



City of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

(928) 282-1154 • Fax: (928) 204-7124

SUMMARY SHEET

Appeal of fence permit denial – Helen Ashley

AP14-00002 (Appeal)

Board of Adjustment

Action Requested: Appeal of the Community Development Director's decision to deny a fence permit for the construction of a wood fence made of shipping pallets on private property.

Land Development Code: Article 9 (Development Standards), Section 902.03 Outside Storage

Sedona City Code: Title 8 (Health and Safety), Chapter 8.10, section 8.10.020-F Public nuisances defined, and Chapter 8.15.010 Nuisances

Public Hearing Date: December 19, 2014, 1:00 PM

Public Notice Date: November 28, 2014

Property Owner: Helen Ashley

Location: 2555 Leisure Lane
Assessor's Parcel Number 408-22-057

Zoning: RMH-12 (Mobile Home and Single-family Residential)

Case Number: AP14-00002 (Appeal)

Prepared By: Nicholas Gioello, Development Services Director

Exhibits:

- Exhibit A: Vicinity Map
- Exhibit B: Aerial View
- Exhibit C: Land Development Code – Article 9 (Development Standards), Section 902.03-A Outside Storage
- Exhibit D: Sedona City Code - Chapter 8.10 Litter, Article I. Litter – Nuisances, 8.10.020, Public nuisances defined. Chapter 8.15.010 Nuisances
- Exhibit E: Applicant letter
- Exhibit G: Photographs



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ISSUE

The appellant, Helen Ashley is appealing the decision of the Community Development Director to deny a fence permit for the construction of a wood fence made of shipping pallets on her private property.

LOCATION

The property is zoned RMH-12 (Mobile Home and Single-family Residential) and located at 2555 Leisure Lane, in the Harmony High Park subdivision. The property is further identified as Assessor's Parcel Number 408-22-057.

BACKGROUND

On July 2, 2014, the Community Development Department received a complaint about a fence made from pallets at a single-family house. Upon investigation by the Senior Code Enforcement Officer, a stop work order was issued for construction without a building permit and the property owner was instructed to apply for a fence permit.

City staff reviewed the permit application and pictures of the pallet fence (see exhibit G). Staff denied the permit based on the fact that the materials used for the fence were defined as a public nuisance by City Code 8.10.020-F (Public nuisances defined) as "crates, packing cases...or other packing material". This section of the City Code declares that any such things upon any private lot are a public nuisance. Also, the Land Development Code (LDC) section 902.03 Outside Storage, requires the screening of "secondhand materials...lumber" stored on a property. Staff's denial of the permit was reviewed by the Community Development Director and found the decision to be correct and in accordance with the applicable sections of the Land Development Code and Sedona City Code.

Staff advised the Ms. Ashley that the fence needed to be removed or an appeal of the Director's decision could be filed. Ms. Ashley chose to file the appeal of the Director's decision. Staff agreed to allow the pallet fence to remain until a Board of Adjustment public hearing could be held and a decision had been rendered.

STAFF COMMENTS

During the process that led to the filing of the appeal, Ms. Ashley met with staff and requested an explanation for why the pallet fence was not approved and did not meet the applicable codes. Staff explained that the Land Development Codes require that when pallets are stored outdoors they must be screened. Additionally, this type of material, when not screened, is defined as a public nuisance and subject to removal. Therefore, secondhand pallets cannot be used as a fence for screening purposes; they are still considered secondhand materials.



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APPLICABLE LAND DEVELOPMENT CODE AND CITY CODE PROVISIONS

Article 9 (Development Standards), Section 902.03-A Outside Storage:

In all residential districts, a maximum area of 200 square feet may be used on any 1 lot or parcel for the outdoor storage of any used or secondhand materials, including, but not limited to, lumber, auto parts, household appliances, pipe, drums, machinery or furniture. Such outdoor storage shall be screened by a wall, fence, landscaping, structure, or other suitable screening from adjacent properties and streets, and shall be located only in rear or interior side yards.

Sedona City Code, Title 8 (Health and Safety), chapter 8.10 Litter, Article I. Litter – Nuisances, 8.10.020 Public nuisances defined:

The following specific acts, omissions, conditions and things in or upon any private lot, building, structure or premises, or in or upon any public right-of-way, streets, avenue, alley, park, parkway or other public or private place in the city are hereby declared to be public nuisances, to wit:

F. Accumulation of trash, litter, rags, empty barrels, boxes, crates, packing cases, mattresses, bedding excelsior, packing straw, packing hay, or other packing material, lumber not neatly piled, scrap iron, tin, and other metal not neatly piled or anything whatsoever in which insects may breed or multiply or which provides harborage for rodents or which may create a fire hazard;

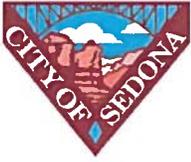
Sedona City Code, Title 8 (Health and Safety), Chapter 8.15.010 Nuisances:

It is unlawful for any person to maintain a public nuisance. Anything which is injurious to health or indecent or offensive to the senses, or which interferes with the comfortable enjoyment of life or property or anything which unlawfully obstructs the free passage or use in a customary manner of any public place, street, sidewalk or alley in the city, is a public nuisance and subject to summary abatement.

DIRECTOR'S INTERPRETATION

The Director has reviewed the above mentioned codes and determined that the use of pallets for the construction of a fence is inappropriate and does not meet the intent of the Land Development Code and the Sedona City Code.

Pallets, in their original form of construction, are intended and used for the shipment of good and materials, similar to shipping crates. Many of the pallets used by the applicant in the construction of the fence have clear signs of such previous use; for example some pallets have broken slats, others have grease marks and stains consistent with the use associated with the shipping of materials and goods. The Director has determined that this meets the description of “*used or secondhand materials*” referred to in the Land Development Code Section 902.03-A. This section of the code (see applicable code provisions above) also clearly states that such materials “*shall be screened by a wall or fence*”. It is the Director’s decision that material such as pallets are required to be screened



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and the use of unaltered pallets for a fence does not meet the intent of the Land Development Code, section 902.03-A.

Note: Staff discussed with the applicant that they would be supportive of the use of wood that was repurposed from old pallets and assembled into a more traditional picket style fence but the applicant declined this option.

The Sedona City Code (8.10.020) clearly defines a public nuisance as an accumulation of “boxes, crates, packing cases... or other packing material, lumber not neatly piled”. The code also makes it unlawful for anyone to maintain a public nuisance. Staff estimates that there are at a minimum 40 pallets and probably more on the property. It is the Director’s interpretation that the number of pallets on the property is an “accumulation” of materials and that pallets qualify by definition as a public nuisance since they are similar to “boxes, crates, packing cases... or other packing material”.

CONCLUSION

It is the Director’s opinion that an accumulation of pallets on a property is a defined public nuisance per the Sedona Land Development Code. It is the Director’s opinion that pallets can be contained on a property if screened behind a solid wall or fence; however the use of unaltered pallets as fence material would not meet this requirement of the Land Development Code since they would be visible to neighbors and potentially the public. It is the Director’s opinion that this pallet fence must be dismantled and removed from the property or, if pallets are to remain on the property, they must be properly screened by an approved and permitted fence.

RECOMMENDED MOTION FOR APPROVAL

I move to deny the appeal of the Director’s decision related to Case Number AP14-00002, and thereby require the removal of the fence installed without a permit and made from pallets.

ALTERNATIVE MOTION FOR DENIAL

I move to approve the appeal of the Director’s decision related to Case Number AP14-00002, and thereby allow the fence made from pallets to remain upon approval of a building permit and final inspection to confirm all conditions of the building permit have been satisfied.

Please note that the above motions are offered as samples only and that the Board may make other such motions as appropriate.

Vicinity Map

Parcel #
408-22-057
Appeal of Director's
Decision

- Parcel #408-22-057
- Zoning Boundary
- Building Footprint
- Parcel Boundary
- Trail
- Street Centerline



0 50 100 Feet

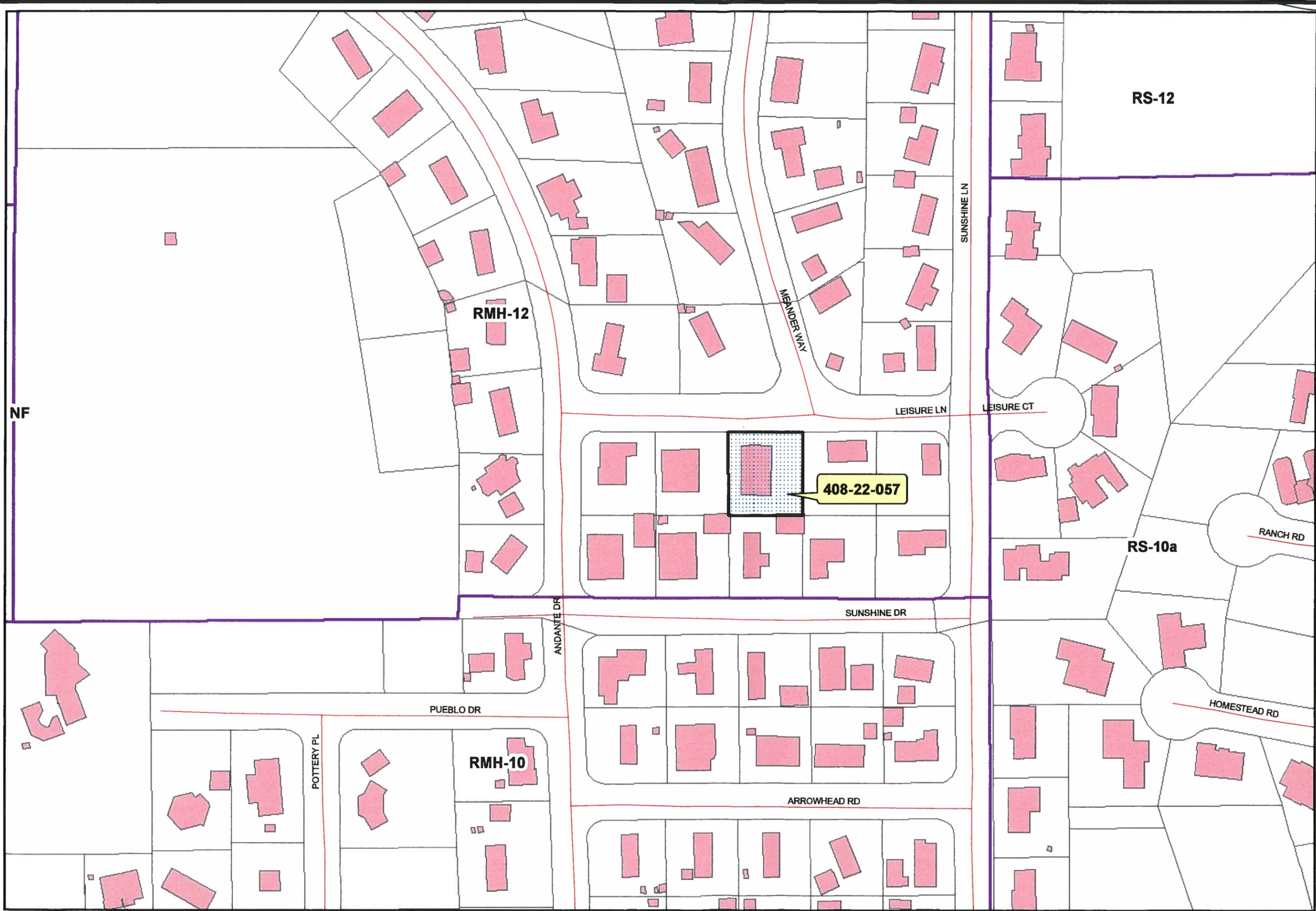
City Index



GIS, City of Sedona
11/19/2014
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nick@sedona\traced\408-22-057_vicinity.mxd



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Aerial View

Parcel
#408-22-057
Appeal of Director's
Decision

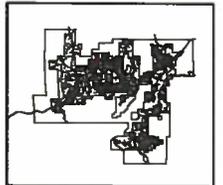
EXH B

-  Parcel #408-22-057
-  Parcel Boundary
-  Street Centerline



0 5 10 Feet

City Index



GIS, City of Sedona
11/19/2014
g:/projects/cd/staff/mickjoello
appeal/mxds/408-22-057_ser



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LEISURE LN

408-22-057

Excerpt of Land Development Code, Article 9 Development Standards

902.03 Outside Storage.

A. In all residential districts, a maximum area of 200 square feet may be used on any 1 lot or parcel for the outdoor storage of any used or secondhand materials, including, but not limited to, lumber, auto parts, household appliances, pipe, drums, machinery or furniture. Such outdoor storage shall be screened by a wall, fence, landscaping, structure, or other suitable screening from adjacent properties and streets, and shall be located only in rear or interior side yards.

B. All boats, trailers, motor homes, travel trailers, recreational vehicles and buses shall be kept in reasonable repair and operable and neatly arranged in a parked condition, located in the rear or interior side yard and shall be screened from adjacent properties and streets by a wall, fence, gate, landscaping or other suitable screening. Operable motor vehicles may be parked on the driveway or access way to the garage or carport.

C. No travel trailers, motor homes or recreational vehicles on residentially zoned parcels or lots shall be used or made suitable for use or occupancy.

D. No mobile home shall be placed or kept on a lot without a current valid building permit and without erection of permanent foundations and hook-ups to facilities, permanent piers, blocks or foundations.

E. The outside storage of objects and materials shall be permitted as an accessory use in C-1, C-2 and C-3 Districts, providing that such storage is totally screened from the view of any contiguous property, right-of-way or easement by means of a masonry wall, solid wood fence or other suitable screening and/or landscaping, unless otherwise provided for in Article 6 SLDC. Outside storage as an accessory use shall not include the display of merchandise for sale, except as provided in Article 6 SLDC. Vending machines permanently installed against but outside a structure shall not be considered an outside display, provided the number of such machines is approved by the Director.

F. The outside placement of metal storage containers shall be limited to C-1, C-2, C-3 and RS-70 zones. No storage unit shall exceed the individual dimensions of 20 feet in length by 8 feet wide by 10 feet in height (20 feet by 8 feet by 10 feet).

EXH D

Excerpt from Sedona City Code, Title 8 Health and Safety

8.10.020 Public nuisances defined.

The following specific acts, omissions, conditions and things in or upon any private lot, building, structure or premises, or in or upon any public right-of-way, streets, avenue, alley, park, parkway or other public or private place in the city are hereby declared to be public nuisances, to wit:

A. Privies, vaults, cesspools, sumps, pits or like places which are not securely protected from insects or rodents, or which are foul or malodorous, or which are not securely closed and protected or, if necessary, illuminated so as to prevent persons or objects from falling therein. Also included are septic tanks and other alternative disposal systems which are no longer in use due to connection of a property to the city wastewater system, and which are required to be abandoned pursuant to SCC 13.15.030(E);

B. Filthy, littered or trash-covered exterior areas, including all buildings and structures thereon and areas adjacent thereto;

C. Animal manure in any quantity which is not securely protected from insects and the elements, or which is kept or handled in violation of any ordinance of the city or Coconino/Yavapai Counties; provided, however, that nothing in this subsection shall be deemed to prohibit the utilization of such animal manure on any farm, garden or ranch in such manner and for such purposes as are compatible with customary methods of good husbandry;

D. Poison oak, poison ivy, or any noxious or toxic weeds or uncultivated plants (whether growing or otherwise), weeds, tall grass, uncultivated shrubs or growth higher than 24 inches or which present a fire hazard;

E. Accumulations of bottles, glass, cans, ashes, small pieces of scrap iron, wire, metal articles, bric-a-brac, broken stone or cement, broken crockery, broken glass, broken plaster and all other trash and abandoned material, unless the same be kept in covered bins or metal receptacles approved by a county health officer, this code or any ordinance of the city;

F. Accumulation of trash, litter, rags, empty barrels, boxes, crates, packing cases, mattresses, bedding excelsior, packing straw, packing hay, or other packing material, lumber not neatly piled, scrap iron, tin, and other metal not neatly piled or anything whatsoever in which insects may breed or multiply or which provides harborage for rodents or which may create a fire hazard;

8.15.010 Nuisances.

It is unlawful for any person to maintain a public nuisance. Anything which is injurious to health or indecent or offensive to the senses, or which interferes with the comfortable enjoyment of life or property or anything which unlawfully obstructs the free passage or use in a customary manner of any public place, street, sidewalk or alley in the city, is a public nuisance and subject to summary abatement. [Code 2006 § 10-1-5].

I do not agree with Nick Gioello's decision that my pallet fence per code 8.10.020 F a Public nuisance.

I am appealing due to the fact that my pallet fence is an "**enclosure**" for my organic garden and the use of pallets is an environmental resource being used throughout the World and also in Sedona. My pallets will be covered with growing plants. (see attachment)

I have worked with Brian Pearson and Keith Chamberlain and corrected all that was requested on the permit application and it was verbally accepted by both until Nick Gioello. I never talked to the Director Juhlin who is referred to in their documents.

My "**enclosure**" cannot be seen from the street nor from the east of my property from anyone unless they are on my property. The south property line is connected to a neighbor, Tom Fish, who complained to the city after it was built, but not during the 2 weeks of construction (and I am sad that he did not come and talk to me first about his concerns). The only people who can see my backyard is Tom Fish and his guests in his home or backyard.

I have agreed to paint prior to the growth of the plants. The "**enclosure**" has passed Brian Pearson structural strength. The fence is not "prop up" The use of gravel and soil is mixed with water to form adobe strength cement. The pallets are wired together using 16 gauged wire and a 5 foot heavy duty T frame pole, pounded 1 (one) foot into the our hard clay soil.



IVY LIVING WALL ON MY
FENCE BOTH SIDES

Permit # B00857

Helen Ashley

425 736 5414

EXH G-1





EXH G-2



EX163



EXH 6-4