

**CITY OF EL MIRAGE  
PLANNING AND ZONING COMMISSION  
REGULAR MEETING MINUTES  
AUGUST 14, 2012**

**I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Doug Doede called the meeting to order at 6:00 p.m. & led the Pledge.

**II. ROLL CALL & ELECTION OF OFFICERS**

Members present were Chair Doug Doede, Frank Carnal, Robert Jones, and Justin McCarty. Brandon Forrey was absent (leaving on a vacation). Staff members present were Senior Planner Mark Smith, and GIS Tech Jose Macias. The Chair suggested putting off the elections until later when all members could be present.

**III. APPROVAL OF THE MINUTES OF JULY 10, 2012**

McCarty had some corrections but needed Forrey to verify a statement. Jones made a motion to table approval of the minutes until Forrey was able to be present. Carnal seconded, and the motion passed 4 to 0.

**IV. PUBLIC HEARINGS**

**1. Conditional Use Permit for Indoor Auto Sales at Mercado El Mirage**

Jones said his brother-in-law owns a used car dealership in town but it should have no bearing on this case. Smith presented an aerial photo of the Mercado and explained that the auto sales would be indoors in the center of the building. There were no changes to the existing site but the building has some issues. He introduced Building Official Mary Dickson.

Mary Dickson said that she had been with the City for five years and the Mercado was brought to her attention her first week. She is to look out for the safety of occupants of existing or proposed buildings. She has sent ten certified letters to the owner or manager of the Mercado about the issues that were there. She has forced businesses out because the City did not know were there. There are very dangerous conditions in the building. Of the ten letters, three have been to the current manager since January of this year. She had a list of 17 items that had to be addressed and at the request of the manager reduced them to 8 key items required before any use can go into this building. The main problem is that people are allowed to go in and set up shop. There was a grocery store that closed there and someone set up a beauty shop in the old freezer and ran plumbing and electric lines. This is the continuing history at the Mercado.

Dickson said It was not her intent to dissuade the Commission to allow the auto sales to go in. Indoor sales were common in the East. There are specific Building & Fire codes to be met and she was confident that the applicant intends to abide by them, but she would like to see some push

given to the management to enforce these key issues without court action because all that will do is delay any uses like this one from coming in.

Jones asked Dickson why it has taken so long to address these issues. Dickson said she has addressed the main issues. The only stores allowed to remain were the 99-cent store and banquet hall. The restaurant moved out. Those three met codes. The remainder of the building was her concern. Structurally the building was in great shape considering some maintenance has not been done. Jones asked if the building is in a trust. Smith said it was a husband & wife. He asked if they ran the facility. Dickson said they were absent. Jones thought they needed motivation. Dickson said her last letter in June was a repeat of the January letter. The management contacted her but made minimal effort until she backed off. It is time consuming for staff and it went to court twice to force eviction.

Doede did not see how the building could support something that large. He asked what type of autos they were selling. Applicant Saad Daoud said they were used autos. They plan on twenty to thirty a month. Doede asked where they would service them. Daoud said he had a shop on 99<sup>th</sup> & Peoria in C-2 and did not allow him to sell there. Doede said there were a lot of recommendations for fire codes: fire walls, sprinklers, ducts, access, sound, utilities. There are a lot of financial burdens. He asked if he or the manager would do it. Daoud said it depended on what was recommended. They would see who would do what and if it was worth it. Doede asked if the sprinklers were not working if there could be any business. Dickson said that was to purpose of the annual test to see if it functions. The last test was done in 2008. Doede said they should get this resolved with management before any use would be allowed. They want to make sure that if the applicant has any investment in it he would not be taken advantage of. Dickson said she needed to know what the plan is to make sure he did not block something else later. It all has to work together. She requested a floor plan with designated suites like any other center, but dealing with the management has been difficult. She does not return phone calls and returns her letters & emails. Doede said if they have not had sprinklers inspected in 4 years that was a code violation and could shut down even existing businesses and asked if they knew. Dickson said they did. That was her only recourse but was a last resort. Dickson said it was her intent to bring it to the Commissions attention. Doede asked what the City Attorney said. Dickson said he was supportive of the citations. Doede thought the building needed to be brought up to code first. Jones said they would love to see new business but this could jeopardize the occupants and shoppers and they did not want that. McCarty said it needed to be brought up to code but the company was not going to bring the whole building up to code. Doede asked for the area of the building. Smith said it was 45,000 square feet. Doede asked the applicant how much he planned to use. He said about 4000 square feet.

Dickson said it was possible for his business to be code compliant in his area. Doede asked about the sprinklers. Dickson said they were not always required but since they were there they had to be the right kind. Jones asked if the system was for all units. Dickson confirmed it was.

City Manager Spencer Isom said the reason staff brought up the history was to give the Commission the opportunity to recommend that this building be brought up to code and give the opportunity for the owners to decide whether they were going to conduct business or to maintain an adversarial position. Staff mentioned absentee owners. Staff attempted to get voluntary compliance. We don't want to discourage new business but we have to get compliance first. He did not think the manager is acting in the owner's best interest by not communicating. A Commission recommendation that the building be brought up to code and staff will not take it to Council unless it is. One question for this body is if they object to the use if it was done appropriately. Staff can bring it back to the Commission before taking it to Council. Carnal made a motion that the owners bring the building up to code before any permits for businesses. McCarty suggested that they should include that the use is okay contingent on the building being brought up to code. Jones said he had questions for the applicant. Carnal also had questions. The Chair suggested a vote on the motion first. McCarty seconded the motion. Jones said the applicant may want to bring his portion up to code separately. Doede said they needed another riser. Jones said he could do his portion separately. Dickson noted that the sprinkler was for the whole building that was a furniture store. The applicant may need to bring in a separate riser. She relies on engineers and inspectors to tell her that. McCarty said codes vary by occupancy. He suggested it be brought up to code with present uses. The vote on the motion passed unanimously.

Applicant Daoud said he could his part but if it is too much expense he could not do it. He spoke to the property manager but nothing is getting done. He talked to the owners about leasing the whole building and getting it done in a few months. He thought the property manager did not know what she was doing and was driving people away. He had other offers for her. Doede said the City needed a plan for the whole building. Daoud said he would do what he can but the manager had to do her part.

Carnal asked how many cars we would have. Daoud said 20-25. Carnal asked where the others would be stored. Daoud said they get so many cars a week from auctions but have to sell them back if they do not sell. Carnal asked if these would fit in the building. Daoud said they would. Carnal asked who got the sales tax. Daoud said the City would, but they are getting permits now. He said they only do retail and they cannot sell at their other location near his home. They choose to be inside because it is too hot outside. Carnal confirmed that no repairs would be done there.

Jones asked the applicant how he could test drive a car. Daoud said he would pull it out. Jones asked if they drive it out. He said yes as it did not look professional to push it out. Doede said they need an exhaust system. Carnal said there were bays in back. Daoud said they had a roll up door and swamp coolers. McCarty suggested having a site plan and operation brought to the Commission and the other building stipulations are met. To move forward the City would have to approve the use based on the stips.

Doede recommended a continuance to give staff time to work with the manager and applicant. Daoud said he could put a plan together. Doede said it would have to wait until next month. Daoud said it was hard to go into business like that. Doede said the City could not allow it to go into the building until the plan is created and the building is brought up to code. Daoud asked if they could do it outside. Doede said that was a different scenario. Smith said it was still conditional. Isom said staff and the applicant will communicate this to the manager but staff will not bring it back to the Commission until the building is brought up to code. Doede told the applicant to put his plan together but the building had to be to standards. Smith asked if the Commission wanted to continue or table it. Jones made a motion to table the item until both parties' plans are prepared. Carnal seconded the motion which then passed 4 to 0.

## **V. NEW BUSINESS**

### **1. Discussion on code amendments allowing churches and similar uses by right or by conditional use permit in various zoning districts**

Smith said that the term is now "religious assembly" but the state has not defined the term. Staff recommended that the City definition be the same as the state. The interpretation may be made by courts rather than the legislature on "Bible study" versus "religious assembly" as discussed last month. Smith said state and federal law require that they be treated similar to other assemblies. He showed proposed changes to the land use table to treat assemblies identically. Staff recommended conditional use in all but the commercial districts subject to applicable building and fire codes. Doede said he noted changes from last month and asked why. Smith said staff discussed it and felt that the City should not try to define "religious assembly" and then have to change it if it conflicted with A.R.S. Staff has not changed their recommendation on where they are allowed.

McCarty said he would like more time and clarification on definitions. He also felt that all members should be here to vote on it. Jones said it was discussed at length last month and some interesting things were brought up. He asked if there was a specific timeline on it. Smith said no except the City needed to comply with the law. Jones moved to continue this item until next month. McCarty seconded and the motion passed 4 to 0.

### **2. Discussion on sign code amendments regarding allowing murals**

Smith turned time over to Macias to present his research on murals. Macias presented information on the pros and cons plus case studies on what other cities are doing with them. As cons, people think they are ugly or poorly done, clash with their surroundings, are opinionated, disturbing, eyesores, risky, uncomfortable, and they wear out quickly. As pros, they create a sense of identity, become attractions, encourage tourism or a destination, discourage graffiti and vandalism, connect with city past or future or pride, encourage conversations, add visual diversity and public art, and can be painted over in time. He presented examples from Bristol, England, where an alley was painted over; Portland, Oregon, where they have guidelines & review plus funding; Philadelphia, Pennsylvania, where they have over 3,00 murals including 50 love-themed murals visible from the elevated rail; Reno, Nevada, where a disturbing mural was removed; Los Angeles, California, where they banned murals for 10 years but recently allowed them again with permits and fees; and finally in Arizona: Avondale, Phoenix, Scottsdale, and Tempe mention public art programs but have no zoning associated with murals, but Chandler, Mesa, Glendale, Goodyear, and Surprise define murals and have art commissions & funds.

Smith asked how the Commission wished to proceed. Staff provided sample ordinances from Peoria, Portland, and Los Angeles. Doede liked the lighted ones but thought they should be approved on a case by case basis. Smith said staff had recommended staff approval with appeal to the Commission and Council, but Doede was recommending more like a conditional use permit. The consensus was that staff should put together proposed wording and bring it back to the Commission for next meeting.

**Elections & Minutes** [items delayed earlier]

Doede made a motion that these items be continued to the next meeting. McCarty seconded and the motion passed unanimously.

**VI. STAFF REPORT [None]**

Smith said staff had a couple conditional uses for next month and a new church on Valentine that will be ready later plus the two discussion items.

**VII. COMMISSIONER COMMENTS [None]**

Doede said he had seen a lot of banners. Smith said they are allowed for 60 days now. Code Enforcement should be checking for approvals.

**XIII. ADJOURNMENT**

The Chair adjourned the Commission meeting at 7:15 p.m.

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Mark L. Smith, Senior Planner

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Doug Doede, Chairman