

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