

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

May 30, 2019
9:30 a.m.

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

MEMBERS PRESENT:

Mr. Jimmy Lindblom, Chairman
Mr. Nathan Andersen
Mr. Bruce Burrows
Ms. Jennifer Ruby

MEMBERS NOT PRESENT:

Ms. Francisca Montoya, Vice Chair
Mr. Greg Arnett
Mr. Michael Cowley
Mr. Broc C. Hiatt
Mr. Lucas Schlosser
Mr. Robert Zamora

STAFF PRESENT:

Ms. Jen Pokorski, Planning & Development Director
Mr. Darren Gerard, Planning Services Manager
Ms. Rachel Applegate, Senior Planner
Ms. Jaclyn Sarnowski, Planner
Mr. Martin Martell, Planner
Ms. Rosalie Pinney, Recording Secretary

COUNTY AGENCIES:

Mr. Chad McBride, County Counsel
Mr. Brian Palmer, County Counsel

Chairman Lindblom called the meeting to order at 9:30 a.m.

Text Amendment TA2018001 (Continued from 4/25)

All Districts

Applicant: Joseph White, Becker Boards Small, LLC
Location: Countywide
Request: Text Amendment to amend Chapter 2, Definitions and Chapter 14, Articles 1403 and 1404 of the Maricopa County Zoning Ordinance (MCZO) relating to Off-Site Advertising Signs (Billboards). TA2018001 proposes additional usage, allowance for digital billboards currently prohibited - Off-Site Advertising Signs (Billboards)

Ms. Sarnowski presented TA2018001 and noted this text amendment is applicant driven and it's being processed through the Enhanced Regulatory Outreach Program (EROP). This case was first discussed at the February 28 ZIPPOR meeting. Comments were received from the committee and stakeholders comments, and the applicant has revised the language. Major changes to the proposed text amendment would allow a radius separation instead of the current linear separation based on street orientation to remove ambiguity and interpretational drift with regard to street orientation. Change in setback requirements of the underlying zoning district to 0'. Restrictions would still be applicable if adjacent to residential zoning districts, residential use in a rural zoning district, or park, school, or roadside rest area. The addition of digital billboards within Maricopa County's jurisdiction, and the current MCZO does not allow for digital billboards. Definition of Scenic Corridor also include area plan policy guidelines that are currently not regulatory, and prohibiting digital billboards within scenic corridors. The applicant has also added language under 1403.3.1.H regarding the Military Airport and Ancillary Military Facility Overlay Zoning District. The applicant has proposed a Conditional Use Permit (CUP) process for digital billboards to be determined by the Planning Director with notification of property owners within 150 feet, and appeals would be determined by the Board of Adjustment. Staff has received 156 letters in opposition with suggested changes to the text from citizens and the industry stakeholders as well as municipalities. As proposed, the CUP process may not be appealable to the Board of Adjustment. County Boards of Adjustment have a limited statutory authority compared to those for cities. Proposal allows for conversion of legal non-conforming billboards; however, widely-accepted planning best practices require that legal non-conforming uses are eliminated over time. Digital/changing text may be a public safety concern for arterial roadway traffic. The tentative Commission hearing for recommendation to the Board of Supervisors is scheduled for July 25, 2019. Staff will make a recommendation once all of the comments and participation are received and analyzed.

Chairman Lindblom asked about the Board of Adjustment portion where it is said it may not be appealable. Ms. Pokorski said they did confirm with the County attorney, and his decision is that per statute a conditional use is not appealable to the Board of Adjustment. We concur with his interpretation. If the applicant chooses to have a public process it would have to be a different process than a conditional use permit that's appealable to the Board of Adjustment, such as a Special Use Permit.

Mr. Bill Lally, the applicant said at the last meeting the comments there were made to continue to work with the stakeholders. This is their second ZIPPOR to come back through this process one more time, and this gave them the opportunity to summarize some of the changes mentioned after the last ZIPPOR meeting. At that meeting there was a number of people from the New River/Desert Hills area that were worried about the Carefree Highway Scenic Corridor areas in the northeast valley. We worked with staff to identify scenic corridors in this area and not only prohibit digital billboards from those scenic corridor areas, but to prohibit them

within 600 feet of the scenic corridor. We created a process to follow what the industry and citizens are used to in the greater Phoenix area in terms of conversions, and we came up with a process as similar as we could in terms of putting together criteria. One of the criteria is if there's impact of property owners within 500 feet. We had a number of meetings with staff whether or not the County statute is similar to the City of Phoenix statute and whether or not title 11 is written similar to title 9 to allow us to follow the same process. We tried to follow a process that is widely used in the valley. It's not every single case, and it's not a change of land use. Change of land uses come before the Planning Commission and the Board of Supervisors. This is a change of technology on an existing land use. We are going to continue to work with staff and County counsel to make sure the process is transparent so everyone has an opportunity to comment, get noticed, appeal it if the decision is not in their favor or not. We will know more once we come back with revised language. We are trying to be similar with the City of Phoenix, and when you are changing to digital there is a component when you have a legal non-conforming board in the City of Phoenix to take down boards or change the look and feel of the dimensions of the board. Our argument from day one taking down the boards hurts the small guys and helps the big guys with a ton of inventory. We tried to come up with a compromise at the last stakeholder meeting, so added language to make sure pole covers are added and decorative features added to the sign structure during the conversion process. Cities that are affected will get noticed of a TAC meeting or something like that, and we added language to notify local municipalities. The letters received from the New River/Desert Hills Association believe strongly about prohibiting billboards and digital conversions in that area. We tried to put some criteria in there in terms of downgraded property values within 500 feet. The City of Phoenix just had the notice area of 150 feet, and if you're within the notice area you can argue impact to broaden that to 500 feet. There's been a lot of questions from stakeholders and others about impacts to the community. They provided a packet with a number of studies from the Federal Highway Administration, associations and other groups that studied property values, driver distractions and lighting studies. We tried to provide enough non-partisan third party evidence that studied all of these impacts because the digital conversion technology is fairly new and in 2009 is when they started to see these in the valley. After that a lot of associations, governments and ADOT began to study the impacts on drivers, the impacts on lighting, and studied the impacts on adjacent properties. They are going to go back to staff and work over a new process, and to make sure it meets the County's legal standards.

Chairman Lindblom asked if a new billboard is to be put in, and there's a non-conforming billboard it could be converted over as long as it's not within 500 feet of another one, and that 1,000 and 3,000 feet will go down to 500 feet? Mr. Lally said correct. One of the tasks the commission gave us was to work with the industry partners as best as we could. One of the comments that came from the industry in certain areas of the city or county, and we have boards that are less than 1,000 feet apart. The reason why that exists today is the spacing standard is not radius. You can have a billboard on a road, and a perpendicular road is a separate road

for the code today, so you can have a billboard less than 1,000 feet from another billboard. The industry representatives that have billboards in that situation were concerned with the ability to convert those existing billboards. We are changing the spacing standard to be radius which gets rid of that situation. There's probably a couple situations like in Tempe where there are a number of different companies with different boards that are less than 1,000 feet. What we wanted to do is make sure to follow your example and try and work with as many of the folks and protect their existing rights to convert.

Chairman Lindblom asked what would be the process if they were less than 500 feet. Mr. Lally said he doesn't know of any that are less than 500 feet, but the only other process would be a variance.

Commissioner Ruby asked in regards to the pole covers, do we have any concerns about the vagary at the city discretion and the language of that. Mr. Gerard said that would be a difficult article to enforce by County statute. If we were to go in that direction there would need to be written documentation.

Mr. Andrew Yancey said he is representing Arrington Outdoor and they have a couple of signs in the County. They sent in a letter a few months ago saying they supported the concept but had a few concerns. They have worked with the applicant and understand they are balancing a lot and he appreciates their efforts. He feels the issues have been resolved with one of them with the 500 foot separation distance, and that would affect some of their signs and he appreciates their work on that.

Mr. Andy Jochums said he is a planner with Beus Gilbert and he echoes what Mr. Yancey said. They represent a landowner and they are not representing a particular group or company so they have a different angle on it. They generally support the concept and ideas and their property would benefit from this. His particular land owner owns land along the future State Route 24, and it was in the previous draft of the ordinance in February but it is not in the draft today. He wanted to point that out to have the applicant add it back in. Ms. Sarnowski said that was a mistake.

Mr. Stephen Earl said he represents Clear Channel Outdoor and today they realized the applicant has made an effort toward a conditional use that would be determined by the Planning Director, and they also learned it's not appealable to the Board of Adjustment, so it would be a fairly quick process. We believe that process needs to be more in depth and be a specific standard as to when you're going to do this. The reason they opposed this application in the beginning, because they draw a significant distinction between urban billboards and suburban billboards. The County has always been a suburban type of area, and there are exceptions to that rule and we call it a County Island to be encompassed by an adjacent city. The problem is those adjacent cities where there will be significant County Island issues along freeways, and where the adjacent cities don't allow any billboards at all. The City of Mesa has turned down

several and Scottsdale went as far as to acquire billboards so it would have none. Tempe allows billboards only by development agreement. Gilbert and Chandler does not allow them. All of a sudden we're going to be going from a system the County has had from 10'x30' and 30 feet high static to a system where we're going to essentially make an urban billboard 14'x48' and 48 feet high. Then to do this without the Board of Adjustment review, we see this as a gold rush. The applicant has about 85 county billboards that could be converted. They are the smaller size and they would instantly be larger and be digital. We take the long view because there is a threshold and people can get upset about billboards being erected in places where they've never been. Then it could result in regulations which are counterproductive for the entire industry. We remain very concerned about this process. If we are going to do this we need to have a procedure that causes each board to be looked at carefully before proceeding, and have some associated benefit with that conversion. Such as removing a non-conforming billboard so that you are generally reducing a number of non-conforming billboards overall or some other community benefit.

Commissioner Andersen asked billboards that are in suburban areas will have a different process to go through for conversion than billboards in urban areas? Mr. Earl said it should be reversed, if they're in a really suburban rural area they should go through a more stringent process. If they are in an urban area where they're going to be absorbed in an adjacent city in the east or west valley there should be more direct involvement from that city instead of just notifying them. There was a suggestion to add the cities name to the billboard, and he would guarantee none of the cities would want their names added to a billboard because then it looks like they approved it.

Chairman Lindblom said he is looking at the Town of Gilbert's letter of opposition, and they are one of the places that don't allow billboards. They mentioned the potential gold rush and how it would cause them to be inundated with unsightly billboards that the residents have specifically prohibited. His understanding of the current ordinance if we have certain zoning in place and right now there is not a hearing process for C-2, C-3, IND-2 and IND-3, and asked how would that gold rush happen. Mr. Earl said it has to do with the C-2 that allows billboards in the County that are static and smaller. The instantaneous change in the same zoning category making them bigger, taller and digital is what can be done. Conversions of existing as well as putting in new if the C-2 zoning is there, and there could be an attempt in the County to rezone properties at freeway interchanges as well. We see it more as you have an existing board and those boards automatically become digital conversions.

Mr. Charles Huellmantel said everyone has raised some big issues and he agrees with much of what Mr. Earl said, and many of the letters in opposition. He is opposed of the change and it's not an appropriate process. If there's going to be a change, it would be appropriate to be a staff driven change. Many of the questions you raised today illustrates that. Hopefully those things will be resolved before another ZIPPOR meeting, and he believes it should not be going to a vote

yet. This is really an opportunity for one applicant to get the thing he would like most in the code and the applicant even pointed out it does benefit Becker Boards quite a bit. What you're probably going to see if you move forward with this, then all of the companies would come forward at some point for their own favorite code. That's one of the advantages to have staff run the process. We are all equally involved in debating all these issues, and today we are not. We can come back with another ZIPPOR, but the discussions would be done between Becker Boards and staff. We don't need a change, but it really should be driven by staff.

Chairman Lindblom asked what his main concerns are. Mr. Huellmantel said overall this is a process driven by Becker and we don't even think it should be changing at this time. The code today is fine and it works. If it changes the way it's proposed there will be more boards and a lot of them would be Becker Boards. They have driven the process, and he doesn't fault them for trying what they are allowed to do, but it doesn't mean you have to grant it.

Commissioner Ruby asked if staff could refresh her memory on exactly what is the moratorium on new regulatory matters, and does it mean staff cannot initiate a text amendment. Mr. Gerard said it's a moratorium on increased regulatory burden and there's a County Enhanced Regulatory Outreach Program (EROP), it's a process to ensure transparency and standardization across the regulatory agencies. As part of that process, any staff proposals for regulatory amendments go through the County manager. It would have to be signed off by the County manager with regard to whether or not it's an increased regulatory burden and if so it has to be explained.

Chairman Lindblom asked why they are wanting to put the city name on the billboards. Mr. Lally said if you drive down the I-10 and go west you see two billboards on the Southside of the freeway and they say the City of Avondale. This will help brand the city, and they made the request of us through County staff. We talked about including cities in the process and their request was to brand themselves on the pole covers. A city like Chandler might say they don't want their name on it and they don't allow billboards. They could say no and ask to see a decorative pole cover. In Phoenix they allow a pole cover to match the surrounding areas. If there's a building that is blue or green we would match the same façade to make it a little nicer.

Commissioner Ruby said she does think this language is going to need some work.

Chairman Lindblom said thank you for those that worked on this and he thanked the applicant for working with those individuals and to continue to do that. He echoes a lot of the concerns and comments. The biggest hurdle is figuring out the process of approvals of non-conforming and new signs.

No action by the Commission. TA2018001 was a discussion item only regarding the proposed text amendment.

Text Amendment TA2018002

All Districts

Applicant: Earl, Curley & Lagarde / Rod Jarvis & Greg Loper
Location: Countywide
Request: Text Amendment to amend Chapter 2, Definitions; Section 501, Article 501.2.4; Section 601, Article 601.2.3; and Section 702, Article 702.2.5 of the Maricopa County Zoning Ordinance (MCZO) relating to Group Homes

Ms. Sarnowski presented TA2018002 and noted this text amendment is also applicant driven and is being processed through EROP. Stakeholder meetings were held on January 25 and April 12, and based on comments at the last workshop, the applicant has made some revisions to the text highlighted in the staff report. Major ordinance changes include: Changing the "Group Home" Definition from long-term (interpreted as a minimum of one year) to a minimum of 30 days. Removing the definition of "Handicapped" and adding a definition of "Person with a Disability". Changing the dispersal requirement to not include a minimum separation distance when separated by a utility right-of-way of at least 300' or by a freeway. Allowing for adjudicated residents. In addition to the two stakeholder workshops, to date staff has received seven letters of opposition and/or suggested edits to the proposed text amendment language. The majority of comments to date address some of the following: Concern of adjudicated residents permitted by right in a group home. Definition of disability should include reference to Americans with Disabilities Act (ADA) and the Federal Fair Housing Act (FFHA). Spacing requirements, both in support of the change to the spacing requirement and concerns it may be too excessive. The current ordinance language is more restrictive. The definition of "Group Home" including treatment. In the latest draft the word "treatment" has been removed from the definition. The tentative Commission hearing for recommendation to the Board of Supervisors is scheduled for July 25, 2019. Staff will make a recommendation once all of the comments/participation are received and analyzed.

Mr. Rod Jarvis, the applicant said he appreciates the opportunity to work through this text amendment. Per one of the comments he heard, we should be referencing the American with Disability Act and the Fair Housing Act. It's what inspired this proposed change for a long time. The Maricopa County ordinance has violated federal law and that's why they are proposing this change. Based on conversations with staff, the real difference of opinion between us and staff is going to be the minimum stay. As he understood staff, their focus is trying to preserve the residential character of the neighborhoods. That's entirely understandable and appropriate, but we are proposing 30 day time frame. When someone goes into a group home for addiction recovery they are typically driven there. They're not coming and going, their day is spent in therapy. They took out the word "treatment," and we intended to take it out and all the reference to all the individual group therapy on site. His client has several group homes, and there's one central area where all the therapy is done and the AZRHA supports that model. He didn't intend for just the word "treatment" come out but all the reference to group and individual therapy comes out. This becomes a place

where people are just living as a family unit. The problem with requiring a minimum stay longer than 30 days is you are closing the door to addicts seeking recovery. It's illegal with relation to other disabled individuals too. The whole purpose of ADA and FFHA with their discussion of group homes is to give people the same right to be in the neighborhood if they are disabled as if they were not. People who are not disabled living in a home are not required to stay there for a year or even 30 days. To require a minimum stay of a year is not only discriminatory to addicts seeking recovery, it's discriminatory against all disabled individuals which is why you have the ADA to preclude that kind of discrimination. A one year period has a good motivation, but it is ill-advised and it is illegal. The result of that is going to be a complaint to HUD if this doesn't change, and HUD will call the Department of Justice and they would come to Maricopa County and give severe fines to the County. We are trying to preserve residential character and this will do that. These people come to live there, sleep there, eat there and live as a family there, and they get in a van and go off-site to get therapy. The reason it is important to have a group home is two-fold, one of the reasons is a matter of economics. We have an opioid crisis in this nation and it has touched this community, this county and state as well. We need to provide ways for people to provide beds to people who are seeking recovery. Ten beds is more economically feasible than five. There's only so much money available to pay for this kind of care, and much of it comes through insurance and much of it from the state, but there's only so much. If you make it more expensive than you make it less available. Another reason for this misconception, society thinks of addicts as "those people". We don't want "those people" in my neighborhood. He had a meeting with Mr. Jeff Taylor with AZRHA and his primary client is the Salvation Army, and he is an addict in recovery. In 1976 he graduated from Central High School and went to ASU to play football. He got injured almost immediately and he went on pain killers to recover from that injury. He finished his education and went to work as a Wall Street trader where he made a lot of money. Within four years he was living on the streets in Phoenix. He did nine stints in jail and prison. At one point he was told his blood tested positive for HIV and they would need to separate him from the jail population and put him in isolation because of the risk of him infecting other people. He was left in isolation for 30 days and while he was in there he had a spiritual experience which made that stay a really sweet experience for him. After that instead of the judge sentencing him to a prison term, he was sentenced to the Salvation Army Recovery Program. His turnaround is one of many. Mr. Jarvis said he has two sons who are addicts in recovery and they would be dead if they hadn't gone to rehab. A 30 day time period is adequate, but if you go longer than that you'll make it hard for people to come and you could impair their recovery. Some only need 30 days then they need to get back to their home or work. Some go to sober living after the group home experience where they're not getting therapy outside as much, because they are going to meetings and going to work. Almost in no case at all, an addict in recovery be outside of his home for more than four or five months. That's a period of time when they are in detox if they need it, and when they are in active therapy and transitional housing before they go home. A one-year period closes the door to group homes being used by addicts in recovery. A one-year period is discriminatory against all disabled individuals anyway. Staff has

the greatest of motives, and he has worked with this staff most of his career and the fact that he disagrees with them does not mean he disrespects them. They are just misguided on this point and society is misguided on this point.

Chairman Lindblom asked how other counties are handling this. Mr. Jarvis said he doesn't know, but he hasn't ran into any municipality that requires one year. This kind of issue is a right in every city he has worked with. The County is being tougher than every city in it. Let's suppose we put in that 30 day timeframe and one of our residences test positive because he snuck something in, then he must be expelled. That would be an exception of the 30 days because he is no longer a disabled individual. By the definition by the ADA, if you are an addict seeking recovery you are disabled as long as you are not using. The minute you are using you are no longer disabled and no longer protected.

Commissioner Ruby said the one change that wasn't discussed was the dispersal of the language change of the 300 foot utility right-of-way. Mr. Jarvis said what we are trying to describe is some sort of barrier that people have to go around so they are more than a quarter-mile away. A lot of times those dispersals are dealt with in a variance setting in front of the Board of Adjustment. These things can be carved out or carved away, and to avoid situations where there's not obvious outcry for a variance.

Commissioner Andersen asked with the removal of the word treatment does that mean medical treatment and group therapies and support group meetings that might occur in the home. Mr. Jarvis said it is, and he should have made sure the rest of the language was taken out. Staff has always been concerned about treatment because it could mean a lot of different things. Our particular client that is funding this does not do it that way, and at one of the stakeholders meetings AZRA came and said they didn't want group therapy or individual therapy in the homes. If his client doesn't need it, and if AZRA the industry representative says they shouldn't have it, then we won't. That's why we specifically took that out. All that language regarding group and individual therapy should come out. In AZRA's perspective it is more helpful to the addicts seeking recovery to have a home where they just live, and whatever therapy is being done is in conversation by a family member in that setting.

Commissioner Ruby asked are there any concerns of the definition of the addiction of alcohol and "illegal" drugs. Mr. Jarvis said we probably need to take that out since painkillers are a legal drug, but not being used as prescribed.

Commissioner Ruby asked is the previous one year determination time period requirement an interpretation on staff's part and it's not codified. Mr. Gerard said that is correct.

Commissioner Ruby said it is important we are talking about a change in the language and we are not changing an ordinance from one year to 30 days. It

would be the interpretation. We can argue if 30 days is right or not but having to be specific in the code makes sense to her.

Ms. Pokorski said the ordinance says “long term” and what the interpretation is as to what long term is. The timeframe isn’t in there.

Chairman Lindblom asked what the number of people is. Ms. Pokorski said by right, you can have five people in the home and there’s no timeframe that’s considered a family-like environment. Up to 10 people currently recovering from addiction are allowed to live in a group home, but in a long term setting.

No action by the Commission. TA2018002 was a discussion item only regarding the proposed text amendment.

Chairman Lindblom adjourned the meeting at 10:38 a.m.

Prepared by Rosalie Pinney
Recording Secretary
May 30, 2019