

COCHISE COUNTY PLANNING & ZONING COMMISSION MINUTES

REGULAR MEETING: Wednesday, June 12, 2013 at 4:00 p.m.

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

Chairman 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 one Special Use request and two Regulation dockets on the Agenda in addition to the Work Session regarding the proposed changes to the Zoning Regulations. He explained the consequences of a potential tie vote and the process for approval and appeal.

ROLL CALL

Chairman 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, Gary Brauchla, Carmen Miller, Ron Bemis, and Joe Garcia) indicated their presence. Staff members present included Karen Riggs, Community Development Director; Beverly Wilson, Deputy Director; Dora Flores, Permit and Customer Service Coordinator; Keith Dennis, Planner II; Peter Gardner, Planner I; Adam Ambrose, Civil Deputy County Attorney; and Pat Hoefler, Planning Tech.

APPROVAL OF THE MINUTES

Motion: Approve the minutes of the May 15, 2013 meeting as presented with one typographical correction.

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

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

Yes: Mr. Martzke, Chairman Lynch, Ms. Edie, Mr. Cervantes, Mr. Bemis, Mr. Garcia

No: 0

Abstain: Ms. Miller, Mr. Brauchla

NEW BUSINESS

Item 1

PUBLIC HEARING - Docket SU-13-08 (Vander-Heyden): A Special Use request for a rental of an accessory living quarter in a Rural Zoning District located at 6580 East Ramsey Road in Hereford. The Applicants seek to rent an existing accessory living quarter on a long-term basis. The Applicants are Leon and Laura Vander-Heyden.

Chairman Lynch called for the Planning Director's report. Mr. Peter Gardner presented the docket, explaining the background of the request utilizing photos, maps, and other visual aids. Mr. Gardner explained that the request was to allow the rental of an existing, permitted Accessory Living Quarter on the subject parcel. Mr. Gardner explained that the docket was transmitted to various agencies for comment. He also explained the correspondence that Staff had received regarding the proposal. He closed by listing the factors in favor of and against approval, explaining several conditions and requested modifications, and invited questions from the Commission. Ms. Edie asked for clarification regarding the regulations on building a rental unit on a property, which Mr. Gardner provided.

Mr. Lynch invited the Applicant to make a statement. Mr. Leon Vander-Heyden explained the reason for the request and invited questions from the Commission. Mr. Lynch asked if the Applicant had built the Accessory Living Quarter or if they had purchased the property with the unit in place. Mr. Vander-Heyden explained that they had purchased the property with the unit in place. Mr. Lynch opened the Public Hearing and asked if there were any members of the public wishing to speak in favor of the project. There being none, Mr. Lynch then asked for speakers in opposition. There being no speakers in opposition, Mr. Lynch closed the Public Hearing and invited discussion from Commissioners. Mr. Martzke explained his support for the request. Mr. Lynch then called for the Planning Director's summary and recommendation. Mr. Gardner recommended Conditional Approval and explained the Condition requested by Staff. Mr. Lynch called for a motion. Mr. Bemis made a motion for recommending Conditional Approval. Mr. Brauchla seconded the motion and Mr. Lynch called for a vote. The motion passed 8-0.

Motion: Motioned to approve with Conditions the Special Use authorization for Rental of Accessory Living Quarters

Action: Approve **Moved by:** Mr. Bemis **Seconded by:** Mr. Brauchla

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

Yes: Mr. Martzke, Chairman Lynch, Mr. Cervantes, Mr. Brauchla, Ms. Miller, Mr. Bemis, Ms. Edie and Mr. Garcia.

No: 0

Abstain: 0

Item 2

PUBLIC HEARING - Docket R-13-05 (Building Code Advisory and Appeals Board): A resolution that proposes the establishment of a joint Building Code Advisory and Appeals Board.

Chairman Lynch called for the Planning Director's report. Ms. Beverly Wilson presented the docket, explaining the background and the proposed adoption and combination of the required Building Code Advisory Board and Building Code Appeals Board. Ms. Wilson explained the legal requirements driving the Boards and the proposal to merge the Boards. She also explained that the proposal had been vetted by the County Attorney's Office and noted that nine other Counties had taken this approach. She then explained what the remaining Counties had done. She also expounded on the rationale to combine the Advisory Board required by State Law and the Appeal Board required by the Building Code, touching upon the Boards' duties and makeup. She explained that Appeals would not be from decisions from the Advisory Board, but rather

from decisions from the Building Official. She also noted that decisions of the Appeals Board could be further appealed to the Board of Supervisors. She closed by inviting questions from the Commission.

Mr. Lynch asked the Commission for questions, and Mr. Bemis asked how the Boards would affect agriculturally designated land. Ms. Wilson explained that Ag lands were currently exempted from Building Code requirements and the adoption of these Boards would not affect that. Ms. Edie noted typographical errors in the proposed bylaws, which Staff corrected. There was a discussion regarding a discrepancy regarding a quorum. Counsel clarified, and Staff made the requested change for clarity. Mr. Bemis asked about the availability of the required members of the Board. Ms. Wilson explained that the Board of Supervisors had already been recruiting and Staff was confident that the required members could be located. Mr. Lynch noted that there were some revisions to be made and entertained the idea of tabling the item for further discussion. Ms. Wilson explained that the Commission was being asked for a recommendation and that the Board of Supervisors was already scheduled to hear the proposal. Mr. Ambrose noted that the Commission could make its recommendation to include the proposed changes previously discussed.

Mr. Lynch then opened the Public Hearing.

Mr. William Jakobek, Saint David, explained his background and spoke regarding contractors' competence or possible lack thereof. He then spoke regarding an unissued 2004 permit that he felt the Advisory Board may have been able to assist with. Mr. Jakobek noted that the Boards required a Citizen seat. He then stated that the State Law required two separate Boards for a reason and felt that the Commission should not defeat that purpose. He used a metaphor of appealing a decision of the king to the same king that made the law and recommended two Boards. He did state approval that the Boards were being created, but reiterated his belief that the State Law created two separate Boards. He stated he felt that Staff was spending a lot of time and money to circumvent the law.

Mr. Douglas Behnke, Sierra Vista, spoke regarding concerns for individual rights and freedoms in Cochise County. He stated that he felt all County documents and bylaws should include statements regarding preventing further limiting or infringing of individual citizens' rights and freedoms. He requested County documents require an impact statement on how individual rights and freedoms are maintained in regards to the topic of the document. Mr. Behnke then recommended that a member of the Sheriff's department become a member of the Advisory and Appeal Board to "represent the Cochise County Citizens' individual rights and freedoms."

Ms. Jere Fredenburgh, Sierra Vista, spoke regarding the decision in 2008 not to form a joint Board. She noted that the Advisory Board was required by statute and gave an "ordinary citizen the ability to represent the residents of Cochise County." She claimed that if the Boards are combined than the individuals writing the regulations would also be hearing appeals, and would be unlikely to reverse a decision. Ms. Fredenburgh further stated that she felt any fees and fines collected prior to the instatement of the Advisory Board were illegal and should be refunded. She closed by stating that the County does not have a water problem, that imposing City water regulations in the County was unacceptable, and requested that water regulation discussion be

postponed until “the Advisory Board has reviewed all the current and proposed regulations, and the public is given lots of opportunity to comment.”

Mr. Michael Ginsburg, Tucson, introduced himself as a contractor, asked for clarification of the proposal and then expressed concern that the Board be composed of well-qualified individuals knowledgeable in alternative building methods.

Ms. Helene Jackson, McNeal, opposed the combined Board, noting that State law required an Advisory Board and the Building Code required an Appeals Board. She stated that “an Advisory Board gives citizens input in writing regulations and an Appeals Board hears objections to those regulations.” She discussed a 2008 decision from the Commission not to form a combined Board. She stated that decision was based on the premise that the same group should not write the rules and hear appeals from them. She spoke to the inclusion of the Building Official on the Board and claimed it would create the appearance of bias. Ms. Jackson noted that only one current Commissioner was in office during the previous hearing on this issue, but was not present, and therefore they “have no institutional memory of that meeting.” She stated that she was at the meeting and stated that three Commissioners and the Chair asked why there could not be two Boards. Based on the 6-0 vote against a combined Board she claims the question was not satisfactorily answered. Ms. Jackson also objected to Staff using the example of other jurisdictions combining the Board as a basis to do the same thing. She closed by stating that Cochise County “needs an Advisory Board” and asked the Boards to be separate so that “each Board can do its job.”

There being no further speakers, Mr. Lynch closed the Public Hearing and invited discussion from Commissioners. Mr. Lynch spoke to clarify a number of inaccuracies in the public comment. He noted that State Law required one Board, and the Code regulations required a second Board rather than State Law requiring two boards. He noted that contrary to the assertion that the combined Board would hear appeals from its own decisions, such appeals would be heard by the Board of Supervisors. He also noted that despite the assertion that the Advisory Board should be reviewing and writing all of the Planning and Zoning regulations, State Law stated that the Advisory Board was charged under State Law with determining the acceptability of alternative building materials, which “has nothing to do with reviewing the entire code or writing it.” He further stated that while several members of the public were making similar arguments, they did “not make sense” in regards to the facts.

Mr. Bemis asked about the integration between the two Boards and how they could be combined or separated and asked for more input. Mr. Ambrose noted that the requirements for the Board come from two separate sources and their missions of interpreting the Building Code was very similar. He also noted that neither State Law requiring an Advisory Board and the Building Code requirement for an Appeals Board spoke to Zoning Regulations in any way. He also noted that neither Board drafted any regulations, and therefore could not be reviewing a regulation or decision that the Board had drafted itself. He explained that all County Attorneys agreed that this was an acceptable proposal legally, and further stated that the arguments against it were political rather than legal. Mr. Ambrose also noted that no County has created two separate Boards. Mr. Bemis then asked if Building Code came from the Federal Code or State Law. Mr. Ambrose relied that the Code was written by a private organization, and jurisdictions choose to adopt them as they see fit. Mr. Lynch compared it to any other professional organization that

published Codes or Standards. Mr. Bemis and Mr. Ambrose clarified that by adopting the Code they gain the force of law as County Ordinances.

Ms. Miller asked if all of the Appeals would be heard by the Board of Supervisors.

Mr. Ambrose explained that if a member of the public disagrees with an interpretation from the Building Official they may appeal to the Advisory and Appeal Board. If still not satisfied a further appeal could be mounted to the Board of Supervisors. Ms. Miller asked about removing the word “combined” from the title of the Board to help correct misperceptions of the Board’s duties. Mr. Ambrose clarified that the perception was incorrect, and Ms. Miller replied that the combination of the Boards seemed to be the sticking point with the objectors. Mr. Ambrose further clarified that the Advisory and Appeals Board would not be hearing Appeals from their own decisions, as their capacity prior to an appeal was to advise rather than to decide. Ms. Wilson clarified the interaction with the Board of Supervisors. Ms. Miller stated that combining the Boards gave the appearance of a conflict. Mr. Ambrose stated that the functions of the Boards were not in conflict, and further stated that if there was a problem with how the Board was perceived then that misperception should be addressed rather than changing the substance of the Board. Mr. Ambrose stated that the Board could be called the Building Code Interpretation Board, since that is what the required Boards do, but the requirements in State Law and the Building Code carry the titles of Advisory Board and Appeal Board. He stated that either two Boards with the same purview must be created, or a single Board fulfilling both requirements must be created. He also commented that it will be difficult to fill the Board, and doubly so to fill two Boards with very similar requirements. Mr. Ambrose also noted that this discussion has been ongoing since 2008, and the objections have not changed, despite Staff’s efforts to correct the misperceptions behind the objections. He stated that the Board was legal and that the Commission was in a position that required them to make a decision. Ms. Miller suggested incorporating Mr. Behnke’s suggestion regarding language supporting “the individual rights and freedoms of the citizens.” Mr. Lynch asked how we could define “human rights” in the context of this Board.

Mr. Bemis spoke regarding the benefits of Building Code and the required Boards. Mr. Ambrose clarified the chain of the Code with regards to Staff and the Board. Mr. Bemis and Mr. Ambrose discussed the functions of the required Boards and the Building Official. Mr. Lynch asked if a decision had gone to the Board of Supervisors and an appellant was not satisfied could the decision be appealed to Superior Court. Mr. Ambrose explained that yes, any decision of the Board of Supervisors may be appealed to Superior Court under State Statute.

Mr. Martzke commented that he was confused by the language allowing a decision of an appeal from the Advisory and Appeals Board to be further appealed to the Board of Supervisors. He was also unsure if one Board or two was being formed. Mr. Ambrose clarified that one Board would be created that fulfilled both requirements. Mr. Martzke asked for further clarification of the Boards’ base on their names. Mr. Ambrose explained the purposes of the Boards, and further noted that neither Board, nor the proposed joint Board has any involvement with Planning and Zoning issues or regulations. He also noted again that decisions of the Advisory and Appeal Board could be appealed to the Board of Supervisors. Mr. Lynch also further attempted to clarify. Ms. Riggs commented that the confusion stemmed from the creation of one Board that fulfilled two requirements, so both titles were being associated with the Board. Mr. Lynch asked for a typographical change to the bylaws for clarity.

Mr. Bemis asked if either Board currently existed or if this was a brand new establishment. Mr. Ambrose answered that neither Board currently existed, and that their formation was required. There was further discussion about the requirement to meet State Law, and the consequences of deliberately defying them. Mr. Bemis asked about the expense of creating the Board. Mr. Ambrose answered that only travel costs would be incurred. Mr. Bemis then asked about how it would impact the Building Official, and Mr. Ambrose clarified from a day-to-day and a statutory point of view.

Mr. Lynch noted that the Building Official is required to be on the Advisory Board as a non-voting member under State Statute, and this should not be seen as a conflict.

Mr. Brauchla expressed a concern regarding terminology, and Mr. Ambrose agreed and recommended the Commission make that recommendation. Mr. Ambrose also recommended language to clarify a concern regarding quorum issues.

Mr. Lynch then called for a motion. Mr. Bemis made a motion to recommend approval per the language given by Mr. Ambrose. Mr. Brauchla seconded the motion and Mr. Lynch called for a discussion. Mr. Lynch summarized the motion, noting the actual responsibilities of the Board, and explaining again that the Board was not involved in writing or reviewing the Zoning Regulations, and called for a vote. The motion passed (6-2).

Motion: Motion to recommend approval with the corrections and bylaws noted by counsel and Staff.

Action: Recommend Approval **Moved by:** Mr. Bemis, **Seconded by:** Mr. Brauchla

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

Yes: Mr. Bemis, Mr. Brauchla, Mr. Cervantes, Chairman Lynch, Ms. Miller, and Mr. Garcia.

No: Ms. Edie and Mr. Martzke

Item 3

PUBLIC HEARING - Docket R-13-06 (Registrant Self-Certification Policy): A resolution that proposes to provide an option for Applicants to submit all plans required for building any structure as having been 'self-certified' by a Professional Registrant in the State of Arizona.

Chairman Lynch called for the Planning Director's report. Ms. Beverly Wilson presented the docket, noting that the program was entirely voluntary and limited to Arizona Professional Registrants with the written authorization of the Registrant and the property owner. She clarified that it was for plan review only. She explained the requirements for a Registrant to qualify for the program. Ms. Wilson explained a hold-harmless clause, and which fees will be waived. She closed by inviting questions from the Commission. Ms. Miller asked about the appeal process noted in the program. Ms. Wilson explained that the Board in question was the Board of Supervisors. Ms. Edie noted that the document did allow appeal to the Advisory and Appeal Board referenced in the previous docket. Mr. Brauchla asked about fees. Ms. Wilson explained that only the plan review fees would be waived.

Mr. Lynch opened the public hearing and received one request to speak.

Mr. Mike Jackson, McNeal, stated that he felt there was an “impossible contradiction” regarding combining the Advisory and Appeal Boards based on the required members. Mr. Ambrose interrupted to point out that Mr. Jackson’s remarks were not pertinent to the item at hand. Mr. Jackson requested that Mr. Ambrose address the Chair rather than the speaker. Mr. Lynch pointed out that he thought Mr. Jackson wanted to address the item on at hand. Mr. Jackson stated that he thought he was speaking at Call to the Public. Mr. Lynch permitted Mr. Jackson to finish with his Call to the Public remarks. Mr. Jackson continued with his objections to the combination of the Advisory and Appeals Boards based on the required makeups of the two Boards. He stated that the measure was “insane” and “impossible” and chastised the Commission for failing to do their job. Mr. Jackson also referenced a previous Building Official’s comments from 2008, pointing out a semantic difference in the 2008 proposal and the current proposal. Mr. Jackson claimed that in the past Staff has stated that the Advisory Board would have a role in “drafting regulations” and that this was not the same as “merely hearing appeals.” He again addressed the concern about the Appeals Board hearing appeals to regulations that the Board itself had adopted. He closed by stating that the Board of Supervisors have been committing a misdemeanor by not creating these Boards in the past. He paraphrased State Law and claimed that the law prohibits the Building Code from applying.

Mr. Lynch stated that the Chair had the opportunity to respond to criticism lodged during Call to the Public, but chose not to. He asked Staff to review the possibility of amending the Building Code to prevent the issue raised by Mr. Jackson.

Mr. Lynch noted that there were no further members of the public wishing to speak regarding this item and invited discussion from Commissioners. Mr. Lynch asked if this program was similar to one done with subdivisions. Ms. Wilson answered that this was the case. Mr. Lynch called for a motion. Mr. Bemis made a motion for Approval with modifications noted by Staff and the Commission. Mr. Martzke seconded the motion and Mr. Lynch closed the public hearing and called for a vote. The motion passed unanimously (8-0).

Motion: Motioned to recommend approval.

Action: Recommend approval **Moved by:** Mr. Bemis, **Seconded by:** Mr. Martzke

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

Yes: Mr. Martzke, Chairman Lynch, Mr. Cervantes, Mr. Brauchla, Ms. Miller, Mr. Bemis, Ms. Edie, and Mr. Garcia.

No: 0

CALL TO THE PUBLIC

Chairman Lynch opened the “Call to the Public.”

Jack Cook spoke about various matters.

Chairman Lynch closed the “Call to the Public.”

PLANNING DIRECTOR'S REPORT

Chairman Lynch then called for the Planning Director's report. Deputy Director Beverly Wilson reported that the wind farm approved by the Commission in April survived Appeal to the Board of Supervisors with the addition of new conditions. She also noted that there would be one Special Use for a dog kennel and a Master Development Plane at the July meeting. She also explained that Staff planned to have the final session on the zoning regulations and vote in July. Lastly, she noted that a Special Use Approval from the prior month had been appealed to the Board of Supervisors.

CALL TO COMMISSIONERS

There were no Commissioner comments.

WORK SESSION

The Commission held a Work Session to continue reviewing proposed changes to the Zoning Regulations. Mr. Bemis read a statement expressing concerns about the regulation rewrite, notably regarding the scope of regulation. He recommended starting with an enticement program prior to regulations and questioned the cost of regulations. He was concerned that regulations rather than enticements would foster resentment and limit compliance. Mr. Bemis expressed a concern regarding over-regulation and referenced the County in two areas. He also expressed concern regarding bringing in regulations from more dense jurisdictions, and that the County had neither the funds nor Staff to enforce the proposed regulations. Lastly, he expressed concern that the Commission was not taking an appropriate role in the process. Mr. Lynch asked Mr. Bemis if he was speaking to water regulations or the regulations as a whole. Mr. Bemis stated that he was speaking to the entirety of the proposal and discussed the Federal Government's involvement in the Upper San Pedro Watershed. Mr. Lynch again asked if Mr. Bemis was referring to water, and Mr. Bemis again stated that he was referring to the entire project and once again expressed concern about copying regulations from Tucson, Pima County, and Sierra Vista and creating more government than the County needed. Mr. Lynch asked Mr. Bemis if he felt that we should not have any regulation. Mr. Bemis answered that he did not and supported law and order and regulation but expressed a concern about misdirection of the process. He also acknowledged that this was a very difficult issue and trusted the Commission to review the proposals in depth. Mr. Lynch noted that they were veering into a high-level philosophical discussion and recommended starting with the proposed corrections. He also noted that the proposed changes were driven by problems rather than a desire among Staff for additional regulation. He also stated that he felt the regulations were not moving towards over-regulation. Mr. Bemis stated that he wanted the Commission to consider his concerns and statements. He expressed more concern about the genesis of the proposed water regulations and how they were being driven by the Federal Government rather than being driven by the County.

Ms. Beverly Wilson went through the document highlighting the changes that had been requested by the Commission at previous Work Sessions. Ms. Edie again expressed concern about the definition of Animal Husbandry and felt it was overly broad. Ms. Wilson noted that if the definition were struck then Kennels would no longer be a regulated use. Mr. Bemis asked why we were not defining Kennels, and Ms. Wilson replied that Staff had added language to that effect, but the Commission directed Staff to strike it at a previous Work Session.

Mr. Lynch expressed his belief that all animal regulation should be in the County's animal ordinance under the purview of the Sheriff's Department. He stated that he felt the Zoning Regulations should not deal with numbers of animals. Ms. Wilson explained how animal uses are land use issues. Ms. Edie expressed concern about the regulations limiting the number of animals, stating that ranchers often have large numbers of dogs. Ms. Wilson asked the Commission if they wished Staff to insert a definition of a Kennel into the proposed regulations, and asked the Commission for suggestions for such a definition. No consensus was reached and Mr. Lynch directed Staff to schedule a Work Session for the next meeting to discuss the issue of animals.

Ms. Wilson noted that all references to water code derived from Tucson regulations were removed, as were all references to agricultural water conservation. Mr. Lynch asked how the rate of water usage from an evaporative cooler would be checked. Ms. Wilson and Mr. Cervantes explained that the units are labeled with their water usage and that inspectors would check the label upon installation. Mr. Bemis asked about enforcement of the regulations regarding evaporative coolers, wondering if the County would send Inspectors around the County to inspect all installed evaporative coolers and red tag any that exceeded the proposed regulations. Ms. Wilson noted first that the regulations would only apply within the Sierra Vista Sub-Watershed and that the inspection would only occur on first installation rather than checking existing units. There was further discussion and clarification regarding rainwater harvesting for new commercial construction. The requirement for separate water meters for irrigation was also clarified at the request of Mr. Bemis.

Mr. Bemis asked if the Commission would see a final draft prior to approval. Staff assured the Commission that prior to a vote a clean revised copy would be available. Mr. Lynch also discussed the requested work session regarding animals and the philosophy behind the zoning regulations.

ADJOURNMENT

Ms. Edie moved to adjourn, Mr. Garcia seconded, and the meeting was adjourned at 6:50 p.m.