

**CITY OF EL MIRAGE
PLANNING AND ZONING COMMISSION
REGULAR MEETING MINUTES
JULY 15, 2009**

I. CALL TO ORDER

Chair Hugh Flisyn called the meeting to order at 6:00 p.m.

II. PLEDGE OF ALLEGIANCE

The Chair led all present in the Pledge of Allegiance.

III. ROLL CALL AND SWEARING IN OF NEW MEMBERS

Members present were Chair Hugh Flisyn, Doug Doede, Ben Lewis and Bill Morrison. Brandon Forrey was excused for a work meeting. Staff present were Community Development Director George Flores, Management Assistance Sharon Antes, City Attorney Rick Flaaen, and Senior Planner Mark Smith. Vice Mayor Michele Kern and Council Member Adam Super were also in attendance in the audience. Rick Flaaen swore in new commissioners Ben Lewis and Bill Morrison.

IV. ELECTION OF CHAIR AND VICE CHAIR

This item was tabled until all members could be present for the vote.

V. APPROVAL OF MINUTES

The Chair asked how the minutes could be approved with a majority of the Commission not having been there. Rick Flaaen said the new members could still vote to approve the minutes even though they were not present. Doug Doede moved for approval of the minutes, seconded by Bill Morrison. The vote in favor was unanimous. The Chair noted that there was no quorum for the meeting in June and thus no meeting and no minutes.

VI. WITHDRAWALS AND CONTINUANCES [NONE]

VII. NEW BUSINESS

1. Orientation for Planning Commission Members

George Flores introduced the training by saying that the City had many opportunities from the past but had a foundation that could be built on once the General Plan and economy improves. He said developers will judge the City by the work, behavior, and courtesy of the Planning and Zoning Commission. They needed to work as a team. After developers meet with staff and decide if they desire to come here. The plan for moving the City forward was based on a lot of background from a lot of perspectives. He thanked the commissioners for volunteering to build a great city.

Chair Flisyn said he needed to ask a question for clarification. He had to leave for another commitment and asked if he could appoint a temporary chair. Attorney Flaaen said he could or the members could decide amongst themselves who would serve as acting chair. Flisyn turned the meeting over to Doede. Before leaving he suggested scheduling a study session for the sign code as it was quite involved.

Rick Flaaen spoke to the Commission on open meeting rules and conflict of interest plus the legal framework for land use planning. Open Meeting Law requires that public business be conducted in the open. It applies to Council, Commission, and appointed committees. Commissioners should not discuss anything coming before them outside of the meeting. He was asked if 3 could have lunch together. He replied it was okay but they could not discuss Commission items. He said they could unintentionally violate the law if two discussed an item and then one of the two spoke to a third member. They should also avoid emailing each other as this could also become a violation. The consequences depend on the seriousness. The correction is to bring it to a meeting and ratify the action. Penalties include a \$500 fine and removal from office plus court costs, and attorneys' fees. The law also requires that the agenda be posted at least 24 hours before the meeting and only items on the agenda can be discussed. No new items can be added. The Comments portion of the meeting allows the members to advise staff to bring an item back for discussion or action. It needs to be an item within their purview: land use regulations and changes. They can bring them up but cannot discuss or vote on them. Ben Lewis asked if three could play golf together. Flaaen said that the public may perceive that as a violation. The only way to avoid that is not to have 3 or more together or to have staff post that a quorum of the Commission may attend an event. They may attend a public meeting with an already posted agenda but cannot conduct business. He advised them not to sit together to avoid appearance of a violation. The Call to the Public on the Council agenda allows the general public to address them, but they cannot discuss or take action on the topic. The agenda is posted at the Clerk's office, the City Hall lobby, the Senior Center, the Branch Library, and on the City website. If any member has a question they can call him or George Flores to avoid problems. Staff appreciates their service and wants it to be pleasant.

Flaaen then referred to Conflict of Interest laws. They state that if you have a substantial interest in a case you must report it and refrain from involvement in the matter. A substantial interest is defined as anything that is not a remote interest. Examples of remote interest include a landlord/tenant relationship (but a member may still recuse himself). Attorneys may not represent contrary parties. Other remote interests include a cooperative association, a small share, or a vote on services.

Conflict of Interest includes family members (defined as parents and significant others, children and spouses, siblings and their spouses). If you don't know if you have a conflict, you should bring it up and ask. The penalties are higher for violations. An intentional violation is a Class 6 felony punishable by 18 months in prison and \$150,000 fine. Unintentional violation is a misdemeanor punishable by 6 months in prison and \$2500 fine. You should disclose any conflict and recuse yourself and make known any remote interest. As a sign in his office says, "It is easier to ask stupid questions than to fix stupid mistakes." Bill Morrison asked his responsibility if he wrote a letter to the editor. Flaaen replied that unless he was authorized by Council he could not identify himself as a commissioner because it gave the impression it was the position of the City. He had a right to express himself, but if it was regarding something pending he should not discuss it beforehand.

Flaaen then spoke about the Code of Conduct. Council members and appointees should be respectful and not have to tolerate abuse. Ben Lewis asked if it was important enough for members to sign off on. Flaaen said it was a good suggestion for them to sign that they had received it and understand that they were bound by it. Doug Doede said he thought they were. Flaaen said it was not an adopted code.

Flaaen then referred to Municipal Planning and Zoning laws. They are to provide assistance to the City Council by holding hearings to receive input from citizens and then recommending action to the City Council on items such as site plans and changes to ordinances like the sign ordinance. They also review the General Plan and Zoning changes. They provide recommendations. They are important, but they are only recommendations. City Council makes the final decision and there are times when they will disagree with the Commission recommendations.

George Flores asked the City Attorney to clarify a few points. The first was regarding personal statements not being representative of the Commission or City of El Mirage. Flaaen reiterated what he told Bill Morrison: that they should not identify themselves as a Planning and Zoning Commissioner unless acting officially for the Commission. Flores asked him about Commissioners bringing up code violations. Flaaen replied that they had a right as a citizen to report violations to Code Enforcement and, if the were not addressed, to contact George Flores who is over that staff function. They should not use the Comments section of the agenda to address them since (1) it is off task and (2) their public statements could bring liability on themselves and the City. Ben Lewis added that they do not have all the facts. Flores said that staff had not served the Commission in the past in failing to remind them about this and will do diligently in the future.

Mark Smith then gave an overview of the Purpose of Planning and Public Participation and Hearings from Chapter 2 and Chapter 4 of the Planning and Zoning Handbook from the Department of Commerce plus the City's process as outlined in a memorandum from City staff. The Plan includes the City's adopted goals, objectives, and strategies. This is being done by a consultant. These policies are implemented by codes such as the Zoning, Subdivision, and Design Standards. The purpose of planning was to prepare for the future and manage change. It can be used to solve problems, coordinate and manage resources, develop policies and procedures, and educate and inform citizens. It can stabilize a community and protect the health, safety, welfare, aesthetics, economic development, property values. It can improve the economics and identify resources, opportunities, and restraints. It can clarify needs, goals, and objectives, and be a forum for action. However, it cannot be done once and for all. It is an ongoing process that changes as the community does. It cannot solve all problems or correct all mistakes. It cannot succeed without policies and actions. It should not promote special interests over the public or exclude others. It should give the community direction and be a consensus of opinions.

Regarding Public Participation, Smith said the Commission must follow the agenda per Open Meeting Laws. The meetings are recorded and minutes prepared. If they did not want to read it, they shouldn't say it. They needed to respect others on the commission and in the public. They should agree to disagree agreeably. The purpose of the hearing is to receive input. Some things will shut down communication. There is no place for vulgar language, or discriminatory or offensive remarks.

Switching to the memo from staff, Smith outlined the City's processes. Commercial developments go through the staff Technical Advisory Committee representing and reviewing codes of different departments. Staff then prepares notices for the press and nearby property owners and sends a copy to Commission members. Staff prepares an agenda for posting and a report and recommendation for Commission packets. The Commission meets every third Wednesday unless there are no items. Occasionally they may have special meetings when needed. At least 3 of the Commission members must attend to conduct business.

The Commission holds a hearing and then makes a recommendation to City Council on various types of requests. Staff delivers packets a week before the meeting for the Commission members to review. Staff presents a summary. Commission members then ask them questions. The applicant is allowed to present their case followed by questions. The public is allowed to comment and the Chair closes the hearing. Commission members then discuss and comment on the case and vote on their recommendation. A majority of those present passes.

Staff then forwards their recommendation including any dissensions and any public comments reflected in the minutes to the City Council. Council then holds its own hearing and makes the final decision. The Commission's recommendation and Council's decision should be based on policies in state law or adopted local codes and ordinances.

George Flores noted that in the case of engineering recommendations, the Commission has sometimes recommended counter to standards. For public safety or liability staff may disagree at the City Council level. Doug Doede said staff may agree to disagree and Council determines.

Bill Morrison asked what to do if approached by someone outside the meeting. Flaaen said they can listen but should avoid discussion. You do not know if they are polling others. Nothing is really off the record. Doug Doede said they did not have to be rude. They would like to address them but legally can't discuss it outside the public meeting. Bill Morrison said Joe Public calls to complain or unload, but not the developer. He knows how sneaky they can be; he has been one. Flaaen said if they had comments about cases they should attend the meeting and express them to all members. Doug Doede said if they are confused, refer them to staff. The members can't please everyone.

Discussion on Possible Sign Code Amendments

Mark Smith referred the Commission to a handout on the present sign standards samples of the size of existing signs. He noted that the City allowed banners temporarily but did not allow portable or sandwich signs or any private signs in City rights-of-way including the sidewalk. The City also does not allow billboards but has a few existing ones. Signs allowed in residential areas are not very large or high. Business and Industrial district signs are also conservative. Staff will address their concerns and recommendations on the code in future meetings.

George Flores said staff had a presentation on the existing codes and recommended changes. The Code tends to be restrictive on sizes. A developer can propose a sign package which is more liberal and an incentive for them. For major developers, signage is always an issue. This was a high elevation overview. Staff will present handouts and codes at the next meeting and possibly a meeting in the week after.

VIII. COMMENTS FROM COMMISSION MEMBERS

Ben Lewis said that the discussion tonight should be brought up on another agenda for the two members not present. George Flores said the staff would cover the same material with them before next meeting.

IX. ADJOURNMENT

The meeting adjourned at 7:30 p.m. on a motion by Doug Doede and second by Ben Lewis.

Mark Smith, Senior Planner

Doug Doede, Acting Chair

George Flores, CD Director

Rick Flaaen, City Attorney