

# AGENDA

## City of Sedona Planning and Zoning Commission Retreat

1:00 PM

Thursday, February 13, 2014

### NOTICE:

Pursuant to A.R.S. 38-431.02 notice is hereby given to the members of the Planning and Zoning Commission and to the general public that the Planning and Zoning Commission will hold a retreat open to the public on Thursday, February 13, 2014 at 1:00 pm in the Vultee Conference Room.

### NOTES:

- Times are approximate.
- Meeting room is wheelchair accessible. American Disabilities Act (ADA) accommodations are available upon request. Please phone 928-282-3113 at least 24 hours in advance.
- Planning & Zoning Commission Meeting Agenda Packets are available on the City's website at: [www.SedonaAZ.gov](http://www.SedonaAZ.gov)

### GUIDELINES FOR PUBLIC COMMENT

#### PURPOSE:

- To allow the public to provide input to the Planning and Zoning Commission on a particular subject scheduled on the agenda.
- Please note that this is not a question/answer session.

#### PROCEDURES:

- Fill out a "Comment Card" and deliver it to the Recording Secretary.
- When recognized, use the podium/microphone.
- State your:
  - Name
  - City of Residence
- Limit comments to 3 MINUTES.
- Submit written comments to the Recording Secretary.

1. VERIFICATION OF NOTICE
2. CALL TO ORDER & ROLL CALL
3. ANNOUNCEMENTS & SUMMARY OF CURRENT EVENTS BY COMMISSIONERS & STAFF
4. RETREAT
  - a. Discussion: Legal overview of zoning law (1 hour)
  - b. Discussion: Legal review of state law, including, but not limited to, Senate Bill 1598, Open Meeting Law, and Recent Case Law (1 hour)
  - c. Discussion: Roles and Responsibilities of the Planning and Zoning Commission, including, but not limited to, procedures, review authority, decorum, and behavior (1 hour)
  - d. Executive Session pursuant to ARS 38-431.03.A.3 for consultation with the City Attorney on legal issues associated with zoning decisions by the Commission (1 hour)

*If an Executive Session is necessary, it will be held in the Vultee Conference Room at 106 Roadrunner Drive. Upon a public majority vote of the members constituting a quorum, the Planning and Zoning Commission may hold an Executive Session that is not open to the public for the following purposes:*

- i. To consult with legal counsel for advice on matters listed on this agenda per A.R.S. § 38-431.03(A)(3).*
- ii. Return to open session. Discussion/possible action on executive session items.*

- e. Discussion: Planning and Zoning Commission proposed work program (15 minutes)
5. FUTURE MEETING DATES AND AGENDA ITEMS (10 minutes)
    - a. Tuesday, February 18, 2014; 5:30pm (Public Hearing)
    - b. Thursday, February 27, 2014; 3:30pm (Work Session)
    - c. Tuesday, March 4, 2014; 5:30pm (Public Hearing)
    - d. Thursday, March 13, 2014 (Work Session)
  6. ADJOURNMENT

Posted: \_\_\_\_\_ By: \_\_\_\_\_

The mission of the City of Sedona government is to provide exemplary municipal services that are consistent with our values, history, culture and unique beauty.

MEETING LOCATION:  
VULTEE CONFERENCE ROOM  
102 ROADRUNNER DR, SEDONA, AZ





## City Of Sedona Community & Economic Development Department

102 Roadrunner Drive Sedona, AZ 86336

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### Memorandum

**To:** Planning and Zoning Commission  
**From:** Cari Meyer, Associate Planner  
**Date:** February 7, 2014 (For February 13, 2014 Retreat)  
**RE:** Materials for Planning and Zoning Commission Retreat

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The Planning and Zoning Commission has a retreat scheduled for Thursday, February 13, 2014, from 1:00 pm to 5:00 pm. In order to move through the agenda as efficiently as possible, the Commission is being provided with a number of documents prior to the retreat. These documents will be discussed and referred to during the retreat and it is expected that the Commissioners will have read these documents and be familiar with their contents.

Please contact Staff as soon as possible if you have any questions.

#### Attachments:

1. Planning and Zoning Commission Handbook
2. City of Sedona Ordinance 88-6 (Ordinance to Create the Planning and Zoning Commission)
3. Riggins Rules 2005
4. The Roberts Rules of Order Basic Points
5. Documents for Legal Overview
  - a. Training Memo: Open Meeting Laws
  - b. Emails regarding Community Benefits under the 2002 Community Plan
  - c. Statutory Language on Exactions
  - d. 2012 Design Review Memo
  - e. Excerpts from the new Community Plan
  - f. Tucson Case on Limits of Police Power in Rezoning
  - g. Kingman Case on the Role of the Community Plan
  - h. Learning Zoning from Legal Cases (Transamerica Title v. City of Tucson)
  - i. Land Use Case Law Review (Power Point Presentation and Note Pages)



City of Sedona  
Planning and Zoning  
Commission

Handbook

2005



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# Introduction

Welcome to the City of Sedona Planning and Zoning Commission. If you are a new Commissioner, you undoubtedly have lots of questions about the job. There's plenty to learn and this Handbook was prepared to help you get started.

Traditionally, the Planning and Zoning Commission is made up of members of the public at large with little or no formal training in planning. They come to the Commission with a public-spirited enthusiasm for community planning and a concern for the future of their community. Planning and Zoning Commission service often means late hours, no pay, and enough arguments to last a lifetime. Still, most Commissioners wouldn't miss the experience for the world.

City staff has developed this Handbook to be both a training tool and a ready reference. The Handbook is modeled after the "Planning Commissioner's Book" prepared by the State of California's governor's office of Planning and Research and the Nebraska Planning and Zoning Association and incorporates many of their ideas and concepts. It does not, however, cover everything that a Commissioner must know. For one thing, there is a lot that can only be learned through experience. Instead, it focuses on the basics. For more detailed information about the subjects that are introduced here, please see your planning staff.

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## ***Part One***

# **The Planning and Zoning Commission**

## **Four Basic Questions**

### ***1. What is the Planning and Zoning Commission?***

It is a permanent committee of seven citizens who have been appointed by the City Council to review matters related to planning and development. The Planning and Zoning Commission (Commission) holds public hearings on a regular schedule to consider land use matters. These include such things as the Sedona Community Plan, specific plans, rezonings, conditional use permits, development review applications, and subdivisions. Commissioners serve at the pleasure of the City Council, so Commission membership changes in response to changes in the make-up of the Council.

The Commission is the City Council's advisor on land use planning. The Council may choose to follow the recommendations of the Commission or not. Accordingly, they may reverse or modify Commission actions or send proposals back to the Commission for further review. The Commission makes the final decision on conditional use permits and development review applications. The Commission makes recommendations to the City Council on Community Plan and Land Development Code amendments, rezonings, and subdivisions.

Because the Commission focuses on planning issues, it is a valuable intermediary between the public and the City Council. When matters run smoothly, the Commission has a low profile. However, when there is a controversy, the Commission is there, in the thick of things, doing its best to sort through the facts and make a good decision.

### ***2. Why have a Planning and Zoning Commission?***

The idea of appointing a group of laymen to make decisions and recommendations about land use planning originated at the turn of the century. Government reformers, seeking to take local government out of the hands of party "machines," reorganized administrative procedures in an attempt to reduce political influence on decisions. One solution was to create a Planning and Zoning Commission, made up of appointed citizens that would be responsible for setting the community's development direction.

### ***3. How does it relate to the Community Development Department?***

Sedona's Community Development Department is the Commission's research staff. The planners can advise the Commission on the Sedona Community Plan, specific plans, zoning ordinance, subdivision ordinance, and other land use regulations. In addition, they provide background information and recommendations on the proposals that are under the Commission's consideration, answer technical questions, and make sure that meetings have been properly advertised in advance. A Community Development Department staff member will always be in

attendance at Commission meetings. Other attendees may include representatives of the City Attorney's office and the Public Works Department.

#### ***4. What does it do?***

Cities "plan" in order to identify important community issues (such as the direction of growth, housing needs, and environmental protection), project future demand for services (sewers, roads, etc.), address potential problems (such as overloaded sewers or crowded roads), and establish goals and policies for directing and managing future development.

The City Council may assign any or all of the following tasks to its Planning and Zoning Commission:

- Assist in writing the Sedona Community Plan or specific plans and hold public hearings on such plans;
- Hold hearings and act upon proposed amendments to the Community Plan and specific plans;
- Hold hearings and act upon proposed changes to the zoning ordinance (Land Development Code) and zoning maps;
- Hold hearings and act on conditional use permits and development review applications;
- Hold hearings and act on preliminary subdivision plats;
- Annually review the City's capital improvement program and the public works projects of other local agencies for consistency with the Community Plan;
- Promote public interest in the Community Plan;
- Consult with and advise public officials and agencies, utilities, organizations, and citizens regarding implementation of the general plan;
- Coordinate local plans and programs with those of other public agencies;
- Undertake special planning studies as needed.

Commissioners can learn about their Commission's particular responsibilities by asking the Community Development Department and referring to the Land Development Code.

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## Meetings

The Planning and Zoning Commission holds meetings -- lots of them. State law requires public hearings before planning actions are taken. At its regularly scheduled hearings, the Planning and Zoning Commission weighs planning proposals in light of state and local regulations and potential environmental effects and listens to testimony from interested parties. If necessary, the Commission may continue a hearing to a later time to allow more information to be gathered or to take additional testimony. The Commission usually considers several items at each hearing; considering each proposal separately and taking action before moving on to the next item on the agenda.

The Commission's decision on a project may be: (1) referred to the City Council as a recommendation for action (this is the case for Community Plan amendments, rezonings, and subdivisions); or (2) considered a final action unless appealed to the City Council (this is the case for conditional use permits and development review applications). The City Council will hold a noticed public hearing on the projects referred to it by the Commission (or received on appeal).

All meetings, including work sessions, must be open and public. This means that a quorum of Commissioners can only discuss Commission business in a public meeting. Meeting agendas must be posted at least 24 hours in advance and topics discussed at a meeting are limited to those on the agenda.

## Notice

The Community Development staff must publish advance notice of Community Plan, specific plan, zone change, conditional use permit, development review, and subdivision public hearings in the *Red Rock News* for all Planning and Zoning Commission meetings. Notice of proposed Community Plan and specific plan adoption or amendment must be mailed directly to the involved property owners. When a zone change, conditional use permit, development review, or subdivision is involved, notice must also be mailed to the owners of property within 300 feet of the project boundaries.

## The Chairperson

The Commission chairperson is responsible for making sure that meetings proceed in a fashion conducive to rational decision making. The chairperson must be familiar with the Commission's procedures and with the agenda items to be discussed at each meeting. The chairperson sets the tone of the hearing, keeps the discussion on track, encourages fairness, moderates and contributes to discussions, and helps direct testimony to the issues at hand. The chairperson will usually:

### Open the meeting

- Explain why the meeting is being held.
- Review the agenda and note any changes thereto.
- Review the procedures, rules and time limits to be in effect.

## **Moderate discussion**

- Describe, or ask staff to describe, the item to be discussed.
- Ask that speakers to identify themselves and take turns when giving testimony.
- Ask speakers to limit themselves to new testimony.
- Ask that Commission members wait to be recognized prior to speaking.
- Intervene when necessary to prevent more than one speaker from talking at one time.
- Ask staff for information or clarification, as necessary.
- Intervene when speakers ramble or get away from the issues.
- Close the meeting to testimony prior to deliberations.

## **Lead deliberations**

- Summarize the issues.
- Ask for input from the Commission as a whole.
- Ask for more information from staff if necessary.
- When Commissioners disagree, assist them in expressing their various concerns.
- When a motion is proposed, make sure that it is stated understandably and in full before a vote is taken.
- Encourage the Commissioners to make timely decisions.
- Make sure that findings are adopted when required.

## **An Important Lesson - "Be Prepared"**

Prior to every hearing, each of the Commissioners should have reviewed the items on the meeting agenda. This means reading the staff report, looking at the Community Plan and Land Development Code sections pertinent to the particular project, and asking questions of the planning staff when necessary.

At the hearing, Commissioners should be able to both ask and answer questions about the project, its relationship to the Community Plan and to the Land Development Code, and its potential impacts on the community. If legal questions arise, don't be afraid to ask the City Attorney for his/her opinion. Don't take legal advice from anyone but the City's own attorney.

## Recipe for an Effective Planning and Zoning Commission

Effective Planning and Zoning Commissions share certain qualities. These include:

- **Ability to focus on the subject under consideration.** Focusing means not being distracted by personalities, groups, or issues that do not have anything to do with the agenda item being discussed.
- **A clear view of the big picture.** A good Commission has the aggregate ability to identify the main points of an issue and to concentrate on addressing those. Keeping the big picture in mind is important so that the Commission doesn't bog down in excessive attention to minor detail.
- **Established rules for conducting meetings.** These needn't be as formal as Robert's Rules of Order, but they should define the responsibilities of the chairperson, the other Commissioners, and the staff. They should also establish the rules for testimony, such as the length of time available, speaker identification, etc.
- **Effective leadership.** An effective chairperson assists the flow of ideas and helps keep the proceedings on track.
- **Informed Commissioners.** Prior to the hearing, Commissioners should have read the staff reports and reviewed the pertinent sections of the Community Plan and the Land Development Code.
- **Attention to legal requirements.** A Commissioner must keep basic legal requirements in mind. Is the proposal consistent with the Community Plan? Does it meet all applicable zoning or subdivision ordinance requirements? Are the environmental impacts of the project, if any, being reduced or eliminated by the conditions of approval? Is the Commission's decision supported by findings of fact based on substantial evidence in the record? When in doubt, ask the City Attorney for his/her advice.
- **An open flow of ideas.** The chairperson and the other Commissioners share responsibility for seeing that there is a continuing flow of ideas and discussion among all parties, including applicants, staff, members of the public, and the Commissioners themselves. Be objective and ask questions.
- **A sense of pace.** The chair should be able to recognize that point in time at which testimony must be closed off so the Commission can deliberate. Commissioners should hold their motions until the discussion has reached its conclusion. Both the chairperson and the other Commissioners should know whether to continue a hearing or to make a decision.

### The Commissioner's "Survival Kit"

Commissioners should bring the following to every meeting:

- The meeting agenda.
- Staff reports and supporting plans for each of the projects to be considered.
- A copy of the Community Plan.
- A copy of the Land Development Code.
- A pad of paper and pencils.

## **Part Two**

# **The Legal Side of Planning**

Countless volumes have been written about the legal basis for planning and all the court decisions on the subject. This Handbook is too brief to go into more than just the bare outline of some of planning's legal side. **Commissioners should rely upon the City Attorney for detailed legal opinions.**

## **The Police Power**

Planning and the regulation of land use are based upon local government's "police power." The courts have held that the police power may be used to regulate a wide and expanding variety of activities, as long as it is exercised in a manner that is reasonably related to the protection of the public's health, safety, and welfare, is not preempted by federal or state law, and is within the framework of state statute. Community planning, zoning laws, subdivision regulations, sign controls, community growth management regulations, and dedications of private land as a condition of development approval are some examples of the police power at work. Constitutional guarantees of equal protection, free speech, due process, and just compensation for the taking of private property define the boundaries of the police power. An illegal "taking" may occur as a result of either the public's acquisition of private property without just compensation or of excessively restrictive land use regulations that deprive a property owner of all uses of his/her land.

## **Findings**

Planning and Zoning Commission decisions must be based on a rational decision-making process. Often, the Commission must adopt written "findings" explaining the factual reasons for its decision. A finding is a statement of fact relating the information that the Commission has considered to the decision that it has made. If a decision is challenged in court, the findings will be used to trace the Commission's reasoning and to determine whether its action was legally justified.

Findings must be supported by evidence in the hearing record (i.e., testimony, reports, environmental documents, etc.) and should not contain unsupported statements. Complete findings should be included in the Commission's action of approval or denial. Keep in mind that findings will not rescue a decision if the Commission has failed to follow the other procedures required by law.

## **Some actions requiring findings:**

**Zone change** -- finding of consistency with the Community Plan and any specific plans.

**Subdivision** -- finding of consistency with the Community Plan and any specific plans; findings supporting approval/denial per state and local subdivision codes.

**Community Plan amendment** – specific findings required by state statute and the City’s Community Plan.

**Specific plan adoption or amendment** – finding of consistency with the Community Plan.

**Conditional Use permit** – required findings (in the Land Development Code), findings supporting approval and conditions.

**Development Review approval** – required findings (in the Land Development Code), findings supporting approval and conditions.

## **Part Three**

# **Zoning Basics**

### **The Origins of Zoning in America**

A little more than 100 years ago, local governments across the United States began to enact ordinances regulating where certain kinds of businesses could locate and the maximum height of buildings. Early examples include an 1885 ordinance regulating the location of laundries in Modesto, California, ordinance regulating building heights in Washington, D.C. in 1899 and Boston in 1904, and a 1909 Los Angeles ordinance governing where industrial plants could be built.

These early ordinances were enacted, in part, to address the social and economic challenges associated with immigration and the rise of the industrial age across much of America. The ordinances sprang from the police power provision embedded in the Constitution, which allows government to exercise reasonable controls in order to protect the public health, safety, convenience, and welfare. Indeed in an 1877 ruling involving Richmond, Virginia, the United States Supreme Court ruled that “the power to govern implies the power to ordain and establish suitable police regulations.” The court went on to state that the “regulation of property” was a function of the police power and did not, on its face, constitute a taking of property.

With this foundation in place, New York City adopted the nation’s first comprehensive zoning ordinance in 1916. The ordinance classified various types of land uses, delineated zones (through a zoning map), and established height and bulk standards for buildings. The ordinance was designed to address issues associated with noise, congestion, incompatible land uses, and the loss of amenity values. Other cities followed New York’s lead and subsequently adopted zoning ordinances for the purpose of guiding and managing growth.

### **Zoning Enabled**

In 1922, the U.S. Department of Commerce, under the leadership of then Secretary Herbert Hoover, published the model Standard State Zoning Enabling Act. The Model Act, which was designed for adoption by states across the country, outlined the role and function of zoning, and set out uniform standards that localities could use to guide land development practices.

The national movement to adopt zoning got a big boost four years later (1926) when the United States Supreme Court ruled in (*Euclid v. Ambler Realty*) that zoning did not violate the due process clause of the federal constitution. The ruling resulted in the widespread adoption of zoning statutes across the nation. By 1940, zoning had become (and continues to be) the most common means of regulating local land use in the United States.

## Zoning Defined

Zoning is a legislative process whereby a community is divided into districts or zones and a series of regulations concerning the use of land within the districts involving the placement, spacing, and size of buildings are provided. The primary goal of zoning is to avoid or minimize disruptive land use patterns involving different properties and different land uses, thereby ensuring that land development is consistent with local plans, local goals, and local building standards.

## Linking Zoning to Planning

A truism that can be stated with authority is as follows: zoning depends on planning and planning depends on zoning. It is difficult for one to exist without the other. The Community Plan can be thought of as a roadmap which captures in pictures and words what a community wishes for itself. Although the plan will talk about land use, it does not regulate land use. This is the role of the zoning ordinance (Land Development Code). In short, the Community Plan provides the basis for drawing and applying the zoning districts, which in turn control what happens on the land.

The subdivision is another planning tool that is linked with zoning. A subdivision ordinance regulates the division of land into building lots for the purpose of sale, development, or lease. The ordinance specifies procedures that are to be followed when land is divided and built upon. Standards governing the platting of buildings, lots and planned improvements, such as roads and utilities, are common to most subdivision ordinances. When used in conjunction with the zoning ordinance and the Community Plan, the subdivision ordinance assures that the land development process is accomplished in an appropriate and consistent manner.

## Who's Who in Zoning

In order to make sense out of the zoning process, it is important to understand the players and their respective roles. But before getting to the players, it is first necessary to know something about the types of decisions that are made in the zoning universe.

The zoning process is similar to the balance of power that we all learned about in civics class. In zoning, different bodies have different responsibilities that serve as a system of “checks and balances.” For the system to work efficiently each role must be played well by the respective body responsible for that role; conversely, it is important for individual bodies to not exceed their designated role.

There are four main types of decision-making functions in the zoning process, including legislative, advisory, administrative, and quasi-judicial functions.

1. *Legislative.* The legislative function involves the adoption or amendment of the zoning regulations themselves. The legislative body is comprised of the Sedona City Council. Note that the zoning map is considered to be part of the zoning regulations, which means that a zoning map amendment or “zone change” is a legislative act.
2. *Advisory.* Prior to adopting or amending the zoning text or map, Sedona’s zoning process

provides for the Planning and Zoning Commission to provide advice to the City Council on the wisdom of any such adoption or revision. Many Planning and Zoning Commissions are also involved in drafting proposed zoning ordinances and amendments.

These are among the most important responsibilities of a Planning and Zoning Commission. The Commission provides an apolitical voice that represents a longer and broader view of the public interest. The Commission will also examine whether the zoning proposal is consistent with the goals and policies of the locality's adopted Community Plan.

In any zoning adoption or amendment process, the legislative body is likely to hear from a variety of "special interests" ranging from local homeowners and neighbors to builders and developers. These special interests are a natural and important part of the process. However, it is equally important to have the independent voice of a Planning and Zoning Commission that is motivated only by the long range public interest of the community as a whole.

3. *Administrative.* It is sometimes surprising for new Planning and Zoning Commissioners to learn that the majority of decisions made in the zoning process are actually made at the administrative level by City staff planners. Non-discretionary standards such as lot size, lot width, setbacks, building height, permitted uses, sign height and size, and parking lot standards can be administered by staff without the need for review by the Planning and Zoning Commission or City Council. These decisions typically take the form of zoning approvals and certificates of occupancy, and are often made a part of the building permit process.
4. *Quasi-judicial.* No zoning code is perfect nor can all potential circumstances be anticipated. For that reason it is important to have a "safety valve" in the zoning process. There are several mechanisms that have been built into the zoning process to allow for the fact that circumstances in the "real world" often require flexibility in the zoning process. First, there are occasions when an interested party may simply disagree with the way in which the administrative staff is interpreting the zoning regulations. Thus, there is a need for an appeals process. Second, there are instances where the strict application of zoning regulations creates an unfair situation to a property owner. Thus, there is a need for some limited ability to vary the provisions of the zoning regulations.

Typically, as part of the zoning process, a board will be designated to hear appeals and consider variance requests. Sedona has the Board of Adjustment to handle variances and appeals. It generally acts in a "quasi-judicial" capacity because in Arizona its decision is final, subject only to appeal to the Superior Court. Board of Adjustment decisions must be more "judge like" meaning there is typically an obligation that a Board of Adjustment decision be based on specific factual evidence, with written findings of fact to support the decision.

### **Things to Watch Out For**

The four decision-making functions just discussed, legislative, advisory, administrative, and quasi-judicial, are generally carried out by the four corresponding bodies: the City Council; Planning and Zoning Commission, Community Development staff, and the Board of Adjustment. However, things are rarely as simple as they seem.

When Planning and Zoning Commissions get caught up in minutia. Many Planning and Zoning Commissions spend hours going through excruciating details on development proposals, dealing with items over which they have little discretion (at least if they follow the dictates of the zoning code). Particularly in communities that have professional staff, there is no need for the Planning and Zoning Commission to take on what is essentially a staff responsibility. A Planning and Zoning Commission works best when it allows staff to make technical determinations, while the Commission focuses its attention on those matters that require discretionary decision-making. Of course, this assumes that the community has a good zoning code, with well-articulated standards in place.

When elected officials try to influence the Planning and Zoning Commission recommendations. It is all too common to find elected officials attending Planning and Zoning Commission meetings and trying to influence the Commission's recommendations. This is perplexing, since one of the principal reasons for Planning and Zoning Commission consideration of zoning amendments is to provide the elected officials with their best advice. It is counterproductive for elected officials to try to influence the "independent" advice that the Planning and Zoning Commission is supposed to provide them.

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## **Part Four**

# **A Short Primer on State Planning Law**

## **The Community Plan and Zoning Are Not the Same**

A Community Plan is a set of long-term goals and policies that the community uses to guide development decisions. Although the Plan establishes standards for population density, building intensity, and the distribution of land uses, it does not directly regulate land use and acts only as a guide.

Zoning, on the other hand, is regulatory. Under the zoning ordinance (Land Development Code), development must comply with specific, enforceable standards such as minimum lot size, maximum building height, minimum building setback, and a list of allowable uses. Zoning applies lot-by-lot, whereas the Community Plan has a community-wide perspective.

Put another way, the Community Plan is a blueprint and zoning is a tool for making it a reality. The Plan is the basis for programs such as the zoning and subdivision ordinances. In turn, zoning is a means of putting into action the Plan's long-term goals.

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## **The Sedona Community Plan**

Sedona's Community Plan is the community's general plan required by state law. The Community Plan is Sedona's blueprint for future development and describes Sedona's development goals and policies. It also forms the basis for land use decisions made by the Planning and Zoning Commission and City Council.

### **Contents**

A Community Plan consists of at least two parts. There is a written text describing the community's goals, objectives, and policies toward development. There is also a map (or maps) and diagrams illustrating the generalized distribution of land uses, the major road system, the open space system, and other policy statements that can be illustrated.

In accordance with ARS 9-461.05, the Community Plan must consist of a statement of community goals and development policies. It must include maps, any necessary diagrams, and text setting forth objectives, principles, standards, and plan proposals. For a community of Sedona's size (a population between 10,000 and 50,000), it must include the following elements, at a minimum:

1. The **Land Use Element** is the focal element of the Community Plan and has guided the formulation of the other elements in the Plan. As the focal element upon which the Community Plan has been developed, it illustrates where the community should develop and

where it should not develop, the anticipated scale and intensity of development, and how various land uses relate to each other.

The Land Use Element recommends a wide range of land uses and development intensities/densities for the City in response to extensive community involvement in the planning process, the existing land use analysis, environmental conditions, the results of surveys, past specific area planning efforts, and the vision statement, goals, and objectives for land use. The Land Use Element serves as a guide for the use and implementation of the City's Land Development Code and zoning map, the tools by which the City may legally implement the Plan. The adopted land use vision statement, goals and objectives, land use plan, and recommended actions will assist the Commission and City Council in reviewing future development proposals and rezoning requests. These components will also assist in future specific planning, development of regulations, planning open space acquisition for preservation or recreation improvements, planning and programming new community facilities to serve the growing community's needs, and in preparing and updating the City's capital improvements program.

2. The **Circulation Element** consists of the general location of existing and proposed highways, arterial and collector streets, bicycle routes, and any other modes of transportation as may be appropriate, all correlated with the Land Use Element of the Plan. The Circulation Element assists the City in developing a comprehensive transportation system, which addresses the circulation planning of the community as it relates to the land use policies set forth in the Community Plan by balancing future transportation needs with community sensitivity and projected land uses.
3. The **Open Space Element** includes a comprehensive inventory of open space areas, recreational resources, and designations of access points to open space areas and resources. It also includes an analysis of forecasted needs, policies for managing, protecting and acquiring open space areas, and policies and implementation strategies designed to promote a regional system of integrated open space and recreational resources and a consideration of any existing regional open space plans.
4. The **Growth Area Element** is mandated by Growing Smarter legislation to require communities to identify land development patterns that do not promote urban sprawl, but "provide for a rational pattern of land development." This element identifies areas for planned multi-modal transportation, infrastructure expansion, and improvements designed to support a variety of uses including tourism.
5. The **Environmental Planning Element** contains analysis, policies, and strategies to address anticipated effects, if any, of Plan elements and new development on air quality, water quality, and natural resources. These policies and strategies have community-wide applicability and do not require environmental impact statements beyond those already required.
6. The **Cost Of Development Element** identifies policies and strategies that the City can use to require development to pay its fair share toward the cost of additional public service needs generated by new development. It identifies legal mechanisms to finance necessary public service and identifies policies to ensure adopted mechanisms result in a beneficial use

to the development and bear a reasonable relationship to the burden imposed on the City to provide additional necessary public services.

7. The **Water Resources Element** addresses the availability of surface water, groundwater, and effluent supplies. It includes an analysis of how the future growth projected in the Community Plan will be adequately served by the legally and physically available water supply or a plan to obtain additional necessary water supplies.

In addition to the State mandated elements, the Sedona Community Plan also includes the following elements:

1. The **Housing Element** contains goals and objectives to guide the City in establishing standards for housing quality, variety, affordability, and preservation of a small-town character.
2. The **Regional Coordination Element** includes goals and objectives promoting regular interaction and communication with the communities and rural areas in the Sedona area and works toward the mutual support of a regional growth management policy based on needs, goals, assets, and resources.
3. The **Community Facilities, Services, and Recreation Element** is a supporting element for many other elements of the Community Plan to illustrate the vision the community has established to augment existing community facilities and services. The element addresses existing and proposed community facilities, services, and recreation needs.
4. The **Economic Development Element** outlines visions, values, and goals to develop and maintain a diverse local economy.
5. The **Tourism Element** contains goals and objectives to ensure and maintain a quality visitor experience, maximizing the benefits of tourism while minimizing impacts of visitors on the community.
6. The **Historic Preservation Element** identifies needs and strategies to preserve and protect Sedona's historic resources.
7. The **Arts and Culture Element** contains goals and objectives promoting and enhancing Sedona's cultural and artistic heritage.

It is important to note that in accordance with statutes, the Community Plan is general in nature and provides an overall guide for community growth and development. The Plan should, therefore, include some flexibility in its interpretation and use.

## **Consistency**

The Community Plan is important because it is the basis for many local land use decisions. Rezoning (except in most charter cities), subdivisions, and public works projects can only be approved when they are consistent with and conform to the Community Plan. An action,

program, or project is consistent with the Community Plan if, considering all its aspects, it will further the goals, objectives, and policies of the Plan and not obstruct their attainment. A rezoning conforms to the Plan if the land uses densities and intensity of use are within the range of uses and densities of the Plan's Land Use Element.

Not only must governmental actions be consistent with the Community Plan, the Plan itself must be internally consistent. Each part of the Community Plan, be it a goal, policy, or map/diagram, must mesh with all of the other parts of the Plan. For instance, the Land Use Element must not contain statements or assertions that conflict with the Housing Element. Similarly, the maps and diagrams adopted as part of the Plan must agree with one another. For example, the location of a major highway on the Land Use Element diagram must match its location on the Circulation Element diagram as well.

### **Approving and Amending the Plan**

The City of Sedona considers amendments to the Community Plan once per year. The process of adopting or amending the Community Plan strongly emphasizes public participation. The City of Sedona must hold public hearings for such proposals. Advance notice of the place and time of the hearing must be published in the *Red Rock News* and also mailed directly to the involved property owners and all City of Sedona property owners. Copies of the proposed amendments must be available for public purchase and review.

The Planning and Zoning Commission and the City Council must each hold at least one public hearing prior to approving or amending the Plan. The Commission will hold its hearing first and make specific recommendations to the City Council. The City Council will take final action on the proposals at their hearing. An amendment to the Community Plan requires a two-thirds vote of the City Council (5-2).

### **Amendment Considerations**

The Community Plan shouldn't be amended casually. The Community Plan, including the *Future Land Use Map*, constitutes a land use policy statement that was created based upon prevailing needs, the existing development pattern, underlying zoning classifications, considerations for man-made constraints, natural constraints and environmentally sensitive lands, opportunities for development, and accepted planning practices. Over a period of time, any of these variables are subject to change. Consequently, the Community Plan must periodically be reviewed and amended if it is to remain effective.

The findings of facts to be considered in approving an amendment to the Plan may include, but are not limited to:

- That the request is supported by the Community Plan when all visions, goals, objectives, policies, and other recommendations are comprehensively evaluated; and
  - That the amendment is not detrimental to the City as a whole.
-

## **Zoning**

Sedona's Land Development Code (zoning ordinance) regulates land uses within the community. It assigns each piece of property to a "zone," which describes the rules under which that land may be used. These classifications, such as "RS-10a" for single-family residences or "C-1" for commercial uses, cover in specific terms the range of uses that is discussed broadly in the Community Plan. Each zone identifies allowable uses and sets standards such as minimum lot size, maximum building height, and minimum front yard depth.

The distribution of residential, commercial, and other zones are based on the pattern of land uses established by the Sedona Community Plan. The zoning map illustrates how zones are distributed.

Zoning is adopted by ordinance and carries the weight of local law. Land may be put only to those uses listed in the zone assigned to it. For example, if the C-1 (General Commercial) zone does not allow lodging uses over six units, then lodging uses could not be built on land that has been assigned the C-1 zoning classification.

## **Rezoning**

If a landowner proposes a use that is not allowed in that zone, then he/she must obtain a change of zone if that use is to occur. The Planning and Zoning Commission and the City Council must hold public hearings before property may be rezoned. The City Council is not obligated to approve requests for rezoning and, except in charter cities, must deny such requests when the proposed zone conflicts with the general plan. Typically, zoning ordinances also provide for limited waivers to zoning regulations (variances), subject to a public hearing.

Public notice for a rezoning hearing must be given at least 15 days before the hearing by advertisement in the *Red Rock News* and by direct mailing to the owners of property located within 300 feet of the proposal's boundaries.

## **Rezoning Considerations**

Commissioners should be able to answer the following questions affirmatively when approving a rezoning.

1. Is the proposed zone consistent with all component parts of the Community Plan (including text and maps)?
2. Is the proposed zone and its allowable uses compatible with existing and planned uses in the area?
3. If significant environmental effects have been identified as a result of the proposed rezoning, are actions being required or conditions applied to mitigate those effects?
4. If the proposal is part of a larger project, has the entire project been addressed in the environmental analysis?

## **Variances**

A variance is a limited waiver of development standards and is considered by the City's Board of Adjustment. A variance may be granted, after a public hearing, in special cases where: (1) strict application of the zoning regulations would deprive the property owner of the uses enjoyed by nearby lands in the same zone; and (2) restrictions have been imposed to ensure that the variance will not be a grant of special privilege. Variances cannot be granted for self-imposed hardships. A variance must not be granted if it would permit a use that is not otherwise allowed in that zone (for example, a commercial use may not be approved in a residential zone by variance). Variances only apply to waivers of development standards in the Land Development Code. In addition, economic hardship alone is not sufficient justification for approval of a variance.

Typically, variances are considered when the physical characteristics of the property make it difficult to use. For instance, in a situation where the rear half of a lot is a steep slope, a variance might be approved to allow a house to be built closer to the street and front property line than usually allowed.

## **Conditional Use Permits (CUPs)**

Some types of land uses are only allowed upon approval of a conditional use permit (also called a CUP) after a public hearing. These uses might include community facilities (i.e., hospitals or schools), public buildings or grounds (i.e. museums or parks), temporary or hard-to-classify uses (i.e., Christmas tree sales), or uses with potentially significant environmental impacts (i.e., hazardous chemical storage). The Land Development Code specifies the uses for which a conditional use permit is required, the zones they may be allowed in, and the public hearing procedure. When allowing a project, the CUP will impose special conditions to insure that the use will not be detrimental to its surroundings. Requirements might include such things as additional landscaping, soundproofing, limited hours of operation, additional parking, or road improvements. A CUP does not rezone the land.

## **Conditional Use Permit Considerations**

Commissioners shall make the following findings when approving a conditional use permit.

- The proposed location of the conditional use is in accordance with the objectives of the Land Development Code and the purpose of the zoning district in which the site is located.
- The granting of the conditional use permit will not be materially detrimental to the public health, safety, or welfare. The factors to be considered in evaluating this application shall include:
  - Property damage or nuisance resulting from noise, smoke, odor, dust, vibration, or illumination.
  - Any hazard to persons and property from possible explosion, contamination, fire, or flood.
  - Any impact on surrounding area resulting from unusual volume or character of traffic.
- The characteristics of the conditional use as proposed, and as may be conditioned, are reasonably compatible with the types of use permitted in the surrounding area.

- The proposed use, as it may be conditioned, will comply with the applicable provisions of this Code, and other ordinances.
  - The proposed expansion or change of a non-conforming use (if applicable) is no more deleterious to other properties in the surrounding area than the existing use.
- 

## **Development Review**

The purpose of Development Review is to provide guidance and direction in the physical improvements of properties within the City through the review of all aspects of a proposed development including, but not limited to, design review, site planning, and the relationship of the development to the surrounding environment and the community. Development Review shall promote harmonious, safe, attractive, and compatible development and is, therefore, considered to further the public health, safety, and general welfare of the citizens of Sedona.

### **Development Review Considerations**

When considering an application for Development Review approval, Commissioners shall use the following criteria:

- The degree to which all of the applicable provisions of the Land Development Code and any other ordinances have been complied with.
  - The degree to which the proposed development of buildings, uses, or structures conforms to the Design Standards set forth in Article 10 of the Land Development Code.
  - The degree to which the proposed development integrates the proposed built environment into the natural environment with minimal disturbance to view corridors, existing native vegetation and/or established landscaping, the natural topography of the site, natural drainage ways, known wildlife habitats, rock outcrops, and other natural features.
  - The degree to which the proposed development integrates into, and is compatible with, the built form of surrounding properties and existing developments with regard to building height and character, landscaping, signage, building materials, historical structures or features, landscaping, and pedestrian and vehicular circulation.
  - That the proposed use is in general conformance with applicable goals, objectives, and recommendations described in the Community Plan and adopted specific plans.
  - The degree to which proposed vehicular ingress, egress, internal traffic circulation, off-street parking facilities, loading and service areas, and solid waste collection are designed to promote public safety and convenience.
  - The degree to which pedestrian circulation is facilitated both on and off-site through interconnected passages, pathways, and plazas, and is designed to promote public safety and convenience.
  - The degree to which the proposed development addresses concerns cited by participating reviewing agencies with jurisdiction in the areas of public health and safety.
-

## **Subdivisions**

In general, land cannot be subdivided in Arizona without local government approval. Dividing land for sale, lease, or financing is regulated by Sedona's subdivision ordinance (Article 7 of the Land Development Code). The Community Plan and the zoning, subdivision, and other ordinances govern the design of the subdivision, the size of its lots, and the types of improvements that will be required as conditions of approval.

### **Subdivision Types**

There are basically two kinds of subdivision: **minor land divisions**, which are limited to divisions resulting in fewer than four lots, and **final plat subdivisions**, which create four or more lots.

### **Processing**

Minor Land Divisions. In order to ensure that a minor land division complies with applicable zoning regulations, does not create land locked parcels, and does not constitute a subdivision, a Land Division Permit must be obtained from the City prior to the division of a parcel into two or three separate parcels, either by recording of a contract of sale or deed of conveyance, or the split of a tax assessor parcel. Minor land divisions are processed at a staff level and do not require Commission approval.

Final Plat Subdivisions The preparation, submittal, review, and approval of all subdivision plats located with Sedona city limits shall proceed through the following progressive steps: (1) pre-application conference, (2) conceptual review, (3) preliminary plat, (4) revised preliminary plat, and, (5) final plat.

All subdivisions must comply with the regulations outlined in Article 7 of the Land Development Code.

The Planning and Zoning Commission and the City Council must each hold at least one public hearing regarding a subdivision plat request.

Subdivision approval is conditioned upon the subdivider providing public improvements such as streets, drainage facilities, water supply, or sewer lines to serve the subdivision. They may also be required to dedicate open space or park area to the community.

Lots within the subdivision cannot be sold and are not legal divisions of land until a final plat has been recorded.

### **Subdivision Considerations**

Commissioners shall make the following findings when considering and approving a subdivision plat.

- That the proposed subdivision conforms to the adopted goals, objectives, and policies of the City.
  - That the proposed subdivision, as reviewed and approved, will not be detrimental to the public health, safety, and general welfare.
  - That environmental concerns, including scenic impacts, conform with adopted standards.
  - That the design of the proposed subdivision is sensitive to the physical characteristics of the site.
  - That the proposed subdivision is consistent with the provisions and the intent of the zoning regulations applicable to the property.
  - That the proposed subdivision conforms with the improvement and design standards set forth in these regulations and other applicable adopted ordinances.
-

## **Part Five**

# **Glossary of Common Planning Terms**

**Accessory Use** means a use conducted on the same lot as the primary use of the structure to which it is related and which is clearly incidental to, and customarily found in connection with, such primary use.

**Building** means a structure having a roof supported by columns or walls.

**Building Footprint** means the floor area enclosed within the exterior sides of continuous perimeter foundation walls of a building or structure, excluding covered decks or patios.

**Building Permit** means a permit required for the erection, construction, modification, addition to, or moving of any building, structure, or use in the City.

**Building Setback Line** means the minimum distance prescribed by the Land Development Code between any property line and the closest point of the foundation or any supporting post or pillar of any related building or structure.

**Building Site** means a legally created parcel or contiguous parcels of land in single or joint ownership which provide the area and the open space required by the Land Development Code, exclusive of all vehicular and pedestrian rights-of-way and all other easements that prohibit the surface use of the property by the owner. Private easements providing access to four or fewer parcels shall not be deducted from the building site area.

**Conceptual Site Plan** means a plan or map that conceptually illustrates the development proposal for the subject property, including (but not limited to) building footprints and square footage, proposed uses, landscape areas and buffers, plazas, pedestrian and vehicular circulation, parking, site access, service areas, and the identification of potentially sensitive design issues. The relationship of the proposed developments should also be reflected.

**Conditional Approval** means an affirmative action by the Commission or the Council indicating that approval will be contingent upon satisfaction of certain specified stipulations.

**Conditional Rezoning** means a rezoning for which conditions of approval are applied.

**Construction Envelope** means one or more specified areas on a lot or parcel within which all structures, driveways, all grading, parking, non-native landscaping, water surfaces, decks, walks, and improved recreation facilities are located. Underground utilities may be located outside the construction envelope, but the area disturbed must be revegetated.

**DBH** means the diameter at breast height - the diameter of a tree trunk or the cumulative diameter of multiple trunks measured four and one half (4-1/2) feet above natural grade.

**Density** means the total number of dwelling units permitted on an acre of land, exclusive of all streets and rights-of-way and public access easements.

**Dwelling Unit** means any building or portion of it which contains living facilities, including provisions for sleeping, eating, cooking, and sanitation facilities as required by the Land Development Code, for not more than one (1) family or a congregate residence for ten (10) or fewer persons.

**Easement** means the portion of a lot or lots reserved for present or future use by a person or agency other than the legal fee owner(s) of the property. The easement may be for use under, on, or above said lot or lots.

**Existing Conditions Analysis** means a plan or map showing the location and general footprint of all existing development within the Context Area, including (but not limited to) the height, intensity, use, and character of existing development, location of existing native vegetation, significant natural features, historical structures, predominant building materials and signs, viewshed analysis, primary pedestrian circulation paths, location of significant development features such as parking lots, courtyards, and pedestrian walkways, and proof of contact with surrounding property owners.

**Final Approval** means unconditional approval of a final plat by the Council, as certified by the City Engineer, signed by the Mayor, and attested by the City Clerk. This authorizes recording of the plat when engineering plans have been approved and the posting of an assurance bond to guarantee the installation of the improvements.

**Floodplain** means the total area required to pass the base flood through a natural watercourse, wash, canyon, ravine, arroyo, or other potential flood hazard area.

**Floor Area** means the area of all floors included within the surrounding exterior walls of a building, or portion of it, excluding vent shafts and courts. The floor area, or portion of it, not provided with surrounding exterior walls shall be the useable area under the horizontal projection of the roof or floor above.

**Floor Area Ratio** means a ratio derived by dividing the area of all floors of all buildings on a site or lot by the area of the site or lot on which they are situated, except single-level, unenclosed, covered parking areas, (unless the roof space is used for any use or activity), and unenclosed covered walkways and lanais.

**Footprint Area** means the area included within the surrounding exterior walls of a building or structure, measured at the foundations of such building or structure.

**Frontage** means the width of a lot or parcel abutting a public right-of-way, measured at the front property line.

**Gross Area** means the total horizontal area within a lot or parcel of land before public streets, easements, or other areas to be dedicated or reserved for public use are deducted from such lot or parcel.

**Hillside Development Area** means any subdivision or portion of a subdivision located in terrain having a slope exceeding fifteen percent (15%).

**Landscaping** means the placement of trees, shrubs, vegetative and organic, or inorganic materials in a prescribed area. Organic and inorganic materials include gravel, cinders, rock, and bark materials.

**Land Division** means the division of improved or unimproved land into two (2) or three (3) tracts or parcels for sale or lease with no new streets. Land Division includes "Land Splits" as defined by Arizona Revised Statutes (as the division of improved or unimproved land of two and one-half (2-1/2) acres or less for the purpose of sale or lease), and any division of a parcel of improved or unimproved land, which is greater than two and one-half (2-1/2) acres in size.

**Lot Coverage** means the portion of a lot or building site, expressed in percent, which is occupied by any building or structure, excepting paved areas, uncovered parking areas, single-level, unenclosed covered parking areas (unless the roof space is used for any use or activity), unenclosed covered walkways, driveways, walks, lanais, terraces, swimming pools, and landscape areas.

**Net Area** means the total horizontal area within a lot or parcel of land, excluding all public streets, easements, or other areas reserved or dedicated for public use except private easements, which serve as primary access to no more than four (4) individual lots or parcels.

**Nonconforming Developments** mean buildings, structures, parking, landscaping, and other property improvements that were lawfully existing prior to the adoption, revision, or amendment of the Land Development Code or previous ordinance, in which the uses are otherwise in conformance with the district in which they are located, but fail, by reason of such adoption, revision, or amendment, to conform to the development standards applicable to the district.

**Nonconforming Situation** means a condition that occurs when, on the effective date of adoption of Land Development Code or a previous ordinance or on the effective date of an ordinance text amendment or rezoning, an existing lot, structure, building, sign, development, or use of an existing lot or structure does not conform to one or more of the regulations currently applicable to the district in which the lot, structure, building, sign, development, or use is located.

**Nonconforming Use** means a use or activity which was lawful prior to the adoption, revision, or amendment of the Land Development Code and Zoning Map or previously applicable zoning ordinances and maps, but which is unlawful by the use regulations currently applicable to the district in which the use or activity is located.

**Open Space** means land areas that are not occupied by buildings, structures, parking areas, streets, alleys, or required yards. Open space may be devoted to landscaping and preservation of natural features, patios, and recreational areas and facilities.

**Parcel** means real property that: (a) has a separate and distinct number or other designation shown on a plan, recorded with the County Recorder's Office or, (b) is delineated on an approved record of survey, parcel map, or subdivision map, as filed with the County Recorder and abutting at least one public right-of-way or easement determined by the Commission to be adequate access.

**Parking Area** means an area designed and constructed for the parking, storage, and maneuvering of vehicles.

**Parking Space** means a space within a public or private parking area, exclusive of driveways, ramps, columns, offices, and work areas, which is for the temporary parking or storage of one (1) motor vehicle.

**Plat** means a map of a subdivision and associated required information which provides for changes in land use or ownership or which describes existing uses.

**Plat, Amended Final** means a plat of all or part of a recorded subdivision proposing a change of design, lot lines, size of lots, number of lots, or street alignments.

**Plat, Conceptual** means a design prepared for review and comment at a pre-application conference and by the Commission. It is not a preliminary plat submittal.

**Plat, Final** means a plat of all or part of a subdivision in substantial conformance with the revised preliminary plat, prepared by a civil engineer or a land surveyor in accordance with the Land Development Code and the statutes of the State of Arizona.

**Plat, Minor Amendment** shall mean any other change to a subdivision final plat not determined to be a major amendment.

**Plat Preliminary** means a tentative plat, including supporting data, indicating a proposed subdivision design, prepared by a civil engineer, land surveyor, landscape architect, architect, or land planner in accordance with these regulations and the statutes of the State of Arizona. A preliminary site plan for a condominium development shall be considered a preliminary plat.

**Plat, Revised Preliminary** means a plat reflecting revisions to the preliminary plat and the associated conditions of approval for review and comment by the Director before formal submittal of a final plat.

**Plat, Recorded** means a final plat, including all of the certificates of approval required by the Land Development Code, the statutes of the State of Arizona, and recorded in the Yavapai or Coconino County Recorder's office.

**Public Right-of-Way** means, but is not limited to, any street, avenue, boulevard, lane, mall, highway, sidewalk, or other pedestrian way, circle, bike path, trail, or similar place which is owned or controlled by a public entity.

**Public Utility Installation** means all buildings, structures, and related equipment except transmission and distribution lines and poles.

**Renovation** means interior or exterior remodeling of a structure, other than ordinary repair.

**Rezoning** means an amendment to the City of Sedona Zoning Map that changes any zoning district classification on the map.

**Right-Of-Way** means a general term denoting an area of land, property, or interests therein usually in a strip dedicated and accepted by the City or other entities, or otherwise required or devoted to uses such as, but not limited to, highways, roads, streets, utilities, drainages, or pedestrian, bicycle, or equestrian ways.

**Roof Line** means the highest point of a structure including parapets, but not including spires, chimneys, or heating or cooling mechanical devices.

**Rough Grade** means the preliminary grading of the site, which generally conforms to the approved plan.

**Setback** means the minimum required distance between the established lot line and any building on the lot.

**Sign** means any medium, including its structure and component parts, including any illumination device which is used or intended to be used to attract attention and/or advertise or promote a business or which is visible by the general public from any public right-of-way, or any public area. "Visible" means capable of being seen, whether or not capable of being read, without visual aid by a person of normal acuity.

**Site** means a parcel or lot, subdivided or un-subdivided, occupied, or to be occupied by a use or structure. Site, as it relates to Article 8, means any lot or parcel or contiguous combination thereof under the same property ownership, where grading is performed or permitted.

**Site Area** means the total area to be used for development of a project.

**Site Plan** means a plan prepared to scale, showing accurately and with complete dimensioning, all of the buildings, structures, and uses and the exact manner of development proposed for a specific parcel of land.

**Street** means any existing or proposed street, road, avenue, boulevard, land, parkway, place, bridge, viaduct, or easement for public vehicular access or a street shown on a plat approved pursuant to law or a street on a plat filed and recorded in the County Recorder's office. A street includes all land within the street right-of-way, whether improved or unimproved, and includes such improvements as pavement, shoulders, curbs, gutters, sidewalks, drainage appurtenances, parking space, bridges, and viaducts.

**Arterial Street** means a street that provides for through traffic with limited access to abutting properties and includes major streets or highways having regional continuity.

**Boundary (Half-Width Street) Street** means a half-width local or collector street, constructed with one (1) edge coincident with a tract boundary, which will be the future centerline of the street.

**Collector Street** means a street that provides for traffic movement between and within neighborhoods and between arterials and local streets and access to abutting property.

**Cul-de-Sac Street** means a street having only one (1) outlet for vehicular traffic, with a turnaround at the closed end, which is not intended to be extended or continued to serve future subdivisions or provide access to other adjacent lands.

**Dead-end Street** means a street open at one (1) end only, without permanent provision for turning around, and which may be further extended into adjoining property.

**Local Street** means a street that provides for direct access to abutting property or for low volume local traffic movements and which connects to collector streets.

**Private Street** means any collector or local street in a recorded public easement in which the City reserves the right to install and maintain, or permit to be installed and maintained, utilities in the rights-of-way, including surface use for refuse collection, but which has been excluded from management, maintenance, and liability by the City.

**Private Streetway** means a street or way owned and maintained by an individual or group of individuals providing the right to control access to one (1) or more lots, parcels, or divided interests in air rights, and which is exempt from management, maintenance, and liability responsibilities of the City.

**Public Streetway** means a right-of-way providing access to one (1) or more lots, parcels, or divided interests in air rights that has been dedicated to and accepted by the City in conjunction with the City's assumption of associated management, maintenance, and liability responsibilities.

**Structure** means the result of arranging materials and parts together, such as buildings, tanks, and fences (but not including tents or vehicles) and attaching them to a lot. It shall also mean a mobile home, anything constructed or erected, any edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, which is located on or in the ground or is attached to something having a location on or in the ground, including swimming and wading pools and covered patios. Paved areas, walks, tennis courts, and similar outdoor areas and fences or walls three (3) feet or less in height are excepted.

**Subdivision** means improved or unimproved land or lands divided for the purpose or financing, sale, or lease, whether immediate or future, into four (4) or more lots, tracts, or parcels of land, or, if a new street is involved, any such property which is divided into two (2) or more lots, tracts, or parcels of land, or any such property, the boundaries of which have been fixed by a recorded plat, which is divided into more than two (2) parts. "Subdivision" also includes any condominium, cooperative, community apartment, townhouse, or similar project containing four (4) or more parcels, in which an undivided interest in the land is coupled with the right of exclusive occupancy of any unit located on it. Plats of such projects need not show the buildings or the manner in which the buildings or air rights above the property shown on the plat are to be divided.

**Tree** means any self-supporting, woody plant of a species which grows at maturity to an overall height of a minimum of ten (10) feet, has a single trunk or multiple trunks which are, in combination, four (4) inches in diameter or has a circumference greater than twelve (12) inches at a height of four and one-half (4 2) feet above natural grade.

**Unrelieved Building Plane** means any vertical surface, or the projection to a vertical plane of an inclined or curved surface, or wall of a structure that, when viewed in elevation, incorporates no overhangs, offsets, projections, decks, ramadas, loggias, or similar architectural features that would produce shadow patterns or otherwise serve to visually blend the structure into its natural background. Windows and doors do not in themselves provide relief, but if they project or recede a minimum of twelve (12) inches on single-family residential buildings or structures only, they may be considered as providing visual relief.

**Use** means the purpose for which land or a building is arranged, designed, intended, occupied, or maintained.

**Utility** means installations or facilities, underground or overhead, furnished for the use of the public, including, but not limited to, electricity, gas, steam, communications, water, television, cable, sewage disposal, water, or sewer treatment, effluent treatment, or disposal, owned or operated by any person, firm, corporation, municipal department, or board authorized by state or municipal regulations. Utility shall mean any person or business providing service to the public through the use of lines, pipes, or other distribution systems. Installations or facilities include, but are not limited to, treatment facilities, transportation pipelines, distribution centers, and storage facilities.

**Variance** means an adjustment made in the application of a specific regulation of the Land Development Code to a particular property or development, providing that the adjustment differs by more than twenty five percent (25%) from a specific regulation. A variance may be granted in order to remedy a disparity in privileges resulting from special circumstances applicable to a particular property or development that deprive it of privileges commonly enjoyed by other properties in the same vicinity and zoning district.

**Yard** means a required space of uniform width adjacent to the perimeter of a lot, the interior boundary of which is measured as a minimum horizontal distance from a lot boundary, or future width line as the required setback of a principal structure, and which is unoccupied and unobstructed by improvements from the ground to the sky except for the projections permitted by the Land Development Code.

**Zoning District** means a classification established by the Land Development Code, which limits or permits various and specific uses.

**Zoning Administrator** means the Director of the Department of Community Development.



ORDINANCE NO. 88-6

AN ORDINANCE OF THE CITY OF SEDONA, ARIZONA PROVIDING FOR AND SETTING THE MEMBERSHIP OF THE PLANNING AND ZONING COMMISSION; PROVIDING FOR THE ELECTION OF A CHAIRMAN AND VICE-CHAIRMAN THEREOF; PRESCRIBING THE GENERAL POWERS AND DUTIES OF SAID COMMISSION; AUTHORIZING THE ESTABLISHMENT OF THE RULES OF PROCEDURE; PROVIDING FOR THE CONDUCT OF BUSINESS AND MEETINGS; PROVIDING FOR THE ASSESSMENT OF FEES; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA:

Section 1:     Creation

There is hereby created, pursuant to A.R.S. §9-461, a Planning and Zoning Commission.

Section 2.     Membership

- A.     The commission shall be composed of seven (7) members who shall be residents of the City. The members of the commission shall be appointed by the Mayor and Council.
- B.     The appointments to the commission shall be for a period of three (3) years each, and until their successors are duly appointed, with terms of members so staggered that the terms of no more than three members shall expire in any one year.
- C.     After the initial appointment, the members of the commission shall be divided by lot into three (3) classes. The first class shall serve for one (1) year; the second class shall serve for two (2) years; the third class shall serve for three (3) years. Thereafter, all appointments shall be for a term of three (3) years. In the event of death or resignation of a member, the vacancy may be filled for the unexpired term.
- D.     The Council may remove a member for inefficiency, neglect of duty, misconduct or three successive unexcused or unexplained absences without the necessity of a hearing or notice and such action shall be final.
- E.     All members shall serve without pay, except that members may be reimbursed for actual expenses incurred in connection with their duties upon authorization or ratification by the commission and approval of such expenditures by the Council.

Section 3: Officers

The commission shall elect a chairman and vice-chairman from among its own members, who shall serve for one year and until their successors are elected and qualified. The Chairman shall preside at all meetings and exercise all the usual rights, duties and prerogatives of the head of any similar organization. The chairman shall have the power to administer oaths and to take evidence. The vice-chairman shall perform the duties of the chairman in the latter's absence or disability. Vacancies created by any cause shall be filled for the unexpired term by a new election.

Section 4: Duty

The duties of the commission shall be to:

- A. Develop, submit a written recommendation to the City Council for adoption, and maintain a general plan which is a Municipal statement of land development policies, which may include maps, charts, graphs and text which sets forth objectives, principles and standards for local growth and redevelopment.
- B. Develop and submit a written recommendation to the City Council for the adoption of such specific plans as may be necessary to implement the general plan.
- C. Study, consider, and submit a written recommendation to the Mayor and Council for the establishment of zoning districts and appropriate regulations to be enforced therein; which said zoning districts may regulate and restrict the height, number of stories, type of construction and size of buildings and other structures; the percentage of lot that may be occupied, the setback, lines, the size of yards, courts and other open spaces; the density of population, the location and use of buildings, structures and land for residential, agricultural, trade, industrial, religious or other purposes; and for such purposes the Planning and Zoning Commission may recommend; the regulation and restriction of the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land; and, the density of population within the zoning districts as defined in the Zoning Code. The establishment of zoning districts and the promulgation of rules and regulations applying thereto, and the fixing, changing, altering or amending any such boundaries, districts, rules or regulations shall only become effective upon the enactment of an ordinance setting forth said matters and no such ordinance shall be enacted or any changes or amendments be made thereto until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard.

- D. To consider, approve, defer or disapprove the preliminary plat for proposed subdivisions and determine their compliance with the Subdivision Ordinance.
- E. To review, consider and recommend to the City Council approval or denial of final plats of proposed subdivisions.
- F. Interpret the appropriate zoning district for uses not specifically listed in the Zoning Code.
- G. Periodically review the capital improvement program for the City.
- H. Promulgate rules of procedure to govern its conduct and function, subject to the approval of the Council, and to have the authority to supervise the enforcement of said rules.

Section 5: Meetings:

The commission shall provide in its rules for its meeting; provided, that special meetings may be called by the chairman or in his absence the vice-chairman. In addition, any three members of the commission may make written request to the chairman for a special meeting and in the event such meeting is not called, such members may call such special meeting in such manner and form as may be provided in the commission rules.

Section 6: Conduct of Business

Four members shall constitute a quorum. The affirmative vote of a majority of the members shall be required for passage of any matter before the commission. In this connection, the minutes of the meeting shall reflect the “ayes” and “nays” cast on a particular measure and shall reflect the vote of each member present. A member may abstain from voting only upon a declaration that he has a conflict of interest, in which case such member shall take no part in the deliberations on the matter in question.

Section 7: Fees

The commission may establish a uniform schedule of fees for services with all receipts to be paid into the general fund of the city. Such fee schedules shall become effective upon approval by the Council.

Section 8: Severability

This Ordinance and its Sections are hereby declared to be severable. If any section, subsection, sentence, clause, word, or phrase of this Ordinance is for any reason held to be void, unlawful or unconstitutional, such holding shall not affect the validity of the remaining portion of this Ordinance.

Section 9: Effective Date of Establishment of Commission

The Planning and Zoning Commission will become effective on July 1, 1988 and upon appointment of its members by the City Council.

PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona, 29<sup>th</sup> day April, 1988.

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Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

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City Attorney

Adopted: O1988-06, April 22, 1988

Revised: O1988-09, April 29, 1988

# **How to be a more effective planning commissioner!**

## **A Summary of Riggins Rules**

P&Z Retreat, February 13, 2014

This is a summary of the Riggins Rules, developed in September 1967 by Mr. Fred Riggins, former Chairman of the City of Phoenix Planning and Zoning Commission. A detailed copy of the Riggins Rules are attached.

1. Do be prepared to attend 99% of meetings.
2. Do create a good impression of City government.
3. Do be on time.
4. Don't dress like a bum.
5. Don't mingle with the audience, applicant, etc.
6. Don't discuss the case with an applicant or objector.
7. Do your homework.
8. Don't indicate by word or action how you intend to vote.
9. Don't fail to disqualify yourself.
10. Do rotate the seating.
11. Do be polite and impartial.
12. Do be attentive.
13. Don't interrupt a presentation.
14. Don't permit more than one speaker at the microphone.
15. Don't let a person speak to the audience.
16. Don't use first names.
17. Do show great respect for the Chairman.
18. Don't be too critical of attorneys.
19. Don't indulge in personalities.
20. Don't make the applicant or a citizen look like a fool.
21. Don't become involved in altercations.
22. Do invite interested persons to study presentation materials.
23. Do not permit speaking from the audience.
24. Do not permit people to leave the podium to approach the Commission.
25. Do not become involved in neighborhood squabbles.

26. Don't be vindictive.
27. Don't try to be a hero.
28. Don't assume the role of a fairy godfather/godmother.
29. Do give a reason for a motion of approval or denial.
30. Do not take staff recommendations lightly.
31. Don't forget that staff is there to help.
32. Don't try to answer the technical questions.
33. Don't try to ease your conscience and toss the applicant a bone.
34. Do vote by roll call.
35. Don't show any emotion over the outcome of a vote.
36. Do discourage any post-mortem remarks.
37. Do not hesitate to continue a case or take it under advisement.
38. Do sit down and soul search if you are the "odd one out".
39. Don't select a chairman on a seniority basis alone.

## ***The Roberts Rules of Order – Basic Points***

- **Point of Privilege:** Pertains to noise, personal comfort, etc. - may interrupt only if necessary!
- **Parliamentary Inquiry:** Inquire as to the correct motion - to accomplish a desired result, or raise a point of order
- **Point of Information:** Generally applies to information desired from the speaker: "I should like to ask the (speaker) a question."
- **Orders of the Day (Agenda):** A call to adhere to the agenda (a deviation from the agenda requires Suspending the Rules)
- **Point of Order:** Infraction of the rules, or improper decorum in speaking. Must be raised immediately after the error is made
- **Main Motion:** Brings new business (the next item on the agenda) before the assembly
- **Divide the Question:** Divides a motion into two or more separate motions (must be able to stand on their own)
- **Consider by Paragraph:** Adoption of paper is held until all paragraphs are debated and amended and entire paper is satisfactory; after all paragraphs are considered, the entire paper is then open to amendment, and paragraphs may be further amended. Any Preamble cannot be considered until debate on the body of the paper has ceased.
- **Amend:** Inserting or striking out words or paragraphs, or substituting whole paragraphs or resolutions
- **Withdraw/Modify Motion:** Applies only after question is stated; mover can accept an amendment without obtaining the floor
- **Commit /Refer/Recommit to Committee:** State the committee to receive the question or resolution; if no committee exists include size of committee desired and method of selecting the members (election or appointment).
- **Extend Debate:** Applies only to the immediately pending question; extends until a certain time or for a certain period of time
- **Limit Debate:** Closing debate at a certain time, or limiting to a certain period of time
- **Postpone to a Certain Time:** State the time the motion or agenda item will be resumed
- **Object to Consideration:** Objection must be stated before discussion or another motion is stated
- **Lay on the Table:** Temporarily suspends further consideration/action on pending question; may be made after motion to close debate has carried or is pending
- **Take from the Table:** Resumes consideration of item previously "laid on the table" - state the motion to take from the table
- **Reconsider:** Can be made only by one on the prevailing side who has changed position or view
- **Postpone Indefinitely:** Kills the question/resolution for this session - exception: the motion to reconsider can be made this session
- **Previous Question:** Closes debate if successful - may be moved to "**Close Debate**" if preferred
- **Informal Consideration:** Move that the assembly go into "**Committee of the Whole**" - informal debate as if in committee; this committee may limit number or

length of speeches or close debate by other means by a 2/3 vote. All votes, however, are formal.

- **Appeal Decision of the Chair:** Appeal for the assembly to decide - must be made before other business is resumed; NOT debatable if relates to decorum, violation of rules or order of business
- **Suspend the Rules:** Allows a violation of the assembly's own rules (except Constitution); the object of the suspension must be specified

# commission memo

**Date:** 2/11/2009  
**To:** John O'Brien  
**Cc:** Mike Goimarac, Gene Neil  
**From:** Ron Ramsey  
**RE:** *Updates on Open Meetings, Conflicts of Interest, and Ex Parte Contacts*

---

With new members on the Planning & Zoning Commission, and a chance to respond to legal issues concerning the operations of the Commission as a public body at the March 17, 2009, annual retreat, you asked for an update on three (3) pertinent areas: open meeting laws, conflicts of interest, and ex parte contacts by the members. A brief summary follows, and pertinent statutes and articles will be attached.

## *Open Meeting Laws*

1. The underlying purpose of the OML is to ensure that the deliberation process occurs in public at a properly noticed meeting and in accordance with the posted agenda. Here are two recent examples of how NOT to comply with OML:
  - **Jerome's** discussion of settlement terms and inclusion of the opposing party in an executive session violated OML per the recent Attorney General (AG) letter. A follow-up meeting posted just to review the legal fees violated OML when the discussion went further in possible sanctions or discipline against the police chief. See <http://verdenews.com/main.asp?SectionID=1&subsectionID=1&articleID=29402> [and attached]
  - **Sedona Fire District's** governing board chairman Don Harr attended a conference with two other members, forming a quorum, and discussed the applications they had for chief outside an open meeting – investigation by AG continuing. See <http://www.redrocknews.com/top-headlines/scandal-rocks-fire-board.html> [and copy attached]
2. Consequences for violation of the OML can include \$500 civil penalties and removal from office, plus payment of attorneys fees and costs the suit brought by the AG. The city cannot expend public money to employ or retain legal counsel on your behalf once any legal action is commenced (ARS38-431.07.B). [see attached summary].
3. Can you talk to the press, citizens, at a Kiwanis breakfast, or even post an email to a message board without violating OML? AG Opinion I07-013 (2007) described scenarios where conversations with the press would be allowed to ensure transparency of government and support the right of free press. Here is the "safe harbor" from **ARS 38-431.09.B (2008)**:

- ...*"it is not a violation of this article if a member of a public body expresses an opinion or discusses an issue with the public either at a venue other than at a meeting that is subject to this article, personally, through the media or other form of public broadcast communication or through technological means if:
    1. The opinion or discussion is not principally directed at or directly given to another member of the public body.
    2. There is no concerted plan to engage in collective deliberation to take legal action."*
- 
4. E-mails have lots of issues, because a "meeting" occurs even though they are sent/received at different times. First, never assume that because you use a private or personal computer that an email is not a public record. Public records include...*"all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, including prints or copies of such items produced or reproduced on film or electronic media...made or received by any governmental agency in pursuance of law or in connection with the transaction of public business (ARS 41-1350) and ..."* reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by monies from the state or any political subdivision of the state." (ARS 39-121.01.B). Second, even though you may be careful to respond only to an email from one other Commission member, and not copy to enough to create a quorum, or forward the comments of another member ("illegal meeting"), **even a one-way communication** violates OML if it proposes legal action ("put forward for consideration, discussion or adoption"). This does not prohibit staff from sending emails with agenda packets (careful – cannot include occasional letter or email of one member that may be in the packet), nor a one-way communication by a member that simply proposes an agenda item.
- 
5. During a meeting, avoid the appearance of improper off-the-record discussions by having conversations with the member next to you, or passing on any notes or memos. This also includes avoiding a quorum talking to citizens or the press prior or after the meeting.
- 
6. During the "Call to the Public" for items not on the agenda, the Commission may limit the time of speakers, and request that speakers on the same side with no new comments to select a spokesperson. *"At the conclusion of an open call to the public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask staff to review a matter or may ask that a matter be put on a future agenda. However, members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action."*(ARS 38-431.01.H). **Note** that these responses occur at the end of the call, and not after each speaker. Also, the call is"...to allow individuals to address the public body on any issue **within the jurisdiction** of the public body." This means general comments about government, the state of the economy, elections, or decisions by the city council are NOT appropriate since they are topics/issues beyond the jurisdiction of the Commission.
- 
7. A task force or working group set up by the Commission itself becomes a "public body" as an "advisory committee" under the expanded definitions of ARS 38-431.1 (2007): *"Advisory committee" or "subcommittee" means any entity, however designated, that is officially established, on motion and order of a public body or by the presiding officer of the public body, and whose members have been appointed for the specific purpose of making a recommendation concerning a decision to be made or considered or a course of conduct to be taken or considered by the public body.*" To avoid creating a new public body, the Commission should allow the staff to organize and meet with the working group, and report back its research or recommendations in a staff report.

8. "Current Events" can be part of the Commission agenda under **ARS 38-431.02.K**: "*..the chief administrator, **presiding officer** or a member of a public body may present a brief summary of current events without listing in the agenda the specific matters to be summarized, provided that... the summary is listed on the agenda... and the public body does not propose, discuss, deliberate or take legal action at that meeting on any matter in the summary unless the specific matter is properly noticed for legal action.*" This section could imply that the best practice is the summary be given by either a designated member or the chairman, but if several members want to report on their Commission related activities, there should not be any discussion,

#### *Conflicts of Interest*

1. It is a paradox that the government is best served by persons with expertise related to their board or commission role, yet restricts their participation whenever they have a "substantial interest" in an agenda item. A "**substantial interest**" is one where they have a "proprietary (ownership) or pecuniary (money)" interest in the outcome (**ARS 38-502(11)**). The statutes are aimed at avoiding compromise of an impartial decision that should be based on the merits presented, not influenced by the personal economic interests of the members.

2. To be "substantial," an interest has to be "*more than a mere abstract interest in the general subject or a mere possible contingent interest...rather, the term refers to...[an] interest by which a person will gain or lose something as contrasted to general sympathy, feeling or bias.*" (*Yetman v. Nauman*, 492 P.2d 1252 (1972)(member of State Board of Health who was also chairman of the M.M. Sundt Construction Company did **not** have a conflict in considering a petition by several Arizona mining companies to relax air pollution standards, even though petitioners alleged a favorable result for the mining companies may increase the prospects of new contracts with Sundt).

3. The statutes define some interests as "remote" and therefore not creating a conflict (**ARS 38-502.10**):

- When the member would be a "recipient of public services" to the same extent as any other member of the public
- When the member is..."*a member of a trade, business, occupation, profession or class of persons consisting of at least ten (10) members which is no greater than the interest of the other members of that trade, business, occupation, profession or class of persons.*"

4. If there is a conflict, it must be declared, a separate report filed with the City Clerk (**ARS 38-509**), and the member must refrain from participating "in any manner" on the agenda item. This is more than simply becoming silent. The member should announce the conflict, and excuse himself from the meeting. Also, if a conflict is likely to arise, the AG has determined that a person with a conflict must not "*make recommendations, give advice, or otherwise communicate with anyone involved in the decision-making process*" (I03-005). This would apply to work sessions, working teams, and staff. You cannot wait until it becomes an action item on a regular agenda.

5. The conflict statutes also prohibit current members from benefiting from their office after leaving the Commission. First, you cannot represent any person for compensation before the Commission **for 12 months** after leaving office IF the matter was one in which you participated in while on the Commission. Second, **for 2 years** after leaving office you cannot..." *disclose or use for the officer's or employee's personal profit, without appropriate authorization, any information acquired by the officer or employee in the course of the officer's or employee's official duties which has been clearly designated to the officer or employee as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary for the proper conduct of government business.*" (**ARS 38-504**).

*Ex Parte Contacts*

1. **Article 14** (Conduct of Members) of the "*Planning and Zoning Commission Rules and Procedures*" states that any contact by any party regarding a filed application should first be referred to the staff, and only if the person persists should the member discuss it, then report the date/source/information to the Commission (at a regular meeting? Only when the item is on the agenda?). My recommendation is simply decline to discuss the application at all, and even if it is a preliminary inquiry by a property owner/developer (no application taken out), send them to staff instead. OML requires that ALL deliberations take place at a meeting, and this includes the discussions that would be taking place between you and a developer or any party (agency, objecting neighbor, citizen group planning on speaking at the hearing).
2. **Rule 4**, "*City Council Rules of Procedure*," cautions members of any of the commissions who plan to attend the meeting of the council or another commission to notify staff well in advance for posting in compliance with OML. Also, your **Article 14** further states that a Commission member will not appear before council on Commission matters unless specifically invited, or directed in advance by a majority of the Commission.
3. **Best practice** may be not to appear before other city commissions, or those of outside agencies involved with frequent Commission matters, to preserve the integrity of the roles of each of those public bodies. Disclaimers that the appearance or comments are personal and not those of the Commission are not effective. It will be difficult if not impossible to avoid substantive comments on their agenda items, and, if their recommendation is to be made for an upcoming item, you have engaged in deliberation outside the P&Z arena that likely will influence your vote later. The Housing Commission, Historical Preservation Commission, and the Arts & Culture Commission, all have their own agendas concerning developments that may come before the Planning & Zoning Commission.

RCR

Attachments

## Ron Ramsey - Fwd: City Policy on Community Benefits

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**From:** Ron Ramsey  
**To:** Audree Juhlin; Cari Meyer; Kevin Snyder  
**Date:** 6/4/2013 11:40 AM  
**Subject:** Fwd: City Policy on Community Benefits  
**CC:** Mike Goimarac  
**Attachments:** City Policy on Community Benefits

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Kevin,

The effort to evaluate "community benefits" in a project has a long history, and here was my take back in 2007. I think my primary concern back then was the use by some commission members of a lack of community benefits to coerce a re-design or concession by an applicant, and, of course, this comes very close to an illegal exaction (see ARS 9-500.13), and use of some very subjective criteria for their votes. The policy was never developed, other than in housing.

The existing CP has sporadic discussions on what are community benefits, such as in the Special Planning Areas (Section 5, at 5-32)

*"In addition to potential benefits and needs described in the following planning areas, there are several general community benefits that should be considered in all development proposals where applicable including, but not limited to:*

- *Undergrounding of overhead utility lines*
- *Pedestrian/Bicycle pathways and linkages*
- *Preservation of natural vegetation and open space and view corridors*
- *Consolidation of parcels as part of a single development plan*
- *Integration of housing within commercial areas and opportunities to address other community housing needs*
- *Preservation of potential historic resources*
- *Buffering between residential and commercial uses*
- *Mitigation of impacts of non-conforming uses*
- *Inclusion of Shuttle Transit stops/facilities*
- *Tax revenue contributions that clearly more than offset the net impacts*
- *Opportunities to implement specific development and design standards for new development or re-development proposals."*

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Be a Fan on Facebook: [www.Facebook.com/CityofSedonaAZ](http://www.Facebook.com/CityofSedonaAZ)

## Ron Ramsey - City Policy on Community Benefits

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**From:** Ron Ramsey  
**To:** John O'Brien  
**Date:** 3/15/2007 1:23 PM  
**Subject:** City Policy on Community Benefits  
**CC:** Gene Neil; Mike Goimarac

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Quality,

I wanted to follow up on our conversation yesterday in the Fishbowl on the affordable housing policy. Now that I am back in the City Attorney's Office, I can put on the legal review hat!

What seems to be missing to me is the big picture on how the City (council, commissions, or staff) gives priority to what have been loosely called "community benefits" when a property owner seeks a rezoning. Each benefit has attracted its own loyal following, but there is no overall policy on what should be the approach taken by staff, other than the recent history of how certain projects have fared. I think an "umbrella" policy would reduce the competition between commissions to see that a project promote only their goals (arts, historic preservation, parks/open space, affordable housing, transportation/parking, etc), and allow the applicant to structure a plan without getting contrary feedback from each reviewing group as it works its way to council. A general policy also serves the staff in two ways: it keeps us from having to abandon our independent analysis of a project as we go before each group, and it will allow a uniform approach to all projects so that the recommendations are not characterized as subjective, and the prior projects do not create an informal "precedent."

As I looked through the LDC and the CP, I really could not find any clear expression of the need to address "community benefits" in an application. There is some general language scattered in the CP (9.3 Open Space Vision, or 17.4 Future Actions for promoting arts, or 7.2 Circulation Vision, and some of the goals in the Growth Area Vision, for instance), and various other general goals, but what requires a property owner/developer to provide or discuss community benefits in, say, the original letter of intent? The Housing Element of the CP (Section 6) spends a lot of time showing all the issues with lack of affordable housing in the city, but then ends up in its recommendations with a list that includes amending commercial zones to allow housing, having some accessory housing in residential zones, more high density housing in certain areas, guest house use, and assisted living uses. The goal of having in-lieu funding for offsite affordable housing for employment demands caused by new commercial and lodge development is briefly mentioned (p.6-17), but not carried over in the specific recommendations or future actions. And note that this goal is limited to **new** commercial/lodge development **and related to what that project adds to the workforce needs.**

I don't even see a basis for community benefits in the list of contents of the application for development review (Section 401.03 of LDC) - so by what authority are we asking? In other words, if we cannot point to some provision in city codes, LDC, CP, or some other adopted policy document, creating a general policy on community benefits would be a good idea for legal support, as well as provide guidance to staff, commissions, and the public.

I think this policy, much like the oft-amended City Council ROP, is adopted as a policy document, not any particular code or CP changes. It should identify the types of community benefits that redevelopment or zoning change requests should offer, probably based at least initially on the size of the project and the type of rezoning involved (as we have done with limited development review steps in single family residential). It should state that each project is unique in its community benefit possibilities, and any final approval will not establish a precedent for future projects. After discussing the various community benefits, the policy could state that for some types of projects, such as new lodging and commercial, affordable housing will be a priority benefit, while with others, maybe a low density PAD, or one in an identified special district (which under the LDC may very well have community benefits discussed), has open space or transportation/trail access as a priority.

So now I am encouraging discussion of a new community development policy. Am I therefor also thinking like a planner?

## SR 89A

Area Description – This includes areas adjacent to SR 89A. Of particular importance is the area north and south of and along the highway east of Airport Road and a small area near Juniper Drive. This area currently consists of undeveloped land between existing churches and the highway, a previously-approved office project and "Real Estate Central", an established use. This area is considered as a high visual impact area, as described in the West Sedona Commercial Corridor Study. Existing zoning includes Office Professional, Open Space and Single-family Medium Density Residential.

Community Needs and Benefits – The visual integrity of the highway corridor is the most important consideration. The area east of Airport Road is particularly visually sensitive. The focus should be to provide a foreground fitting the open space character of the forest and the views beyond. Significant retention of open space is therefore essential.

All uses should be low traffic generators relative to current zoning, single-family residential in scale and enhance overall pedestrian mobility. Significant on-site retention of natural vegetation/open space, view preservation and minimal building and pavement coverage is essential. Land uses should be consistent with community needs, benefits and be compatible with surrounding uses. Direct access to the highway is discouraged where alternative access is available or can be provided.

### *Summary of Community/Area Needs:*

- Maintain the visual integrity of the highway corridor.
- East of Airport Road, provide a foreground fitting the open space character of the forest and the views beyond.
- Provide significant on-site retention of natural vegetation and open space.
- Provide uses that generate minimal traffic relative to the existing zoning in the area.
- Provide significant buffering from the highway right-of-way, utilizing open space, vegetation and/or topography.
- Provide land uses on a single-family residential scale.

### *Summary of Community/Area Benefits:*

- Opportunity to create pedestrian-oriented projects that can help reduce pavement coverage
- Opportunity to consolidate properties under unified planning
- Opportunity to address National Forest urban interface issues with retention of open space and control and design of access.

## **Uptown**

Area Description – The area between Van Deren and Smith Roads from Forest Road north to Mesquite Avenue and the area between Price and Wilson Roads from Mesquite Avenue to Schnebly Road. Existing uses include, single-family, multi-family, offices, publishing, and parking. Existing zoning includes Office Professional, Transitional, Multi-family High Density Residential and Single-family High Density Residential.

## ( Special Planning Areas )

be met/provided. Land uses and densities within this category must be within the range of land uses and densities in the residential and other land use categories of Section 5.2.2 of the *Land Use Element* of the **Sedona Community Plan**. Within these ranges, appropriate uses and densities are dependent upon consistency with community needs, benefits and neighborhood compatibility. Proposed residential units/densities should also be evaluated according to City-wide buildout projections based on current zoning.

In addition to potential benefits and needs described in the following planning areas, there are several general community benefits that should be considered in all development proposals where applicable including, but not limited to:

- Undergrounding of overhead utility lines
- Pedestrian/Bicycle pathways and linkages
- Preservation of natural vegetation and open space and view corridors
- Consolidation of parcels as part of a single development plan
- Integration of housing within commercial areas and opportunities to address other community housing needs
- Preservation of potential historic resources
- Buffering between residential and commercial uses
- Mitigation of impacts of non-conforming uses
- Inclusion of Shuttle Transit stops/facilities
- Tax revenue contributions that clearly more than offset the net impacts
- Opportunities to implement specific development and design standards for new development or re-development proposals.

The following are examples of some of the questions that should be asked in the evaluation of development proposals within Special Planning Areas:

- What is the priority of the benefit or need?
- Can the benefits/needs and potential impacts be quantified and does one outweigh the other?
- Can a specific need be met through other alternatives?
- Are there differences in the time frame over which benefits will be realized and impacts experienced?
- Does the proposal have tax benefits that more than offset the net impacts?

Special Planning Areas are intended to provide for alternative land uses that can address impacts resulting from existing or future incompatible land uses and to provide creative methods to address community benefits and needs. In keeping with these objectives, consideration may be given to adjustments in Special Planning Area land use boundaries where specific parcels are immediately adjacent to a Special Planning Area boundary under the following conditions:

- There is an opportunity to mitigate the impacts of non-conforming uses on adjacent or nearby residences.

## Statutory Language on Exactions

9-500.12. Appeals of municipal actions; dedication or exaction; excessive reduction in property value; burden of proof; attorney fees

A. Notwithstanding any other provision of this chapter, a property owner may appeal the following actions relating to the owner's property by a city or town, or an administrative agency or official of a city or town, in the manner prescribed by this section:

1. ***The requirement by a city or town of a dedication or exaction as a condition of granting approval for the use, improvement or development of real property.*** This section does not apply to a dedication or exaction required in a legislative act by the governing body of a city or town that does not give discretion to the administrative agency or official to determine the nature or extent of the dedication or exaction.

... B. The city or town shall notify the property owner that the property owner has the right to appeal the city's or town's action pursuant to this section and shall provide a description of the appeal procedure. The city or town shall not request the property owner to waive the right of appeal or trial de novo at any time during the consideration of the property owner's request.

... E. ***In all proceedings under this section the city or town has the burden to establish that there is an essential nexus between the dedication or exaction and a legitimate governmental interest and that the proposed dedication, exaction or zoning regulation is roughly proportional to the impact of the proposed use, improvement or development or, in the case of a zoning regulation, that the zoning regulation does not create a taking of property in violation of section 9-500.13***



## Ron Ramsey - Design Review Renewed

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**From:** Ron Ramsey  
**To:** John O'Brien  
**Date:** 2/9/2012 11:16 AM  
**Subject:** Design Review Renewed  
**CC:** Mike Goimarac; Nicholas Gioello

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JOB,

We have several times in the past looked at the extent of the discretion of the city, either at the Commission or Council levels, to require design concessions from developers whose projects are already compliant with the uses for that district. Back in 2008, it was the potential impact of Prop 207, where such requirements could be construed as a taking. Now the issue is the effect of SB 1598, the "**Regulatory Bill of Rights**" passed by the Legislature in 2011, and for the most part effective July 20th.

I think the key provision in the bill is **ARS 9-834.A**:

9-834. *Prohibited acts by municipalities*

A. A municipality shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule, ordinance or code. A general grant of authority does not constitute a basis for imposing a licensing requirement or condition unless the authority specifically authorizes the requirement or condition. [Note that "license" is much more than a traditional permit - under **ARS 9-831.2** it includes ..."the whole or part of any municipal permit, certificate, approval, registration, charter, or similar form of permission required by law."]

So, what is the extent of our existing authority for design review?

- **401.01 Purpose.** The purpose of development review is to provide guidance and direction in the physical improvements of properties within the city through the review of all aspects of a proposed development, including, but not limited to, design review, site planning and the relationship of the development to the surrounding environment and the community. Development review shall promote harmonious, safe, attractive and compatible development and is, therefore, considered to further the public health, safety and general welfare of the citizens of Sedona.
- **401.06 Considerations.** In considering any application for development review approval the development review process shall be guided by the following considerations:
  - A. Does the application comply with all of the applicable provisions of this Code and all other ordinances?
  - B. Has the applicant made a substantial, good faith attempt to comply with the design standards set forth in Article 10 SLDC, Design Review Manual?
  - C. Are the proposed uses in general conformance with the applicable goals, objectives and recommendations described in the Sedona Community Plan and adopted specific plans as manifested in the Land Development Code and Design Review Manual?
  - D. Does the proposed development reasonably attempt to address concerns cited by participating reviewing

agencies with jurisdiction in the areas of public health and safety?

E. Does the proposed development *reasonably attempt* to integrate into the natural environment with minimal disturbance to view corridors, existing native vegetation and/or established landscaping, the natural topography of the site, natural drainage ways, known wildlife habitats, rock outcrops, and other natural features?

F. Does the proposed development *reasonably attempt* to integrate into, and become compatible with, the built form of surrounding properties and existing developments with regard to building height and character, landscaping, signage, building materials, historical structures or features, landscaping, exterior lighting and pedestrian and vehicular circulation?

G. Are the proposed vehicular ingress, egress, internal **traffic** circulation, off-street parking facilities, loading and service areas and solid waste collection facilities reasonably designed to promote public safety and convenience?

H. Is **pedestrian and bicycle** circulation facilitated, *where reasonably feasible* and possible, both on and off site, through interconnected passages, pathways and plazas that are designed to promote public safety and convenience?

I. Does the proposed development provide legally compliant facilities for people with **disabilities**?

J. Has the applicant made *a good faith effort to address concerns of the adjoining property owners* in the immediate neighborhood as defined in the Citizen Participation Plan for the specific development project?

- **401.07 Planning and Zoning Commission Public Hearing and Decision.** The Commission shall hold at least 1 public hearing on each development review application subject to its approval. At the public hearing, the Commission shall review the proposal with consideration given to the criteria in subsection 401.06 of this section. Approval, conditional approval or denial of a development review application shall be based on the findings set forth in subsection 401.08 of this section.

- **401.08 Findings.** The Design Review Manual is the City of Sedona's acceptable standard and guiding policy document for all development projects in Sedona. When reviewing a development review application:

A. The Director or the Commission, as applicable, may approve, with or without conditions, a development or portion of it if the Director or Commission ***finds that all provisions of ordinances, development policies and standards of the city have been complied with;***

B. The Director or the Commission, as applicable, may deny the entire development or portion of it if the Director or Commission finds that any provisions of ordinances, development policies and standards of the city have not been complied with.

Some projects, such as C-Market, would have overlaying design guidelines that may be applicable (*Main Street Character District*), but the above criteria and guidelines would still apply to measure whether there has been a ***"substantial, good faith attempt to comply with the design standards,"*** and the applicant ***"reasonably attempted"*** to meet the other considerations as to integration with the natural environment, integration with the existing development, allow pedestrian access, or address the particular concerns of neighbors. Although the language in Section 401.08 (Findings) may seem broad, and invite all sorts of criteria by stating *"all provisions of ordinances, development policies, and standards of the city"*, in reality the criteria for approval or denial should remain within Section 401.06. This is especially true in light of the new mandate in ARS 9-834.A.



Commission. I also envision the need to put the Act on a future agenda once staff has had time to prepare a more definitive time line and inspection process to be in compliance with those portions of the Act that become effective this July and December.

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## Excerpts from the New Community Plan (November 2013)

[page ii][also on page 18, Land Use]

*“As noted in Fritz v. City of Kingman, 191 Ariz. 432 (1998), Arizona statutes require that each municipality adopt a general plan and that such plans are aspirational guides or statements of policies and preferences. (See A. R. S. Sec 9-461.05(C)) This court concluded that a general plan is not a self-executing document and recognized that in order to realize a general **plan’s abstract policies** and preferences, a city must undertake further specific actions such as adoption of zoning ordinances that apply specific uses and densities to specific properties.”*

*“**Private property rights** are protected by both the State and U. S. Constitutions that prohibit the taking of any property without just compensation and due process of law. This Community Plan will be interpreted and applied in accordance with the law and will respect the private property rights of all citizens that are protected by the State and U. S. Constitutions.”*

[page 1]

### **The Community Plan is:**

- An expression of the community's vision
- A guide for future growth
- An assessment of community priorities

### **The Community Plan is not:**

- A capital improvement program budget
- A zoning ordinance
- A subdivision ordinance
- A maintenance and operations plan
- A commitment for expenditures of public funds
- **An infringement on private property rights**

*“Although the Plan is not a zoning ordinance, zoning regulations must be **consistent with and conform to** the Plan, and zoning is a key tool in its implementation. The Plan also guides the development of other more specific plans and the City’s capital improvements program ...”*

[page 10, Environmental Stewardship Vision]

- *Homes, businesses, parks, and streets will be in harmony with the natural landscape.*

[page 10, Community Connections Vision]

- *There will be walkable districts with a mix of residential and commercial.*
- *There will be more direct access between neighborhoods and popular destinations*

[page 15, Sense of Place Vision]

- ***Sedona will have a unique and distinctive image and identity***
- *The built environment will blend with the natural environment.*
- *Design standards will continue to limit building height, lighting, signs, and colors.*

- The built environment will integrate the natural topography and vegetation.

[page 19, Land Use]

*Key Issues*

- *Need for clear development and re-development incentives.*
- *Need to align zoning districts with Community Plan goals.*
- ***Desire to preserve viewsheds.***

[page 53, Land Use Policies]

1. Approve **new housing units** only if within the City’ s current overall limit on the total number of homes that can be built under current zoning.
2. Limit **expansion of the existing commercial areas**, as represented on the Future Land Use Map, unless supported by an approved plan within a Community Focus Area or Planned Area.
3. Ensure that a **balance of land uses** is maintained and identify general areas for concentrated, mixed use development, public gathering places, and land use transitions to provide healthy and sustainable residential neighborhoods and commercial areas and to address specific area needs.
4. Ensure that the proportion of **lodging** uses to other commercial uses does not significantly increase by limiting locations for lodging uses and by evaluating the proportional increase in all lodging rezoning applications.
5. **Preserve scenic views**, including potential utility undergrounding and view corridor planning, in the consideration of new development and infrastructure, including limits on the approval of multi-story structures.
- ...
7. Require **parking standards** that are consistent with mixed and shared uses, promote efficient use of space, and minimize asphalt coverage.
8. Require **design standards that reflect Sedona’ s unique historic and cultural heritage** and sign standards that provide diversity and prevent “franchise/monoculture” (corporate signature) signs.
9. Evaluate locations for **public gathering spaces** and residential services on a neighborhood scale and reflective of unique architectural character for neighborhoods within walking distance and located away from the main commercial areas.
- ...
12. Encourage the retention of low to moderate income housing opportunities in the redevelopment of existing **mobile home parks** through retention of existing densities and other incentives.
- ...
14. Consider new and emerging trends for **non-traditional housing** developments, such as co-housing, garden apartments, and other alternate housing types.

15. Encourage **clustering of residential units** to direct development away from more environmentally sensitive portions of a site.

...

[page 57, Circulation Goals]

- Limit the building of new roads and streets and make strategic investments in other modes of travel.
- Create a more walkable and bike-able community.

[pages 66-67, Circulation Policies]

1. Pursue a range of **multi-modal** options to reduce traffic to safe and convenient levels, including but not limited to: park and walk/ride, access control, parking interconnections, street connections, transit, and incentives for reducing vehicle trips.

...

5. Provide **street connections** as low-speed alternatives to the highways that will maintain neighborhood safety and integrity.

6. Plan **future transportation improvements** and land use development at the same time and support a diversity of land uses within walking and biking distance of residential and lodging areas.

...

12. Focus on making the most efficient use of existing **parking facilities** before creating new facilities and investigate the creation of additional public parking through lease, purchase, or development.

14. Make **pedestrian and bicycle** facilities and improvements to existing infrastructure a high priority for circulation-related capital funding.

15. Ensure that **SR 179** is maintained as a scenic corridor of uncommon beauty and that future improvements are an enhancement to this corridor.

16. Support efforts to limit **aircraft noise**.

...

[page 78, Environment Policies]

...

4. Implement incentives or regulations for existing and **new development** to incorporate **water conservation** measures and energy efficient site design and building features.

.

6. Establish standards for the use of low impact development practices to manage **storm water**.

...

8. Reduce harmful **emissions**.

9. Support community efforts to be **dark sky** compliant.

10. Preserve and restore **natural drainages** and open space areas with native plants to provide wildlife habitat, reduce erosion, and improve storm water retention.

11. Control the spread of **invasive exotic plant species** through education, removal, and prevention.
12. Implement a **green building program** that includes education, standards, and incentives.
13. Support **recycling** and other waste stream reduction efforts.

[page 86, Parks, Recreation and Open Space Policies]

...

4. Establish regulations and incentives to **incorporate parks and trails into subdivisions** and other development projects.

...

6. Improve and manage **public access to Oak Creek** within the City.

...

9. Maintain the **lowest density land uses next to the National Forest**, supporting cluster development, and reserving open space in Community Focus Areas or Planned Areas.

10. Preserve **natural open space**, including areas with significant natural resource values, the riparian habitat of Oak Creek, and viewsheds such as ridgelines, scenic vistas, along highways, and gateways into the community.

...

[page 92, Economic Development Policies]

1. Partner with the private sector to build an economically and environmentally attractive community by utilizing the **City' s unique image** to promote new investment.

...

8. Preserve the City' s commercial and light industrial land inventory by placing **limits on rezoning to residential designations**.

12. Work with public and private partners to build **fiber optic infrastructure** throughout the City to provide 21st century communications technology to current and future businesses.

[page 99, Community Character]

*“The term **“community character”** is hard to define, but it encompasses many things that contribute to quality of life for residents and to visitor experiences. However, for many, if not all, each experience is distinct. For example, many Sedonans still treasure a “small-town” feeling. Others see that small-town ambience slipping away with growth and new residents. One of the most obvious character features that a new arrival sees is a harmony in buildings and signage that have minimum visual impact. There are others who believe that this harmony is being lost as new development introduces different architectural designs and expression. These differences contribute to the vibrancy of the community experience in Sedona and are part of what makes the community unique.”*

[page 107, Community Policies]

...

11. Support public and private efforts that reflect and celebrate community with events, expressions, displays, and activities that will foster cultural innovation and creativity and promote the value and impact of arts, culture, and history to Sedona's community character.

[page 112, How Plan Is Implemented]

### **Private Sector**

*"Many of the Plan recommendations are implemented with new development or redevelopment of existing properties that conforms to the City's Land Development Code and through incentives that may be created in Specific Plans and Planned Areas. In these cases, development flexibility may be provided in conjunction with **benefits to the community.**"*

[page 116, Implementation]

### **Exactions**

*"An exaction is a payment or dedication made by a developer for the right to proceed with a project requiring government approval. It can be in the form of a fee, dedication of land to the public, construction or maintenance of public infrastructure, or provision of public services. **The exaction must be directly related to the need created by the development, and proportional to the cost of the improvement.**"*

[page 120, Implementation Policies]

....

2. Support funding mechanisms that are **beneficial to development and bear a reasonable relationship to the burden imposed** on the City to provide additional necessary public services.

...

4. Require development to pay its fair, proportionate share of service and infrastructure costs through development agreements, development impact fees, and other appropriate methods.





1 of 50 DOCUMENTS

**TRANSAMERICA TITLE INSURANCE COMPANY, a corporation, as Trustee  
under Trust No. 27,215, Appellant, v. The CITY OF TUCSON, a Municipal  
Corporation, et al., Appellees**

**No. 2 CA-CIV 1667**

**Court of Appeals of Arizona, Division Two**

**533 P.2d 693; 1975 Ariz. App. LEXIS 566; 23 Ariz. App. 385**

**April 9, 1975**

**SUBSEQUENT HISTORY:** **[\*\*1]** Rehearing Denied May 7, 1975. Review Denied June 17, 1975.

**COUNSEL:** Schorr & Karp, P. C., by S. Lenwood Schorr, Tucson, for appellant.

James D. Webb, Tucson City Atty., by Enos P. Schaffer, Deputy City Atty., Tucson, for appellees.

**JUDGES:** Howard, Chief Judge. Krucker, J., concurring. Hathaway, Judge (dissenting).

**OPINION BY: HOWARD**

**OPINION**

**[\*\*\*386] [\*694] OPINION**

As a condition of rezoning, can a municipality require the landowner to dedicate part of his land for right-of-way purposes? That is the main issue to be decided by this appeal.

Appellant is the owner of vacant land located at the southeast quadrant of the intersection of Silverbell Road and Speedway Boulevard in Tucson, Arizona. This property consists of approximately 196,000 square feet. The northern three-fourths of the property is zoned B-1

which permits commercial usage. The southern one-fourth of the property is zoned R-1 for residential use. Appellant requested and was granted a change of zoning on the southern quarter from R-1 to B-1. However, the rezoning granted requires, as conditions precedent, that appellant deed to the City a 75-foot one-half right-of-way for Speedway for the entire northerly portion **[\*\*2]** of the land already zoned B-1 and a 60-foot one-half right-of-way for Silverbell Road on the westerly side of all the property. There are other conditions designed to buffer the subject property from existing residential property.

In granting the conditional zoning, the Mayor and Council found that the rezoning would permit a "greater impact on the traffic" on Speedway and Silverbell and:

"4. That the governing body would be discriminating as to property owners throughout the city who as a condition to rezoning which increases traffic demands and friction are historically required to dedicate additional right-of-way to meet the standard widths of the Tucson Master Plan for major thoroughfares.

5. That, in particular, the governing body would be discriminatory and unfair to the property owners directly across

Speedway who had a parallel fact situation. . . ."

Both before the Mayor and Council and in the trial below, appellant presented two [\*\*\*387] [\*695] plans, Plan S and Plan S-1. Plan S shows how the property can be utilized as a shopping center under the present zoning. In Plan S the improvements are located toward the center of the property with [\*\*3] parking spaces located in the front, rear and sides of the improvements. Under Plan S the area sought to be rezoned is used for parking, a permissible R-1 use. Plan S provides 274 parking spaces and has one entry and exit for ingress and egress to Speedway and one entry and exit for ingress and egress to Silverbell.

Plan S-1 shows the development of the property after rezoning. The main difference between Plan S and Plan S-1 is that under S-1 the improvements are located to the rear of the property on the land presently zoned R-1 and the parking is mostly to the front of the improvements. Plan S-1 provides for one entry and exit on Speedway and one entry and exit on Silverbell. It has twenty less parking spaces than Plan S.

A Rezoning Development Plan is required by Section D5 of the Rules and Regulations of the City Planning and Zoning Commission. Section D7 provides that final plans for building permits shall substantially comply with the approved tentative plan.

Appellant did not object to the conditions designed for buffering or the dedication of the one-half right-of-way for Silverbell Road along the property adjacent to Silverbell which was being rezoned. It did object, [\*\*4] however, to the other dedication demanded and filed an action for declaratory judgment in superior court.

The trial court made findings of fact and conclusions of law and entered its judgment in favor of appellees. Among the court's findings were:

"13. The right-of-way dedications required in this case are reasonably related to the proposed use under the rezoning.

14. The proposed use under the rezoning will increase traffic on the streets bordering the plaintiff's property.

15. The proposed use of the property under the rezoning will increase traffic turbulence on the streets."

Appellant has presented nine questions for review, six of which in essence relate to the reasonableness of the conditions. The remaining questions concern the admissibility of certain evidence and the sufficiency of the evidence.

At the outset it should be noted that a zoning ordinance is cloaked with a presumption of validity. *City of Phoenix v. Price*, 18 Ariz.App. 144, 500 P.2d 1132 (1972); *Peabody v. City of Phoenix*, 14 Ariz.App. 576, 485 P.2d 565 (1971). Further, the appellate court must accept the trial court's findings unless they are demonstrated to be clearly erroneous. *Olson v. State*, [\*\*5] 12 Ariz.App. 105, 467 P.2d 945 (1970). When the reviewing court is left with a definite and firm conviction that the trial court has made a mistake in its findings of fact and such findings are clearly erroneous, it may set them aside. *Park Central Develop. Co. v. Roberts Dry Goods, Inc.*, 11 Ariz.App. 58, 461 P.2d 702 (1969).

The City of Tucson in the exercise of its police power may do those acts which promote public convenience or general prosperity, as well as public safety, health, and morals. The police power is based on the necessity to safeguard the public interest. Its concept is not static, but dynamic, changing and accommodating to the complexities of modern society

Because of the nature of the police power, its exercise frees a governmental body from liability for compensation for resulting private losses. *Montgomery v. Health Dept.*, 161 Cal.App.2d 584, 326 P.2d 886 (1958); 6 E. McQuillin, *The Law of Municipal Corporations* § 24.06 (1969). However, exercise of the police power does not include the power of eminent domain. *Article 2, § 17 of the Constitution of Arizona*, A.R.S., provides:

"\* \* \* No private property shall be taken . . . for public or private [\*\*6] use [\*\*\*388] [\*696] without just compensation having first been made, or paid into court for the owner . . . ."

The police power cannot extend beyond the necessities of the case and be made a cloak to destroy

533 P.2d 693, \*696; 1975 Ariz. App. LEXIS 566, \*\*6;  
23 Ariz. App. 385, \*\*\*388

constitutional rights as to the inviolateness of private property. *House v. Flood Control Dist.*, 25 Cal.2d 384, 153 P.2d 950, 952 (1944). An arbitrary, conceived exaction will be nullified as a disguised attempt to take private property for public use without resort to eminent domain. *Mid-way Cabinet Fixture Mfg. v. County of San Joaquin*, 257 Cal.App.2d 181, 65 Cal.Rptr. 37 (1967). A strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 43 S.Ct. 158, 67 L.Ed. 322 (1922).

The power of a municipality to impose conditions on zoning or rezoning has been upheld. *Ayres v. City Council*, 34 Cal.2d 31, 207 P.2d 1 (1949); *Scrutton v. County of Sacramento*, 275 Cal.App.2d 412, 79 Cal.Rptr. 872 (1969). We agree with these cases. The power to impose conditions on rezoning is an exercise of the police power and such [\*\*7] conditions are valid as long as the conditions are reasonably conceived. The fulfillment of public needs emanating from the proposed land use is the sine qua non of the exaction's reasonableness. *Scrutton v. County of Sacramento*, *supra*.

In *Ayres*, approval of a subdivision was conditioned on dedication of land for street-widening and a planting strip. There was evidence that the subdivision would create conditions which required the widening, the restriction of ingress and egress, and the screening of lot owners from traffic noise and fumes emanating from the subdivision.

In *Scrutton v. County of Sacramento*, *supra*, the landowner sought to have her property rezoned from agricultural to multiple family residential to permit its development for residential apartment units. Among the conditions imposed by the county was the requirement that Mrs. Scrutton dedicate a 27-foot right of way for widening a street called Foster Way which bordered the east side of her property and that she pave Foster Way at her own expense (amounting to \$ 13,000). Mrs. Scrutton objected to dedicating and paving the Foster Way frontage since the sole vehicular access to her planned apartment development [\*\*8] was by means of the street bordering the northern part of her property. The county's sole justification for the Foster Way requirements was that they would benefit Mrs. Scrutton's property. Summary judgment was granted in the county's favor. In reversing the summary judgment, the court commented

on the affidavits filed by the county:

"They contained no showing that Mrs. Scrutton's apartment project would generate traffic or other conditions on Foster Way which would reasonably necessitate widening and improving the street at her sole expense." 79 Cal.Rptr. at 880

All the cases which we have cited are relied upon by the city in defending the judgment of the trial court.

A planning session was held in 1971 prior to the public rezoning hearing. Mr. Lim, Director of Planning for the city gave the following reason for the requested dedications:

"Mr. Chairman, the Commission requested from Staff the Speedway at Silverbell traffic. In consultation with the Traffic Engineer the latest average daily count at Speedway and Silverbell was on the order of 9,691 cars per day. On Speedway itself, it is on the order of 2,429 to about 2,972. On any thoroughfare, whether [\*\*9] it be major or minor, when you get to the position of having 9,000 cars average daily traffic, it is to the best interest of the community that the street be widened beyond the thirty foot street where it is now, and if possible go to at least four lanes. Once the average daily traffic gets above 10,000 and in the order [\*\*\*389] [\*697] of 12,000 to 14,000 and on up, then one starts thinking about six lanes. Before that one starts thinking about a median divider. I think, based on this, the staff request on that particular zoning case was in order, and because of the advent of the Junior College, the transition at St. Mary's, we can expect to see the 9,000 daily traffic go up to very shortly on the order of 12,000 to 14,000."

We note no mention of the increased traffic hazards resulting from the rezoning.

At the subsequent public meeting of the Mayor and Council at which the conditional rezoning was granted,

the following question and answer is cited by appellees as showing justification for the conditions:

"Councilman Kennedy: Mr. Lim, has there been any past precedent set on this type of case? I seem to remember one -- I think it was on Swan Road, if I [\*\*10] recall. I don't know whether we had a legal opinion at that time that we couldn't require the right-of-way. It had something to do with a man whose mother owned the property and we were trying to take the right-of-way from them. Actually, he had some control. There is a similarity.

Mr. Lim: Mr. Mayor, Mr. Kennedy, I can't recall the exact precedence (sic). However, in the development of a piece of land all under one ownership, it is Staff's opinion and the Planning and Zoning Commission's opinion that, upon the development of a piece of land in which one is going to increase the traffic and one is going to increase the hazards along with that traffic, that the developer, in order to not only for his own good and for the community's good, should make provisions for that extra traffic that he is going to generate as a result of that development. It is under this theory in which the Planning and Zoning Commission has asked Mr. Schorr's client for the right-of-way so that in the future -- and we know it's coming -- that Speedway, which is now carrying on the order of 9,000 cars per day, within the next 18 months will carry over 11,000 cars per day and, if the west side develops [\*\*11] as we anticipate, we can look to 20 to 25,000 cars per day. This amount of traffic at Speedway and Silverbell would be extremely hazardous if this land is developed as Mr. Schorr says with a fair-sized shopping center. The intersection is hazardous now and it will be that much more. Without the additional right-of-way, we would not be able to control the traffic to any extent."

The problem with Mr. Lim's answer is that it fails to point out to the Mayor and Council that appellant already had the right without the rezoning to construct a fair-sized shopping center. In fact, from the parking standpoint, Plan S provides for 20 more customer parking spaces than Plan S-1.

The evidence at trial does not improve the city's position. Its *sole* evidence on the issue of increased traffic hazards necessitated by the rezoning other than evidence previously mentioned, came from Mr. Lim's testimony. He stated: (1) the traffic generation between Plan S and S-1 would be approximately the same, numerically; (2) there is a possibility that under S-1 a greater proportion of the traffic would be generated on Speedway; (3) S-1 would "throw" less traffic on Silverbell than S; (4) the layout [\*\*12] of S-1 is much nicer and more attractive than S; and (5) Plan S would create less customer traffic than Plan S-1 because parking to the rear of a shopping center is not as attractive to the customer as full parking to the front. (This seems to contradict his statement that Plan S and Plan S-1 would generate approximately the same amount of total traffic.)

Appellant presented the testimony of Mr. Dennis Wall who holds a Bachelor's Degree in Architecture from Oklahoma State University and a Master's in Planning from the University of Arizona. It was his opinion that Plan S would have a greater impact on the Speedway traffic based on the "theory of intervening opportunities." [\*\*390] [\*698] This theory is that as the proximity to the street increases, opportunities occur more frequently for the passing motorist and thus increase the frequency that such motorist would drive into the shopping area. This in turn would create more traffic turbulence, i. e. cars slowing down to enter the shopping center and cars pulling into the street from the center.<sup>1</sup> He further opined that as far as traffic generation was concerned, there was little difference between Plan S and Plan S-1 [\*\*13] but that Plan S-1 would cause less traffic turbulence than Plan S.

<sup>1</sup> On the issue of increased traffic burden as a justification for dedication of right-of-way, see *Sommers v. City of Los Angeles*, 254 Cal.App.2d 605, 62 Cal.Rptr. 523 (1967).

The relationship between the conditions exacted by the city and the use proposed by appellant presented a factual inquiry for the trial court. The burden was on appellant to show such lack of relationship in order to

overcome the presumption of validity. We believe appellant did this. The Mayor and Council and the trial court went astray in failing to distinguish between the requested rezoning and appellant's ability to build a shopping center on the property *without* the rezoning. It is true that the placing of a shopping center on the rezoned property will create an additional traffic burden on the adjacent streets. But this increased burden was already in existence under Plan S. There is no evidence that the rezoning of the land in question will cause any appreciable [\*\*14] burden on the streets over and above that which would emanate from the land *prior to rezoning*. The testimony from Mr. Lim that there is a *possibility* that Plan S-1 would generate *more* traffic on Speedway is too vague to justify what appears to be a thinly disguised attempt to secure private property without the payment of just compensation.

When all the city's evidence is put together, it shows that the daily traffic count is approximately 9,691 cars per day at the intersection of Silverbell and Speedway, that the present traffic count requires that the street be widened to four lanes. Because of St. Mary's Hospital and Pima Community College the daily traffic count will shortly reach a point where six lanes will be needed. The intersection of Silverbell and Speedway is now hazardous. The development of a fair-sized shopping center will add to the hazards of the intersection. Plan S-1 might possibly generate more traffic on Speedway than Plan S. In every rezoning case the city requests the amount of right-of-way needed to provide the width required by the master plan.

Keeping in mind the fact that appellant already could have built a shopping center on the existing [\*\*15] zoning, we ask again, is the widening of the streets necessitated by the rezoning? We think not. Because of factors unconnected with the development of the property Speedway and Silverbell already needed widening. The city's testimony that Plan S-1 would generate "more" traffic than Plan S does not prove anything. Five hundred and two cars are "more" than five hundred cars. If the city is relying on the traffic increase as a justification for the exaction of the right-of-way it must show an *appreciable*<sup>2</sup> increase in traffic which in turn cause or add to control or safety problems on the existing streets. No such testimony was adduced in this case.

<sup>2</sup> See *Mid-way Cabinet Fixture Mfg. v. County of San Joaquin, supra*. "Our reading of the record

... gives not the slightest hint that there would be an *appreciable* increase in traffic." (Emphasis added) *65 Cal.Rptr. at 39*.

The city attempts to justify its action by what appellant terms the "ipso facto" theory of reasonableness. The theory goes like [\*\*16] this: More intensive use can be made of B-1 zoned property than property zoned R-1, ergo, more traffic will be generated on the adjacent streets, ergo, the conditions are reasonable. Under this theory the city isolates the property to be rezoned and views [\*\*\*391] [\*699] it in a vacuum. This cannot be done. If the property is rezoned, Plan S-1 must, according to the rules of the Planning and Zoning Commission, be followed as closely as possible. We therefore must focus on the property as it will be utilized under Plan S-1 and refuse to follow the city's bootstrap argument. Findings of fact 13, 14 and 15 are clearly erroneous.

Appellant's contention that the court erred in admitting, over its objection, the dedication required by the city on the property across Speedway from appellant's property and in admitting into evidence other instances in which the city required dedication of a right-of-way is well-taken. Whether the city reasonably exercised its police power in these other cases is not relevant.

The conditions requiring appellant to dedicate a 75-foot half right-of-way for Speedway Boulevard; to dedicate a standard 25-foot radius spandrel at the corner of Speedway [\*\*17] Boulevard and Silverbell Road; and to dedicate a 60-foot half right-of-way along that part of the property already zoned B-1, are invalid as an unlawful exercise of the police power and an attempt to secure private property without just compensation. Appellant has the right to have the property rezoned to B-1 free of these invalid conditions. The grant of a public privilege may not be conditioned upon the deprivation of constitutional protections. *Scrutton v. County of Sacramento, supra*.

The erroneous findings of the trial court are set aside and the judgment is reversed. The case is remanded to the trial court with instructions to enter judgment in favor of appellant and declare the rights of the parties in a manner consistent with this opinion.

**DISSENT BY: HATHAWAY**

**DISSENT**

HATHAWAY, Judge (dissenting).

In my view the evidence supports the trial court's conclusion that the conditions attached to the rezoning request were reasonable.

There is no doubt that a municipality may require, as a condition to its granting a rezoning application, dedication of a street. *A.R.S. § 9-462.01(A)(7)*.<sup>1</sup>

1 That statute reads in part:

"§ 9-462.01. Zoning regulations

A. Pursuant to the provisions of this article, the legislative body of any municipality by ordinance may:

\* \* \*

7. Require as a condition of re-zoning public dedication of rights-of-way, as streets, alleys, public ways, drainage and public utilities as are reasonably required by or related to the effect of the re-zoning."

[\*\*18] The testimony disclosed that the shopping center contemplated on the property if rezoned would generate more traffic, being a more attractive development. The exhibits depicting the two plans in themselves seem to support the trial court's conclusions. The new Plan, S-1, opens the entire parking area to both Speedway and Silverbell, concentrates all traffic on the northside and as otherwise borne out in the evidence, presents a more attractive shopping center.

As observed in *Scrutton v. County of Sacramento*, cited by the majority, reasonable conditions may be

imposed upon the landowner's proposal:

"A grant of public privilege may not be conditioned upon the deprivation of constitutional protections. (*Bagley v. Washington Township Hosp. Dist.*, 65 *Cal.2d* 499, 504-505, 55 *Cal.Rptr.* 401, 421 *P.2d* 409; *Danskin v. San Diego Unified Sch. Dist.*, 28 *Cal.2d* 536, 545-547, 171 *P.2d* 885.) The police power 'cannot extend beyond the necessities of the case and be made a cloak to destroy constitutional rights as to the inviolateness of private property.' [Citation omitted.]

"Although 'reasonableness' has been postulated as the hallmark of validity, a more precise standard is available. [\*\*19] An utterance in *Ayres v. City Council*, *supra*, 34 *Cal.2d* at page 42, 207 *P.2d* at [\*\*\*392] [\*700] page 8 supplies it: '[W]here it is a condition reasonably related to increased traffic and other needs of the proposed [land use] it is voluntary in theory and not contrary to constitutional concepts.' The Ayres' formulation may be generalized by the statement that conditions imposed on the grant of land use applications are valid if reasonably conceived to fulfill public needs emanating from the landowner's proposed use." 79 *Cal.Rptr.* at 879.

Applying the Ayres' formulation, as generalized in *Scrutton*, it would appear that the conditions imposed upon the granting of rezoning are reasonably conceived to fulfill increased needs emanating from the landowner's proposed use. I would affirm.



5 of 50 DOCUMENTS

**KIERSTEN SUE FRITZ; and CITIZENS SUPPORTING FAIR GROWTH, a political committee, Plaintiffs-Appellants, v. CITY OF KINGMAN, a municipal corporation; CHARLENE WARE, in her official capacity as City Clerk, Defendants-Appellees, and COMMITTEE FOR RESPONSIBLE ZONING, Intervenor.**

**NO. CV-98-0062-AP**

**SUPREME COURT OF ARIZONA**

*191 Ariz. 432; 957 P.2d 337; 1998 Ariz. LEXIS 33; 267 Ariz. Adv. Rep. 3*

**April 16, 1998, Filed**

**PRIOR HISTORY:** [\*\*\*1] MOHAVE COUNTY No. SA-97-33. Appeal from the Superior Court of Arizona in Mohave County. The Honorable Michael Irwin (La Paz County).

**DISPOSITION:** AFFIRMED.

**COUNSEL:** Gallagher & Kennedy P.A., by Jeffrey D. Gross, Attorneys for Plaintiffs-Appellants, Phoenix.

Charlotte Wells, Kingman City Attorney, Attorney for Defendants-Appellees, Kingman.

Sacks Tierney P.A., by Andrew de Mars and Brian de Vallance, Attorneys for Intervenor, Phoenix.

**JUDGES:** RUDOLPH J. GERBER, Judge. **CONCURRING:** THOMAS A ZLAKET, Chief Justice, CHARLES E. JONES, Vice Chief Justice, STANLEY G. FELDMAN, Justice, FREDERICK J. MARTONE, Justice. Justice Ruth V. McGregor did not participate in the determination of this matter; pursuant to Ariz. Const. art. VI, § 3, the Honorable Rudolph J. Gerber, Judge of the Arizona Court of Appeals, Division One, was designated to sit in her stead.

**OPINION BY:** RUDOLPH J. GERBER

**OPINION**

[\*\*337] [\*432] OPINION

GERBER, J.

P1 This appeal raises the single Euclidean<sup>1</sup> question whether a rezoning ordinance adopted by the city of Kingman is a legislative act subject to referendum or, on the other hand, merely an administrative act and hence not referable. After the trial court [\*\*338] [\*433] ruled that the rezoning was legislative [\*\*\*2] and therefore referable, the proponent of the rezoning ordinance, Kiersten S. Fritz, appealed directly to this court. For reasons that follow, we reaffirm our view that zoning decisions are legislative matters subject to referendum. We also reaffirm that *Wennerstrom v. City of Mesa*, 169 Ariz. 485, 821 P.2d 146 (1991), neither alters that view nor implies that zoning ordinances reflecting a city's general plan thereby become administrative decisions. We therefore affirm the trial court's order.

<sup>1</sup> See *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 71 L. Ed. 303, 47 S. Ct. 114 (1926).

191 Ariz. 432, \*433; 957 P.2d 337, \*\*338;  
1998 Ariz. LEXIS 33, \*\*\*2; 267 Ariz. Adv. Rep. 3

## FACTUAL AND PROCEDURAL BACKGROUND

P2 After public hearings and citizen input, the city of Kingman (city) adopted the Kingman General Plan on May 4, 1992. The General Plan land use map showed the Fritz property in an area where densities could range from one to four dwelling units per acre. The existing zoning of Ms. Fritz's land was R-R, which allowed only one dwelling per acre.

P3 In 1997, some five years [\*\*\*3] after adoption of the General Plan and in response to Ms. Fritz's request, the city adopted a zoning ordinance that changed the classification of her land to R-1-8, which permitted as many as four dwellings per acre. A citizens group opposed to the rezoning, the Committee for Responsible Zoning (Committee), filed petitions with the city to refer the rezoning to the electorate.

P4 Fritz and a contending group named Citizens Supporting Fair Growth (collectively Fritz) then filed suit in the superior court to compel the city to reject the referendum petitions. The trial court allowed the Committee to intervene. Fritz moved for summary judgment on the ground that the rezoning ordinance was an administrative act not subject to referendum. The trial court denied the motion and granted the Committee's countermotion for summary judgment, effectively holding that the rezoning constituted a legislative act subject to referendum.

P5 Fritz now appeals from the trial court's order. The Committee cross-appeals from denial of its request for an award of attorney's fees and costs. We have jurisdiction under *Arizona Revised Statutes Annotated (A.R.S.) section 19-122(C)* (Supp. 1997).

## THE APPEAL

[\*\*\*4] P6 The trial court found as a matter of law that the zoning ordinance governing Fritz's property was legislative. We review that finding de novo. *Board of Regents v. Phoenix Newspapers*, 167 Ariz. 254, 257, 806 P.2d 348, 351 (1991).

### Zoning is a Legislative Act

P7 In multiple decisions over a lengthy period, this court has consistently held that zoning decisions are legislative acts subject to referendum. See *Pioneer Trust*

*Co. v. Pima County*, 168 Ariz. 61, 64, 811 P.2d 22, 25 (1991) (even a city's conditional approval of an application for rezoning is subject to referendum); *Wait v. City of Scottsdale*, 127 Ariz. 107, 108, 618 P.2d 601, 602 (1980) ("It is well settled that the passage of an original zoning ordinance is the exercise of a legislative function."). See also *Queen Creek Land & Cattle Corp. v. Yavapai County*, 108 Ariz. 449, 451, 501 P.2d 391, 393 (1972) (refusing to bar referendum on supervisors' grant of a zoning change); *City of Phoenix v. Oglesby*, 112 Ariz. 64, 65, 537 P.2d 934, 935 (1975) (zoning is a function of the legislative branch); *City of Phoenix v. Fehlner*, 90 Ariz. 13, 17, 363 P.2d 607, 609 (1961) (establishing appropriate zoning classes [\*\*\*5] is primarily legislative). We recently stated in *Pioneer Trust* that we are "not persuaded that any adequate reason has been demonstrated to overrule our earlier cases." 168 Ariz. at 64, 811 P.2d at 25.

### Rezoning Under a General Plan is a Legislative Act

P8 Fritz argues that we need not overturn these cases because even if zoning is generally regarded as legislative, it becomes an administrative act when it merely implements the policies of a general plan. She relies on language in *Wennerstrom* regarding the difference between administrative and legislative acts. 169 Ariz. at 488-89, 821 P.2d 149-50. She asserts that just as the city of Mesa's bond election in *Wennerstrom* [\*\*\*39] [\*434] put the public on notice of the city's intention to construct road improvements, so the Kingman General Plan put the public on notice of the zoning classifications applicable to Fritz's land.

P9 More specifically, she contends that the Kingman General Plan stated the precise policy that the subject property could be developed at a density ranging from one to four dwelling units per acre and that anyone who opposed this range of densities should have sought a referendum on the General Plan at the time of [\*\*\*6] its adoption. She further contends that the rezoning ordinance allowing four dwelling units per acre merely implemented pre-existing policy embodied in the General Plan regarding the appropriate density for development of her land.

P10 We do not believe that *Wennerstrom* departs from our earlier cases nor that it is dispositive here. In *Wennerstrom*, the city sought authority from the voters to issue bonds to fund city street improvements. 169 Ariz. at 486-87, 821 P.2d at 147-48. We held that the bond

election was a legislative act but that later city council resolutions approving realignment and widening of certain streets were administrative acts not subject to referendum. *Id.* at 491-92, 821 P.2d at 152-53. The bond election represented legislative action by the voters because "they declared a public purpose and provided the ways and means for its accomplishment." *Id.* at 491, 821 P.2d at 152 (emphasis added).

#### Kingman's General Plan is Not Legislation

P11 To constitute legislation, a proposal must enact something; it must be a "definite, specific act or resolution." *Saggio v. Connelly*, 147 Ariz. 240, 241, 709 P.2d 874, 875 (1985). We have also stated that "legislatures [\*\*\*7] do not enact general principles." *McBride v. Kerby*, 32 Ariz. 515, 522, 260 P. 435, 437 (1927).

P12 Contrary to Fritz's argument, the city's General Plan is a statement of broad policies, goals, and principles. It enacts nothing definite or specific nor does it implement any law, purpose, or policy previously declared by the legislative body. See *Wennerstrom*, 169 Ariz. at 489, 821 P.2d at 150 (quoting 5 E. McQuillin, *The Law of Municipal Corporations* § 16.55, at 266 (3d rev. ed. 1989)).

P13 The language of the General Plan itself mandates this conclusion. Its Forward states:

What follows is a general development plan for the city of Kingman . . . . *The purpose of this document is not to recommend specific uses for specific locations. It is not super-layer zoning. Rather, it is a statement of community concerns and development policies intended to aid decision-making in future community growth issues.*

(Emphasis added.) Similarly, the city's resolution adopting the General Plan refers to the "generalized land use plan" contained therein and urges consideration of General Plan policies when the city makes the actual decisions to guide its growth. Nothing [\*\*\*8] in the General Plan directly addresses the zoning of the Fritz property.

P14 The Arizona statute requiring each municipality to adopt a general plan also reveals that a general plan,

such as the city's, is to be an aspirational guide or statement of policies and preferences. See *A.R.S. § 9-461.05(A)*. The statute provides in relevant part: "The general plan shall consist of a statement of community goals and development policies. It shall include a diagram . . . and text setting forth *objectives, principles, standards and plan proposals.*" *A.R.S. § 9-461.05(C)* (emphasis added). The statute also requires a land use element to "designate[] the *proposed general distribution and location and extent of such uses of the land for housing, business, industry,*" and other purposes. *A.R.S. § 9-461.05(C)(1)* (emphasis added).

P15 From this language we conclude that a general plan need not command anything specific. It need not provide the ways and means of its own accomplishment and thus is not a self-executing document. To realize a general plan's abstract policies and preferences, the city must undertake further specific actions, adopt specific ordinances, and make use-specific [\*\*\*9] decisions. These further decisions entail, among others, the zoning [\*\*340] [\*435] ordinances that apply specific uses and densities to specific properties.

P16 Therefore, we disagree with Fritz's characterization of the Kingman General Plan as *the* legislative act that renders subsequent zoning decisions mere administrative implementations. Instead, this General Plan clearly contemplated that future decisions such as imposing specific uses on specific locations would merely adhere to the Plan because the Plan itself does not descend to or mandate such specificity. Like the conceptual approval of street widening in *Wennerstrom*, adoption of Kingman's General Plan comprised conceptual land use planning "preliminary to a legislative act." 169 Ariz. at 491, 821 P.2d at 152.

#### The General Plan Does Not Give Notice to Landowners

P17 Furthermore, nothing in the General Plan puts landowners or their neighbors on notice of permitted uses, density of development, or other restrictions and conditions on specific properties. The time for citizens to object -- indeed, their only opportunity -- is when they have actual notice of specific legislative decisions regarding specific property. By its own admission, [\*\*\*10] the General Plan does not provide such actual notice to specific landowners or their neighbors and thus its adoption could not trigger a referendum.

191 Ariz. 432, \*435; 957 P.2d 337, \*\*340;  
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#### Utah Law is Not Persuasive

P18 Fritz urges us to adopt the Utah Supreme Court's view in *Wilson v. Manning*, 657 P.2d 251, 254 (Utah 1982), that a rezoning ordinance is not subject to referendum. In *Wilson*, a divided court declined to overturn a 1964 Utah case holding that a rezoning could not be referred to the electorate. The *Wilson* majority conceded that the original enactment of a zoning ordinance would be subject to referendum. *Id.* at 253. It found that a "change in a zoning classification" from residential to commercial was simply an amendment that "implemented the comprehensive plan and adjusted it to current conditions." *Id.* at 254. Such an amendment accordingly was an administrative act. *Id.* The dissent contended that the rezoning was a legislative act which "by its very nature constituted a material change . . . not within the contemplation of the lawmaking body when the master plan was adopted by ordinance." *Id.* at 256 (Howe, J., dissenting).

P19 Even if we accept the distinction offered in *Wilson* that adopting [\*\*\*11] a new policy is a legislative act while implementing an existing policy is an administrative act, we are not persuaded that the majority properly applied this distinction. Instead we agree with the dissent that a change in the nature of a permitted use is a new policy not reflected in the master plan. In Fritz's case, the initial zoning law permitted one dwelling per acre; the rezoning placed her property in a new classification of four dwellings per acre. That change necessarily constitutes a new policy on the appropriate density of housing on her individual property. As such, it is a legislative decision.

P20 We also note that, in contrast to Arizona, the relevant Utah statute subjects "master plan[s]" to the referendum process but expressly exempts "individual property zoning decisions." *Utah Code Annotated* § 20A-7-101 (1995).<sup>2</sup> Given this statutory dissonance, *Wilson* has no application in Arizona.

<sup>2</sup> Formerly Utah Code Ann. § 20-11-24.

#### Conclusion Regarding the Appeal

P21 We find no error in [\*\*\*12] the trial court's ruling that rezoning is a legislative decision subject to the referendum power reserved to the people in our constitution. *See* Ariz. Const. art. IV, § 1(8). Our decision subjects the rezoning of Fritz's property to a referendum vote at the city's next general election.

#### THE CROSS-APPEAL

P22 The Committee unsuccessfully requested from the trial court an award of attorney's fees and costs pursuant to *Rule 11, Arizona Rules of Civil Procedure*, and *A.R.S. section 12-349* on the ground that Fritz filed suit to cause harassment and delay. It also seeks to recover the fees and costs incurred in this court. Our disagreement with Fritz's argument for application of *Wennerstrom* to [\*\*341] [\*436] these facts does not imply that we find her argument frivolous. We affirm the denial of attorney's fees and costs based on our finding that Fritz made a good faith argument for extension of existing law. Each side will bear its own attorney's fees and costs on appeal.

RUDOLPH J. GERBER, Judge

CONCURRING:

THOMAS A. ZLAKET, Chief Justice

CHARLES E. JONES, Vice Chief Justice

STANLEY G. FELDMAN, Justice

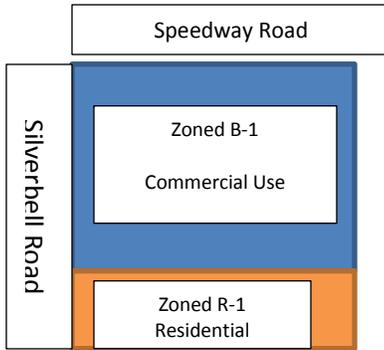
FREDERICK J. MARTONE, Justice

Justice Ruth V. McGregor did [\*\*\*13] not participate in the determination of this matter; pursuant to *Ariz. Const. art. VI, § 3*, the Honorable Rudolph J. Gerber, Judge of the Arizona Court of Appeals, Division One, was designated to sit in her stead.

## Learning Zoning From Legal Cases

*Transamerica Title v. City of Tucson*

533 P.2d 693 (1975)



Property owner presented two plans to the city: **S** (no rezoning) where the shopping center is located in the commercial area, and parking on the lower ( a permitted R-1 use), and **S-1** (R-1 parcel rezoned to commercial), with the shopping center now to the rear (Speedway is the main road). Both had one entrance/exit to Speedway, and one to Silverbell Road. As a condition of rezoning, the city required the owner to deed over a 75-foot one-half R/W for Speedway along the entire northerly portion, and another 60-foot R/W for Silverbell Road. Suit was filed concerning the 75-foot R/W on Speedway.

The city in granting the conditional rezoning found that it was justified because (a) other property owners throughout the city had to make similar dedications when the project increased traffic demands, and (b) it would particularly be discriminatory not to require the Speedway dedication since the property directly across "had a parallel fact situation." At the Commission, the P&Z Director stated the reasons for asking for the dedications were that city engineering policy and the "best interests of the city" was to widen streets based on average daily counts of vehicles, and that the traffic on Speedway was anticipated to increase more in the future with the planned expansions of nearby projects [*expansion of hospital and junior college*]. There was no mention of increased traffic hazards resulting from the rezoning. At the subsequent city council meeting, he repeated the need for the dedication based on increased traffic counts from projects in the next 18 months.

At trial, the Director testified that both plans had approximately the same traffic generation, that S-1 may throw more traffic to Speedway, and that S-1 in the rezoning was a more attractive design. The trial court upheld the requirement finding (a) the dedications are reasonably related to the proposed use under the rezoning (b) the proposed use will increase traffic on the streets bordering the property and (c) the proposed use will increase traffic turbulence [*interruptions of normal flow as vehicles attempt to enter/exit the shopping center*].

The appellate court overturned them both, and made the following comments:

1. "a zoning ordinance is cloaked with the presumption of validity"
2. "an appellate court must accept a trial court's findings unless they are clearly erroneous"
3. "A city in the exercise of its police power [*zoning*] may do those acts which promote public convenience or general prosperity, as well as public safety, health, and morals. The police power is based on the necessity to safeguard the public interest. Its concept is not static, but dynamic, changing and accommodating to the complexities of modern society."

4. "Because of the nature of the police power, its exercise frees a governmental body from liability for compensation resulting from private losses. However, exercise of the police power does not include the power of eminent domain....The police power cannot extend beyond the necessities of the case and be made a cloak to destroy constitutional rights as to the inviolateness of private property."
5. "An arbitrary, conceived exaction will be nullified as a disguised attempt to take private property for public use without resort to eminent domain."
6. "A strong public desire to improve the public conditions is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change."
7. Both the city and trial court went astray in failing to distinguish between the requested rezoning and the owner's ability to build a shopping center on the property **without** rezoning. The increased traffic burden on the streets would already be in place just using Plan S
8. Because of factors not associated with the project, Speedway already needed widening
9. "If the city is relying on the traffic increase as a justification for the exaction of the right-of-way, it must show an **appreciable** increase in traffic which in turn cause or add to control or safety problems on the existing streets. No such testimony was adduced in this case. "
10. The city cannot justify its action simply by saying that more intensive uses can be made of B-1 zoned property than property zoned R-1.
11. It was error by the trial court to admit and consider dedications on the property across Speedway and other instances where the city required dedication of a right-of-way
12. ***"The conditions requiring [the owner] to dedicate a 75-foot half right-of-way for Speedway Boulevard; to dedicate a standard 25-foot radius spandrel at the corner of Speedway Boulevard and Silverbell Road; and to dedicate a 60-foot half right-of-way along that part of the property already zoned B-1 are invalid as an unlawful exercise of the police power and an attempt secure private property without just compensation. [The owner] has the right to have the property rezoned to B-1 free of these invalid conditions. The grant of a public privilege may not be conditioned upon the deprivation of constitutional protections."***



























