from a resident related to the Green Bee Farmer's Market off premise signs that were present in the McDowell Mountain Ranch neighborhood over the previous weekend on the event date. Code Enforcement staff went to the site and spoke with the property owner (McDowell Mountain Ranch Community Association) conveying that a Special Event permit was required for any event to occur on site along with approval for any off premise signage. The property owner contacted the Green Bee Farmer's Market owner and relayed the requirements. The Green Bee Farmer's Market owner worked with staff to submit the required documents for the permit approval which was issued on January 30, 2015. The permit conditions allowed for the requested two off-site directional signs along McDowell Mountain Ranch Road.

### **Community Input**

Staff has sent postcards to all property owners within 750 feet of the site and posted a hearing sign on the site. As of the writing of this report, staff has received two phone inquiries regarding the appeal request. One was seeking general information and one resident voiced concerns about the signage. The resident believed there were too many signs in her community, believing that a farmer's market, placed in a local residential setting, caters to the local residents and having multiple signs placed a large distance away, brings additional traffic and attention to her neighborhood, no longer making it a local farmer's market. In addition, she felt they are visually unappealing and obstruct corners where they are placed.

### **Discussion**

A special event is defined as a temporary outdoor use on private property which extends beyond the normal uses and standards allowed by the Zoning Ordinance. In this request, the reoccurring event is held mostly on Sundays and located in the parking lot of the McDowell Mountain Ranch Community Center, surrounded by residential properties. The farmer's market consists of one vendor, several tent canopies, and a variety of produce items for sale.

The owner has requested to be allowed to place several off premises signs on public property within the right of way on planned event dates, in order to promote the market, remind people that it is occurring, and use signs to direct them to the event. Private off-premise signage is not permitted within the city right-of-way.

The Special Events Committee (SEC) gives careful consideration for any proposed event signage, both on site event and off-site directional signs to insure that attendees can locate and be able to identify the event to know when they've arrived. The City's Sign Ordinance is a reflection of the community's desire to ensure thoughtful placement within City boundaries. Unnecessary signage placed to help promote and market the event outside of the area gives a direct advantage to event producers for daily advertising anywhere in the City that all other businesses cannot enjoy. The SEC reviews for consistency in its application to ensure sign placement does not visually impact the physical and natural beauty of the community and stays focused on the need for any off-premise directional signs to allow for safe movement of



vehicles and attendees to enter and exit the event safely. This event has a low volume of anticipated event attendance (few, intermittent vehicles) and is highly visible from the major street (easily located). This is consistent with the application of sign placement associated with other temporary signs.

### **Applicant's Appeal**

The Applicant's Appeal of the Decision to the Zoning Administrator submitted contains two arguments for approval for off premises signage as outlined below:

1. The Special Event Permit provides rights that are not granted to other businesses based upon the temporary nature.
2. The farmer's market is unique and does not compare with any past or present events and should therefore not have created rules or criteria applied to it as the Code is ambiguous in nature and may be interpreted and applied based on each unique situation.

### **Findings**

In a typical request to the Board of Adjustment, the Board must review and determine if the required four (4) findings have been justified to allow a Zoning Variance. In the case of an appeal of the Zoning Administrator decision, such as this one, these findings are not required and the Board of Adjustment will need to:

- Determine whether or not it has jurisdiction over this matter;
- Determine whether the Applicant has standing; and, if the Board first finds that it has jurisdiction over the matter and that the applicant has standing, then the Board shall;
- Discuss the merits of the case to determine whether or not the City's application of requirements for special event signage is arbitrary, capricious or an abuse of discretion.

### **Staff Recommendation**

Staff recommends that the Board of Adjustment find that Zoning Administrator decision was not arbitrary, capricious or an abuse of discretion, and concur with the Zoning Administrator that the temporary, reoccurring off premises directional signage be limited to the locations along McDowell Mountain Ranch Road, Bell Road, Thompson Peak Parkway and Paradise Lane.



**APPROVED BY**

---



Cheryl Sumners, Events Manager, Report Author  
480-312-7834, csumners@scottsdaleaz.gov

8-22-16

Date



Brad Carr, AICP, Board of Adjustment Liaison  
480-312-7713, bcarr@scottsdaleaz.gov

8.22.2016

Date



Tim Curtis, AICP, Current Planning Director  
480-312-4210, tcurtis@scottsdaleaz.gov

8/23/2016

Date

**ATTACHMENTS**

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1. Appeal Decision dated June 30, 2016
2. Map of 8 proposed off premise signage locations – April 6, 2016
3. Event/Market Site Plan
4. Applicant Narrative
5. Applicant Evidence





## Planning and Development Services

### Current Planning

7447 East Indian School Road  
Scottsdale, Arizona 85251

June 30, 2016

Aaron Shearer  
Green Bee Produce  
462 S. Robson  
Mesa, AZ 85210  
admin@greenbeeproduce.com

Re: Appeal of the Signage Conditions of the Green Bee Farmer's Markets Special Event Permits

Dear Aaron,

Thank you for meeting with me May 23, 2016 to explain your market events and related signage needs. The fresh produce market events that you hold weekly appear to be something welcomed and desired by the community, which is fantastic. At issue is the signage request as part of the special event permits approval.

There are two main purposes for the sign code. The first is for general aesthetics of the city, reducing visual clutter to allow the prevalence of the physical and natural beauty of the community. The second is for traffic safety within the city. Reducing the number of signs visible to motorists promotes greater traffic safety in the community and orderly travel on the roadways. Private off-premise signage is not permitted within the city right-of-way.

The Zoning Ordinance, under Section 8.537., refers to Special Event Signage as needing approval by the general manager (or, the Special Event Committee as delegated by the general manager) and focuses on both on-site event signage and off-site event signage related to directional needs as noted below. My understanding is that on-site event signage has been approved, but at issue is the approved off-site premises directional signage that remains in disagreement.

Sec. 8.537. - Special events and theme amusement parks.

Special events and amusement parks are allowed signs as follows:

I. *General.*

- A. Events/activities which will occur on a designated date or during a limited period of time shall be allowed signage to promote the event/activity. The signage will support, promote and/or advertise the event/activity and may contain the names of a specific agency or business that is sponsoring the event/activity. All signs associated with the event/activity are temporary and must be removed by the date specified by the general manager.
- B. The organization sponsoring the event/activity shall prepare and submit an application, consisting of a complete list and description of all signs, including directional signs, banners, pennants, flags, balloons, lighting, hot/cold air balloons and other features associated with the event/activity, and proposed times for erecting and removing the signs. The application will be reviewed and approved by the general manager.
  1. Names and logos of sponsoring agency(ies) or business(es) shall be limited to twenty (20) percent of the total area of lettering identifying the activity or event.
  2. All banners, pennants and flags shall be limited to twenty-four (24) square feet and shall be suspended no higher than thirty-six (36) feet above grade, except that all banners, pennants and flags suspended over roadways or driveways shall be no higher than eighteen (18) feet above



grade and maintain a minimum clearance of fourteen (14) feet. Banners are allowed in the Downtown Area only.

3. All signs, banners, pennants and flags spanning private walkways must maintain a minimum clearance of seven (7) feet six (6) inches.
4. Searchlights are prohibited except in those cases where allowed in Section 7-602 of the zoning ordinance.
5. Temporary off premises directional signs shall be limited in sign area to six (6) square feet for each sign. The total number and location of such signs shall be approved by the general manager.

Currently, the farmer's market is approved for a special event permit at the McDowell Mountain Ranch McDowell Center located at 16116 N. McDowell Mountain Ranch Road. Included in that approval are allowances for off-premise directional signage related to the farmer's market. A total of 8 directional signs are allowed for the farmer's market event, which include signs along McDowell Mountain Ranch Road, Bell Road, and Thompson Peak Parkway north of McDowell Mountain Ranch Road all within a mile radius of the farmer's market. Your request sought 13 total off-premise directional signs to be located within a 2.5 mile radius of the farmer's market.

The City of Scottsdale Sign Ordinance, Section 8.102.III., has specific criteria for allowance of signs within the right-of-way or on public property. Those signs relate to signs for traffic management and signs erected by a governmental entity for a governmental purpose. The city has been allowing off-premises traffic directional signage in association with a special event permit, and after careful consideration by the Special Events Committee, when that signage has been shown to align with the traffic directional needs, not advertising needs, of the specific special event, as outlined in Section 8.537.I.B.5. of the Sign Ordinance. The number and location of that signage has followed a policy of reviewing the proposed event against several criteria, including the attendance of the event and traffic safety management needs.

There is careful consideration given for any proposed event signage, both on-site and off-site directional signage, to ensure attendees can locate the event and know when they have arrived. The City understands that event signage is temporary and only erected on event dates. The City needs to ensure that unnecessary signage isn't being placed to help promote and market the event outside of the area and that off-site signage is limited to the directional signage that attendees may need to locate the event. Otherwise, this gives a direct advantage to event producers for daily advertising signage anywhere in the city that all other businesses cannot employ. Special event directional signage is intended to assist motorists going to an event find the event and enter and exit safely. It is not intended to advertise the event to motorists up to 2 miles away.

This event is in the same location each week. People who have previously attended the market and those who live in the community can reasonably get to the market without the need for any directional signage. Additionally, if the address of the market event is promoted, people can look on their smart phones or GPS devices to locate the market and find directions as well. I realize there were several letters that commented to the fact that while they knew where the market was, they enjoyed and used the signage as reminders that the market was happening that day. That is not a purpose for permitted directional signage. The City expects that the event producer is helping to promote their market in many ways other than off-site signage (social media, email, printed material, newsletters, community marketing, etc.). Those looking for the market would encounter directional signs within a half mile of the event, which should aid in those seeking assistance for the market location.

The City's Sign Ordinance is a reflection of the community's desire to ensure thoughtful sign placement within its boundaries. The multitude of sign locations can visually detract from the physical and natural beauty of the community and what may be viewed acceptable by some are nuisances to others. Directional signage focuses on traffic safety, which is taken into consideration when reviewing the sign request. It does not incorporate off-site promotion and marketing of the event.

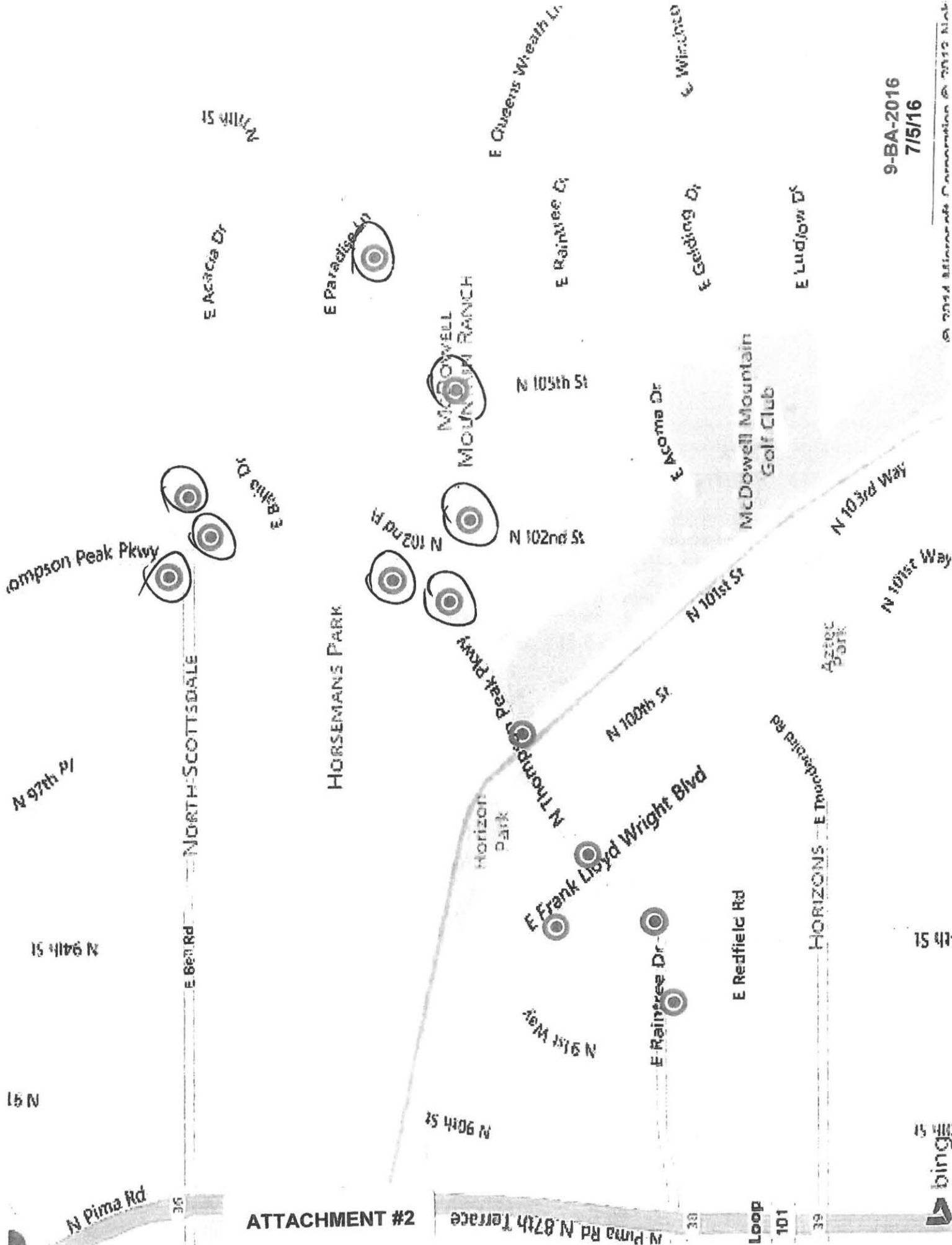


I am unable to provide additional off-premise directional signage approval for the location beyond what was has already been approved by the Special Event Committee for the reasons noted above.



Randy Grant  
Zoning Administrator  
City of Scottsdale  
480-312-2664





ATTACHMENT #2

N Pima Rd N 87th Terrace

Loop 101 39

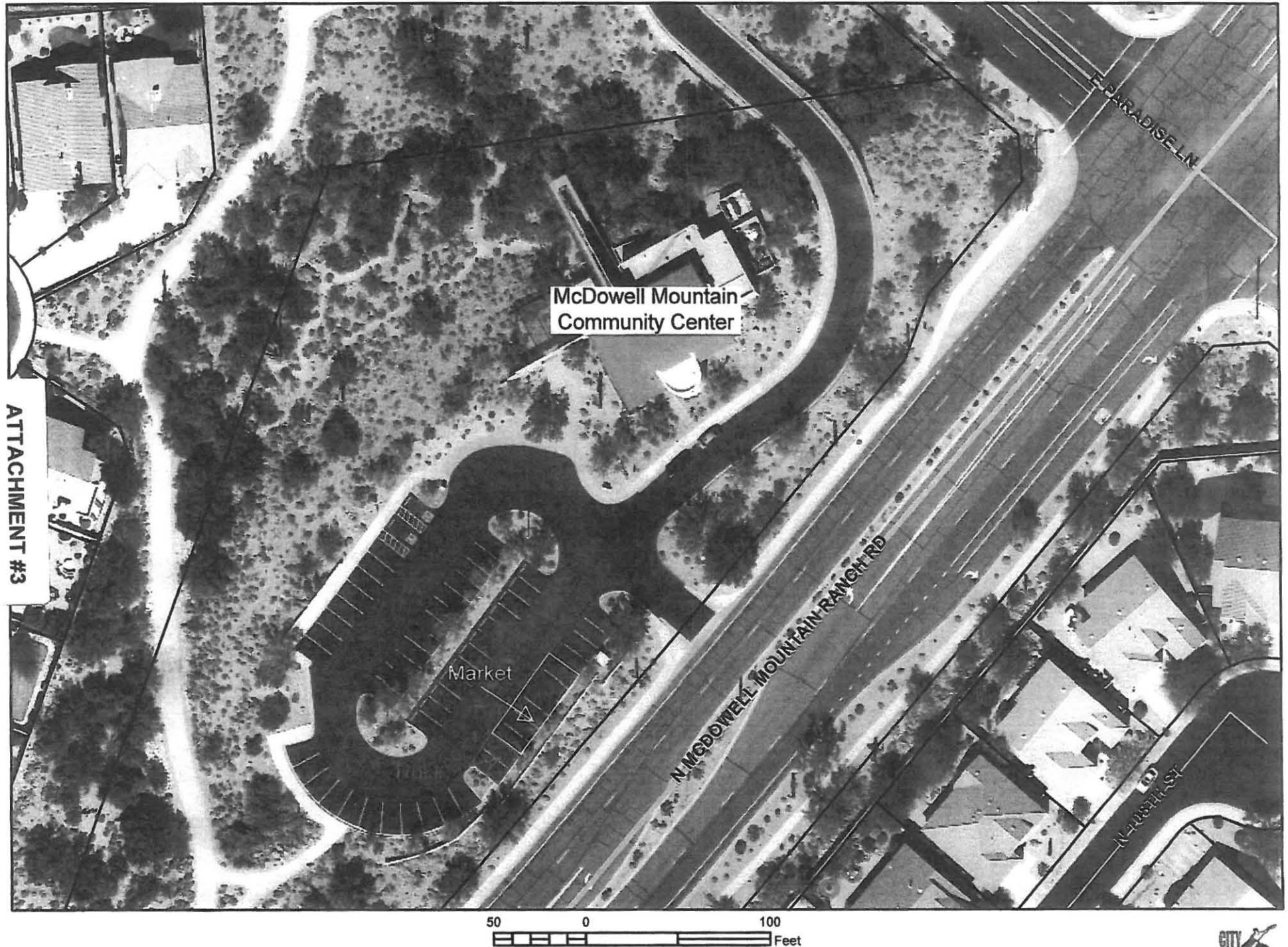


9-BA-2016  
7/5/16

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# Green Bee Produce Farmer's Market





# NARRATIVE

July 5, 2016

**Applicant:** Green Bee Produce

**Special Event permit #** 67-SE-2016 / 222970

**REQUEST:** Board of Adjustments Hearing per Section 1.805- appealing Zoning Administrators Decision on Special Event Permit restrictions

Green Bee Produce is a mobile farmers market that hosts farmer's markets on private property in Scottsdale. On April 29, 2016 Green Bee was issued a special event permit (253-PA-2016) with restrictions. Green Bee had requested 5 off site directional signs, which was denied by the Special Events Board. Per section 7.928, Green Bee filled a notice of appeal with the Zoning Administrator. The meeting with the Zoning Administrator was held on May 23, 2016. Per Section 7.928, the Zoning Administrator is required to give a written decision no latter then 5 days after the appeal meeting. Despite this specific Code Requirement, and despite 6 written requests over a period of 32 days, finally on June 30<sup>th</sup> the Zoning Administrator, through Brad Carr (Scottsdale's Senior Planner), issued a decision denying Green Bee's request. Per section 1.805, Green Bee is appealing the Zoning Administrators decision to the Board of Adjustments.

Green Bee will prove at the Board of Adjustments hearing that the Zoning Administrators decision to deny Green Bee's request for 5 off site directional signs is unconstitutional, bias, and an abuse of discretion.

Due to the past issue with the Planning Department deciding (without notice to either party) not to present the BOA with all the supporting documents Green Bee had provided at the review meeting, and instead picking and choosing only the documents they wanted the BOA to see (eliminate the most important documents of Green Bee's case.....) Green Bee has decided to present our supporting information directly to the BOA at the appeal hearing.

Since Scottsdale Senior Planner, Brad Carr, was involved in issuing the Zoning Administrators appeal decision on June 30<sup>th</sup>, and Mr. Carr is also responsible for making the recommendation to the BOA, there is no point in Green Bee partaking in any pre application / review / informational meetings. Senior Planner, Brad Carr, has already made his decision based off the opinion of the Zoning Administrator, so we already know what the recommendation will state. Therefore, Green Bee waives the right to any pre-hearings or review processes and demands that the City issue their Recommendation based on the knowledge and opinions they have already made.

Furthermore, due to the excessive length of time the Zoning Administrator took to issue a decision (over a month) and the fact that the Planning Department collaborated with the Zoning Administrator to issue his decision, (so there is no extra time needed to conduct the timely pre hearing reviews) there is no reason why Green Bee's appeal can't be scheduled for the next BOA meeting in August 2016. According to section 1.803, as long as the application and request is filed at least 15 days prior to the next BOA meeting, the case may be scheduled to be heard at the next meeting. There is plenty enough time to accommodate that request and still adhere to the legal terms outlined in the Scottsdale City Code.

Thank you,

Green Bee Produce  
admin@greenbeeproduce.com





67-SE-2016

253 - PA - 2016

**Purpose:** Thank you for choosing Scottsdale as the location for your event. The purpose of the Pre-Application submittal and Special Events Committee meeting, is for the applicant and City Staff to discuss the proposed special event request and the information that is necessary for City Staff to process an application that complies with all rules, regulations and best practices for a safe event.

**Submittal:** You may submit your application online or in person at the One-Stop-Shop located at 7447 East Indian School Road. Please note that there is an \$87 nonrefundable submittal fee for the application. All checks shall be payable to "City of Scottsdale"; checks and credit cards are also accepted.

**Scheduling:** After this packet has been accepted at the One-Stop-Shop, a staff member will contact the Applicant within five (5) Staff Working Days to schedule a meeting with the Special Event Committee. Generally, a meeting is scheduled within five (5) to fifteen (15) Staff Working Days from the date of the submittal. Meetings are held Wednesdays beginning at 9 am at Current Planning, 7447 E. Indian School Rd. The committee is comprised of representatives of various city departments with differing areas of expertise. The meeting is informal and you can ask questions, solicit suggestions, and even modify your event plans. Once an application is approved, the Special Event Permit fee is \$105 for events on private property and \$159 for events on public property. The permit fee is separate from your \$87 submittal fee.

**Public Information:** Please note the information you provide becomes public information.

Contact Information
Applicant Name: (person's Name) <b>Aaron Shearer</b>
Mobile Phone: <b>4257855400</b>
E-mail: <b>admin@greenbeeproduce.com</b>
Organization or Business Name Holding Event: <b>Green Bee Produce</b>
On-Site Person Responsible for Event Operations: <b>Aaron</b>
Mobile Phone: <b>4257855400</b>

Tourism and Events  
7506 E. Indian School Rd, Scottsdale, AZ 85251  
480-312-7177

2/11/2016

9-BA-2016  
7/5/16

ATTACHMENT #5



EVENT INFORMATION						
<input checked="" type="checkbox"/> Event Name: Green Bee Produce Farmers Market						
<input checked="" type="checkbox"/> Will the event occur on City of Scottsdale property or in a public street (right-of-way) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>						
<input checked="" type="checkbox"/> Event Address: 16116 McDowell Mountain Ranch Road						
<input checked="" type="checkbox"/> Event Website (required if available): www.greenbeeproduce.com						
<input checked="" type="checkbox"/> Event Description (or attach narrative): Farmers Market						
Event Includes Outdoor Music? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>						
Event Details Dates and Times						
	Date	Event Start Time	Event End Time	Event Set Up Start Time	Event Clean Up Complete Time	Estimate Attendance per Day
Monday						
Tuesday		Every Sunday	tentative dates			
Wednesday		10/15, 16, 23, 30	2/5, 12, 19, 26	8/2, 11, 18, 25		
Thursday		11/6, 13, 20	3/5, 12, 19, 26			
Friday		12/4, 11, 18	4/2, 9, 23, 30			
Saturday		1/8, 15, 22, 29	5/7, 21			
Sunday		9am	1pm	7am	2pm	unknown
Total Anticipated Attendance:						
SPECIAL EVENT SITE PLAN						
<input checked="" type="checkbox"/> Site Plan: A detailed site plan is required—applications will not be processed without it. Attach separate document(s). Site plans should clearly show the location of the event, areas used for parking, fencing, entry/exit points, tents/canopies (include dimensions), stages (include dimensions), generators, bars, tables/chairs, portable restrooms, signs, etc. A route map is required for distance events such as walks, runs, rides, and parades. Useful mapping resources include (print and draw on map): <u>Maricopa County Assessor &amp; City of Scottsdale Digital Map Center</u>						







Aaron,

This is to notify you that you may resume your farmers markets in our parking lots as you previously have done when your matters with the City of Scottsdale have been resolved.

Thank you

Michael Woodington, CAAM®

General Manager

McDowell Mountain Ranch Community Association

AAM, LLC

Ph: 480-473-0877

Fax: 480-473-3172

(602) 957-9191 (main line)



All special events taking place on City property require the event holder to carry liability insurance for their own protection as well as insurance protection for the City of Scottsdale. Required coverage and limits will be at the discretion of the Risk Management Division depending on the size and scope of the event. Prior to the issuance of your Special Event Permit, the event producer must submit a Certificate of Insurance with the insurance limits and coverage's shown in the table below are in full force and effect and must name the City of Scottsdale as an Additional Insured. For athletic events (Walking, Running, Swimming, Biking) which include a liability waiver that participants are required to sign, the event sponsor must include in the waiver either the City of Scottsdale by name or by reference as premises owner or property owner. For questions, contact Risk Management at 480-312-2490.

Commercial General Liability (required from all event producers)	\$1,000,000	Each Occurrence
	\$2,000,000	Products -- Completed Operations
	\$2,000,000	General Aggregate
Liquor Liability	\$1,000,000	Each Common Cause and Aggregate
OR (depending on event)	\$5,000,000	Each Common Cause and Aggregate

Check one:

- ☒ None of my event takes place on city property (city facility, street, sidewalk, right-of-way, etc.).
- ☐ All or a portion of my event takes place on city property and I will provide the required insurance.

**LIABILITY WAIVER REQUIREMENT:** For events (particularly athletic events such as walking, running, swimming and biking) which include a liability waiver to participate, the liability waiver shall waive liability for the City of Scottsdale by name. The City may require liability waivers for events when the nature of the event subjects individual participants to unusual personal risk.



### LAND AND TRAFFIC

Applicant is responsible for ensuring adequate parking for attendees and for minimizing any negative impacts to adjacent areas. Applicant is responsible for obtaining authorized approval for any private parking areas; a copy of the approval must be included with this application. For events using volunteers for traffic control (e.g., course marshals), event volunteers cannot direct traffic in the street. They may provide guidance from the sidewalk, other pedestrian area, or on a closed street.

The event will include the following (check all that apply):

- ☐ Existing public parking (city parking lot, city parking garage, on-street parking)
- ☒ On-site parking (may require property owner and/or landlord approval)
- ☐ Off-site parking (approval from property manager/owner required)
- ☐ Shuttle service from off-site parking areas (attach shuttle plan)
- ☐ Valet service (provide a valet parking plan from the valet company)

Valet company: \_\_\_\_\_

Contact person: \_\_\_\_\_

Phone number: \_\_\_\_\_

Contact Tax & License at (480) 312-2400 to obtain a VALET PARKING LICENSE APPLICATION if event valet is proposed on public property.

### STREET CLOSURE

Applicant is responsible for hiring a barricade company for any street, alley, lane, or public sidewalk closure. The City of Scottsdale does not provide barricades. Show proposed closures on the Special Event site plan. Any street closures and barricade set-up/removal shall match the approved barricade plan on file. Oversight of barricade set-up is the responsibility of event applicant. Discrepancies or safety issues may result in the delay or cancellation of the event.

The event will include the following (check all that apply):

- ☐ Sidewalk closure ☐ Street ☐ Alley ☐ Lane closure(s)

Barricade company: \_\_\_\_\_

Contact person: \_\_\_\_\_

Phone number: \_\_\_\_\_

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### SECURITY

Applicant is responsible for providing a safe and secure event. This includes the event venue, event parking areas, and adjacent areas affected by the event. Applicant must ensure adequate personnel are present to provide general security, maintain order, contain liquor to licensed premises, protect money, provide medical assistance, etc. Depending on the nature of the event, private security personnel and/or off-duty police officers may be required. To hire Scottsdale PD off-duty officers, call 480-312-4385. Any privately hired security must be licensed in the State of Arizona. The Scottsdale Fire Department recommends an emergency medical standby when daily attendance exceeds 5,000 people. Occupancy loads must adhere to that which is set by the Fire Department.

The event will include the following (check all that apply):

#### Security Personnel

☒ In-house staff and/or volunteers

☐ Hired security personnel

Company name: \_\_\_\_\_

Contact person: \_\_\_\_\_ Phone number: \_\_\_\_\_

☐ Hired off-duty police officers. Estimated number: \_\_\_\_\_

☐ Scottsdale PD off-duty officers

Other agency name: \_\_\_\_\_

Contact person: \_\_\_\_\_ Phone number: \_\_\_\_\_

#### Medical Standby

☐ Standby emergency medical staff (paramedics/EMTs)

Company name: \_\_\_\_\_

Contact person: \_\_\_\_\_ Phone number: \_\_\_\_\_

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### TENTS AND CANOPIES

A tent permit issued by the Scottsdale Fire Department is required for any tent 400 square feet or larger (20 feet x 20 feet or larger). Tents shall be shown on the Special Event site plan. For additional information, call 480-312-1843. Tent permit applications must be received by the Scottsdale Fire Department at least 10 days prior to the event.

- ☐ There will be tents 400 square feet or larger.

Supplier: \_\_\_\_\_

Contact person: \_\_\_\_\_ Phone number: \_\_\_\_\_

### GENERATORS

A commercial minimum electrical permit issued by Permit Services is required for any generator 20kw or larger. Location of the generator shall be shown on the Special Event site plan.

- ☐ There will be a generator 20kw or larger.

Licensed contractor: \_\_\_\_\_

Contact person: \_\_\_\_\_ Phone number: \_\_\_\_\_

### SIGNS AND BANNERS

Signs and banners are regulated by the Zoning Ordinance and will be reviewed as part of the application request. Approved signs and banners may only be posted on the day of the event. Fence wrap graphics must face the interior of the event venue.

The event will include the following (check all that apply):

- ☒ Directional signs (show locations on Special Event site plan and/or area map)  
☒ Signs or banners visible from outside the venue (show locations on Special Event site plan)

Describe (include dimensions and wording): Directional Farmers Market

### VENDORS

If vendors (food, retail sales, display/information, games, etc.) will be present at your event, you must supply a list of vendors with this application and also contact the City of Scottsdale Tax and License Department at 480-312-7625.

The event will include the following categories of vendors (check all that apply):

Food ☐ Retail ☐ Display/Info ☐ Games ☐ Other: ☒

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# ENTERTAINMENT

Applicant is required to have an event staff member responsible for monitoring sound levels when sound/music/noise may be audible beyond the event venue. Noise complaints can result in calls for service from the Scottsdale Police Department. A police officer or Code Enforcement Inspector may require the volume to be reduced or ceased based on complaints or unreasonable sound levels.

The event will include the following (check all that apply):

- ☐ Live Band and/or DJ      Name of bands/performers: \_\_\_\_\_  
☐ Pre-recorded Music

Date	Live Band		DJ		Pre-Recorded Music	
	Start Time	End Time	Start Time	End Time	Start Time	End Time
Monday						
Tuesday						
Wednesday						
Thursday						
Friday						
Saturday						
Sunday						

- ☐ PA System  
☐ Fireworks / Pyrotechnics  
☐ Sound/music/noise may be audible beyond the event venue; therefore, an event staff member will be

assigned to monitor the sound level during the event to ensure sound does not unreasonably disturb the surrounding area.

Contact person: \_\_\_\_\_ Phone number: \_\_\_\_\_



### LIQUOR

If liquor is present at your event, state law requires liquor to be contained within the event venue. A liquor license is required if the event is open to the public, or if there is a fee for admission, food or drink. Anyone serving liquor must be familiar with state liquor laws. See the Arizona Department of Liquor Licenses and Control [website](#) for additional information. Use adequate fencing and security personnel to prevent alcohol from being removed from your liquor licensed premises.

Check only one:

- ☒ Liquor will not be present at the event.
- ☐ The event is adjacent to an existing liquor establishment (restaurant or bar) and the establishment will temporarily extend their liquor-licensed premises to include an area which does not have a liquor license. The liquor establishment must complete the Arizona Department of Liquor Licenses & Control (DLLC) Extension of Premises form ([click here](#)) and you must include this completed form (signed and notarized) with your event application. Once approved by the city, you must take the form to Arizona DLLC at 800 W. Washington, 5<sup>th</sup> Floor, for issuance of the actual extension permit. For additional information, call 602-542-5141.
- ☒ Liquor will be present and I am making arrangements with a charitable, civic, fraternal, political party/campaign committee, or religious organization for Special Event Liquor License (SELL). The [SELL form](#) available from Tax and License at 480-312-2400 (or [click here](#)). The SELL approval process is handled through Tax and License and SELL applications should be submitted at least 21 days prior to the event.

Organization name: \_\_\_\_\_

### EVENT NOTIFICATION

Notification is required to inform nearby or affected businesses, property owners and HOA's within 300 feet at least two weeks prior to the event. Notification is required for events with off-site parking, outdoor amplified sound, street closures, fireworks, or other notable impact to adjacent areas. Notification letters must include a detailed description of the event including setup and tear-down times, starting and ending times for outdoor music, estimated attendance, and the event organizer's name and mobile phone number for contact before, during and after the event for all street closures.

If applicable, event notification will be made by (check all that apply):

- ☐ Mail    ☐ Email    ☐ Door hangers    ☐ Fliers    ☐ In person    ☐ Other \_\_\_\_\_

Please note that approval/sign off may be required if your event includes a street closure, sound amplification or other impacts to the surrounding neighbors or businesses.

Tourism and Events

7506 E. Indian School Rd, Scottsdale, AZ 85251



Applicant is responsible for (a) having a sufficient number of containers to handle all trash generated by the event; (b) removing trash during and after the event; (c) completely cleaning the site and adjacent/affected areas after the event; and (d) providing a sufficient number of restroom facilities (including ADA accessible facilities). If any portion of the event takes place on city property and city personnel need to perform additional cleaning due to your event, you will be billed by the City of Scottsdale for this service.

To arrange for garbage dumpster by the City of Scottsdale, contact Solid Waste at 480-312-5600.

The event will include the following (check all that apply):

- ☐ Garbage dumpsters (show on Special Event site plan)

Sanitation company: \_\_\_\_\_

Contact person: \_\_\_\_\_ Phone number: \_\_\_\_\_

- ☐ Portable restroom facilities (show on Special Event site plan)

Restroom company: \_\_\_\_\_

Contact person: \_\_\_\_\_ Phone number: \_\_\_\_\_

Tourism and Events

7506 E. Indian School Rd. Scottsdale, AZ 85261



**WARRANTY:** Applicant warrants that the information provided in this application is true and accurate to the best of Applicant's knowledge and belief.

**INDEMNIFICATION:** To the fullest extent allowed by law, the Applicant agrees to defend, indemnify and hold harmless the City, its officers, officials, representatives, agents, employees and volunteers from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, the cost of appellate proceedings, and all claim adjusting and handling expenses, arising from or related to any acts or omissions of the permit holder or its agents, contractors and subcontractors related to the Special Event.

**SPECIAL EVENT PERMIT CONDITIONS:** Other conditions may be imposed.

- State law requires that liquor must be contained within the area permitted by your State license.
- City law prohibits discharges of anything but storm water into the City's rights-of-way, storm drain system and natural washes.
- Street closures, barricades and event layout shall be as shown on the approved site and barricade plan.
- If the City performs any cleanup due to your event, you will be billed and required to pay for the cleaning.
- If there is damage to City property due to your event, you will be billed and required to pay for its repair.
- You are required to provide a safe and secure environment at your event. Private security must be licensed in the State of Arizona.
- A City Police Officer or Code Enforcement Inspector may require the music volume to be reduced or ceased.
- You must comply with the maximum occupancy load set by the Fire Department.
- You must allow for immediate fire lane and other security access at your event.

The Applicant's signature below authorizes a City representative to inspect a special event on City or private property at any time, including setup.

**AUTHORITY:** For special events on private property, the Applicant warrants:

1. I am the property owner or the authorized agent of the property owner for this application, excluding City property. If the property has more than one owner, then I am the agent for all owners, and the word "owner" refers to them all.
2. I have written authority from the property owner regarding any and all Special Event regulatory and related matters involving all property identified in this application, excluding City property.

Signature of Applicant must be the same person listed on page 1.

3/30/2016

Date

Aaron Shearer / member

Printed Name and Title of Applicant



## **Exhibit 2**



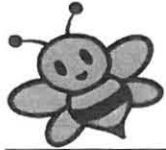


# Our Markets

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- ⌚ Not your typical Farmers Market
- ⌚ Not your typical locations-out of town
- ⌚ Usually held within Master Planned Communities
- ⌚ Off the beaten path – deep into communities
- ⌚ Hidden in parking lots of Community Centers
- ⌚ Not visible from any main roads
- ⌚ Schedule (days & times) changes regularly due to community events





## Sec. 8.537. - Special events and theme amusement parks

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Special events and amusement parks **are allowed signs** as follows:

I. *General.*

A. Events/activities which will occur on a designated date or during a limited period of time **shall be allowed signage to promote the event/activity**. The signage will **support, promote and/or advertise the event/activity** and may contain the names of a specific agency or business that is sponsoring the event/activity. All signs associated with the event/activity are temporary and must be removed by an the date specified by the general manager.

B. The organization sponsoring the event/activity shall prepare and submit an application, consisting of a **complete list and description of all signs**, including **directional signs**, banners, pennants, flags, balloons, lighting, hot/cold air balloons and other features associated with the event/activity, **and proposed times for erecting and removing the signs**. The application will be reviewed and approved by the general manager.





# History

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- ⌚ Ran successfully with signs
- ⌚ City issued notice to comply & rejected all sign requests
- ⌚ Following year tried to work with City-moved market locations
- ⌚ All suggestions failed-Markets failed
- ⌚ BOA Appeal – not there to decide if code was being followed but only to determine if ZA decision was being consistently applied.
- ⌚ GB closed doors
- ⌚ Researched City History- Found signs allowed until 2007- banned signs
- ⌚ Filed for 2016 Special event permit-signs allowed????



# 2016 Current Sign Map

**2016 Current Sign Map**

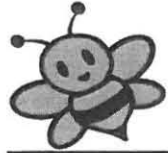
**APPROVED BY SEB**

**NOT APPROVED**

Map showing various roads and locations in Scottsdale, Arizona, including:

- E Bell Rd
- E Bahia Dr
- E Paradise Ln
- E McDowell Mountain Ranch Rd
- E Queens Wreath Ln
- N 108th Pl
- N 100th St
- N 90th St
- N 40th St
- N Frank Lloyd Way
- N Star Way
- N Thompson Peak Fwy
- Pima Fwy
- WestWorld of Scottsdale
- McDowell Mountain Business Center
- Hoffman Property
- Desert Sage
- Montage
- Scottsdale Horizon Center
- Village at Scottsdale





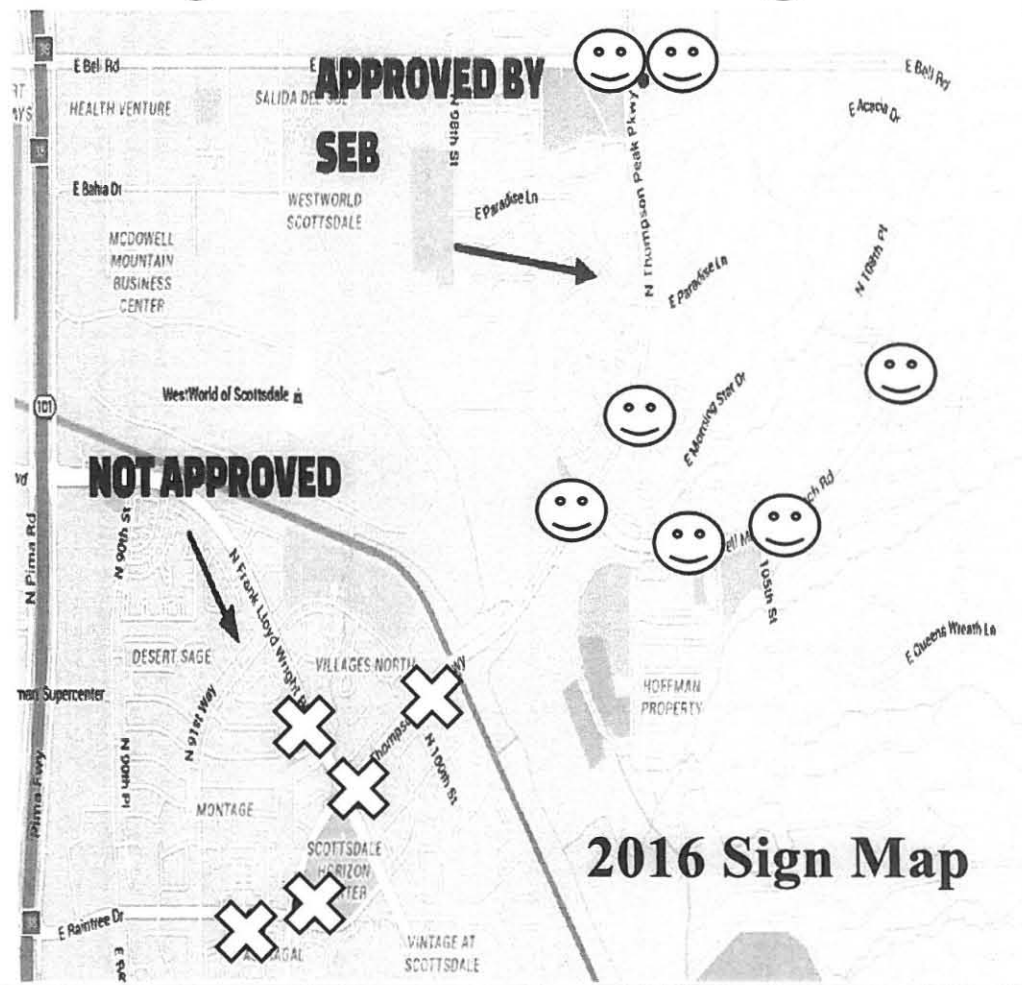
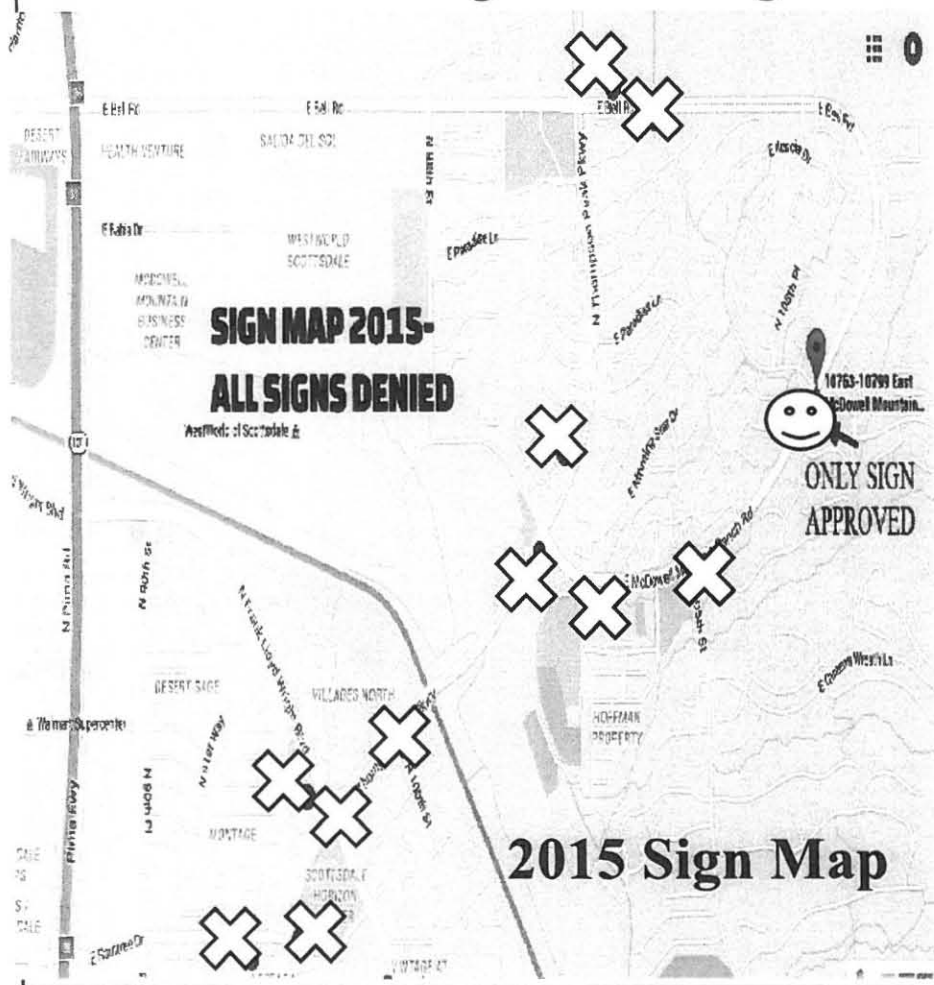
## June 30, 2016 ZA Denial letter

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- ⌘ Consistently enforced with all events
  - ⌘ City follows a policy of reviewing requests against certain criteria
  - ⌘ All event signs are restricted to 1 mile from Site. (New Enforced Rule)
  - ⌘ General Aesthetics- natural beauty of the community
  - ⌘ Traffic Safety- reducing signs visible to motorist promotes greater traffic safety.
  - ⌘ Advertising verse directional
  - ⌘ Private off-premise signage is not permitted within the city right-of-way.
- 
- ⌘ Side Note- The city claims they have been “allowing off-premises traffic directional signage in association with a special event permit.” Since when? Denied in 2015



## Consistency? Last year / this year-what changed?





**CITY OF SCOTTSDALE**

**Special Events**

**Special Event Permit  
Pre-Application and  
Concurrent Application**

- PA -

Public Information: Please note the information you provide becomes public information.

### Contact Information

**Mobile Phone:** John Bridger: (602) 768-7161 / John Goff: (602) 757-8390

6/23/15

# Application for Signs

## TENTS and CANOPIES

A tent permit issued by the Scottsdale Fire Department is required for any tent 400 square feet or larger (20 feet x 20 feet or larger). Tents shall be shown on the Special Event site plan. For additional information, call 480-312-1040. Tent permit applications must be received by the Scottsdale Fire Department at least 10 days prior to the event.

☒ There will be tents 400 square feet or larger.

Supplier: ProTm

Contact person: Brady Castro Phone number: (602) 318-5660

## GENERATORS

A commercial minimum electrical permit issued by Permit Services is required for any generator 20kw or larger. Location of the generator shall be shown on the Special Event site plan.

☒ There will be a generator 20kw or larger.

Contact person: John Giff Phone number: (602) 757-8300

## Signs described as directional & branding purposes

Signs and banners are regulated by the Zoning Ordinance and will be reviewed on a case-by-case basis. All signage must request. Approval signs and banners may only be posted on the day of the event. Less than 24 hours, all signs must face the interior of the event venue.

The event will include the following (check all that apply):

☒ Directional signs (show locations on Special Event site plan and/or area map)

☒ Signs or banners visible from outside the venue (show locations on Special Event site plan)

Describe (include dimensions and wording): Way signs for signs and banners, directional, identification, directional, & branding.

## VENDORS

If vendors (food, retail sales, display/information, games, etc.) will be present at your event, you must supply a list of vendors with this application and also contact the City of Scottsdale Tax and License Department at 480-312-1626.

The event will include the following categories of vendors (check all that apply):

Food ☒ Retail ☒ Display/info ☒ Games ☐ Other: ☐

**Tourism and Events**  
 1000 School Rd. Scottsdale, AZ 85261  
 480-312-7177

Page 7 of 11

EXACT SAME APPLICATION AS I FILL OUT



What is the difference between these signs?



**This one gets unlimited locations with no restrictions or violations**

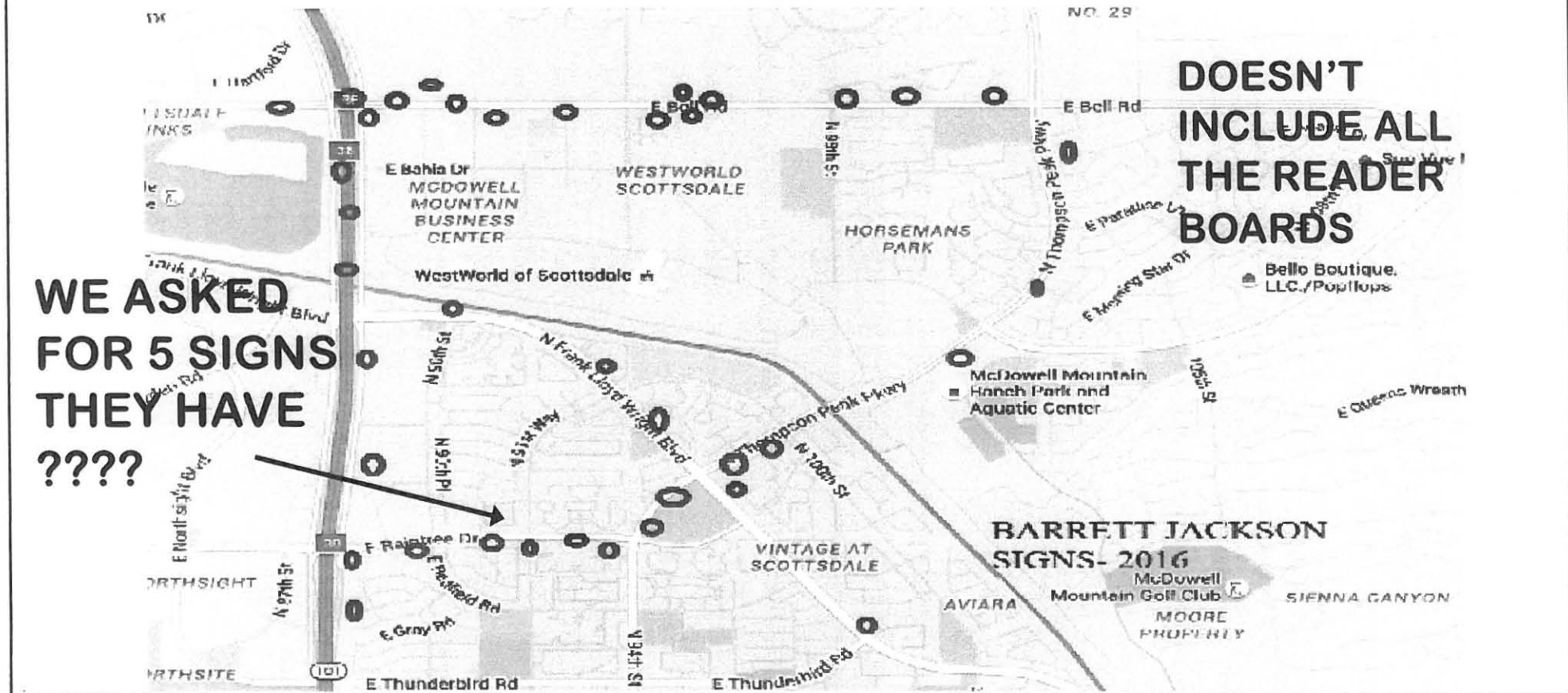


**This one is heavily regulated and locations restricted.**



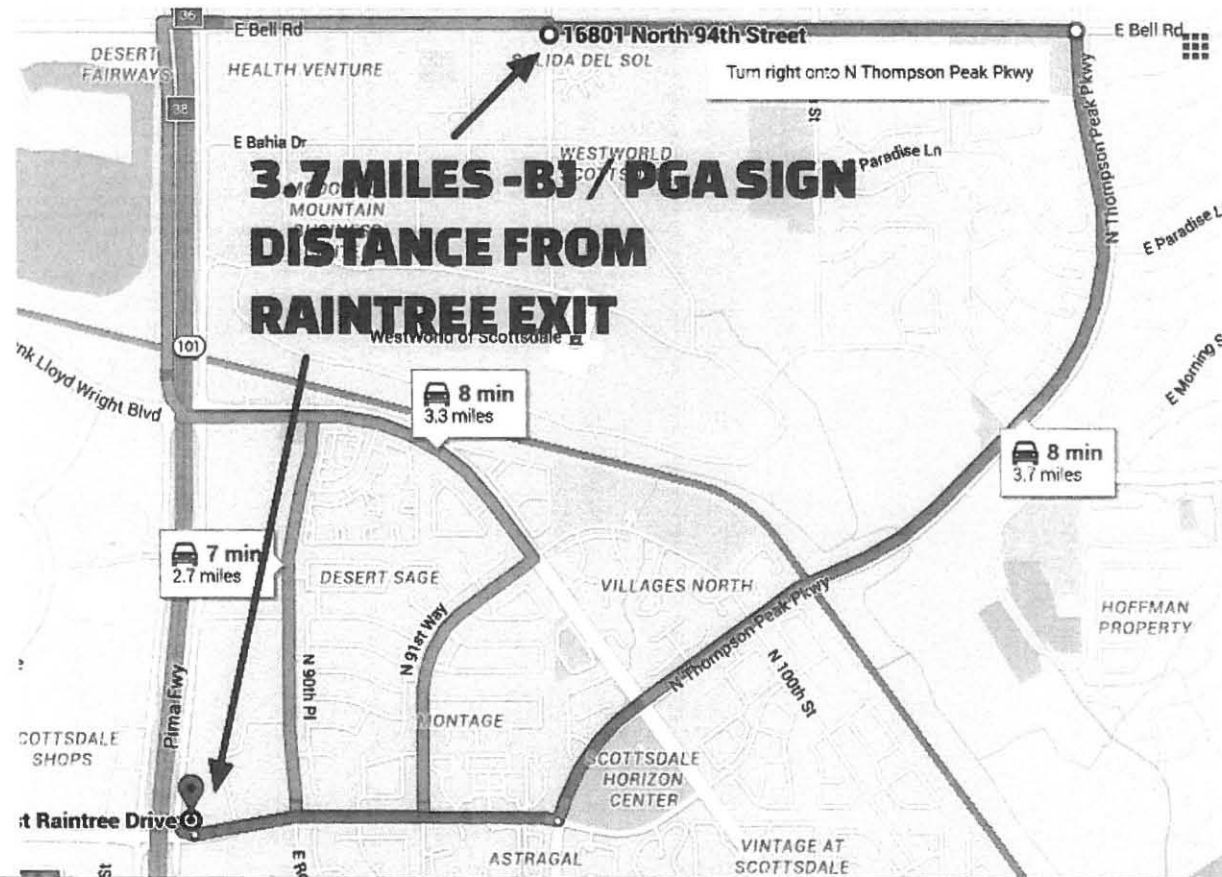
# BJ / PGA Sign Locations-2016 approved by ZA

ZA Criteria- only allow enough signs as needed to find event





# What Happened to the 1 mile rule?



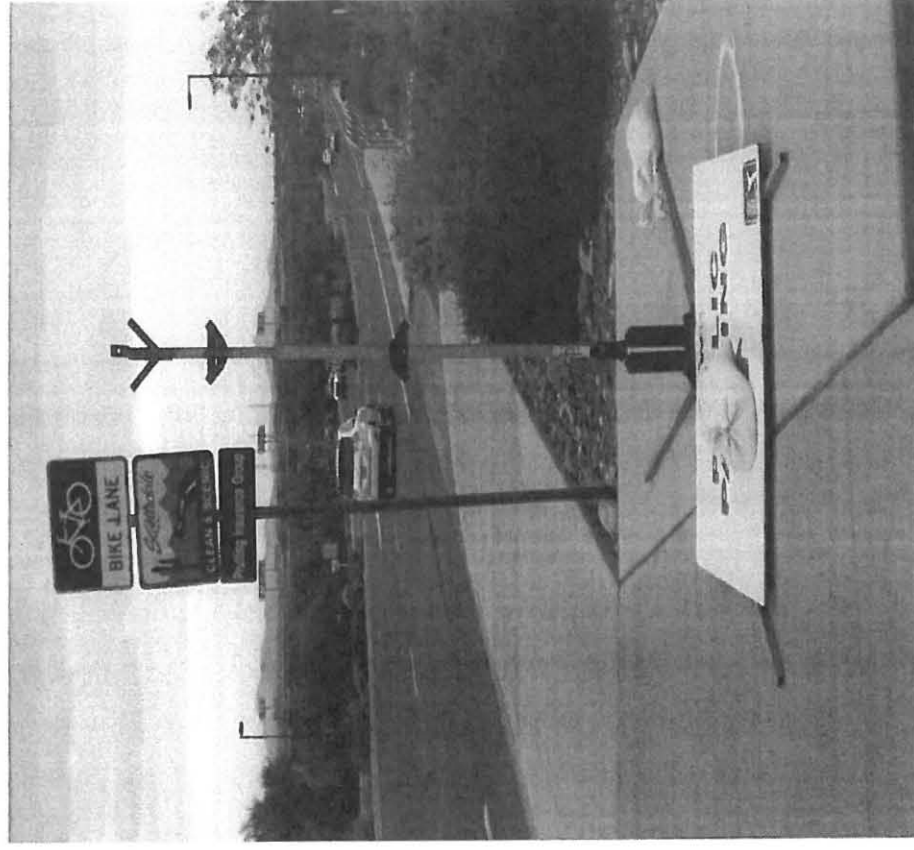
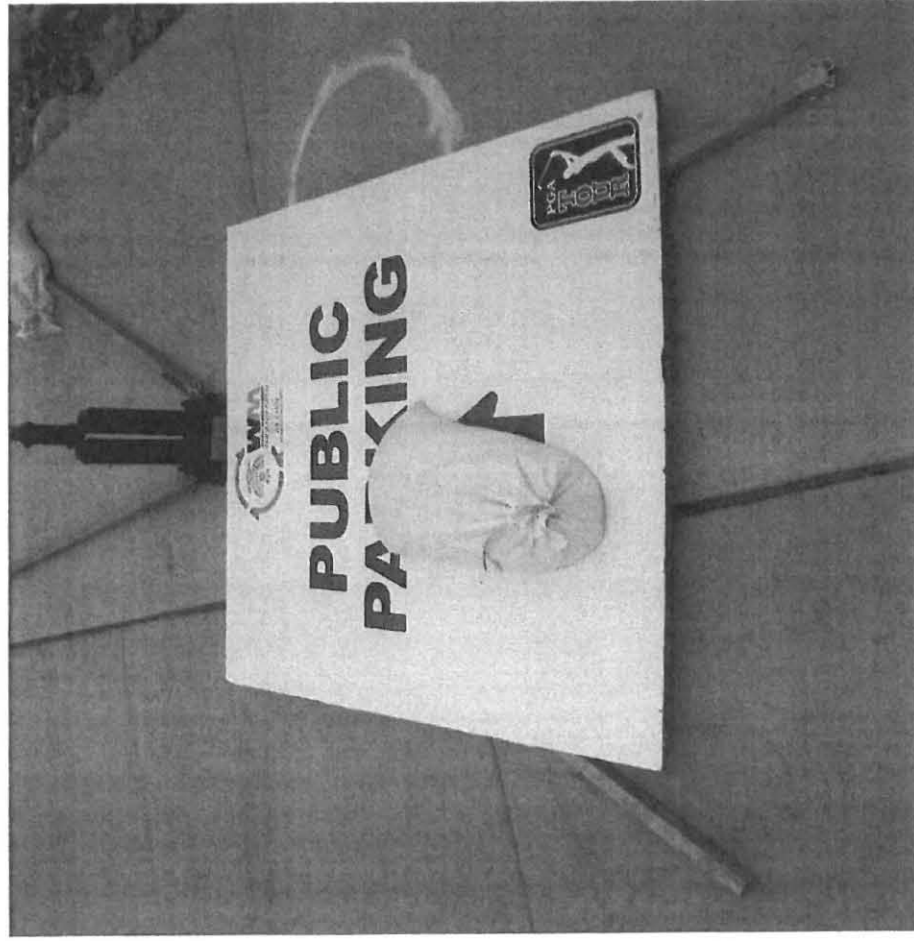


## PROMOTING NATURAL BEAUTY?





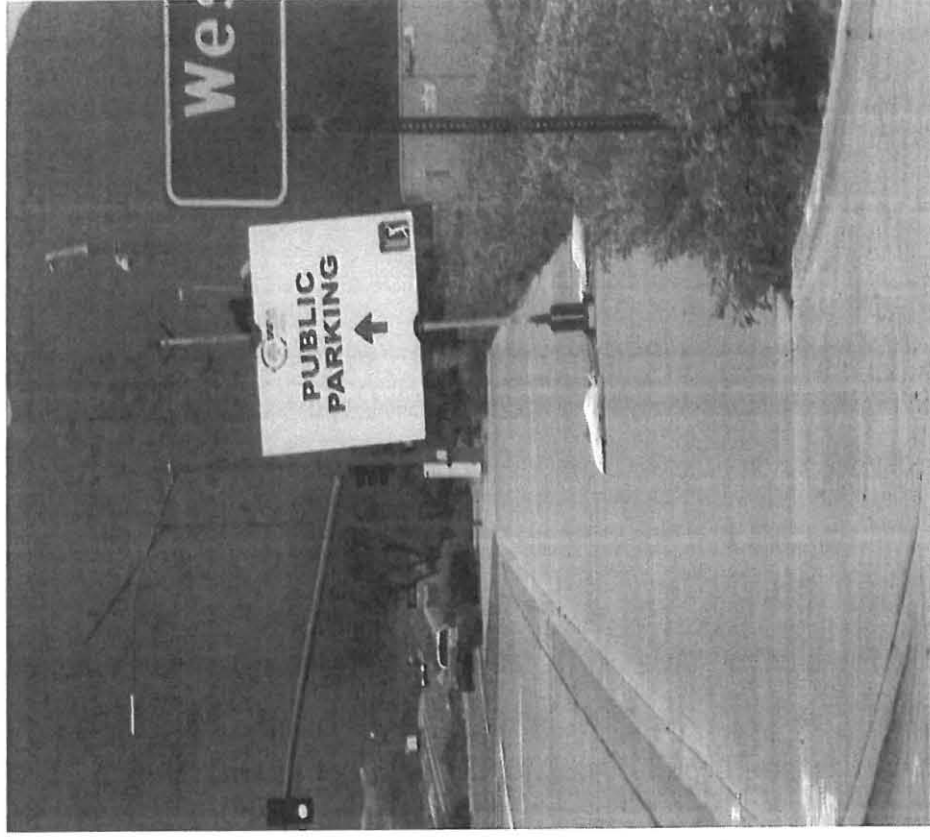
# SIGN ON SIDEWALK \* PEDESTRIAN HAZARD



**VIOLATION SEC. 47-105 (K) \$250.00 FINE**



# SIGNS ON SIDEWALK & IN SIGN FREE ZONE

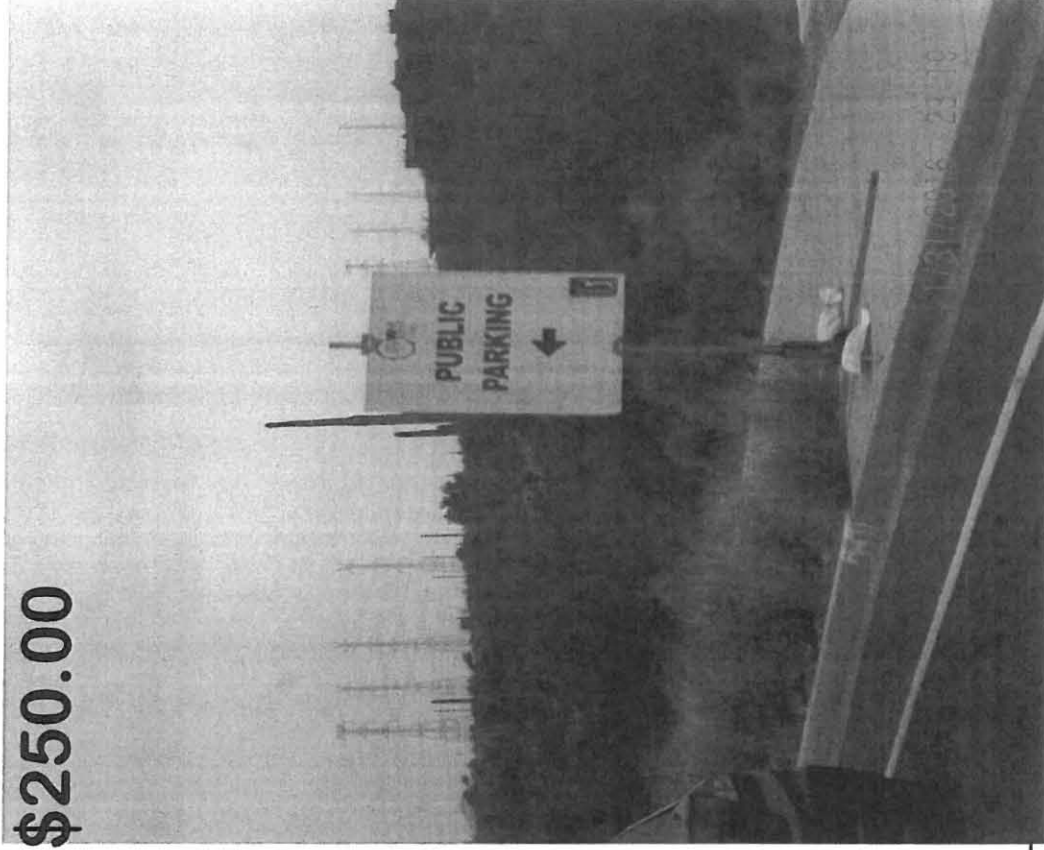


**VIOLATION SEC. 47-105 (K) \$250.00 FINE**



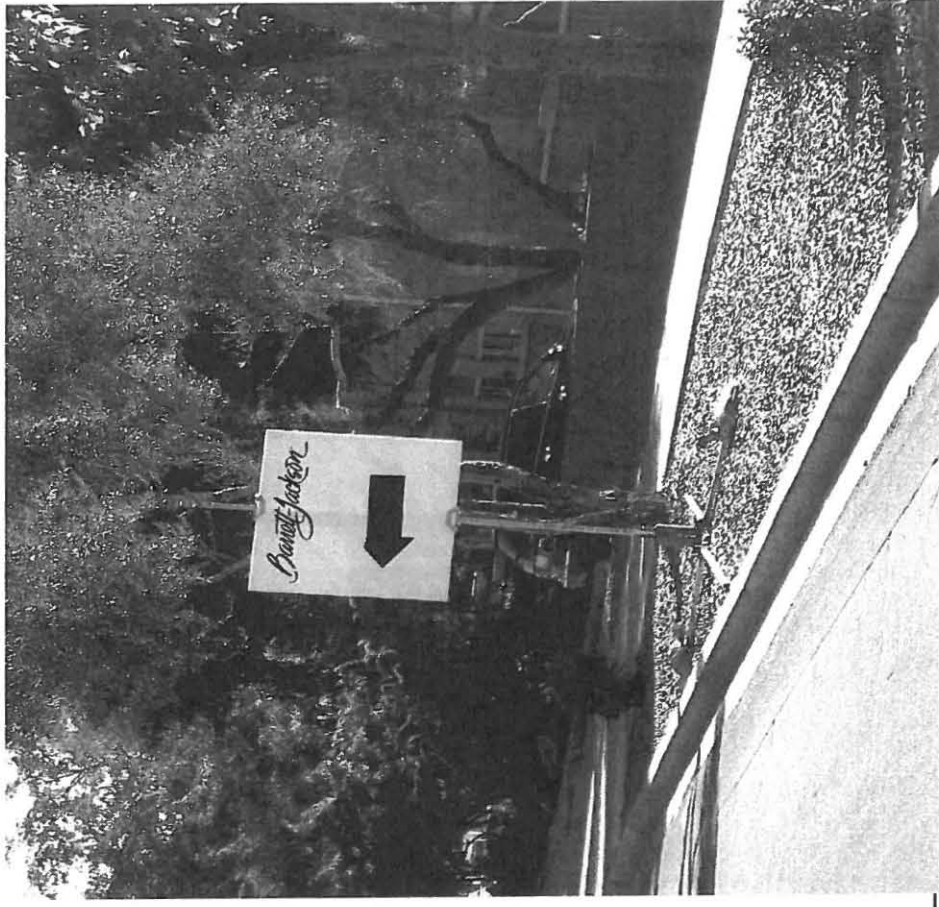
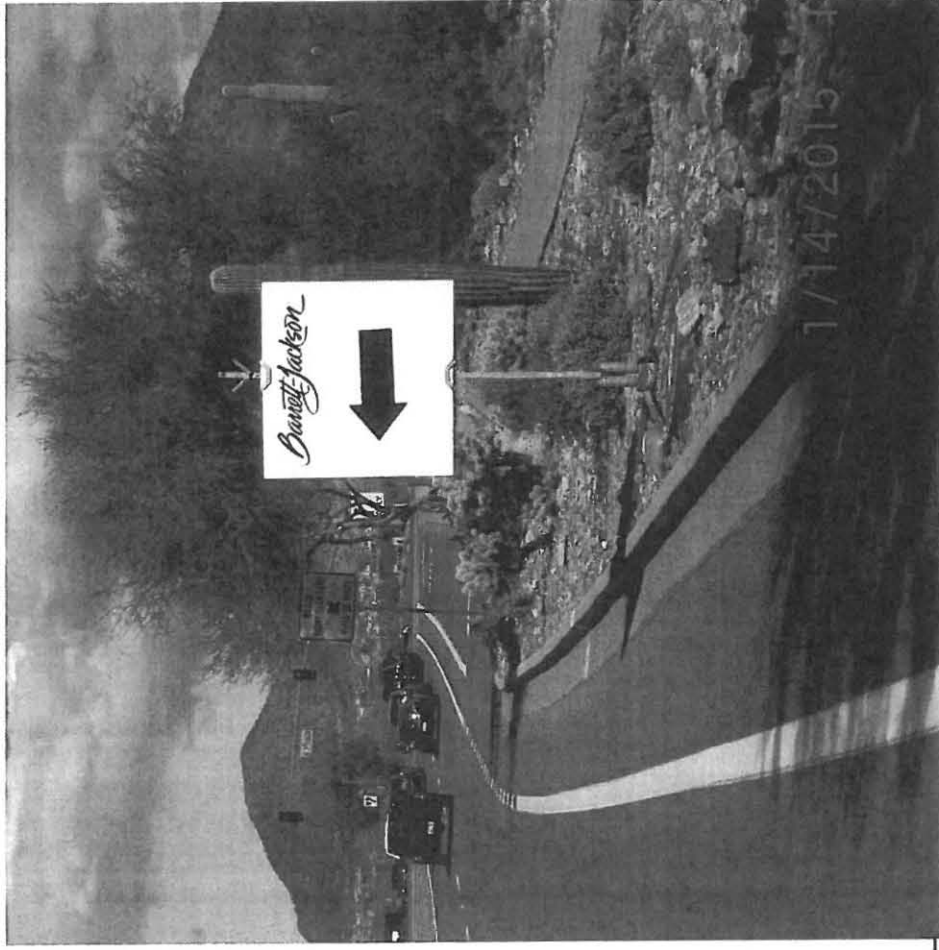
# SIGNS ON SIDEWALK

VIOLATION \$250.00



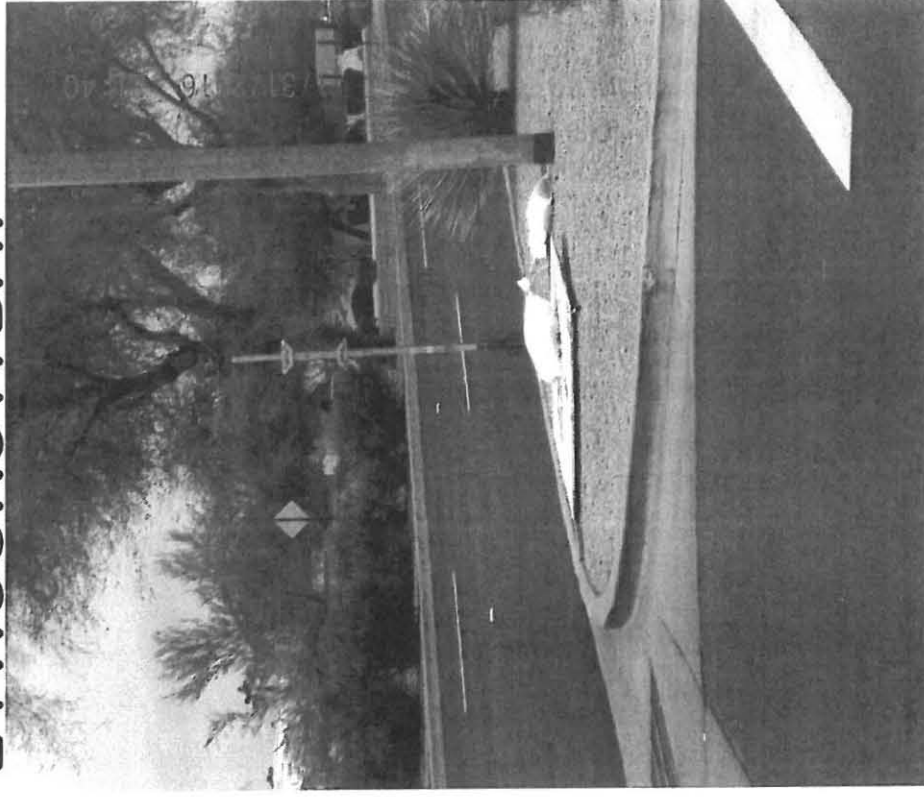


## SIGNS IN THE RIGHT OF WAY





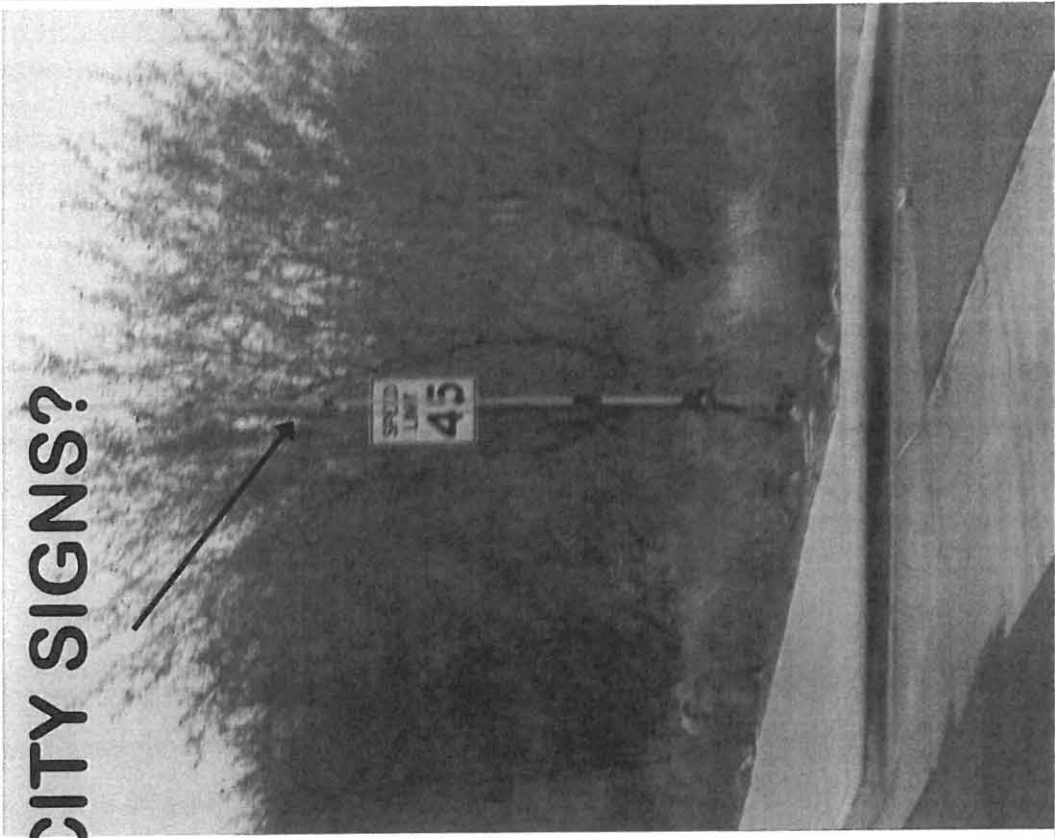
**UP FOR OVER 16 DAYS- 24 HOURS A DAY**



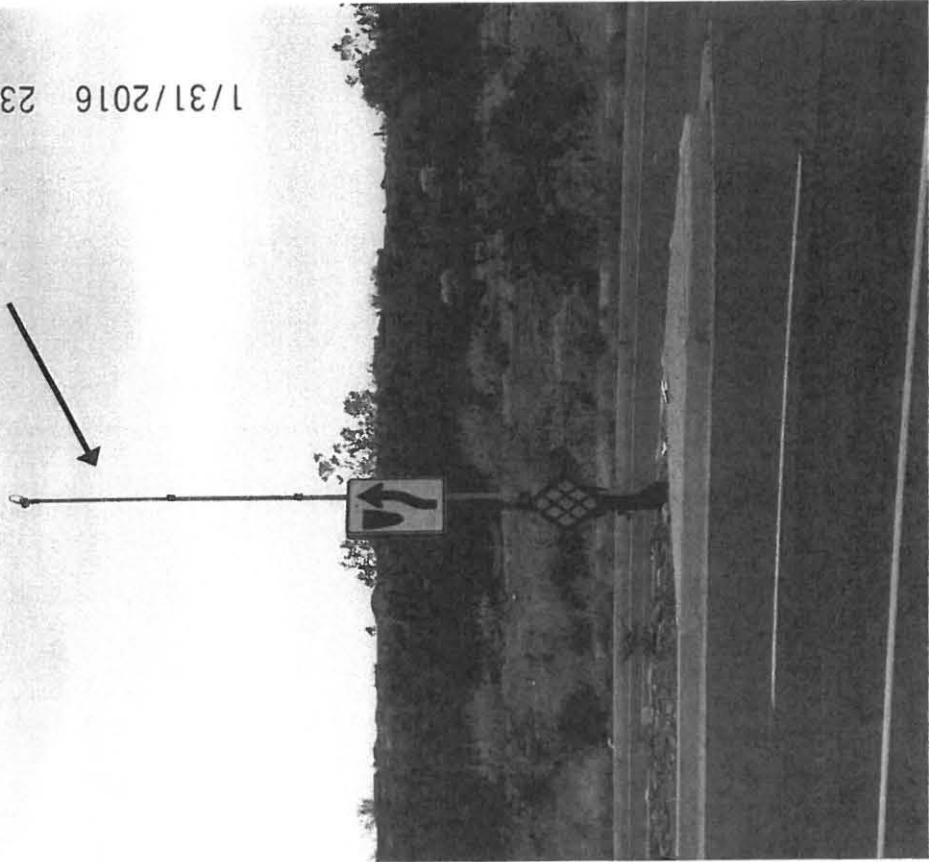
**IN THE RIGHT OF WAY & IN SIGHT TRIANGLE**



**ATTACHED TO CITY SIGNS?**

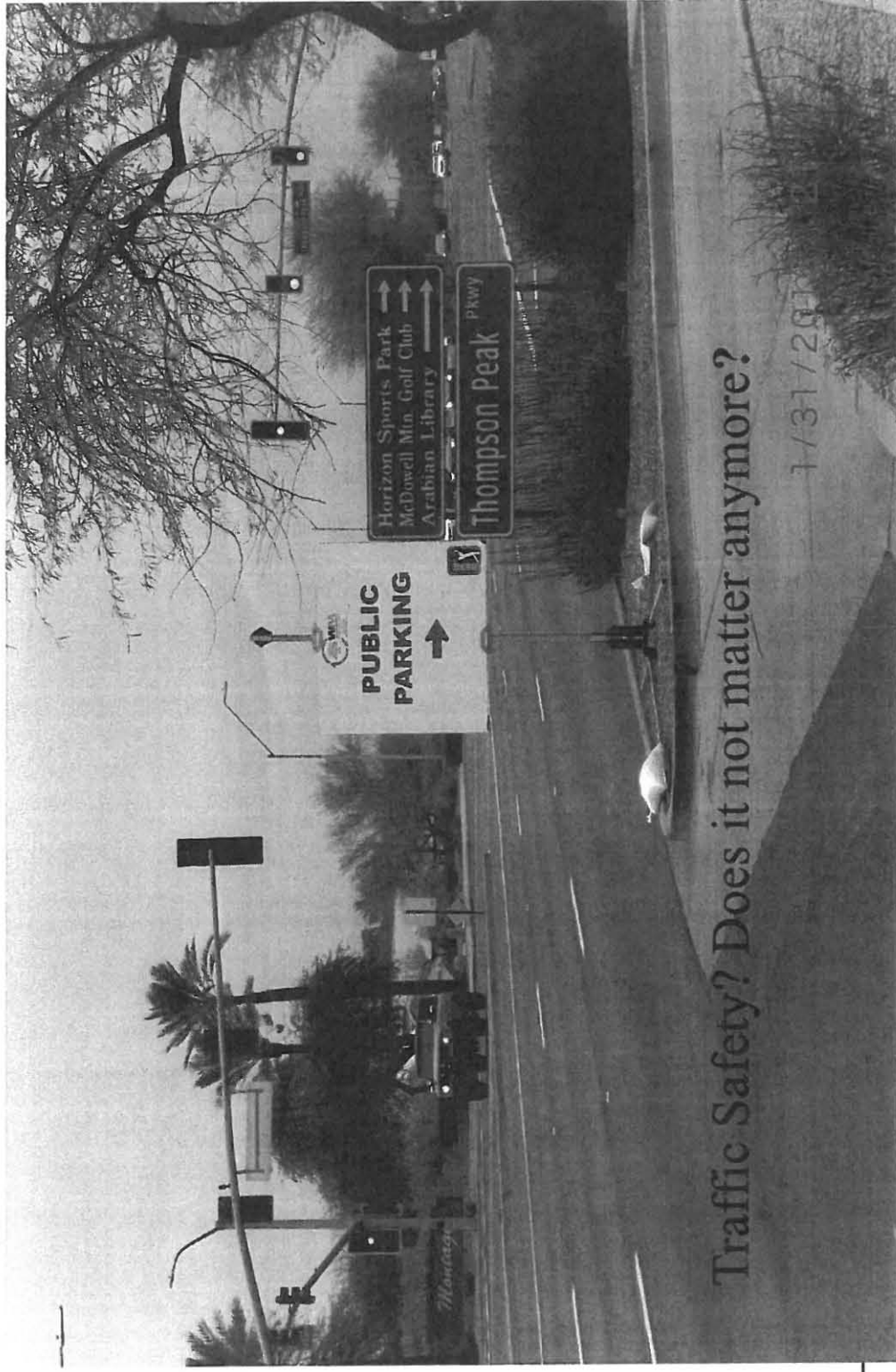


1/31/2016 23:20





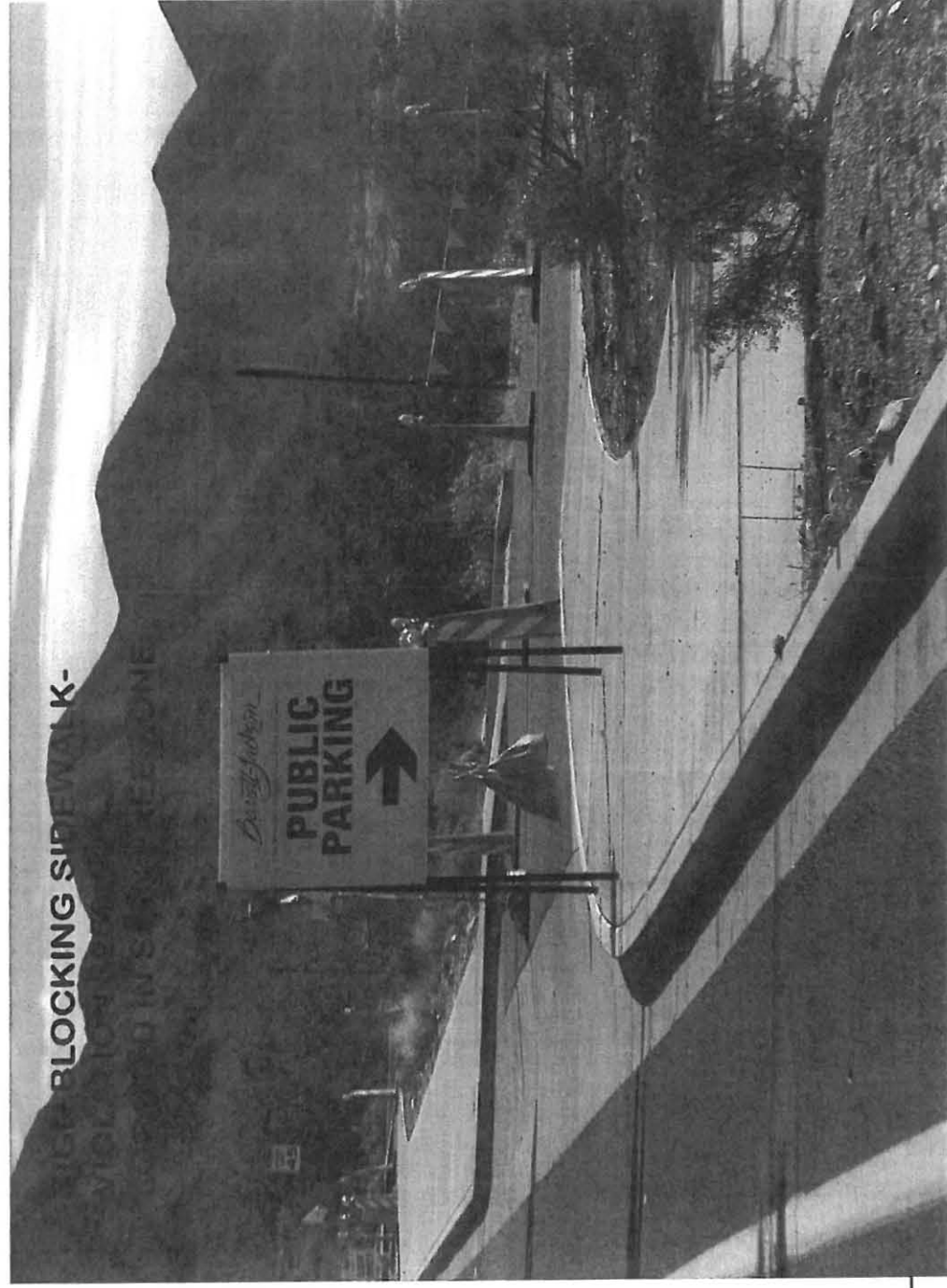
## Sign Blocking City Street Signs- Violation



Traffic Safety? Does it not matter anymore?



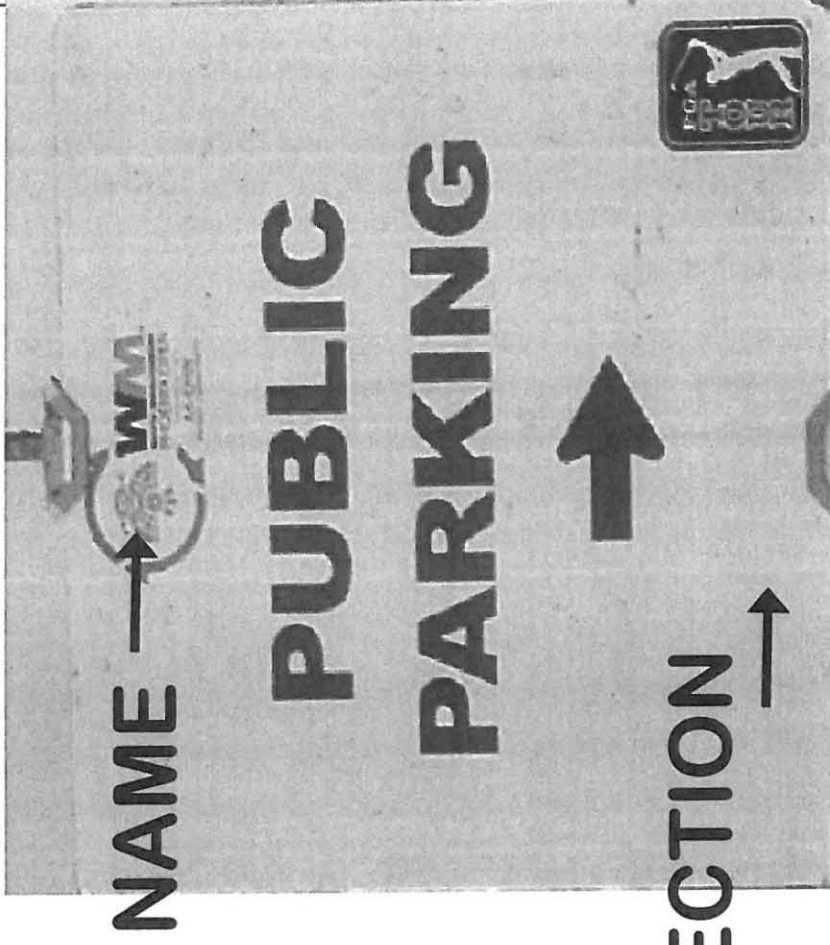
# **VIOLATION OF DISABILITIES ACT**





## ADVERTISING

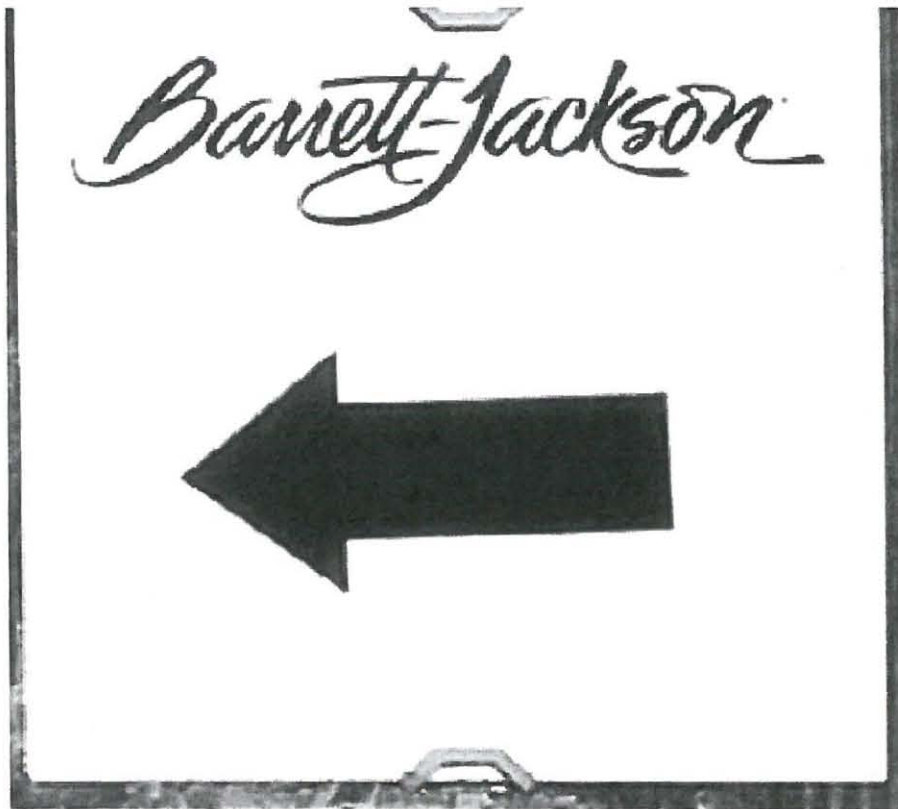
## DIRECTIONAL



Why are these signs labeled different?



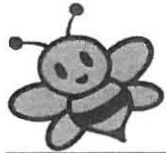
## WHAT IS THE DIFFERENCE?



Should one sign receive special treatment over the other?

Would that be consent enforcement?





# Sign Placement

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- Each location has been researched for maximum benefit and safety
- We poll every customer about the signs and locations
- All locations are accessible without interfering with traffic
- All signs are securely anchored to stay in place in heavy wind storms
- No signs are placed on sidewalks
- No signs are placed to interfere with Pedestrian or Bike traffic
- No signs are placed on ANY corner
- No signs are placed to block traffic visibility or City signs
- We check in with local business regularly to insure there are no problems
- We have received nothing but positive feedback from the Community
- Signs are placed during market set up and removed promptly after- max 6 hours up
- We take pride in our Signs

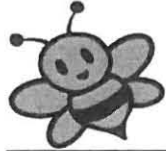




# COMPARISON

<b>GREEN BEE</b>	<b>PGA / BARRETT JACKSON</b>
Held Special Event Permit	Held Special Event permit
Required to submit Sign map	No Sign map required
Signs require approval	No approval needed
2015-1 sign allowed at ingress into parking lot	2015-Unlimited ALL Signs allowed
2016- Allowed signs up to 1 mile	2016- No restrictions- 3.7 miles away
Signs only allowed during event times	Signs allowed 24/7 for 16 plus consecutive days
Signs not allowed on sidewalk or ROW	Signs allowed on sidewalk and ROW
2015-issued notice to comply	Never violated - clear violation of STATE law
ZA: claims "Signs not allowed due to aesthetics"	Aesthetics aren't effected by these specific signs
ZA: claims "Community doesn't want them"	Communities assumed opinion doesn't matter
ZA: claims "Traffic Safety issues"	PGA signs are more important then traffic signs
ZA: claims "Signs are promotional not directional"	Admits used for branding yet unlimited allowed





## What this Proves?

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- Ⓜ The City is not consistently applying the sign code  
“no you cant, but for you its ok.”
- Ⓜ All ZA reasons for denial are contradicted  
“I’m sorry your sign effects the beauty of Scottsdale, but this similar sign is like flowers in a garden, everyone loves flowers.”
- Ⓜ ZA bases Sign Criteria on who the applicant / speaker is  
“sorry if you were Barrett Jackson we would allow you to use signs.”
- Ⓜ There are no standard rules that are applied to everyone-  
Apparently the name on the sign greatly effects its safety issues.
- Ⓜ Zoning Official is abusing their discretion.  
Does this need further examples?



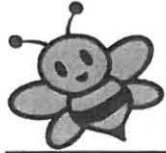


# Arbitrary and Capricious

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☞ The Zoning Administrator's denial of my sign request is arbitrary and capricious.



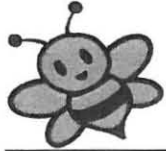


# Freedom of Speech

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⚖ Under the Zoning Administrator's decision and on its face, the Scottsdale City Code violates my free speech rights as guaranteed by the First and Fourteenth Amendments to United States Constitution as well as the free speech guarantees of Article II, Section 6 of the Arizona Constitution. The code contains unconstitutional content-based and speaker-based restrictions and create an unconstitutional prior restraint on my free speech rights.



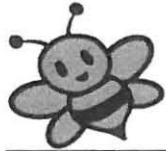


# Equal Protection

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Under the Zoning Administrator's decision and on its face, the Scottsdale City Code violates the equal protection guaranteed by the Fourteenth Amendment to the United States Constitution and Article II, Section 13 of the Arizona Constitution. The code contains unconstitutional content-based and speaker-based restrictions.





# Due Process

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Under the Zoning Administrator's decision and on its face, the Scottsdale City Code violates due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article II, Section 4 of the Arizona Constitution. The code does not contain explicit standards of application so as to prevent arbitrary and discriminatory enforcement and does not provide a person of ordinary intelligence with a reasonable opportunity to know how many signs they may use.



## WHAT IS THE DIFFERENCE?





### **Exhibit 3**





City of Scottsdale  
Board of Adjustment  
Regular Meeting

**Marked Agenda**

6:00 p.m., Wednesday, September 7, 2016  
City Hall Kiva  
3939 N. Drinkwater Blvd

**CALL TO ORDER – 6:00 p.m.**

**ROLL CALL – Board Member Martinez absent. All others present.**

**APPROVAL OF MINUTES**

1. Review and possible approval of July 13, 2016 Board of Adjustment Special Meeting Minutes  
– Board Member Donahoe made a motion to approve Special Meeting Minutes of July 13, 2016. Vice Chair Garry seconded the motion, which carried 6-0.

**REGULAR AGENDA**

2. 10-BA-2016 (70th & Earll Townhomes Variances),  
Request by owner for variances to the City of Scottsdale Zoning Ordinance, Section 5.704.B.2 pertaining to the restriction in building height to one (1) story adjacent to a single-family residential district, and Section 5.704.D.1 pertaining to relief from the building setback abutting a R-1 district, for a property located at 3106 N. 70th Street with Medium Density Residential (R-3) zoning.  
Located at 3106 N 70Th Street  
Steven Bruckal, applicant, Bonnie Griffing, owner  
Ben Moriarity, coordinator  
– Board Member Donahoe made a motion to deny variance of Section 5.704.B.2. Board Member Adli seconded the motion, which carried 6-0.  
– Board Member Donahoe made a motion to deny variance of Section 5.704.D.1. Vice Chair Garry seconded the motion, which carried 5-1 with Board Member Belknap dissenting.



3. 11-BA-2016 (Behar Residence),

Request by owner for variances to the City of Scottsdale Zoning Ordinance, Section 5.204.E.1.a and Section 5.204.E.1.c, pertaining to relief from the front yard setback for a property located at 8011 E. Larkspur Drive with Single-family Residential (R1-35) zoning.

Located at 8011 E Larkspur Drive

Tyler Green, applicant, Ben Middlemiss & Mary Behar, owner

Ben Moriarity, coordinator

**– Vice Chair Garry made a motion to deny the variance. Board Member Mona seconded the motion, which carried 6-0.**

4. 9-BA-2016 (Green Bee Produce ZA Appeal)

Request by applicant for an Appeal of Zoning Administrator's written decision dated June 30, 2016 regarding special event signage for Green Bee Produce, a temporary mobile farmer's market.

Located at 16116 N. McDowell Mountain Ranch Rd.

Green Bee Produce, applicant Aaron Shearer

Cheryl Sumners, Coordinator

**Motion for jurisdiction by Vice Chair Garry; 2<sup>nd</sup> by Board Member Belknap. Motion approved 6-0.**

**Motion to affirm by Board Member Adli; 2<sup>nd</sup> by Donahoe. Motion carried 5-1 with Vice Chair Garry dissenting.**

**ADJOURNMENT-8:35 PM**

**Board of Adjustment consists of:**

Matt Metz, Chair

Paul Garry, Vice Chair

Alper Adli, Board Member

Gary Donahoe, Board Member

Dana Belknap, Board Member

Sergio Martinez, Board Member

Greg Mona, Board Member



Persons with a disability may request a reasonable accommodation such as a sign language interpreter, by contacting Casey Steinke at 480-312-2611. Requests should be made as early as possible to allow time to arrange accommodations. For TTY users, the Arizona relay service (1-800-367-8939) may contact Casey Steinke at 480-312-2611.