

**MINUTES OF THE ZONING, IMPLEMENTATION, POLICY, PROCEDURE
AND ORDINANCE REVIEW (ZIPPOR) COMMITTEE OF THE
PLANNING AND ZONING COMMISSION**

August 6, 2020
9:30 a.m.

Gotowebinar.com
Phoenix, Arizona

MEMBERS PRESENT:

Mr. Lucas Schlosser, Chairman
Mr. Greg Arnett, Vice Chairman
Mr. Nathan Andersen
Mr. Bruce Burrows
Mr. Matt Gress
Mr. Jimmy Lindblom

MEMBERS ABSENT:

Ms. Francisca Montoya
Ms. Jennifer Ruby
Mr. Robert Zamora

STAFF PRESENT:

Mr. Darren Gerard, Planning Services Manager
Ms. Rachel Applegate, Senior Planner
Ms. Rosalie Pinney, Recording Secretary

COUNTY AGENCIES:

Mr. Wayne Peck, County Attorney
Mr. David Anderson, Business Engagement Mgr., OET
Ms. Rebecca Quince, Senior Project Manager, OET

Chairman Schlosser called the meeting to order at 9:43 a.m. and made the standard announcements.

Text Amendment TA2019001

All Districts

Applicant: Commission-initiated

Request: Text Amendment - Wireless Communication Facilities

Mr. Gerard presented TA2019001 and noted the purpose of the text amendment is to eliminate the need for Conditional Use Permit for a Wireless Communication Facility that otherwise meets all zoning requirements, and bring the ordinance into compliance with federal guidelines for eligible facilities request for co-location of existing facilities. In the staff report there is revised language to Article 1202.2.8, it currently reads - *any proposed wireless communication facility that cannot meet the standard outlined in Article 1202.3 of this Ordinance shall be required to obtain a Special Use Permit approval by the Board of Supervisors. A facility that meets the standards shall be processed administratively as a Conditional Use Permit prior to obtaining construction permits. Notwithstanding the foregoing, relief from the standards may be granted with approval of a Variance pursuant to Section 303 of this Ordinance.* Mr. Gerard said it is a simple change and we are going to reword

that entire paragraph to read – *unless qualifying as an eligible facilities request under section 6409 of the Spectrum Act – as defined by 47 CFR 1.4001(b)(3) as amended – any proposed wireless communication facility that cannot meet the standard outlined in Article 1202.3 of this Ordinance shall be required to obtain a Special Use Permit approval by the Board of Supervisors. Notwithstanding the foregoing, relief from the standards may be granted with approval of a Variance pursuant to Section 303 of this Ordinance.* Mr. Gerard stated we would take article 1303.2.1 that speaks to conditional use to a wireless communication facility, and just strike that article. There is no known opposition and industry is in support. We are asking the Commission to initiate this case to be brought back at a future public hearing to discuss in detail and make recommendation to the Board of Supervisors.

Commissioner Andersen said in the past couple years we've seen quite a few of these conditional use permits for a wireless communication facility, and asked if this will be retroactive in any of these CUP's from any of the facilities in the past, or is it just from this point forward. Mr. Gerard said it is from this point forward, however there would be no need for a conditional use permit. A conditional use permit is an administrative process, it is not the Special Use Permits you are thinking of. SUP's are items that don't meet the ordinance standards and will come before this body. Per federal rule, there are approvals you've given that could have colocations that modify the facility outside the parameters of your approval where they can go a certain amount higher or a certain amount of greater protrusion, but that is a federal rule that supersedes our ordinance. It supersedes maximum height and maximum dimension for protrusion. Those type of colocations we have to accommodate per federal rule. If there were a concealment element it must be maintained or we cannot administratively approve it, and other ordinance requirements such as separation distances and setbacks must be maintained. It is a lessening of the regulatory burden in practice because of federal law.

Vice Chairman Arnett asked is there any scenario that they could do things contrary to those federal standards or is this just another tax and check box we are trying to get away from. Mr. Gerard said as we had a chance to look at this over the past 5 or 6 years, it does not have a value added for the applicant or the community.

Vice Chairman Arnett asked if they still need to adhere by federal standards. Mr. Gerard said yes, there's federal issues that go above and beyond where we don't look at health issues and FCC issues. There are further federal requirements they have to meet. Our ordinance will not allow the federal rules to be abused or bypassed. It's certainly a lessening of regulatory burden, and removing unnecessary processing more so than changing regulation.

Commissioner Gress asked if there is a federal agency that will go and inspect the wireless communication facility to ensure it complies with federal law. Mr. Gerard said the Federal Communication Commission (FCC) oversees these type of facilities, and he doesn't know there inspection process. None of that is changing, and our ordinance doesn't have any bearing on that, other than we are memorializing the

fact the colocation on existing facilities without going through a special use if they are consistent with the federal rule.

Commissioner Gress said he thought the County might do spot checks or something to ensure they were playing by the rules to allow them. If they aren't meeting these federal requirements they would have to go through the special use permit process. Mr. Gerard said no, we don't check or review the federal requirements that is totally separate from our local zoning authority. We still do the plan review for construction, it is permitted by-right in the zoning for us to simply track and review. That conditional use permit process was administrative and no public input, and no discretion for denial. That process did not have a value added to the development community, or the neighborhood. We were using it for tracking to determine separation distances. We can do that anyway through the zoning clearance and zoning plan review for the construction permit. We are just taking away an unnecessary administrative process for by-right zoning land uses.

Mr. David Allen said he is with American Tower and he worked with staff on this change and feels that it separates facilities that are within the federal standards from ones that are not. The ones that are not don't meet the federal standards should go through the Special Use Permit process and those that do, it make sense to streamline. We are in full support of this proposed ordinance change.

COMMISSION ACTION: Commissioner Burrows motioned to initiate TA2019001. Commissioner Andersen second. Initiated 6-0.

Text Amendment TA2019002

All Districts

Applicant: Commission-initiated
Request: Text Amendment - Variance Timeframe

Mr. Gerard presented TA2019002 and noted this text amendment will delete Article 303.5.2 – *Evidence, satisfactory to the Board of Adjustment, of the ability and intention of the applicant to proceed with actual construction work in accordance with said plans within 120 days after allowing any Variance.* Mr. Gerard said we are proposing this language be struck, it's being used as a standard stipulation for variance approval by the Board of Adjustment. If you get a variance for a front setback, to deviate from Rural-43 requirement for a 40 foot setback, you have to get a building permit application and submit it within 120 days and complete the permit in a year. The issue is there is no reason to make this a requirement for all variances. If you had a statutory warrant to justify that variance should be a condition that lacks in perpetuity, it shouldn't be specific to a certain building permit. We are asking for this to be removed and lessening regulatory burden. It would prevent a number of cases for variances because they can't get the permit completed in time. Especially with COVID-19 to have projects where it's harder to have people to social distance where it makes it harder to complete projects physically.

Mr. Peck asked has there been any thought to make this retroactive so if the condition exists it's removed. Mr. Gerard said he doesn't know how many are

pending right now. We have another avenue to help correct that, at least during this period. The Board of Supervisors has passed resolutions to automatically extend critical deadlines and that includes Planning and Zoning Commission approval. That has been a good tool and people have been able to meet that requirement.

Mr. Peck said his concern is there could be variances that could be two and three years old and people didn't realize they had that time delay, and the COVID resolution wouldn't cover it. It's not really that major of a change and he wasn't sure how enforceable it was anyway. If the Commission thinks that's a good idea we could work on the language and have it for you when it's presented for action.

Commissioner Andersen asked is there any timeframe that would make sense to require the actual construction to be completed on these variances, 120 days seems very short. Mr. Gerard said if they are in the event of a variance request that does warrant some type of temporal element, there's nothing from precluding us from placing such a condition on the approval. The vast majority of variances are undue physical hardships facing the property, and that's a condition that shouldn't be temporal. If there's a hardship today there would be a hardship three years from now.

Commissioner Andersen asked if the variance pertains to a code requirement that's very specific to a building design that may not be applicable to a future building design. If that particular building design was not completed in that instance, it seems like it might be appropriate to tie it to that building design. Mr. Gerard said there is nothing that prevents the Board of Adjustment from considering that, this is just removing a requirement on all variance approval. The example you gave is more likely something that would go to the Building Code and Advisory Board after recommendation from the building official. It's slightly different, not subject to the same statutory test. If there's a statutory justification of undue physical hardship facing the property that warrants you to have a different setback or smaller lot size, that shouldn't be affected by the timing of a building permit in almost all cases, but sometimes it may.

Chairman Schlosser asked staff if he'll work with Mr. Peck to have it retroactive if that is something they will work out between now and when it moves forward. Mr. Gerard said he believes what council was getting at were cases that were approved years ago that may have expired, and whether there should be some type of mechanism to address that separately from this text amendment where the Board can address a directive. Right now we are just talking about striking text in its entirety.

Commissioner Gress asked do you see any concerns with eliminating this time-clock and having this buildup of these active variances where there's been no work completed. Mr. Gerard said no, this is a narrow parameter. We are only talking about Board of Adjustment only, not items that come to Planning and Zoning Commission or the Board of Supervisors. This isn't addressing multi-use, multi-phase projects. It is addressing specific properties where it is usually a residential parcel. It is parcel specific. It really doesn't matter if there's a buildup of approvals as long as

they are memorialized and they have that proof of the variance when they come in for building permits and we can process the zoning clearance. There's a statutory test and it should be black or white, and does it meet the statutory test or does it not. If it meets it there's really no justification for development of that property within a certain timeframe. It's just saying it is a legal lot for this size, area or width. It shouldn't be permit driven the same way plan of development are. This body does not see variances.

Vice Chairman Arnett said this has been long overdue from when he served on the Board of Adjustment. There is zero reason for a time period and he agrees with this change one hundred percent.

Commissioner Lindblom said he is in support of the removal of this text, and he likes the idea to be retroactive.

COMMISSION ACTION: Vice Chairman Arnett motioned to initiate TA2019002. Commissioner Andersen second. Initiated 6-0.

Text Amendment TA2019003

All Districts

Applicant: Commission-initiated
Request: Text Amendment - Home Based Business

Mr. Gerard presented TA2019003 and noted this is to amend Chapter 5 and 6. There's been one e-mail of opposition. This amendment will add language to the existing home occupation allowances in the rural and residential zoning districts to include immediate family to the non-resident employees permitted within the operation. Secondly, it will eliminate Home Occupation and Home Daycare land use applications. It's not really a zoning ordinance issue, staff will remove two application types. The opposition concerns is it doesn't place a number on the maximum number of family members that do not live in the house that can work there, and it is opening up the ordinance. This is housekeeping to simply bring the ordinance in to conformance with state law that was passed two years ago. We are already operating this way, we are changing the ordinance to take out language that limits the maximum numbers of employees that does not reside there. Because of state law we have to allow immediate family members that don't reside on site to be able to work there. There is zero discretion having this be part of the zoning ordinance.

COMMISSION ACTION: Commissioner Gress motioned to initiate TA2019003. Commissioner Andersen second. Initiated 6-0.

Text Amendment TA2019004

All Districts

Applicant: Commission-initiated
Request: Text Amendment - C-2 Group Care Facilities

Mr. Gerard presented TA2019004 and noted this is another housekeeping item to include language to the existing use of 'hospitals' to include 'and other group care facilities'. The amendment would clarify additional ancillary hospital or medical

related land uses, and other types of institutional and group care facilities to be permitted within the C-2 zoning district.

COMMISSION ACTION: Commissioner Lindblom motioned to initiate TA2019004. Commissioner Burrows second. Initiated 6-0.

Text Amendment TA2019006

All Districts

Applicant: Commission-initiated

Request: Text Amendment – Water Trucks

Mr. Gerard presented TA2019006 and noted this text amendment is to permit the parking for a single water hauling truck to be considered as an accessory vehicle at a single family residence in the rural zoning district under specific conditions. Staff noticed there is a growing problem with certain regions of the County that do not have public water systems where they have to truck in water in tanks or cisterns especially in the Rio Verde and New River area. A driver for a water hauling company may live in a certain area and are parking their large semi-truck at a residents. This is a zoning violation today because a water hauling truck is not accessory to a single-family residence. Article 1102.9 currently reads – *Additional Parking Regulations: In addition to the above parking requirements, the following requirements must be met: Article 1102.4. The parking or storage of a non-accessory vehicle except for normal deliveries having a gross vehicle weight greater than 10,000 lbs. on any lot in any rural or residential zoning district is prohibited.* Mr. Gerard said this speaks only to non-accessory vehicles, a water hauling truck or business in a single-family residence would clearly be non-accessory. If that truck for some reason was not greater than 10,000 lbs. and only 8,000 lbs. there would be argument it's a non-accessory vehicle but it's not prohibited by the ordinance. A horse-trailer or hay wagon for instance may be greater than 10,000 lbs. but they are accessory to those permitted uses in that zoning district. A water hauling truck is for a commercial business and it's not accessory to a single-family residence. This proposal would be to change this article to read - *Additional Parking Regulations: In addition to the above parking requirements, the following requirements must be met: Article 1102.4. The parking or storage of a non-accessory vehicle except for normal deliveries having a gross vehicle weight greater than 10,000 lbs. on any lot in any rural or residential zoning district is prohibited. This prohibition shall not apply to an employee of a water hauling company who parks a single water truck at his residence on a lot in a rural zoning district and within an area not served by a public water system and who makes the truck available for emergency response for fire suppression (registered with the local fire district or department).* Mr. Gerard said as of nine o'clock this morning staff received 35 correspondence in support, 55 in opposition and 20 that expressed concern or other, not expressing support or opposition. He believes there's a tremendous amount of misunderstanding. The opposition of support are split to people who like the idea, and many that would like to allow for two trucks to be parked at a residence. Staff does not support two trucks. There is also concern this is adding regulation to three particular water hauling businesses that exists today in the Rio Verde area. This is not adding regulation, this is lessening regulatory burden. They may have drivers that live in the region and park the water

hauling truck at their residence. This is not to permit operation of a base for a water hauling business anything greater than a single truck. If someone has a water hauling business and they have multiple trucks and need a base of operation they can do that today in industrial zoning or they can seek a Special Use Permit. Today there is one pending in the Rio Verde area. The water hauling businesses that are operating today in Rio Verde are zoning violations and do not have entitlement to operate a land use of a water hauling business at those locations. They can seek zoning entitlement either through industrial zoning or a Special Use Permit which can be site and aspect specific. Staff is unlikely to support industrial zoning in the Rio Verde area particularly on dirt roads without water which is speaking to what is being addressed here. Even though we want to see public safety increased and public safety threat mitigated by allowing water hauling trucks close proximity to the customers to cut down long trips and make themselves available to fire suppression. We are not pushing this forward as a means to foster or promote residential growth without adequate water. We do believe this solves a problem under very specific conditions outlined in the proposed language. An employee of a water hauling company can only have a single truck. You have to be inside the rural zoning districts, and you have to be inside a region not served by a public water system, and you have to make the trucks available for emergency firefighting and fire suppression. There may be concern with the last phrase, *(registered with the local fire district or department)*. He doesn't know if that is necessary or if they want that struck. The department will not be maintaining a registry. The water company would need to coordinate with the local firefighting agency to let them know where their trucks are located overnight.

Mr. Peck said zoning ordinances do not regulate people they regulate property. He would like to make a change to read – *This prohibition shall not apply to a property that is principle residence of an employee of a water hauling company.* Then the language would continue. This restriction is to the property and not the employee and it doesn't change the substance in anyway, it is more consistent with what a zoning ordinance is about.

Commissioner Gress asked what if the truck is inoperable and they won't be using it because it's not working, and to bring on a second truck. Would this zoning allow abandoned water trucks to be parked in rural residences? Mr. Gerard said the ordinance allows for unregistered inoperable vehicles to be kept on a property. Those are expected to be non-accessory vehicles to a property. That would be considered a commercial vehicle unregistered and inoperable and be a zoning violation, and if they brought on a second truck that would be two zoning violations as currently written. This a very limited application, today if we saw a semi parked at a residence it would be clearly a zoning violation. If this passed they would have to demonstrate they are an employee of a water hauling business and appropriately located. If you think this is worth initiating than you can direct us to look at the unregistered inoperable vehicles in a larger context.

Commissioner Gress said the truck will be there overnight and won't be on the property during the day, it'll be out making deliveries etc. versus being a parts vehicle

for a local company. He would feel more comfortable with that and interested in exploring it further. Mr. Peck said when there are zoning code violations that involves serious questions, the department gets him involved, as he serves as a prosecutor. If the scenario was brought forth his argument to the hearing officer would be the vehicle is inoperable and it's not available for emergency response for fire suppression, and therefore it would be in violation of the ordinance the way this text amendment is written.

Mr. Kip Micuda said he is a neighbor to the owner of Dynamite Water in a residential area. It's that operation that manifested this proposed rule change in the first place. He submitted extensive materials both relative to the rule and the Special Use Permit. He sees this rule addressing two historic facts. Water hauling drivers in his area have been parking their trucks at their homes for decades, and for the firefighting elements in the communities. The rule addresses the other issue these trucks being required to be used for fire suppression going forward makes a world of sense to him. When the issue came up with the number of trucks, and some of us have been focused on that particular issue. He's decided with further observation with this particular area and the focus on the number of trucks was a little misguided. One or two trucks can certainly be argued, but most recently he's argued consistent with the department it should be one truck, but he doesn't have a problem with two trucks. He does think there is a critical issue with the language being added, if there's no restriction with space between trucks and has advocated that language be added that these trucks cannot be on adjoining lots or within 500 hundred feet of each other. That's consistent with the prior comments made that the rule should focus on the property and not the people. The lot next to him is 5 acres, and the SUP is asking to make 5 acres an industrial complex which would mean they would have as many as 10 water hauling trucks on four sides of his property. The owner has just purchased another acre and that owner has two employees that have their homes adjoin the other side of his property. That's 7 acres adjoined, and if the trucks remain at one, he's still able to run 3 trucks. If he subdivides the 5 acres then he'll be able to string together more trucks. The door has been left open for the industrial complex that he is attempting to maintain. There needs to be it precludes adjoining properties within 500 feet to have these vehicles. The biggest reason for doing this is to support the fire suppression component. Right now Dynamite Water is operating off of 5 acres and a mile from Rural Metro. They are both on one extreme end of the Rio Verde community. As seen with fires in the past year, fire trucks didn't show up timely. If our interest is to have these water trucks spaced as evenly as they can be throughout the community and to provide the maximum fire support, we don't want them centralized in any particular area. Mr. Gerard said that same stance was repeated by many of those in opposition and concerns. Staff recommendations one truck to a residence. If someone wants to operate a water hauling business they can do so with a Special Use Permit for a home-based cottage industry. The neighbor next to Mr. Micuda has a pending SUP right now for just that. If someone starts dividing properties and building homes for employees, that seems like a lot more energy than just coming in for a Special Use Permit through this body.

Chairman Schlosser said when he was a reserve firefighter with Rural Metro, with one truck there's never enough water. Fire suppression is his main concern. Mr. Gerard said this is a question for the fire agencies to address. They may have preferences to have strategically located water trucks. They may prefer to have a water truck parked at their facility overnight. If they were parking at the local fire department and they would pick them up in the morning there would be no need for this text amendment.

Ms. Applegate said she has a few people that want to express their support but do not wish to speak - Kelly Nelson, Sam Coppersmith, and Damon Bruens. They are available if there are any questions.

Commissioner Gress asked by approving this today this would give staff the opportunity to bring this forward to the Commission for more discussion at that time. Mr. Gerard said the text amendments on today's agenda is only for initiation. They will all come back at a public hearing for discussion, and your recommendation to the Board of Supervisors.

Mr. David Anderson said they have several people that wish to speak but when unmuted their audio goes offline, or they are unable to respond for some reason. It looks like this is an issue on their end and not on our end. They have attempted to chat with several individuals and not receiving any responses. He would like to give them the opportunity to speak but he doesn't know how to do that if they have technical issues on their end.

Chairman Schlosser said we are just initiating the process to move forward. Mr. Gerard said any documentation that is sent in to the Planning and Development will be included in the staff reports to move forward to this body at the public hearing, and then again to the Board of Supervisors.

Chairman Schlosser said for everyone that wanted to speak and haven't been able to he apologizes for the technical difficulties.

Commissioner Andersen said he is in favor with the one water truck and likes the additional changes council recommended, and he likes Mr. Micuda's suggestion of the spacing requirement. It balances the preservation of the residential area and the need for adequate fire service throughout the community.

Mr. Robert O'Neil said his microphone does work on his end and he has no technical issues.

Ms. Rebecca Quince read a statement from Mr. Neil Kremer - As a resident it is essential to have water delivered to our property and our provider feels that it is essential to have two trucks allowed.

Commissioner Gress said he agrees with the revisions from council and he likes the suggestion from Commissioner Andersen with the spacing. He asked if staff would

consider these suggestions and then it will be discussed to include those suggestions and it may not. Mr. Gerard said yes, when we come back for public hearing in the staff report we will note the options of one and two vehicles, and 500 foot or other spacing.

COMMISSION ACTION: Commissioner Gress motioned to initiate TA2019006 with revisions from council. Commissioner Burrows second. Initiated 6-0.

Chairman Schlosser adjourned the meeting at 11:02 a.m.

Prepared by Rosalie Pinney
Recording Secretary
August 6, 2020