



Yuma County, Arizona
DEPARTMENT OF DEVELOPMENT SERVICES

2351 W. 26th Street, Yuma, Arizona 85364

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Craig L. Sellers, P.E., CPM
Director

YUMA COUNTY PLANNING AND ZONING SUBCOMMITTEE MEETING
PUBLIC NOTICE AND AGENDA

DATE: September 27, 2018
TIME: 2:30 p.m.
PLACE: Yuma County Department of Development Services, Aldrich Auditorium
2351 W. 26th Street, Yuma, Arizona

MEMBERS: Maggie Castro, AICP, Planning Director Barry Olsen
Ron Rice Wayne Eide
Danny Bryant

STAFF: Craig Sellers, Director of Development Services
Pat Headington, Chief Building/Fire Code Official
Kimberly Grable, Executive Assistant
Regina Collins, Hearing Officer Specialist

ADVISORS: Amanda Mahon, Yuma County Attorney II

1. Call to Order and Roll Call
2. Approval of Minutes – Regular Meeting of July 26, 2018 **Action**
3. Discussion concerning possible text amendments to the Yuma County Zoning Ordinance, Section 306.03—Certificate of Exemption, Section 309.00, Section 401.01—Application for Amendment or Change, Section 1201.00—Permits, Section 1201.01—Zoning Inspector, Arizona Revised Statutes, Title 11, Chapter 6, Article 2, Permits, Section 1208.00—Withholding of Permits, Section 1209.01—Commencement of Action and Notice of Hearing..... **Action**

ADJOURN

NOTE: For further information about this public hearing/meeting, please contact Maggie Castro, AICP, Planning Director, phone number (928) 817-5173; or e-mail contactdds@yumacountyaz.gov or TDD/TTY (Arizona Relay Service): call in 1-800-367-8939, call back 1-800-842-4681. Individuals with special accessibility needs should contact the individual indicated above before the hearing/meeting with special need requirements.

AGENDA ITEM 2

The Yuma County Planning and Zoning Subcommittee met in a regular session on July 27, 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; and Danny Bryant, PZ Commission Member. Members absent were: Ron Rice, PZ Commission Member; and Wayne Eide, PZ Commission Member. Others present were DDS Director Craig Sellers, Chief Building and Fire Code Official Pat Headington; and PZ Commission Specialist Amber Jardine.

ITEM No. 2: Approval of the Planning and Zoning Subcommittee regular meeting minutes of June 14, 2018.

MOTION (BRYANT/OLSEN): Approve as presented.

ROLL CALL VOTE: Bryant - AYE; Olsen - AYE; Castro – AYE. The motion carried 3-0.

ITEM No. 3: Permits Process (*continued from June 14, 2018 meeting*)

Barry Olsen began the discussion with handing out a proposal of language to the following sections in the Zoning Ordinance; 306.03, 404.01, 1201.00, 1201.01, 1208.00 and 1209.01. He explained the bold wording represents what he added to the Zoning Ordinance and strikethroughs are what he took out of the Zoning Ordinance.

Maggie Castro informed Subcommittee Members that section 309 in the Zoning Ordinance also refers to permits. She read section 309 from the Zoning Ordinance to the Subcommittee Members.

Barry Olsen reviewed the following;

Section 1201.00 – Permits

Barry Olsen explained the changes he made in Section 1201.00(D) in the Zoning Ordinance (see attachment "A").

Danny Bryant handed out copies of the Superior Court Order and the Arizona Court of Appeals decision in reference to Case No. S1400CV2015-00951, Yuma County V. Mario and Rosa Valenzuela. Mr. Bryant questioned staffs interpretation of the documents (see attachment "B" and "C").

Maggie Castro replied staff was given direction from legal counsel in regards to the Arizona Court of Appeals decision.

Discussion on the proposed addition to Section 1201.00 "The lack of building permit/s does not by itself constitute a threat to public health and safety".

Maggie Castro informed Subcommittee Members on April 23, 2018 a proposal on what changes ought to be made to the Zoning Enforcement provisions of the Yuma County Zoning Ordinance was presented to the Planning and Zoning Commission along with Staff's recommendation. She explained the Planning and Zoning Commission did not initiate the proposed changes. Maggie Castro stated she will do the same with the proposed changes suggested by Mr. Olsen, along with staff recommendations to the Planning and Zoning Commission.

Pat Headington advised Subcommittee Members that the County will have a greater burden when determining code compliance for structures; and the County would need to obtain a court order for inspections if the proposed language is approved.

Danny Bryant questioned the process of the Hearing Officer, stating the defendant is guilty until proven innocent. He stated the government serves the public.

Craig Sellers reassured the process is not guilty until proven innocent. He explained the department has twenty years of electronic trail along with staff that thoroughly researches prior to determining if there is a permit or not.

Maggie Castro stated that staff enforce and implement regulatory documents and planning documents that are adopted by the Board of Supervisors.

Danny Bryant stated staff interpret the Zoning Ordinance differently than the staff in the past.

Section 1201.01- Zoning Inspector

Barry Olsen reviewed the proposed changes and additions he made for Section 1201.01 (see attachment "A").

Maggie Castro informed Subcommittee Members that the strikethrough in Section 1201.01 is required by State Law (see attachment "A").

Barry Olsen stated he understands letter "B" of the proposed addition to the Zoning Ordinance in Section 1201.01 is already implemented by staff. However, the public is unaware of this implementation and suggests for it to be in the Zoning Ordinance (see attachment "A")

Barry Olsen discussed Section 1201.01 Permits and Section 1205 Planning and Zoning in regards to maintaining unpermitted structures. He explained the building permit statute is different than the land use statute. The land use statute refers to maintaining unpermitted structures and is broader than the permit statute which refers to not having a permit.

Pat Headington replied that Arizona Revised Statutes 11-861 authorizes the Board of Supervisors to adopt the building code. Chapter one includes a violation of maintaining an unpermitted structure, similar to the language used in the Zoning Ordinance Section 1205.

Craig Sellers explained the process of denying permits are based on state laws.

Maggie Castro further explained that applicants receive correction letters with listed citations prior to the denial letter.

Barry Olsen inquired about appeal rights for denied permits.

Pat Headington answered an appeal to the permitting process can be made to the Director. He stated an appeal to the interpretation of the Building Code can be made to the Building Code Advisory Board.

Barry Olsen discussed determining what is a public health and safety violation.

Maggie stated Deputy Zoning Inspectors are complaint driven only.

Barry Olsen discussed the option of the County becoming complaint and staff driven when citing zoning violations.

Maggie Castro and Craig Sellers discussed the presentation that Mr. Sellers will be taking to the Board of Supervisors. The presentation will indicate the different options for citing zoning violations along with the pros and cons for each process.

Discussion on criteria for what is a public health and safety violation resulted in the Subcommittee proposing language to the Planning and Zoning Commission.

Section 1208.00- Withholding of Permits

Barry Olsen inquired about the meaning of Section 1208.00 and suggested the removal of Section 1208.00 from the Zoning Ordinance. He stated he could not find a state statute that supports Section 1208.00 (see attachment "A")

Maggie Castro answered that staff enforces this section when a permit is submitted for a structure with unpermitted structures attached. She stated she will speak to the Deputy County Attorney in regards to Section 1208.00.

Section 1209.01- Commencement of Action and Notice of Hearing

Barry Olsen reviewed the proposed additions to Section 1209.01 (see attachment "A"). He explained the public's frustration with anonymous complaints and later discussed his proposed addition to the appeals process.

Craig Sellers stated per legal the release of the anonymous complaint requires the case to be heard at the Superior Court. He clarified that the complainants' name would only be released if a person discloses their name and a public records request is submitted.

Discussion on structures requiring exempt permits to be placed on the Assessor's tax rolls.

Maggie Castro explained the County follows the same process when receiving a complaint whether the complaint is anonymous or not.

Pat Headington gave an example of some reasons why complainants choose to be anonymous.

The Subcommittee suggested implementing the staff to cite violations as they see them in their normal course of duty to resolve the anonymous complaint issue.

Subcommittee Members discussed how violators that have been found guilty at the Hearing Officer pay their sanction without coming into compliance. The suggested resolution was to have the Hearing Officer impose daily civil sanctions. The Subcommittee further discussed CC&Rs and the County not enforcing them.

Barry Olsen suggested appointing an attorney that is familiar with due process as the Hearing Officer. He explained the dilemma with appointing an ex-employee.

Craig Sellers stated the Hearing Officer is appointed by the Board per State Statute.

The Subcommittee discussed the County's appeal process leaving the decision to be made by the Planning and Zoning Commissioners at the public hearing.

Discussion about requirements for fire rating steel posts. Pat Headington stated there is a five foot side yard setback that is required, if it is between three feet and five feet it has to have a one hour rating.

Section 306.03- Certificate of Exemption

Barry Olsen inquired about the Zoning Ordinance stating a certificate of exemption is required for commercial or Agriculture however, the state law states it is exempt (see attachment "A").

Maggie Castro answered Section 306.03 was pre-empted by state law so it is not required. She stated this section can be taken out with the proposed amendments.

Section 404.01- Application for Amendment or Change

Barry Olsen reviewed his proposed addition to Section 404.01 (see attachment "A"). Mr. Olsen discussed the three hundred feet notices that are mailed to property owners. He questioned the reasoning behind staff occasionally sending notices beyond three hundred feet to property owners.

Maggie Castro clarified that state statute requires a minimum of three hundred feet notice to property owners. She explained some projects impact property owners beyond the three hundred feet minimum requirement. She stated staff refer to a criteria list when determining extending the notification radius.

Barry Olsen suggested placing the criteria list, which is an internal policy, into the Zoning Ordinance.

Craig Sellers suggested referring to the criteria list in the Zoning Ordinance.

Maggie explained the Zoning Ordinance does not include any requirement of notifying property owners, the requirement comes from State Statute.

Pat Headington inquired about publishing internal policies and procedures online for the public's access.

Craig Sellers explained the importance of evaluating the proposed amendments to ensure it will accomplish the intention and not create an opposite effect.

Maggie Castro asked Mr. Olsen to send her an electronic copy of the proposed changes by the end of August and she will reconfigure it to the County's format which is used when requesting amendments to the Zoning Ordinance. She stated next meeting she will provide the criteria list that is used to identify the notification areas. She stated she will speak with the Deputy County Attorney in regards to Section 1208.00 - Withholding of Permits.

Subcommittee Members set a future meeting date of September 27th 2018 to further discuss the proposed changes.

There being no further business to come before the Planning and Zoning Subcommittee the meeting was adjourned at 4:30 p.m.

Approved and accepted on this 27th day of September 2018.

Maggie Castro, AICP, Planning Director

DRAFT

~~306.03--Certificate of Exemption~~

~~This Ordinance shall not prevent, restrict or otherwise regulate the use or occupation of land or improvements for railroad, mining, metallurgical, grazing, or general agricultural purposes if the tract concerned is five (5) or more contiguous commercial acres. However, property is not considered exempt from the Yuma County Zoning Ordinance or Yuma County Comprehensive Building Safety Code unless and until the Yuma County Planning & Zoning Division has issued a Certificate of Exemption for that property. To secure a certificate of exemption, an applicant shall submit a Zoning Clearance Application, including site plans and other supporting documentation. Only property classified by the Yuma County Assessor's Office or the Arizona Department of Revenue as property used for one of the purposes cited in the first paragraph of this section is eligible for exemption under this section. If property that has been so classified is five (5) or more contiguous commercial acres, and is used for an exempted use, the property shall be exempted from the Yuma County Zoning Ordinance and/or Comprehensive Building Safety Code, unless the Planning Director determines that all or part of the property is not used primarily for one (1) or more of the purposes listed in the first paragraph of this section. Any structures built under an exemption that do not meet the underlying zoning district and/or building safety standards may be required to comply with said standards if, at a future date, the exemption is no longer applicable. If the Planning Director finds that all or part of the property is not used primarily for agricultural purposes as identified in this section, the property will no longer be exempt and shall be subject to the requirements of this ordinance. Any structures built under an exemption that do not meet the underlying zoning district and/or building safety standards may be required to comply with said standards if the exemption is no longer applicable.~~

[Commercial and Ag. Exemptions are per State Law and pre-empted. What authority does County have for requiring a Certificate of Exemption? How does the County enforce this based upon State law?]

~~404.01--Application for Amendment or Change~~

~~...~~

~~F. Notice of Rezoning Application Acceptance. The Department of Development Services Planning Staff shall provide notice of the application's acceptance. The notice shall briefly summarize the nature of the proposed amendment, invite interested persons to review the application at the Department of Development Services and submit written or oral comments on the application. **[For rezoning cases governed by A.R.S. 11-814(D), the Department of Development Services shall only mail notices to property owners within three hundred feet of the proposed rezoning.]**~~

~~Section 1201.00--Permits~~

~~Assessor, Arizona Revised Statutes, Title 11, Chapter 2, Article 9, Permits~~

~~D. If a person has constructed a building or an addition to a building without obtaining a building permit, a county shall not require a subsequent owner to obtain a permit for the construction or addition done by the prior owner before issuing a permit for a building addition, except that~~

nothing in this section shall be construed as prohibiting the enforcement of an applicable ordinance or code provision which [materially threatens] affects the public health or safety. The lack of building permit/s does not by itself constitute a threat to public health or safety.

1201.01--Zoning Inspector, Arizona Revised Statutes, Title 11, Chapter 6, Article 2, Permits

It is unlawful to erect, construct, reconstruct, alter or change the use of any building or other structure within a zoning district covered by the ordinance without first obtaining a building permit from the inspector and, for that purpose, the applicant shall provide the zoning inspector with a sketch of the proposed construction containing sufficient information for the enforcement of the zoning ordinance. ~~No permit shall be required for repairs or improvements of a value not exceeding five hundred (500) dollars.~~ The inspector shall issue the permit when it appears that the proposed erection, construction, reconstruction, alteration or use fully conforms to the zoning ordinance. In any other case, the inspector shall withhold the permit [except as follows]:-

A. No permit shall be required for repairs or improvements of a value not exceeding five hundred (500) dollars.

B. The work does not involve an unpermitted detached structure, which is 3, or more, feet from the structure subject to the permit.

C. The work does not involve prior work on the same structure by a prior owner and such work does not materially affect public health and safety.

D. For any work done prior to 1998 where the County is unable to locate a permit, the presumption shall be such work was originally permitted by the County, unless the County can establish otherwise.

The zoning inspector's denial of any permit shall include specific citations to the provisions of the zoning ordinance, building codes or other codes supporting the zoning inspector's denial of the permit and references to the submitted plans, when applicable.

Any person denied a building permit, may appeal the zoning inspector's denial to the Yuma County Building Code Advisory Board for review. [The decision of the Yuma County Building Code Advisory Board shall be a final decision of the County. Judicial review of the final decisions of the Yuma County Building Code Advisory Board shall be pursuant to title 12, chapter 7, article 6.]

Section 1208.00--Withholding of Permits

It shall be unlawful to knowingly petition for and/or obtain any permit which conflicts with or violates the provisions of any federal, state, county or local statute, ordinance, rule or regulation relating to, but not limited to health regulations or sanitary and wastewater facilities, fire, building, plumbing, electrical, mechanical codes; and drainage, Flood plain, or right-of-way encroachments regulations.

To provide for the enforcement of this section, the county shall withhold any permit for properties upon which a use of the property, building or any other structure does not meet the standards expressed in this section.

[What is the purpose of this Section? How does owner “knowingly” file or obtain a permit in violation of cited provisions? This should be deleted as it not consistent with the other provisions of the Zoning Ordinance.]

1209.01--Commencement of Action and Notice of Hearing

A. Every action brought before the Hearing Officer for any violation of the Yuma County Zoning Ordinance shall be initiated by a complaint with the Hearing Officer by the Zoning Inspector. **[A complaint shall only be initiated upon: i) a signed written complaint submitted to the Zoning Inspector by a member of the public, identifying the complete name of such person and the alleged violation is independently verified by the Zoning Inspector; or ii) the Zoning Inspector’s own discovery and verification of visual of Zoning Ordinance violations constituting a material threat to public health and safety.]** Whenever the Zoning Inspector files a complaint with the Hearing Officer, a hearing shall be held after serving notice of the hearing on the alleged violator.

B. Notice of the hearing and a copy of the complaint **[together with a complete copy of the County’s file substantiating the complaint]** shall be personally served on the alleged violator at least five (5) days prior to the hearing. Service of the Notice shall be affected by delivering a copy of the notice and of the complaint to that individual personally or by leaving copies thereof at that individual’s dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

...

J. Any appeal arising from a decision of the Board of Supervisors shall be to the Superior Court of the State of Arizona. **[The County’s appeal of the Board of Supervisor’s decision shall require the Board of Supervisor’s express authorization for an appeal.]**

MISCELLANEOUS

Engineered plans for pre-fabricated structures shall not be required for structures less than _____ square feet in size, where the manufacturer has provided plans and specifications for such structures.

1 Barry L. Olsen, Bar No. 015226
2 LAW OFFICES OF LARRY W. SUCIU, PLC
3 101 E. Second Street
4 Yuma, Arizona 85364
5 Telephone: (928) 783-6887 Fax: (928) 783-7086
6 holson@lwslaw.net

FILED
2016 JUL 27 PM 5:02
CLERK OF SUPERIOR COURT
YUMA ARIZONA 85364

Attorneys for Defendants/Appellees

7
8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF YUMA**

10
11 YUMA COUNTY,

Case No. S1400CV2015-00951

12 Plaintiff/Appellant,

Div. No. III

ORDER

13
14
15 v.

16 MARIO and ROSA VALENZUELA,
17 et.ux.,

18 Defendants/Appellees.

19 This action is an appeal of an administrative decision of the Yuma County
20 Board of Supervisors governed by A.R.S. § 12-901, et.seq. The Court having
21 reviewed Plaintiff's/Appellant's Opening Brief, Defendants'/Appellees'
22 Answering/Response Brief, the record on review and consideration of the oral
23 argument of the parties on June 20, 2016 finds the following undisputed facts are
24 material to the appeal.
25
26
27
28

Law Offices of Larry W. Suciú, PLC
101 E. Second Street
Yuma, Arizona 85364
Tel: (928) 783-6887 Fax: (928) 783-7086

- 1 2. In 2013, Defendants/Appellees purchased Yuma County Assessor's
2 Parcel No. 754-63-002 (the "Property") which included a 500 ft² metal structure/
3 building.
4
- 5 2. The metal structure/building was constructed without any building
6 permit/s issued by Yuma County.
7
- 8 3. Defendants/Appellees purchased the Property without any knowledge
9 of the lack of a building permit for the metal structure/building.
10
- 11 4. In 2014, Defendants/Appellees applied for a building permit for the
12 Property to add a structure for detached bathrooms.
13
- 14 5. During Yuma County's review of the detached bathroom structure
15 permits, the County's Building Safety Division determined the metal structure/
16 building lacked building permits.
17
- 18 6. The matter was referred to the County's Zoning Inspector, who sent
19 letters to Defendants/Appellees on July 25, 2014 and September 23, 2014,
20 requesting compliance with the County's Building Code Permit Requirements.
21
- 22 7. On December 18, 2015, the County filed complaint 14-H-0011
23 against Defendants/Appellees with the County's Zoning Enforcement Hearing
24 Office.
25
- 26 8. The single allegation in the complaint was a violation of Section
27 1201.02 of the Yuma County Zoning Ordinance, which provides:
28

1 It is unlawful to perform any work without the required permits under
2 the provisions of the Building, Fire, Mechanical, Electrical and/or
3 Plumbing Codes adopted by the Yuma County Board of Supervisors.

4 9. On February 5, 2015, the County's Hearing Officer conducted a
5 hearing and imposed a \$250.00 fine, but allowed for a fine reduction if the
6 violation was brought into compliance.

7
8 10. Defendants/Appellees then obtained a re-hearing of the matter on
9 August 6, 2015 at which time Defendants/Appellees asserted that A.R.S. § 11-
10 321(E) was a defense to the complaint.

11
12 11. At the August 6, 2015 hearing, the County's Chief Building Official,
13 Patrick Headington, testified he had only seen the Defendants'/Appellees' Property
14 from the street, but had never inspected the Defendants'/Appellees' Property to
15 determine if there was any health or safety issue with the metal structure/building.

16
17 12. The Hearing Officer found Defendants/Appellees "in violation of the
18 Zoning Ordinance as alleged in the Complaint," and made the finding that "Permits
19 are required by A.R.S. § 11-861 and therefore are related to health and safety."
20

21 13. Defendants/Appellees appealed the County Hearing Officer's
22 determination to the Board of Supervisors.

23
24 14. The Board of Supervisors reversed the County Hearing Officer's
25 decision.
26

27 BASED UPON THE COURT'S REVIEW AND CONSIDERATION OF
28

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1 THE UNDISPUTED FACTS AND THE LEGAL POSITIONS OF THE PARTIES
2 THE COURT ORDERS AND DECREES AS FOLLOWS:
3

4 A. That the lack of building permit/s does not by itself constitute a public
5 health or safety violation pursuant to A.R.S. § 11-321(E);
6

7 B. That pursuant to A.R.S. § 11-321(E), in the absence of any actual
8 public health or safety violation Defendants/Appellees are exempt from obtaining a
9 building permit for the 500 ft² metal structure/building, which they did not
10 construct;
11

12 C. That furthermore, Defendants/Appellees did not unlawfully perform
13 any work on the 500 ft² metal structure/building in violation of Section 1201.02 of
14 the Yuma County Zoning Ordinance; and
15

16 D. The Court pursuant to A.R.S. § 12-911 affirms the Yuma County
17 Board of Supervisors' decision reversing the Yuma County Zoning Hearing
18 Officer's decision.
19

20 DATED this 26th day of July, 2016.

LARRY KENWORTHY

Honorable Lawrence C. Kenworthy
Judge of the Superior Court

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

YUMA COUNTY, *Plaintiff/Appellant*,

v.

MARIO and ROSA VALENZUELA, et al., *Defendants/Appellees*.

No. 1 CA-CV 16-0535
FILED 12-28-2017

Appeal from the Superior Court in Yuma County
No. S1400CV201500951
The Honorable Lawrence C. Kenworthy, Judge

AFFIRMED

COUNSEL

Yuma County Attorney's Office, Yuma
By Edward P. Feheley
Counsel for Plaintiff/Appellant

Law Offices of Larry W. Suciu, PLC, Yuma
By Barry L. Olsen
Counsel for Defendants/Appellees

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MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge James P. Beene and Judge Randall M. Howe joined.

CATTANI, Judge:

¶1 Yuma County appeals from the superior court's ruling affirming the Yuma County Board of Supervisors' decision reversing a zoning enforcement hearing officer's order finding that Mario and Rosa Valenzuela had violated a zoning ordinance. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 The Valenzuelas purchased a residential property south of Yuma in 2013. At the time of the purchase, there was a residence as well as a large metal accessory structure on the property.

¶3 In mid-2014, the Valenzuelas applied for a building permit to construct detached bathrooms outside the residence. The County issued a building permit for the detached bathrooms, but a zoning inspector discovered no permits on file for the metal building. The County then sent the Valenzuelas a notice stating that they were required to obtain permits for the structure or remove it.

¶4 The Valenzuelas did not obtain permits or remove the metal building, and the County filed a single-count complaint alleging the Valenzuelas had violated Yuma County Zoning Ordinance ("Zoning Ordinance") § 1201.02, which provides that performing work without permits required under the county's building and related codes is unlawful. A zoning enforcement hearing officer found a violation as alleged and imposed a \$250 civil sanction, subject to review should the violation be remedied. The Valenzuelas moved for reconsideration, urging that as subsequent owners who had simply inherited a prior owner's unpermitted construction, they were exempt from obtaining a building permit for the metal structure unless it presented an actual public health or safety issue. See Ariz. Rev. Stat. ("A.R.S.") § 11-321(E). The hearing officer denied reconsideration and reaffirmed the violation, reasoning that § 11-321(E) did not support an exemption because permits required by the county's

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building (and related electrical, plumbing, etc.) codes necessarily related to health and safety.

¶5 The Valenzuelas appealed to the Yuma County Board of Supervisors, which reversed the hearing officer's decision by a 3-1 vote. The County then filed a complaint for judicial review challenging the Board of Supervisors' decision, see A.R.S. §§ 11-815(G), 12-901 to -914, and the superior court affirmed. The court reasoned that (1) the lack of a building permit was not in and of itself a public health or safety issue, so under A.R.S. § 11-321(E) the Valenzuelas were exempt from obtaining a building permit for the unpermitted metal building constructed by the prior owner and (2) in any event, the Valenzuelas had never unlawfully performed any work on the metal building in violation of Zoning Ordinance § 1201.02.

¶6 The County timely appealed, and we have jurisdiction under A.R.S. § 12-913. See *Svendsen v. Ariz. Dep't of Transp.*, 234 Ariz. 528, 533, ¶ 13 (App. 2014).

DISCUSSION

¶7 The superior court must affirm a board of supervisors' zoning enforcement decision unless the decision "is contrary to law, is not supported by substantial evidence, is arbitrary and capricious or is an abuse of discretion." A.R.S. § 12-910(E); see also A.R.S. § 11-815(G); *Horne v. Polk*, 242 Ariz. 226, 230, ¶ 13 (2017). On appeal, this court independently reviews the record to determine whether a preponderance of the evidence supports the judgment. *Parsons v. Ariz. Dep't of Health Servs.*, 242 Ariz. 320, 322, ¶ 10 (App. 2017). We review legal determinations de novo. *McGovern v. Ariz. Health Care Cost Containment Sys. Admin.*, 241 Ariz. 115, 118, ¶ 8 (App. 2016).

¶8 The County challenges the superior court's application of A.R.S. § 11-321(E) to exempt a zoning violation premised on the lack of a permit required by the building code. We need not address this issue, however, because the County never showed that the Valenzuelas committed the alleged violation.

¶9 The single count of the County's zoning enforcement complaint alleged that the Valenzuelas had "failed to obtain permits for accessory structures" on the property – the metal building – "in violation of Section 1201.02 of the Yuma County Zoning Ordinance." Zoning Ordinance § 1201.02 provides:

It is unlawful to perform any work without the required permits under the provisions of the Building, Fire, Mechanical,

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Electrical and/or Plumbing Codes adopted by the Yuma County Board of Supervisors.

(Emphasis added); *see also* Building Code of Yuma County § 105.1 (requiring a permit “to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done”); Residential Code for One- and Two-family Dwellings of Yuma County § 105.1 (same). Even assuming the Zoning Ordinance and building codes could require a permit for continued use of a structure constructed without a permit, *cf.* A.R.S. §§ 11-815(B), -861(A), the specific provision on which the County based its case only applies to someone *performing work* without a permit.

¶10 The County acknowledged that the Valenzuelas purchased the property after the metal building was constructed, and never alleged, much less proved, that the Valenzuelas had performed or directed any work on the metal building that would have required a permit. Because the only violation alleged was premised on “perform[ing] any work” without the requisite permits in violation of Zoning Ordinance § 1201.02, and absent any evidence that the Valenzuelas performed any such unpermitted work, the superior court did not err by affirming the Board of Supervisors’ decision.

CONCLUSION

¶11 The judgment is affirmed.



AMY M. WOOD • Clerk of the Court
FILED: JT

AGENDA ITEM 3



MEMORANDUM

TO: Yuma County Planning and Zoning Commission Subcommittee

FROM: Maggie Castro, AICP, Planning & Zoning Director

RE: Discussion concerning possible text amendments to the Yuma County Zoning Ordinance, Section 306.03—Certificate of Exemption, Section 309.00, Section 401.01—Application for Amendment or Change, Section 1201.00—Permits, Section 1201.01—Zoning Inspector, Arizona Revised Statutes, Title 11, Chapter 6, Article 2, Permits, Section 1208.00—Withholding of Permits, Section 1209.01—Commencement of Action and Notice of Hearing

DATE: August 28, 2018

This memorandum is to propose changes to the Yuma County Zoning Ordinance, Section 306.03—Certificate of Exemption, Section 309.00, Section 401.01—Application for Amendment or Change, Section 1201.00—Permits, Section 1201.01—Zoning Inspector, Arizona Revised Statutes, Title 11, Chapter 6, Article 2, Permits, Section 1208.00—Withholding of Permits, Section 1209.01—Commencement of Action and Notice of Hearing.

The proposed changes are shown below. Text that is proposed to be deleted is in ~~strikethrough~~ format and new text is in **bold** font.

~~306.03—Certificate of Exemption~~

~~This Ordinance shall not prevent, restrict or otherwise regulate the use or occupation of land or improvements for railroad, mining, metallurgical, grazing, or general agricultural purposes if the tract concerned is five (5) or more contiguous commercial acres. However, property is not considered exempt from the Yuma County Zoning Ordinance or Yuma County Comprehensive Building Safety Code unless and until the Yuma County Planning & Zoning Division has issued a Certificate of Exemption for that property.~~

~~To secure a certificate of exemption, an applicant shall submit a Zoning Clearance Application, including site plans and other supporting documentation.~~

~~Only property classified by the Yuma County Assessor's Office or the Arizona Department of Revenue as property used for one of the purposes cited in the first paragraph of this section is eligible for exemption under this section.~~

~~If property that has been so classified is five (5) or more contiguous commercial acres, and is used for an exempted use, the property shall be exempted from the Yuma County Zoning Ordinance and/or Comprehensive Building Safety Code, unless the Planning Director determines that all or part of the property is not used primarily for one (1) or more of the purposes listed in the first paragraph of this section.~~

~~Any structures built under an exemption that do not meet the underlying zoning district and/or building safety standards may be required to comply with said standards if, at a future date, the exemption is no longer applicable.~~

~~If the Planning Director finds that all or part of the property is not used primarily for agricultural purposes as identified in this section, the property will no longer be exempt and shall be subject to the requirements of this ordinance. Any structures built under an exemption that do not meet the underlying zoning district and/or building safety standards may be required to comply with said standards if the exemption is no longer applicable.~~

Section 309.00--Permits

C. Exemptions

The following land uses shall be exempt from the permit requirements as stated in Subsections A and B above, unless the property at issue is located in a special flood hazard area, in which case these exemptions do not apply:

- ~~1. Farm uses and land primarily used for agriculture as identified in Section 202 of this ordinance.~~
2. Excavation for installation of septic tank systems under the control of Department of Development Services or grading permits issued by Yuma County Flood Control Division.
3. Fences six feet (6') or less in height designed primarily to enclose the perimeter of a lot, wholly or partially.
4. Utility structures covering a well or pump, providing the structure is used only for a covering well and pump, utility poles or structures supporting utility lines, excavation for installation of underground utilities, transformer enclosures or pad-mounted transformers, or sewage treatment plants under the control of the Arizona Department of Environmental Quality.
- ~~5. Railroad, mining, metallurgical, grazing or general agricultural purposes, if the tract concerned is five (5) or more contiguous commercial acres (Arizona Revised Statutes, Title 11, Chapter 6, Article 2).~~
- ~~6. Agricultural composting, if the tract is five (5) or more contiguous commercial acres. (Arizona Revised Statutes, Title 11, Chapter 6, Article 2).~~

D. Permits In Flood Hazard Areas

Yuma County Floodplain Regulations require a floodplain use permit for any development within Special Flood Hazard Areas as defined by Yuma County Floodplain Regulations Sec. 3.2. Requirements regarding land use permits for property located within a special flood hazard area may be obtained at the Yuma County Department of Development Services – Engineering Division. Additional information may be located under Arizona Revised Statutes, Title 48, Chapter 21, Article 1.

E. Permit Revocation

1. The Planning Director may revoke any permit or other authorization granted under this Ordinance for:
 - a. Failure to comply with the provisions of this Ordinance or the terms and conditions of the permit or authorization;
 - b. False statements or misrepresentations made in securing the permit or authorization; or, if the permit or authorization was mistakenly granted in violation of applicable State or local law.
2. Before revoking a permit or other authorization, the Planning Director shall give the holder of the permit or authorization ten (10) days written notice of intent to revoke the permit or authorization. The notice shall state the reasons for the intended revocation and state that the holder may have an informal hearing on the intended revocation before the Planning Director. On revoking a permit or other authorization, the Planning Director shall give the holder of the permit or authorization a written notice of the revocation and the reasons for it. The holder of a revoked permit or authorization may, within ninety (90) days after the revocation, submit to the Planning Director a written request to reinstate the revoked permit or authorization. On determining that the conditions justifying the revocation have been eliminated and that the development fully complies with all applicable requirements of this Ordinance, the Planning Director may reinstate the permit or authorization.
3. A copy of all correspondence to the permit holder under this Section regarding possible revocation shall be copied to the parcel or lot property owner if different from the permit holder.

F. Engineered plans for pre-fabricated structures shall not be required for structures less than ____ square feet in size, where the manufacturer has provided plans and specifications for such structures.

404.01--Application for Amendment or Change

F. Notice of Rezoning Application Acceptance

The Department of Development Services Planning Staff shall provide notice of the application's acceptance. The notice shall briefly summarize the nature of the proposed amendment, invite interested persons to review the application at the Department of Development Services and submit written or oral comments on the application. **For rezoning**

cases governed by ARS 11-814(D), the Department of Development Services shall only mail notices to property owners within three hundred feet of the proposed rezoning.

Section 1201.00--Permits

Assessor, Arizona Revised Statutes, Title 11, Chapter 2, Article 9, Permits

D. If a person has constructed a building or an addition to a building without obtaining a building permit, a county shall not require a subsequent owner to obtain a permit for the construction or addition done by the prior owner before issuing a permit for a building addition, except that nothing in this section shall be construed as prohibiting the enforcement of an applicable ordinance or code provision which ~~affects~~**materially threatens** the public health or safety. **The lack of building permits does not by itself constitute a threat to public health or safety.**

1201.01--Zoning Inspector, Arizona Revised Statutes, Title 11, Chapter 6, Article 2, Permits

It is unlawful to erect, construct, reconstruct, alter or change the use of any building or other structure within a zoning district covered by the ordinance without first obtaining a building permit from the inspector and, for that purpose, the applicant shall provide the zoning inspector with a sketch of the proposed construction containing sufficient information for the enforcement of the zoning ordinance. ~~No permit shall be required for repairs or improvements of a value not exceeding five hundred (500) dollars.~~ The inspector shall issue the permit when it appears that the proposed erection, construction, reconstruction, alteration or use fully conforms to the zoning ordinance. In any other case, the inspector shall withhold the permit, **except as follows:**

- A. No permit shall be required for repairs or improvements of a value not exceeding five hundred (500) dollars.**
- B. The work does not involve an unpermitted detached structure, which is 3, or more, feet from the structure subject to the permit.**
- C. The work does not involve prior work on the same structure by a prior owner and such work does not materially affect public health and safety.**
- D. For any work done prior to 1998 where the County is unable to locate a permit, the presumption shall be such work was originally permitted by the County, unless the County can establish otherwise.**

The zoning inspector's denial of any permit shall include specific citations to the provisions of the zoning ordinance, building codes or other codes supporting the zoning inspector's denial of the permit and references to the submitted plans, when applicable.

Any person denied a building permit, may appeal the zoning inspector's denial to the Yuma County Building Code Advisory Board for review. The decision of the Yuma County Building Code Advisory Board shall be a final decision of the County. Judicial review of the final decisions of the Yuma County Building Code Advisory Board shall be pursuant to title 12, chapter 7, article 6 of the Arizona Revised Statutes.

Section 1208.00--Withholding of Permits

~~It shall be unlawful to knowingly petition for and/or obtain any permit which conflicts with or violates the provisions of any federal, state, county or local statute, ordinance, rule or regulation relating to, but not limited to health regulations or sanitary and wastewater facilities, fire, building, plumbing, electrical, mechanical codes; and drainage, Flood plain, or right-of-way encroachments regulations.~~

~~To provide for the enforcement of this section, the county shall withhold any permit for properties upon which a use of the property, building or any other structure does not meet the standards expressed in this section.~~

It is unlawful to erect, construct, reconstruct, alter or use any building or other structure within a zoning district covered by the ordinance without first obtaining a building permit from the inspector. The inspector shall recognize the limitations placed on the inspector's authority by Arizona Revised Statutes, Chapter 6, Article 1 and Article 2, and shall issue the permit when it appears that the proposed erection, construction, reconstruction, alteration or use fully conforms to the zoning ordinance. In any other case the inspector shall withhold the permit.

1209.01--Commencement of Action and Notice of Hearing

A. Every action brought before the Hearing Officer for any violation of the Yuma County Zoning Ordinance shall be initiated by a complaint with the Hearing Officer by the Zoning Inspector. **A complaint shall only be initiated upon: i) a signed written complaint submitted to the Zoning Inspector by a member of the public, identifying the complete name of such person and the alleged violation is independently verified by the Zoning Inspector; or ii) the Zoning Inspector's own discovery and verification of visual of Zoning Ordinance violations constituting a material threat to public health and safety.** Whenever the Zoning Inspector files a complaint with the Hearing Officer, a hearing shall be held after serving notice of the hearing on the alleged violator.

B. Notice of the hearing and a copy of the complaint **together with a complete copy of the County's file substantiating the complaint** shall be personally served on the alleged violator at least five (5) days prior to the hearing. Service of the Notice shall be affected by delivering a copy of the notice and of the complaint to that individual personally or by leaving copies thereof at that individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

1209.05--Rules of Procedure

J. Any appeal arising from a decision of the Board of Supervisors shall be to the Superior Court of the State of Arizona. **The County's appeal of the Board of Supervisor's decision shall require the Board of Supervisors' express authorization for an appeal.**