

**COCHISE COUNTY PLANNING & ZONING COMMISSION
MINUTES**

Wednesday, January 9, 2013

The regular meeting of the Cochise County Planning & Zoning Commission was called to order at 4:00 p.m. by Chair Lynch at the Cochise County Complex, 1415 Melody Lane, Building G, Bisbee, Arizona in the Board of Supervisors' Hearing Room.

Mr. Lynch admonished the public to turn off cell phones, use the speaker request forms provided, and to address the Commission from the podium using the microphone. He explained the time allotted to speakers when at the podium. He then explained the composition of the Commission, and indicated there was a single Special Use Permit on the Agenda. He explained the consequences of a potential tie vote and the process for approval and appeal.

ROLL CALL

Chair Lynch noted the presence of a quorum and called the roll, asking the Commissioners to introduce themselves and indicate the respective District they represent; eight Commissioners (Tim Cervantes, Pat Edie, Jim Lynch, Jim Martzke, Carmen Miller, Gary Brauchla, Ron Bemis, and Liza Weissler) indicated their presence. Chairman Lynch asked Ms. Wilson to introduce a new staff member, Peter Gardner and then asked the Board Members to introduce themselves and state which District they represent. Staff members present; Beverly Wilson, Deputy Director; Keith Dennis, Planner II; Peter Gardner, Planner I; Adam Ambrose, Attorney, Dora Flores, Customer Service and Permit Coordinator.

CALL TO THE PUBLIC

Chair Lynch opened the "Call to the Public." Mr. Bemis asked if he was allowed to speak at the Call to the Public. Council indicated that Mr. Bemis was free to speak at any time. Mr. Bemis requested a roster of County Staff present at the meeting be included in the minutes. Jack Cook spoke about various matters. Mike Jackson spoke about concerns that Building Code was adopted improperly due to lack of a Zoning Advisory Board and that all Zoning Regulations were hence invalid. Mr. Bemis asked the Chair if he could question Mr. Jackson regarding this matter. Mr. Ambrose interjected that response to Call to the Public items was not permitted and if the Commission felt discussion was needed than the item would have to be placed on the Agenda at a future meeting. Chair Lynch closed the "Call to the Public."

APPROVAL OF THE MINUTES

Motion: Approve the minutes of the December 12, 2012 meeting as presented.

Action: Approve **Moved by:** Mr. Martzke, **Seconded by:** Mr. Cervantes

Vote: Motion passed (**Summary:** Yes = 6, No = 0, Abstain = 2)

Yes: Mr. Martzke, Ms. Miller, Chair Lynch, Ms. Edie, Ms. Weissler, Mr. Cervantes

No: 0

Abstain: Mr. Brauchla, Mr. Bemis

NEW BUSINESS

Item 1

Election of Chairman and Vice-Chairman for 2013.

Mr. Bemis nominated Mr. Lynch for Chairman for 2013, and Mr. Martzke seconded. Mr. Martzke then moved to close the nominations and Ms. Edie seconded. The nominations were closed by unanimous vote and the nomination of Mr. Lynch was also carried by unanimous vote. Mr. Bemis then moved to nominate Mr. Martzke as Vice-Chairman, and Ms. Edie seconded. Mr. Bemis then moved to close the nominations, and Ms. Edie seconded. The motion passed unanimously.

Item 2

PUBLIC HEARING, Docket SU-13-01 (Workman): The Applicant seeks Special Use authorization from the Planning and Zoning Commission for a Contract Construction Services operation, per Section 607.13 of the Zoning Regulations, utilizing the existing Kings Ranch at Coronado Discovery Center on the property.

The discovery center is the sales office for the subdivision, consisting of three structures and an asphalt parking lot. The Applicant, RL Workman of Workman Homes, is using the sales center as the headquarters for his business and some storage of equipment (indoor) and vehicles (outdoor) will take place. This company is also the home builder for the Kings Ranch at Coronado subdivision. The subject parcel (104-24-312) is located at 10280 S. Wilderness Road in Hereford, AZ.

Chairman Lynch called for the Planning Director's presentation of the Docket. Keith Dennis, Planner II, delivered the report, illustrating the facts of the case, utilizing photos, maps and other visual aids. He explained the background of the case and the circumstances surrounding the Special Use Permit under consideration. Mr. Dennis explained the background of the subdivision and of the existing structures on the property. Mr. Dennis explained the Applicant's site plan and the current and proposed uses on the parcel. Issues regarding permitting, access, and parking were discussed as well as the existence of a sign in the County and State Right of Way that was to be relocated. Mr. Dennis did note that Modifications of access and parking requirements, as well as for screening and signage were requested by the Applicants. He concluded by offering four factors in favor and two factors against approval. Mr. Dennis asked for questions from the Commissioners. There being no questions, Mr. Lynch invited the Applicant to make a statement.

Mr. Cerepanya, a representative of the Applicant, explained how the property owner had come into possession of the subdivision and their efforts to develop the area. He explained the Applicant's misunderstanding that led to the establishment of the office without a permit. He also explained how many employees were onsite and explained the equipment stored on site. Mr. Cerepanya invited questions from Staff. There being none, Chairman Lynch opened the Public Hearing. There being no members of the Public interested in speaking, Chairman Lynch closed the Public Hearing. Mr. Lynch asked about the sign Modification. Mr. Dennis clarified that this was a new sign as opposed to the signs already addressed. Chairman Lynch asked for the Planning Director's summary and recommendation. Mr. Dennis recommended Conditional Approval and explained the recommended Conditions and Modifications. Mr. Lynch asked the Commission if there were questions for staff. There being none he asked for a motion in the affirmative. Mr. Martzke moved to approve Docket SU-13-01 with the Conditions and Modifications recommended by staff in the staff memorandum. Mr. Cervantes seconded. Mr. Lynch opened the item for discussion. Mr. Cervantes expressed concern about the Applicant proceeding without a permit. Mr. Martzke stated that he felt that the new owner of the subdivision should be held to the required standards and therefore improve the situation. Mr. Bemis expressed his approval of the development. There being no further questions or comments, Mr. Lynch called for a vote. The motion passed 8-0.

Motion: Motioned to approve the Special Use authorization for Contract Construction Services.

Action: Approve **Moved by:** Mr. Martzke, **Seconded by:** Mr. Cervantes

Vote: Motion passed unanimously (**Summary:** Yes = 8, No = 0, Abstain = 0)

Yes: Mr. Martzke, Ms. Miller, Chair Lynch, Mr. Cervantes, Mr. Bemis, Mr. Brauchla, Ms. Weissler and Ms. Edie.

Item 3

PUBLIC HEARING, Docket SU-12-23A (Wu): The Applicant seeks Special Use Modification of SU-09-23 to construct a Solar Energy Plant, which was approved by the Commission in December 2009 with a condition of approval requiring the developer to make substantial construction progress within three (3) years from the date of Commission approval; this request is to Modify this condition to allow for additional time to make substantial construction progress. The location includes six (6) contiguous RU-4 zoning districts (Rural; minimum lot size 4 acres) located approximately 7 miles southeast of the Bowie townsite. The property (a site consisting of Parcels 304-01-004; 004A; 004B, 009; 023; 024) takes access via S. Apache Pass Rd. The Applicant is Jian Ming Wu

Peter Gardner, Planner I, delivered the report, illustrating the facts of the case, utilizing photos, maps and other visual aids. He explained the background of the case and the circumstances surrounding the Special Use Modification under consideration. Mr. Gardner noted that the property owner and current Applicant was not the original Applicant in 2009. It was noted that the Applicant was not present but was available via

telephone if necessary. Ms. Weissler asked if the proposed technology was the best choice for the project and how wildlife would be affected. Mr. Gardner explained that both questions were addressed at the initial approval and explained that under the existing approval minor changes to technology could be approved by staff. Mr. Lynch concurred. Mr. Brauchla and Ms. Weissler expounded on the technology proposed. Mr. Lynch asked for clarification if environmental impacts were addressed in 2009. Mr. Gardner indicated they were and referenced the attached report from the 2009 approval. Mr. Lynch asked the Commission if there were other concerns. Ms. Wilson expounded on the lack of requirement for Environmental Impact Studies. Mr. Bemis added additional information regarding endangered species. Mr. Lynch requested input on calling the Applicant and the Commission decided against doing so.

Chairman Lynch opened the Public Hearing. There being no members of the Public interested in speaking, Chairman Lynch closed the Public Hearing. Ms. Miller brought up three points of concern; one was concern about impact and the size of the project; the second was changes recent changes in technology pointing towards photovoltaic systems; the last was concern about approving a Special Use based on speculation, and stated that the power lines that may serve the project were in doubt. Ms. Wilson asked the Chair if Ms. Miller's concerns should be directed to the Applicant. Ms. Miller stated that she felt the Applicant would be unable or unwilling to address the questions and declined to request a call to the Applicant. Mr. Bemis spoke about the cumulative effects of photovoltaic arrays on the hydrologic contours of a parcel. He stated that he felt Staff should require more information from Applicants for solar projects addressing these concerns. He expounded that solar projects and highways have impacted range uses and wildlife. Ms. Miller also added concerns that solar projects negatively impacted the environment. Mr. Lynch noted that while the arguments were valid they were equally applicable to any energy project. Mr. Bemis responded that he felt that environmental impacts should be given greater weight. Chairman Lynch asked Staff if these concerns were addressed by Staff. Ms. Wilson and Mr. Gardner explained that the issue was addressed in 2009 and that it would be dealt with in greater detail at the Commercial Permitting process. Mr. Bemis asked for more information from Staff about mitigation of hydrological impact from any solar projects of any scale and expressed concern that such mitigation was not being addressed by Staff. Chairman Lynch noted that such issues were common with any development and expressed confusion as to the point of the current discussion in regards to the project at hand. He also addressed the speculative concern, stating that he felt this project was not speculative in the sense of being requested simply to increase the value of the land for sale. Mr. Bemis again asked if this approval would prevent the County from addressing water issues and stated that he felt denial was appropriate. Mr. Bemis noted that the proposed power lines have not yet been approved due to the contentious nature of the projects. With no further questions from Commissioners, Chairman Lynch asked for the Planning Director's summary and recommendation. Mr. Gardner recommended Conditional Approval and explained the requested Conditions.

Mr. Lynch asked about the expiration of the current permit and Mr. Gardner provided the information. Mr. Bemis moved to approve Docket SU-09-23A with the conditions recommended by staff in the staff memorandum. Mr. Martzke seconded.

Mr. Lynch opened the item for discussion. Mr. Martzke asked about if the condition should be worded to automatically revoke the permit after three more years without progress and moved to so amend the motion. He expressed a desire to give the current Applicant the chance to develop the parcel. There wasn't a second to the Modification to the motion. Mr. Bemis asked Counsel if there was a legal requirement to allow an Applicant to request an extension. Mr. Ambrose explained that the Commission could grant an extension and that the Zoning Regulations allow the Commission to revoke the permit after notice to terminate is provided and the opportunity given for the Applicant to request an extension. Mr. Lynch asked Mr. Ambrose for clarification of the current situation, which Mr. Ambrose provided. Mr. Lynch also explained the Commission's options. Mr. Lynch explained his thoughts about denial and his rationale. Mr. Bemis expressed his belief that there would not be substantial construction within the next three years, and that regulations may change, and that the Applicant should come back to the Commission when ready to proceed with construction. Counsel asked the Commission if they wanted to contact the Applicant. Mr. Lynch asked for opinions of Staff. Mr. Gardner agreed that the Applicant should be contacted. Mr. Bemis stated that he felt the only question should be if the Applicant could provide information on when and where the power lines would be installed. Mr. Lynch and Mr. Bemis further discussed this point. Mr. Ambrose also reminded the Commission that they had the option of tabling the item and requesting the information in writing. Mr. Lynch noted that if the Applicant was seriously interested in the project he would have been present and that a single telephone question was not sufficient. He suggested tabling the item until the next meeting to allow the Applicant to be present. Mr. Cervantes and Ms. Edie stated that they felt his only involvement was ownership of the land and that he had no technical input. Mr. Martzke stated that the process to permit the feed lines would take three to five years and therefore no construction would occur within three years under any circumstances. He also noted that his motion to amend the motion was not seconded. The option of tabling was discussed, and Ms. Weissler asked what would happen if the Applicant did not appear. There being no further questions or comments Mr. Lynch called for a vote and the motion failed 0-8.

Motion: Motioned to recommend conditional approval Special Use Modification

Action: Approve **Moved by:** Mr. Bemis, **Seconded by:** Mr. Martzke

Vote: Motion failed unanimously (**Summary:** Yes = 0, No = 8, Abstain = 0)

Yes: Mr. Martzke, Ms. Miller, Chair Lynch, Mr. Cervantes, Ms. Weissler, Mr. Brauchla, Mr. Bemis and Ms. Edie.

Chairman Lynch called for a five minute break before the next item.

Item 4

PUBLIC HEARING, Docket R-13-01:

A resolution that proposes a number of revisions to the 2008 version of the Cochise County Zoning Regulations (adopted June 20, 2008, Resolution 08-31). The overall intent of the proposed revisions is to: 1) to simplify and clarify the regulations to be understood by staff and the public; 2) build in more flexibility in the administration of the regulations; and 3) bring the regulations into conformance with revisions in the Cochise County

Comprehensive Plan and Arizona Revised Statutes (“ARS”). Examples of land use definitions that have been added include: Commercial Kennels, Community Gardens and Farmers’ Markets, and Recycling Transfer Stations. Many other definitions, such as Residential Care Homes and Institutions, were modified for clarity or to meet current ARS requirements. Article 19 has been re-written to conform to ARS. The Commission will be considering revisions to most sections of the Zoning Regulations as part of this Docket. The Applicant is Cochise County Planning and Zoning Commission

Beverly Wilson, Deputy Director, delivered the report, first introducing Dora Flores, Customer Service and Permit Coordinator for assistance. Mr. Bemis interjected with a concern regarding Mr. Jackson’s Public Comment and a concern that any action by the Commission was invalid and requested legal opinion. Mr. Ambrose interrupted to assure Mr. Bemis that the issue would be addressed and that the Commission should review the Regulations on their own merits and should trust Staff to assuage the Commission’s concerns. Chairman Lynch interjected that he had no intention of approving the document this evening and preferred to come up with a methodology of reviewing the changes. Ms. Wilson offered a work session to review the proposed changes with the Commission. Chairman Lynch and Ms. Wilson discussed that items that would be removed from the proposed changes. Ms. Wilson explained that the purpose of the update was to simplify and clarify the language of the regulations and to formalize the interpretations into the regulations per the requirements of SB1598 and noted that was how kennels came to be included in the changes, and also noted that the proposed kennel definition had been removed from the proposed changes. She also explained that references to specific sections of the regulations or Arizona Revised Statutes were removed to ease clerical tracking. She reiterated that the kennel change was deleted and would be dealt with on its own at a later date. The addition of several new definitions was noted to address new trends, as well as changes of definitions to fall into line with State Statute or for clarity. She briefly touched on major changes in each article. Ms. Wilson also noted that renewable energy requirements were also struck. Changes to Grocery Stores and Communication towers were noted. The additions of Farmer’s Markets and Community Gardens were addressed. Alterations to setbacks for Special Uses in General Business Districts were proposed to bring them into line with other Districts. Marijuana uses were added to Heavy Industrial Districts. Administrative Regulations were modified for clarity. It was noted that a section was relocated from section 18 to section 17. Proposed changes to Site Development Standards were noted as items clearing up recurring situations. Ms. Wilson explained that all content restrictions were removed from Sign Regulations and that Sign Code was greatly simplified. Clarification of Non-Conforming Status was discussed. Mr. Jack Cook spoke regarding the proposed changes. Mr. Jackson spoke about the proposed changes and referenced his Public Comments regarding the legitimacy of the regulations and recommended the Commission investigate the Board’s actions. Mr. Ambrose clarified that his office would provide the requested legal opinion. Chairman Lynch noted that it was not appropriate for the Commission to take on a Judiciary or investigative role into the past actions of the Board of Supervisors and reiterated his intention to focus on Land Use Issues as the Commission had been appointed to do. Mr. Bemis commented that he felt that process was important. Mr. Lynch stated that he felt a line by line review was not a good

approach, nor was a simple up or down vote on the entire document. He addressed the suggestion of work sessions and asked for experience. Mr. Bemis supported the concept of a work session and once again expressed concern about Mr. Jackson's assertions and requested detailed legal opinions from multiple sources rebutting those assertions. Mr. Bemis also expressed the possibility of holding multiple public meetings prior to the Commission discussing the changes. Mr. Martzke agreed that a work session would be good to understand the whole document. Ms. Edie expressed a desire for more time to review the changes. Ms. Weissler stated that she felt the summary was very clear and that a work session would be a good idea, but that the summary was the place to start. Mr. Bemis brought up his background in such documents and suggested breaking the document up into sections. Chairman Lynch asked for input on a timeframe for review and suggested that Staff coordinate a work session. Mr. Bemis suggested meeting for several hours at a time biweekly for six months. Ms. Wilson asked the Commission why none of the members has contacted Staff with any questions. Mr. Lynch clarified that he had attempted to do so. Ms. Wilson expressed a belief that the changes were straightforward. Mr. Lynch recommended a work session to address the summary and definitions to begin. Mr. Bemis concurred but expressed concern that work sessions were not governed by open meeting law and would shade any discussions. Mr. Lynch proposed the suggested work session and requested the summation slides for prior review. He recommended the legal issue brought up by Mr. Jackson be addressed first, but expressed confidence in Staff's ability to resolve the issue. Mr. Bemis clarified his earlier comment regarding the legal opinion requested. Mr. Bemis moved to table the item to a time uncertain with the addendum that Staff not proceed until receiving Counsel's legal opinion regarding process. Mr. Ambrose stated the answer would be provided before the end of the week. The motion was seconded by Jim Martzke. There was no further discussion and the motion was carried 8-0.

Motion: Motioned to table item until time uncertain and schedule a work session

Action: Table to time uncertain **Moved by:** Mr. Bemis, **Seconded by:** Mr. Martzke

Vote: Motion failed unanimously (**Summary:** Yes = 8, No = 0, Abstain = 0)

Yes: Mr. Martzke, Ms. Miller, Chair Lynch, Mr. Cervantes, Ms. Weissler, Mr. Brauchla, Mr. Bemis and Ms. Edie.

PLANNING DIRECTOR'S REPORT

Chairman Lynch then called for the Planning Director's report. Deputy Director Beverly Wilson reported that there were two Special Use dockets for the next month as well as a work session. Mr. Bemis thanked Staff for their efforts on the regulation changes and expressed a desire to support Staff but a concern that correct procedures be followed.

CALL TO COMMISSIONERS

Mr. Bemis thanked Staff for their efforts on the regulation changes and expressed a desire to support Staff but a concern that correct procedures be followed. Chairman Lynch concurred.

ADJOURNMENT

Mr. Martzke moved to adjourn, Mr. Bemis seconded, and the meeting was adjourned at 6:05 p.m.