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

Date: February 16, 2017
9:30 a.m.

Planning and Development
501 N. 44th Street, Gold Conference Room
Phoenix, Arizona

MEMBERS PRESENT:
Mr. Greg Arnett, Chairman
Ms. Jennifer Ruby, Vice Chairperson
Mr. Nathan Andersen
Mr. Bruce Burrows
Mr. Michael Deutsch (telephonically)
Mr. Broc C. Hiatt

MEMBERS NOT PRESENT:
Mr. Michael Cowley
Mr. B.J. Copeland
Mr. Michael Johnson
Mr. Murray Johnson

STAFF PRESENT:
Mr. Darren Gerard, Planning Deputy Director
Ms. Rachel Applegate, Senior Planner
Mr. Derek Scheerer, Planner
Mr. Tom Ewers, Plans Examiner Manager
Ms. Lynn Favour, Development Services Deputy Director
Ms. Rosalie Pinney, Recording Secretary

COUNTY AGENCIES:
Mr. Robert Swan, County Counsel

APPROVAL OF MINUTES:
September 8, 2016
January 19, 2017

Chairman Arnett called the meeting to order at 9:35 a.m. The minutes for September 8, 2016 and January 19, 2017 were approved as written.

Text Amendment TA2016001 **All Districts**

Applicant: Staff
Location: Countywide
Request: Group Home/Group Care Facility Definitions

Mr. Scheerer presented text amendment TA2016001 to add language as well as delete existing language in the definitions section of the Maricopa County Zoning Ordinance. This will clarify what constitutes an adjudicated person, a family, and what qualifications are required for Group Care Facilities and Group Homes. The text amendment as proposed will lessen the regulatory burden by providing greater flexibility to Group Home applicants.

Chairman Arnett asked if there was a specific case for this text amendment. Mr. Scheerer said when speaking with applicants they had numerous questions asking for clarification. Also speaking with the Department of Child Services about their definitions for Group Homes for foster children and other adjudicated but not criminally adjudicated children and individuals assigned to Group Homes, Group Care Facilities, and Foster Homes.

Mr. Gerard noted the interpretation for the adjudicated person in the ordinance has always been narrower than the potential of any court adjudicated individual. We have a very large umbrella for a Group Care Facility that has never been memorialized, and we needed the definitions to be clarified for more appropriate and consistent code enforcement.

Chairman Arnett asked how much of this is proactive or reactive. Mr. Gerard stated it is reactive to specific issues and Mr. Scheerer has been working with Child Protective Services in their rule making procedures.

Commissioner Hiatt asked about the significance of two or more, and is their certain regulations and limitations. Mr. Gerard said at the County level we would require a special use permit for a Group Care Facility.

Commissioner Hiatt noted to insert into the sentence two or more that are not family members. If you have two members of the family who happen to be adjudicated not sure if it would qualify. Mr. Gerard stated, if operating a Group Home for registered sex offenders and there is a tremendous amount of opposition, we are trying to make it very clear as to where and when we can enforce on that.

Commissioner Hiatt asked if you have a family member related by blood and two of those family members happen to be under the definition of adjudicated persons would that make them a Group Care Facility even if they are just family? Mr. Gerard said that is correct, the adjudicated person has to be actively on parole or probation, two or more persons not related

by blood. It does get complicated and it needs to be very specific for code enforcement.

Commissioner Hiatt said his concern is if you have a family and two family members are on parole or probation and they fall within all the requirements, he cannot support that. If they are not related and it is more of a business environment and charging people rent is one thing, but family just living together? Is there a way to not have a blood related family for these regulations? Mr. Gerard noted they can indicate two or more persons not including spouses or minor children.

Vice Chairperson Ruby asked if you can define the nature of the facility by saying for the purposes of a commercial operation. Mr. Gerard said he didn't believe that works and there are so many variables to that.

Mr. Scheerer said they can say they are court ordered to reside there and if there is two wayward children they would be ordered to stay with their parents. Mr. Gerard said the last sentence could be changed to two or more such persons who are not spouses, or minor children at the same address shall be considered a Group Care Facility. It is a difficult population and it is a needed service but nobody wants this in their neighborhood.

Mr. Gerard said what they have now is two or more said persons who are not spouses or minor children who are related by blood or adoption.

Chairman Arnett asked if they initiate today what is the process? Mr. Gerard said we will bring this back to you next month for the actual public hearing and to consider a recommendation of approval or denial to the Board of Supervisors.

BOARD ACTION: Commissioner Hiatt motioned to initiate TA2016001 with recommended modifications to the proposed language. Commissioner Burrows second. Approved 6-0.

<u>Text Amendment TA2016002</u> **All Districts**

Applicant: Staff
Location: Countywide
Request: C-3 Nightclubs

Mr. Gerard presented text amendment TA2016002. Article 805.2 use regulations for C-3 zoning reads, the building or premise can be used for dance halls and nightclubs including outdoor amplified music except adult

oriented businesses. The problem is there are two very opposing interpretations at the staff level which creates confusion with respect to code enforcement. This language would preclude any adult business in the C-3 zoning district, and staff is concerned it is a bit illogical since C-3 is typically more isolated from residential neighborhoods than C-2. We added language at the end for clarification. Adult oriented businesses are permitted in C-3, but they cannot have outdoor amplified music and entertainment. We do not want dancers and entertainers to be outdoors. The intent of the language is you can have outdoor music and entertainment in C-3 but not if it is adult oriented.

Commissioner Andersen asked if in the Maricopa County zoning ordinance it is written that every use that is in a less intense zoning district are they automatically considered permitted uses or do they have to be specifically outlined as such. Mr. Gerard said it has to be specifically stated and in the ordinance it does. All residential rolls up into single family residential and multi-family residential. Multi-family residential rolls into C-1 so it skips C-O and C-S, then it rolls to C-2, then that rolls to C-3 then IND-2 and IND-3.

Vice Chairperson Ruby noted the challenge is the clause that if it accepts adult oriented facilities, you could either use it to modify outdoor amplified music or use it as a use. Mr. Gerard said correct, all we are trying to do is to clarify that it is speaking to the outdoor entertainment and not the adult oriented facilities.

BOARD ACTION: Vice Chairperson Ruby motioned to initiate TA2016002, Commissioner Burrows second. Approved 6-0.

<u>Text Amendment TA2016003</u> **All Districts**

Applicant: Staff
Location: Countywide
Request: Runway and Landing Strips

Mr. Gerard presented text amendment TA2016003 to mitigate potential litigation to insert language that the Board can waive Runway Protection Zones and Obstacle Free Zones if not in conflict with the Department of Defense or the Federal Aviation Administration (FAA).

Commissioner Andersen asked if this increases any liability for the County. Mr. Gerard said no, these are privately operated airstrips.

Mr. Swan stated on the very last paragraph it reads, it will not conflict with any regulation of the Federal Aviation Administration or Department of Defense requirement. He noted there are tons of regulations out there, and suggested to change it to any applicable or potentially applicable.

Chairman Arnett noted the word any is pretty broad. Mr. Gerard said they can change the word from any to applicable.

Vice Chairperson Ruby said on the graphic shown, the runway is marked at 60 feet and then the Obstacle Free Zone says 20 feet which should be 200 feet. Mr. Gerard said they will fix that to reflect the correct size.

BOARD ACTION: Commissioner Burrows motioned to initiate TA2016003, Commissioner Andersen second. Approved 6-0.

<u>Text Amendment TA2016004</u> **All Districts**

Applicant: Staff
Location: Countywide
Request: Home Occupations/Sales, Garage/Yard Definitions

Mr. Scheerer presented text amendment TA2016004 to clarify what constitutes a Home Occupation Residential, a Home Occupation Cottage Industry and Sales, Garage and Yard.

Mr. Gerard noted they are stripping yard and garage sales out of the definitions and creating their own definition, and changed language to clarify the separation of a Home Occupation Residential and the Home Occupation Cottage Industry, one is administrative and one is legislative.

Chairman Arnett asked what the key points from the letter of concern were. Mr. Gerard said the East Valley Property Rights Coalition thought to better differentiate between a Home Occupation Cottage Industry, but there are listed specifics in the use regulations of the zoning districts and it is already spelled out.

Commissioner Andersen noted when comparing the definitions between Home Occupation Residential and Home Occupation Cottage Industry, one says it's an accessory use of a dwelling that involves very limited manufacture and the other is an accessory use of a dwelling that involves limited manufacture. Who decides what is very limited and limited? Mr. Gerard said in the use regulation of the zoning districts it calls out conditions

that the Home Occupation Residential must fall under in order for an administrative approval and anything beyond that is a Cottage Industry. Chairman Arnett asked if it addresses what types and kind of manufacturing. Mr. Gerard said there are no limitations on that.

Commissioner Andersen recommended to eliminate the word very limited and limited in both definitions. Mr. Gerard said they can remove the word very limited and add as outlined in the use regulations of the rural and single family residential zoning districts and the definition of the Cottage Industry remove the word limited.

BOARD ACTION: Commissioner Andersen motioned to initiate TA2016004, Vice Chairperson Ruby second. Approved 6-0.

Text Amendment TA2016005 **All Districts**

Applicant: Staff
Location: Countywide
Request: Adult Oriented Facilities Definition

Text Amendment TA2016006 **All Districts**

Applicant: Staff
Location: Countywide
Request: Ordinance P-10 for Adult Oriented Businesses and Adult Service Providers

Mr. Gerard noted TA2016005 and TA2016006 are related, with TA2016005 they would like to have a definition that simply reads Adult Oriented Facilities any use of land or building/structures subject to the Maricopa County ordinance for Adult Oriented Businesses and Adult Service Providers and strike the other language since it's referencing a general ordinance about Adult Services. With TA2016006 we'll take ordinance P-10 for Adult Oriented Businesses and Adult Service Providers and change it so the enforcement agency will be the Maricopa County Sheriff's Office instead of Planning and Development. This was switched to the Sheriff's Office at the end of the year.

Chairman Arnett stated we're not in the business enforcing the law of non-planning and zoning activities, but doesn't it cause a conflict when they come in to get an Adult Business permit? Mr. Gerard said the licensing and enforcement is now being done by the Sheriff's Office.

BOARD ACTION: Commissioner Hiatt motioned to initiate TA2016005, Commissioner Andersen second. Approved 6-0.

BOARD ACTION: Commissioner Hiatt motioned to initiate TA2016006, Commissioner Burrows second. Approved 6-0.

Text Amendment TA2016007 **All Districts**

Applicant: Staff
Location: Countywide
Request: Home Occupations

Mr. Scheerer presented text amendment TA2016007 which relates to the changes of the residential and rural districts for the Home Occupation Residential and Home Occupation Cottage Industry as listed in the Use Regulations for the Rural and Single-Family Residential zoning districts.

Mr. Gerard said Senator Farnsworth passed legislation last year in regard to Home Occupations and we are catching up with that and proactively ahead of legislation. In Chapter 13, the special uses for Cottage Industry, we stripped out all of the conditions so the only conditions are the proprietor business must live on the property and otherwise can't meet the conditions of the administrative approval for a Home Occupation. It takes 2 pages down to one paragraph and it will require legislative approval from the Board with recommendation by the Commission and all those conditions that would have been the more liberal Cottage Industries have moved back in the Home Occupation. We're going from one non-resident employee to no more than three and no more than one client at any time to five. There could be additional traffic, but we'll require an additional parking space but not more than six additional parking spaces in order to maintain the residential nature. Taking away the 250 square foot limitations, and it does not have to be in the dwelling it could now be in a garage or a barn, and allowing a certain amount of outdoor storage, a four foot square sign, and a separate business entrance.

Vice Chairperson Ruby noted we are now treating the special use permits as custom parameters rather than having all of these specific ones, instead all the items are listed in the special use permit. Mr. Gerard said yes, and before there was language where they had to meet these 12 or 16 conditions and if they couldn't meet them they would require a unanimous vote of the Board and now they are trying to simplify it.

BOARD ACTION: Vice Chairperson Ruby motioned to initiate TA2016007, Commissioner Andersen second. Approved 6-0.

<u>Text Amendment TA2016008</u> **All Districts**

Applicant: Staff
Location: Countywide
Request: Tiny Houses (Zoning)

<u>Text Amendment TA2016009</u> **All Districts**

Applicant: Staff
Location: Countywide
Request: Tiny Houses (Building)

Mr. Gerard noted TA2016008 and TA2016009 are related. TA2016008 adds definition of the Tiny House in the zoning ordinance and changing the use regulations. The County already permits Tiny Houses and we are trying to memorialize types of exceptions we will allow. Allowing lofts to have a fixed ladder rather than stairs, smaller room dimensions, and lower ceiling height. We might consider if we need a text amendment to the zoning ordinance, nowhere in the zoning ordinance do we talk about minimum sizes for dwellings, and if we move forward with the building code we probably do not need the zoning code. The concern of the zoning code is by adding a definition we're opening that up to a legal debate if a Recreational Vehicle (RV) would be considered a Tiny House.

Chairman Arnett said technically he does not know the difference between a Tiny House and an RV.

Mr. Ewers noted the difference is wheels and a license, vehicles are titled and structures are not. RV's are titled and are on wheels and Tiny Houses are fixed to the ground and are not licensed.

Mr. Gerard said if we do not add the change to the definitions we require a recreational vehicle to be in an RV park. We believe we can leave this alone and not move forward with zoning code and then all the issues will be addressed in the building code.

Chairman Arnett asked if the language is anywhere else or do we need this in order to distinguish the two. Mr. Gerard said the RV issue is not addressed in the building code. In the zoning ordinance without discussing Tiny Houses, recreational vehicles are permitted only in RV parks or under specific circumstances as a temporary use permit.

Vice Chairperson Ruby asked if 400 square feet is the industry standard. Mr. Ewers said no, there is pending state legislation to require cities and counties to adopt regulations concerning Tiny Houses.
Mr. Gerard said we already permit Tiny Houses and this is to have language in the ordinance to proactively indicate that we've addressed this.

Chairman Arnett asked why we need to define the size of a house.

Commissioner Hiatt said the requirements are more liberal and we need to define what's applicable.

Mr. Gerard said one concern of having it in the zoning ordinance is that there have been jurisdictions that have had housing issues in the past with minimum house sizes in a zoning district and that was a civil rights issue of the Fair Housing Act. We can move forward either way and can enforce either way.

Vice Chairperson Ruby stated is there a benefit to not adding something to the zoning code, not making an addition that we can't see or benefit from? Mr. Gerard said the whole issue is its small, and it really does not necessarily need to be addressed in the zoning ordinance.

Commissioner Hiatt asked if it's not addressed in the zoning ordinance, how you address the issue of people pulling trailers on a property and saying it's a tiny house. Mr. Gerard said if it falls under the definition of a recreational vehicle we can require that it can only be located in an RV park.

BOARD ACTION: Vice Chairperson Ruby motioned not to initiate TA2016008, Commissioner Hiatt second. Initiation Denied 6-0.

BOARD ACTION: Vice Chairperson Ruby motioned to initiate TA2016009, Commissioner Hiatt second. Approved 6-0.

Chairman Arnett adjourned the meeting at 10:36 a.m.

Prepared by Rosalie Pinney
Recording Secretary / Administrative Assistant
February 16, 2017