

The Yuma County Planning and Zoning Subcommittee met in a regular session on June 14, 2018. The meeting was held in the Aldrich Hall at 2351 West 26th Street, Yuma, Arizona.

CALL TO ORDER: At 2:30 p.m. Maggie Castro, Planning Director convened the Planning and Zoning Subcommittee meeting. Members present were: Maggie Castro, Planning Director; Barry Olsen, Attorney, public representative; Danny Bryant, PZ Commission Member; and Ron Rice, PZ Commission Member. Members absent were: Wayne Eide, PZ Commission Member. Others present were DDS Director Craig Sellers, Chief Building and Fire Code Official Pat Headington; Deputy County Attorney Ed Feheley; and Office Specialist III Amber Jardine.

MOTION (OLSEN\RICE): Designate Maggie Castro to sign the minutes for the PZ Subcommittee.

The motion carried 4-0.

ITEM No. 2: Approval of the Planning and Zoning Subcommittee regular meeting minutes of May 24, 2018.

MOTION (BRYANT\RICE): Approve as presented.

The motion carried 4-0.

VOICE VOTE: Castro-AYE; Olsen- AYE; Bryant-AYE; Rice-AYE.

ITEM No. 3: Permits Process

Mr. Sellers began the discussion by giving each subcommittee member a copy of the draft comprehensive permitting process and enforcement policy and reviewed the content. Mr. Sellers reviewed a listing of the major tasks that the Development Services perform. The attachment showed the overall processes of the department and identified areas that are needing input from board and commission.

The following concerns were discussed;

Yuma County appeals process

Mr. Rice stated the Department or any other organization shouldn't have the authority to appeal a Superior Court action. An opposing party can appeal, but the organization should not have that authority. Mr. Rice stated the authority for Yuma County to appeal a case should be taken out of policy and suggested that the Board of Supervisors limit how far the appealing process can go.

Mr. Bryant stated he cannot find in state statute where authority is given to the Planning Director to appeal a Board of Supervisors decision. Mr. Bryant stated the public court's decision affirmed the Superior Courts decision. In reference to the Valenzuela case.

Mr. Olsen stated there is a disagreement with County staff and the County Attorney and members of this committee as to what the court of appeals decided.

Mr. Rice, Mr. Olsen and Mr. Bryant would like the minutes to reflect that the Court of Appeals affirmed the Superior Court. They also recommend that the Zoning Ordinance state that appeals to the supervisors can be appealed to Superior Court by the property owner.

Mr. Sellers clarified the document that is being presented is not the department's policy. He explained it is a list of talking points and a background of the policy. The purpose of the attachment is to provide the subcommittee the ability to review our processes and to give any feedback. The department can then focus on the main concerns.

Mr. Olsen stated the documents that were reviewed gives the committee an idea about policies and procedures so they can identify the problems that the committee was put together to address. Mr. Olsen stated the committee is to identify areas in the Zoning Ordinance, policy and procedures from the public sector that need improvements or direction as to how the problems can be solved.

Interpretation of public health and safety; lack of building permits

Mr. Bryant discussed the interpretation of what is a public health and safety issue. Whether or not an absence of a permit in and of itself is a health and public safety issue. Mr. Bryant referred to Judge Kenworthy's decision which stated that the lack of a permit in itself was not a public health and safety violation and his ruling was affirmed.

Mr. Olsen disagrees that state statute states that a lack of a permit is a public health and safety violation.

Mr. Rice, Mr. Olsen and Mr. Bryant all recommend the Zoning Ordinance state the absence of the building permit is not a health and safety issue.

Mr. Headington responded the department has invited realtors and has provided two presentations to help them try to determine what is on a permit and how to read permits.

Unpermitted structures and permitting process

Mr. Bryant stated the county records are not complete. If the county cannot find a permit, it should not mean the person is automatically guilty. Mr. Bryant inquired about courtesy inspections and reducing fees.

Mr. Rice stated if a permit cannot be found then it is the county's fault for not finding permits. If the structure is sound without problems, then the County should not state it is a safety issue. Mr. Rice suggests to perform an inspection and not find them in violation. He also suggested to retro activate permits.

Mr. Sellers informed subcommittee members the department moved to electronic permitting around 1997. Records from then on are complete and have some sort of electronic trail. Staff research thoroughly prior to determining if there is a permit or not. Mr. Sellers explained due to discussions of concern focusing on structures such as awnings, sheds and etc. the department has taken the following approach; if the structure is not connected to the proposed structure then staff is not holding any permits. Staff is advising the applicant that a permit for an existing structure is not found and giving the option to include it on the permit for the proposed structure. Mr. Sellers then explained the fee schedule is not set up to where staff can reduce fees. Reducing or waiving fees would be a way to get a courtesy review.

Mr. Bryant then stated the next determination would be which Building Code to adhere to. Mr. Bryant stated the Building Code Official would determine whether a structure was built without an engineer and if it would require a permit. Mr. Bryant expressed there is an opportunity to interpret the code for the best interest of Yuma County.

Mr. Sellers explained it would be the Board of Supervisors' decision to expose Yuma County to that liability. He explained the liability Yuma County staff have if they conduct an engineering inspection.

Mr. Olsen stated the county's function isn't to determine if the structure is sound, but to determine the structure is to code. He explained there is only one structural engineer and he is swamped. Clients are having a problem getting a structural engineer.

Mr. Headington agreed having an engineer, re-engineer or back engineer a structure that is existing is cumbersome and expensive. Mr. Headington explained committee members mention awnings and sheds when addressing the lack of a permit is not a public health and safety issue. He brought up a two story church that was built out of metal without a permit as an example. He questioned if that qualified as a public health and safety issue. Mr. Headington stated the word "building", a word that is being considered in the amendment to the Zoning Ordinance, is all inclusive regardless of use, occupancy and hazards involved. Mr. Headington expressed the importance of ensuring the right solution is being presented.

Mr. Olsen stated a two story metal building with that type of occupancy compared to the carport/awning with aluminum frame is much more severe. Mr. Olsen provided an example of an Avon lady inviting the public to her home should be held to a business type standard verses a person working from home not inviting the public.

Mr. Bryant stated the metal building is public, but someone's carport or awning is private. Mr. Bryant stated home-based businesses will have minimal traffic and would require some higher level of private property residence, but shouldn't go to a commercial level. Mr. Bryant gave an example of a barber that is cutting hair from home and the county finds he has an unpermitted patio cover from 1970.

Mr. Headington explained state statutes allow home businesses and that becomes public health and safety.

Maggie Castro agreed with the statement Mr. Headington made and stated changes in state law specifically for home occupations where limited retail and manufacturing is allowed in residential zoning districts only for home occupations. Maggie Castro stated parameters need to be defined.

Mr. Olsen suggested beginning with the question of private or public; private and public would be handled in different ways.

Mr. Rice disagrees with the county automatically claiming it to be a public health and safety issue.

Maggie Castro responded that the basis of the Zoning Ordinance is public health, safety and welfare and foundation of building codes.

Mr. Sellers stated he is focusing on receiving guidance of what is a public health and safety issue. The definition may be different depending on private, occupancy, large business, small business and etc. Mr. Sellers stated the building code and fire code address these issues. However, there is ground to develop a scale based on the intensity of the use.

Mr. Bryant agrees with setting levels of enforcement depending on the intensity of the use. Mr. Bryant reiterated that residents are not applying for permits due to existing structures on their property that are not permitted.

Maggie Castro handed out and reviewed the change to the policy of unpermitted structures.

Mr. Rice stated he concurs with the new unpermitted structure policy, but suggested adding a way of relief. Mr. Rice stated the staff should have the authority to issue permits. Mr. Rice would like the Board to give options or directions to issue permits over and above what staff is doing now.

Maggie Castro responded that the reviewing staff do not have the authority to finalize a permit, but to review. Maggie Castro explained the adopted code that states proposed work has to comply with the ordinance and building codes. She clarified that if the existing structure is attached to the proposed work, it is considered one structure.

Mr. Sellers clarified that the department is not telling staff they can't issue permits, but instead working with the applicant.

Mr. Olsen stated the purpose of the PZ subcommittee is to review what staff is proposing and give recommendations. Mr. Olsen recommended starting with is it private or public and work through that way.

Anonymous Complaints

Mr. Bryant stated complaints should not be anonymous and Mr. Rice agrees anonymous complaints should not be investigated.

Maggie Castro stated that direction will need to be received from the Board about responding to anonymous complaints. Maggie Castro explained the changes to the policy on investigating complaints in the 90s to mid-2000s and what the policy is now.

Mr. Bryant and Mr. Headington discussed fire ratings for steel poles and referred to the residential code.

Mr. Olsen stated he understands staff and committee member's ideas and concerns. The main concern is a lack of a permit and permit process. He suggests the starting point is determining whether it is private or public. Mr. Olsen also suggested outlining public health and safety.

Maggie Castro recommended that Mr. Olsen provide staff with comments prior to next meeting.

Mr. Sellers concluded the meeting advising subcommittee members to communicate any issues that arise to him.

The Planning and Zoning Subcommittee will hold its next meeting on July 26, 2018 at 2:30 PM.

There being no further business to come before the Planning and Zoning Subcommittee, the meeting was adjourned at 3:41 p.m.

Approved and accepted on this 26th day of July 2018.



Maggie Castro, AICP, Planning Director