

**CITY OF EL MIRAGE  
PLANNING AND ZONING COMMISSION  
REGULAR MEETING MINUTES  
OCTOBER 9, 2012**

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

Chairman 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, Brandon Forrey, Robert Jones, and Justin McCarty. Staff members present were Deputy City Manager Sue McDermott, Senior Planner Mark Smith, and GIS Technician Jose Macias.

Doede called for nominations for Chair. Forrey nominated Doede, seconded by Carnal. The vote was 5 to 0 in favor. Carnal nominated Forrey for Vice Chair, seconded by Jones. Forrey nominated Jones for Vice Chair, but there was no second. The vote for Forrey as Vice Chair was unanimous.

**III. APPROVAL OF THE MINUTES OF SEPTEMBER 11, 2012**

McCarty corrected his statement on the last page. Forrey moved for approval of minutes as the amended. Carnal seconded, and the motion passed on a vote of 5 to 0.

**IV. PUBLIC HEARINGS**

**1. Conditional Use Permit for Recycling Facility at 9305 N. El Mirage Rd.**

Smith summarized the staff report, showing an aerial photo of the two yards on the parcel and the site plan. He noted that a caretaker cannot be in a mobile or RV unit but in a modular or site built structure and containers cannot be stacked without a variance. The property was already improved a few years ago including dedication of right-of-way, landscaping, water and sewer, spaced fire hydrants, a high screen metal wall, and dust-proofing. He showed examples from the owner of stacked containers and noted that they would be no higher than the covered storage to the north. Staff recommended approval with stipulations in the report. The owner indicated that there are parking issues with the neighboring property.

Doede asked the height of the wall. Owner Vicki Tofte-Ogden responded that it was about 7 feet high. Doede asked the height of the containers. Ogden said they were 4 feet high. She had done research on recycling and noted the property behind hers was doing so without approval. She went to several yards and printed out state laws which override city rules. They require licensing and cameras and thumb prints and record everything. The reason for stacking the bins is to keep thieves out. She talked to a recycler who was interested in operating the yard. The property behind is recycling metal and possibly other things. Doede asked if the bins could be stacked two high. Ogden said the recycler said no. He does everything right. He said two was not high enough to keep thieves from climbing and cutting them open with torches. She took pictures from Olive Avenue and the

containers would actually look better than existing storage visible to the north. They would be at the back of the property. Forrey asked staff if the reason for not stacking the containers was aesthetics. Smith said the code did not state a reason. Forrey said that if it was aesthetics, he had no strong objections to stacking them.

Carnal asked about video required. Ogden said they had to film customers. Carnal asked if the yard had to be taped. Ogden said it was not to keep the yard safe but to have a record of who was bringing what. Doede said that with thievery going on the last few years due to the economy and stripping houses, the state created these measures. He did not see a problem with stacking as long as they are kept uniform in color. Ogden said the recycler she spoke to had a clean record for the last 12 years. She heard him refuse to take items, and she did not think it was for her benefit. Everything that came into the yard his helpers immediately tore down and put in bins or in the trash. Different items went into separate bins. She would really like to get him in her yard. Doede asked if she would add a building. She said possibly but she did not want anything permanent since she wanted to use the property for better use in the future. Doede asked about a caretaker's unit. Ogden said there was only a trailer stored there now.

Jones asked staff about the parking issue. Smith replied that the employees for the rear yard were parking in the front instead of in the yard because the owner in the back was blocking access. Ogden said they were parking in the parcel behind but when the illegal recycling moved in they moved all the parking out front. She now has competition behind her recycling the same things that she would that has no permit. Doede asked if she owned the land out front. She said it was her land. Doede asked if she could make them remove the parking. She said yes, but it would help if she was going to do everything legally they should have to also. Doede asked staff what was being done about it. Smith said he was trying to contact Code Enforcement but had not reached them yet.

Jones asked what kind of metals would be recycled. Ogden said all metals. Some are ferrous and some not. There is a list that the state says you cannot take. Jones asked about auto bodies. Ogden said that was auto recycling. There would be none of that. Jones was concerned about the recycling yards that looked sloppy and stacked items high and did not recycle for months. He asked if there was a wall in the back that protected her from her neighbor. She said there was a solid fence, but they had their bins illegally. Jones asked if Code Enforcement would check that out. Smith answered yes. Ogden said she had provided pictures of messy yards and then the business card and pictures of the one she wanted to get. She did not want a slob in there. Doede asked if she cannot get him to comply, how she would get someone better. Ogden said the last one she had in the yard called her a "hard woman". When she had a tow company in there she did not allow them to have over ten tires. When they had more she was down there until they were gone. Jones asked if she was going to sublease the property and then oversee it. Ogden replied she would and would make sure it was the way it was supposed to be done, and if not, they would go. That is the only way she would

do it; she would not want someone else to apply and get it. Carnal asked if she would avoid the situation she had in June. She said there was no one more horrified than she was. She takes one vacation a year to Mexico in a primitive location. He called her and she had someone clear a 20' X 20' area where he was going to put it. When she got back there was no one sicker than she was. She had already figured how much it was going to cost to move if Chief Howard had not had not stepped in. She said it was too good to be true. It was only 3 ½ weeks and Parks & Sons were pulling trailers in there. Ogden reiterated that the reason she did not want to build anything up front is that someday it would be more valuable for a real building. This would be something temporary until the economy picked up. Doede asked again if she planned a caretaker. She said it was simply being stored. Doede asked about an office. Ogden said the recycler she wanted on site only had a mobile office and a shade for tearing down items.

Forrey asked if staff was recommending recycling. Smith replied yes. He asked if Code Enforcement could take care of any stipulations. Smith said they could. McCarty asked about a caretaker's unit. Smith said it would have to meet building codes, either site-built or a modular office, not a mobile or RV unit. Ogden said the existing one was not set up; it was just stored there.

Carnal asked about the stipulation on parking moving inside the wall. He said he went by several times and there were a dozen cars and it did not look good. Ogden said it was actually part of their rental agreement. She just did it. They were slobs and throwing things on the ground. They can park in back. What stopped them is the illegal recycling center. They had to move for it. When it gets out of there they will have plenty of room. That is not her property there. McCarty asked what the City's recourse was if they continue to park there. Smith said parking had to be screened; that is why staff brought it up with the case.

Forrey moved for approval with staff stipulations. Jones seconded the motion. Ogden asked if the variance was approved at the same time. Smith said it was approved by City Council as the Board of Adjustment. When staff took it to them they would have to take separate action on it. Ogden asked when that would be. Smith said it would be next month if staff could advertise it before the meeting. The motion to recommend approval with stipulations passed unanimously.

## **2. Churches and similar uses allowed or conditional use in various districts**

Smith reviewed the existing definition of "church" and "religious assembly" and requirements from state law to treat them the same as other similar land uses, where they are permitted in the existing city code, the staff recommendation and the Commission's recommendation from last month. Staff is still recommending conditional use in all but commercial areas. The definitions in the code make it clear that these are institutional uses and not the casual use of a home for get-togethers and other activities. Doede asked for input from the audience, but no one spoke. Forrey said one of the issues with staff recommendation was treating them equally with other uses. Smith said staff recommendation was to change

churches and all similar to churches to conditional use in residential areas. The proposed changes would address all of them together.

McCarty said one of his concerns before was 'private clubs'. He would partially agree with staff recommendations with community centers, private clubs, and indoor amusements, but he would still back his original recommendation to allow religious assemblies in all zones. Looking at the state law, it includes all membership organizations which vary from the definitions by the City.

Forrey said he could go one of two ways on this item. One way is to impose greater restrictions on several of the uses, thereby making them equal. In that respect he would not be in support of including the "religious assemblies or institutions" included in "churches". If they go the other direction and made churches permitted in all but Natural areas, he would be in support of including them. It goes back to what triggered the discussion months ago. If a church operates out of a club house, fire code and access are already taken into consideration under existing code. He does want to go with flow of the rest of the Commission. Jones said he thought they should go with staff recommendation.

McCarty moved to recommend allowing churches in all zones except Natural Resources and all the other uses [community center, indoor amusements, and private clubs] be conditional uses. Forrey asked for clarification of the motion. McCarty referred to staff's recommendation and said he recommended that the other similar uses be conditional in residential areas per staff but churches be permitted in all but Natural Resource. He said it was consistent with state law. Doede said he wanted to go with staff recommendation on community centers, indoor amusements, and private clubs, but with the Commission recommendation on churches. McCarty assented.

Jones asked staff what prompted this issue. Smith referred to state law which requires that churches be treated on no less than equal terms with a non-religious assembly. Staff had the same concerns about a church's traffic as they do about a non-religious assembly. Jones asked why it was brought back to the Commission after they made a recommendation last month. What is the City trying to get them to do? Doede said they had not been able to come up with a good decision. McDermott said the ordinance revision requires a public hearing. Last meeting was for their discussion in an informal discussion. This meeting is for them to make a recommendation to City Council. Staff's largest concern is a church in a residential neighborhood creates issues for parking and traffic. McCarty said there were constraints by fire or building code so it negates that. Smith said they had to meet those codes but then you have 50 people driving in and out of a subdivision to go to a meeting. Forrey said the existing lots are a limitation. If it a large area, staff can require infrastructure as part of the development, so there are a number of built-in safeguards to prevent a lay church being built in an area surrounded by single family homes. Forrey asked staff for a situation where that could happen in the middle of a residential area. Smith said he could give him an

example that he is familiar with in Dallas, Texas, his church's temple sits on a very narrow residential street with homes on either side of it about half a mile in either direction. The temple gets very heavy traffic 5 or 6 days of the week, and the codes do not ban a church in that location. The lot is large and there is no problem with parking, but the traffic on that street is horrendous going out a half a mile in either direction to other intersections. There are no intersections closer. Forrey said El Mirage is small and asked if there are lots large enough for a church of that size. Smith said Grande Mirage had lots up to ¼ to 1/3 of an acre. Dysart Ranchettes has one to two acre lots. There are a lot of churches in the area. That is preferable to more homes in noisy areas, but the churches are not in the middle of the housing. They are over against El Mirage Road where traffic is already heavy. McDermott said she worked in Avondale before El Mirage. They had churches that want to come in to residential buildings where there is no room for parking. This may not prevent that sort of thing. One church moved into a commercial site. You can drive by on a Wednesday evening. It is on Rancho Santa Fe just off Dysart across the street from Wal-Mart. There are so many people that they park across the street in Wal-Mart. It creates a lot of problems even on a collector street with people trying to cross. Forrey said he was not trying to be antagonistic. He asked if the church exceeded fire department requirements. McDermott said Avondale required that churches be on a collector. She was not sure about other codes. McCarty said he wasn't sure but he thought zoning did really apply to churches. They are more recommendations that they don't have to follow codes by law. Smith said that is not what the state law is saying. It says they have to be treated as equal. You can treat them better and some cities do, but there are examples where the normal person would say they don't want to build it there but there is nothing that restricts it either. They have to have a site plan and meet parking ratios and other improvements but they could still overload the street system.

Doede did not believe they needed to be in a residential neighborhood. The City's streets are narrow and when you get 25 to 50 cars on a street which on some nights is typical, it is difficult for residents to get through let alone fire and police protection. I did not think they belong in a residential area. Other areas are fine, but when you have families involved it is not fair to the homeowners.

Mary Koestner said we all had things that we want or do not want. The major point was whether we comply with state and federal law. That is for the protection of the City. Cities and others have been sued when they weren't in compliance. If you look at our code, churches are denied. That is not constitutional. She asked if there are situations where churches set up in residential areas. Doede mentioned the case where a youth group is using an apartment clubhouse. It does not affect parking but it may affect residents. Koestner asked if he was referring to Victory Outreach because that was conditional. She was concerned about compliance with law. When churches are denied across the table it is really bad.

Forrey said looking at both recommendations, he believed both recommendations brought the City in line with state law, but since they were split he believed staff recommendation would accomplish what we need to do at this time and bring them closer to a unanimous recommendation for Council.

McCarty said there was still some interpretation in state law and the City is still left open to law suits. Doede agreed that it was vague, and it all depended on interpretation. Smith noted that the City Attorney has looked at this and agreed with our recommendation. What the state law reads that we can't treat them any less than equal. That leaves it open to giving them an advantage which some cities do by allowing them in most districts. Staff is suggesting that that would be detrimental to our residential areas. As Doede said the streets are narrow. They are actually narrower in many new subdivisions than the City's own code allowed since they were done by Planned Area Development. Jones asked if the proposal was in compliance or not. Smith said it was the staff's and City Attorney's opinion that as long as we treat them the same it would be in compliance. Jones asked if the Commission's recommendation was not in compliance. Smith said no, it was still in compliance but the question was the effect on residential areas. A simple explanation would be that if your neighbor decided to start a church and converted his structures and had room in the back for parking, he could do it, but would you like that next door. Jones said he would still have to apply. Smith agreed it went through site plan approval but as long as it meets codes the City could not deny the use. Under a conditional use the City could say it does not work here; it is not the right location. That is not to say we are against the church's use any more than any other use, but we don't allow the institutional or commercial uses for a reason: it isn't very compatible with quiet residential areas.

The Chair said they still had a motion on the floor and asked it to be read back. Smith stated McCarty had recommended that churches be allowed in all but Natural Resource zones where they would be conditional and that the other similar uses be conditional in residential areas. [There was no second.]

Forrey made a motion to recommend approval of staff's recommendations, seconded by Jones. The vote was 4 to 1 in favor with McCarty voting nay.

### **3. Sign code amendments regarding definition of and allowance of murals**

Smith said this was talked about last meeting. The present code did not allow painted signs so it did not allow murals. Murals are more art than advertising, so staff proposed a definition. As part of the design it should be approved with the site plan, but to be able to deny a mural in a particular location, it would have to be approved by a conditional use permit rather than just a site plan amendment.

Jones moved to recommend approval of staff's recommended definition and code changes, seconded by Forrey. The motion for approval passed unanimously.

## **V. DISCUSSION ITEMS [NONE]**

**VI. STAFF REPORT [NONE]**

**VII. COMMISSIONER COMMENTS**

Forrey thanked staff for their time and effort on the items on this agenda.

**XIII. ADJOURNMENT**

The Chair adjourned the Commission meeting at 7:08 p.m.

---

Mark L. Smith, Senior Planner

---

Doug Doede, Chairman

DRAFT