

**CITY OF EL MIRAGE  
PLANNING AND ZONING COMMISSION  
REGULAR MEETING MINUTES  
May 8, 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**

Members present were Frank Carnal, Doug Doede, Brandon Forrey, Mary Koestner, and Justin McCarty. Staff present were Deputy Manager Bill Pupo, Senior Planner Mark Smith, and GIS Technician Jose Macias.

**III. APPROVAL OF THE MINUTES OF MARCH 13, 2012**

Forrey made a motion for approval of the minutes of March 13, 2012. Carnal seconded. The motion passed 4 to 0 with Doede abstaining.

**IV. CONTINUANCES**

**1. Request by Victory Outreach for a conditional use permit for church use of Dysart Elementary School at 12950 W. Varney Rd. & Casa Mirage Apartments Clubhouse at 12235 W. Thunderbird Rd.**

Smith asked that the item be continued to June 12<sup>th</sup> meeting to get the City Attorney's opinion as requested. Koestner asked what happened to the case then. Smith said it would be dealt with at the next meeting. Koestner asked if it could be done before that. Smith said it could if the Commission recommends it to Council rather than continue the item. Forrey clarified that the church will continue to meet until then. Smith said staff was not pushing for enforcement at this time. Koestner asked if they were meeting now. Smith said they were. Koestner asked if it would inconvenience them. Smith said it would only wait longer for the decision.

Doede allowed Rosie Lopez, administrator for Victory Outreach, to speak. She wanted to get clarification and resolve the issue. Forrey said staff desired to have the attorney's opinion and he himself had questions. Koestner said Smith had done research and they would be talking about it later. Smith said she referred to a general discussion in item 3. McCarty was unclear why it was an issue. Smith said there were federal laws that affect religious rights so they are making sure how those affect the City. Doede said they were trying to get clarification if it should be pursued or not. McCarty said in other words whether it is necessary or not. Carnal made a motion to continue the case until June 12<sup>th</sup>, seconded by Forrey. The motion passed 3 to 2 with Carnal, Doede, and Forrey in favor and Koestner & McCarty opposed.

**V. NEW BUSINESS**

## **1. Request by Lennar Homes for site plan amendment to allow new housing models on remaining vacant lots on Montecito Estates**

Smith showed the vacant lots left in Montecito Estates and indicated that Lennar was buying them to build new homes. He showed views of the proposed models and elevations. He mentioned that one included a built-in an accessory unit. The original builder Namwest had one with a casita. He noted the presence of Drew Lesniewski & Eric Molina from Lennar. Koestner asked if they met setbacks. Smith said they did. He noted the requirement still stood that no two of the same models be adjacent or across from each other to ensure diversity on these rectangular streets. McCarty asked what made the difference between a duplex and an accessory unit. Smith said accessories do not have separate utilities. Doede asked the Lennar representatives if all these models are available for any of these lots. They stated that they are 35' wide and will fit any lot. Forrey asked about the information they received about allowing two-story homes. Smith said a resident on the northernmost street of Thompson Ranch across the basin from Desert Lane in Montecito. Two stories are permitted in City zoning except for homes on the east end of Thompson Ranch adjacent to the mining area so that they do not look into the 70' pit. For some reason there are no two-stories on his street and he said the former developer promised not to build any two-story units adjacent to Thompson Ranch, but staff did not find a restriction to that effect. Forrey confirmed that they were free to choose. Smith said they were unless the Commission and Council restricted it, but staff saw no reason to do that.

A resident of Montecito asked about electrical issues at the public ramada. Smith said that was on property owned by the HOA rather than Lennar. Lennar representatives said they would look into it. Forrey asked if there was an HOA in Montecito Estates. Smith said there was. Forrey asked if Lennar lots would be part of the existing HOA or have to form their own. Smith replied that all the lots in Montecito would be part of the same HOA.

McCarty moved to recommend approval of the requested amendment. Forrey seconded, and the Commission voted unanimously for approval. Smith noted that Council would take final action on the request May 15<sup>th</sup>

## **2. Discussion on proposed sign code amendment for murals**

Smith said staff had questions from the Mayor and Code Enforcement about murals. Murals fall under the definition of a sign. The Code makes no distinction between art and signs. Staff had a request and processed it as a minor site plan amendment so they are suggesting codifying that process. Smith showed examples of painted signs [lettering] and murals [graphics] and some combinations of the two. Murals do not meet the size requirements for signs [1 square foot per linear foot] and signs are not allowed to be painted on buildings any more. The question is whether it is art or advertising. Staff devised a definition and standards for a mural.

Koestner asked if the murals were done without City review. Smith said some were done without permits. There are no structural changes, but permits are required. But the Code does not allow painted signs and murals are painted. Doede said some were done at the time the Code changed and don't meet either code. He said he was not a fan of murals. They changed the Code to help beautify the City and modernize it and he did not feel that they help. Forrey said they can't see what it looks like until it is up and so it is hard to monitor quality. He asked whether staff had reviewed what other cities are doing. Smith said he had not, He said many cities did not address them so he wrote the definition himself. He said many cities do have murals including Casa Grande where he lives. He wrote the procedure based on the Sew & Van mural. Murals are more part of the architecture than a sign. Some have proposed painting wells such as Las Cruces, New Mexico. Under the present code, they are signs and signs cannot be painted so murals would not be allowed. Koestner suggested that the proposal may be the best way to go and asked about procedure. Smith said the Commission would recommend it to Council.

Forrey asked how formal the process would be. Smith said staff received a scaled drawing of what it would look like. Koestner asked about the existing ones. Smith said some may be grandfathered and others not. Forrey suggested more research in the Valley and in the country. The biggest conflict he saw was the deliberate deletion of painted signs to control quality. Doede said if we decide to allow murals they should meet the same standards as signs and include a model and public hearing. McCarty said lettering can be done artistically also. Smith agreed but said they are still a message in words rather than graphics. Forrey made a motion to continue the discussion to next month to allow more research. McCarty seconded, and the motion passed unanimously.

### **3. Discussion on permitting churches without conditional use permit**

Smith said he provided memos on the history of the requirement for the conditional use in the Code since 1987 and a list of cases processed. He also provided a memo on the pros and cons and what other cities do. Some allow them in some zones and not in others. Most don't allow them in industrial zones as incompatible even in light industrial storage areas.

Koestner thanked staff for research on this matter. She thought churches should be allowed in residential and commercial zones by right rather than conditional use. The playing field should be level and not discriminatory against churches. She agreed with the memo stating that given the changes in federal and state laws and court decisions we should consider whether to still require conditional uses. She said the City should not. A majority of the other cities in the memo do not including Surprise, Peoria, Mesa, Maricopa County, and Glendale. Some say permitted/not allowed. Smith explained that in bigger cities with multiple commercial zones, some

of the districts do not allow them. Koestner said she thought the Victory Outreach Church should be approved and the fee waived and for others like New Jerusalem Ministries until the matter is resolved. What got her involved was that none of the other churches were required to get a permit for existing facilities and only churches are restricted. It doesn't look good. The majority of cities already allow churches and we should not be an exception. There would be no building; the schools are already zoned for schools and parking. The IGA exempted them. Smith said there was one church that requested to use the funeral home but they withdrew the case. Koestner said our City Code should be amended to permit churches and the Victory Outreach request should be granted until it is resolved.

Smith noted that 'temporary' to many means 5 years, but the Code defines it as 6 months. The church could rent for years and never build. Koestner said it did not matter; the building and parking are there. Smith noted that parking is different for schools and churches and the uses operate at different times with different traffic patterns. The question is whether it is compatible. Koestner said there has never been any problem. They could continue until they built and hopefully the code would be changed. Smith said they would still require site plan approval as any commercial type use does. Koestner said churches should not be conditional since others were not. She did not think federal law allowed it. Smith said they were researching that, but most non-residential uses in residential zones are conditional including schools and that has to do with traffic and other issues, not the use. The City does not single churches out. Most uses are conditional. Koestner said that the schools have not been a problem. Smith said the City's schools are large and do not have a problem, but smaller charter schools might. Koestner said we could address them. The conditional use allows us to address them. Doede said each was looked at individually to make sure that the group fits the site. Forrey said the conditional use would allow the use of the building, not the size of the congregation. Smith said they were looking at a change in occupancy of the building, but churches and schools are not too much different; they are both large congregations of people. Koestner said other groups are not charged to meet at the schools. Doede said the school charges them. Koestner said the City did not. Smith said a meeting hall is not always conditional. Koestner said the federal act addressed that issue.

Pupo said the schools could be considered multipurpose buildings. The sensitivity for a church comes from the parking. K through 6 schools have limited parking. Churches may have a couple hundred attending. The conditional use addresses the traffic after hours in a neighborhood. It's more the infrastructure than a religious issue. Koestner said it was still discriminatory. New Jerusalem Ministries has been meeting for two years without any problems. Pupo said it was reactivity vs. proactivity. If the neighbors had problems there would be nothing the City could do about it.

Koestner said other groups are not required to do it. The laws do not allow that. Pupo said the attorney was looking at that. Doede said Maricopa County does not recognize a church in a residence. We built in a residence in a county island on 75<sup>th</sup> & Banff. One of the stipulations based on the neighbors' comments was left out only toward 75th, no entrance on Banff, only on 75th. The residents do have a say.

Forrey said churches, like schools, are exempt from requirements except fire and traffic codes. Even with that regulation, many schools create horrible conditions. But once the buildings are there, there is no mechanism to go back and fix it. There's still a capacity of the building; the purpose of the building is irrelevant whether it's a chess club or a church. He asked staff if there is a mechanism to go back on a conditional use. Smith said yes if you placed a limitation on it or you could address it through building and fire codes. Koestner said that was her point; the City has blindsided the schools. McCarty said there is a potential for persons to preclude certain groups. Koestner said that is why the law prohibits it.

Rosie Lopez of Victory Outreach said she thought it was interesting that they were discussing what they have information for. Typically a ministry in the school is temporary. It is their goal to grow but only have 40 now. Parking is not an issue. When they reach capacity their goal is to move on and purchase property and build. They launched in the Northwest Valley only 5 months ago. Their goal is to rent for two to five years. They paid for the request and are anxious to move forward and to cooperate with the City.

Doede said his congregation started with seven families and in 9 years are up over 400. They met in several locations before they bought the house including a community center. Forrey said they seem to be talking about renting rather than a conditional use. Smith noted that commercial users often rent but it had nothing to do with the use of the property. Anyone in a strip mall is renting space. Whether they rent or not does not affect uses. Koestner said other cities allow them so we stand out when we don't. Smith said that many don't allow them at all in some zones. Koestner said that was in Industrial. Smith said some don't allow them in commercial zones. The City did not allow them in commercial until 2004.

A citizen from Montecito asked about allowing them by right in residential. He asked if someone could buy a house next door and convert it to a church. Doede said they were conditional in residential. He noted that if you allow them by right you could stumble all over the rights of residents,

Forrey said it still depended on the capacity of the building. Smith agreed, saying if you bought a home and wanted to convert it to a church you would have to meet the building codes for a church and parking

requirements. You could take almost any home in the Ranchettes since they have an acre around them with plenty of room for parking. The improvements may cost a lot, but they could convert any structure.

Forrey thought the rental argument was interesting since commercial uses typically rent. Smith said you also do not control how long they rent. Pupo said at the northwest corner of Reems and Greenway there is a shopping center there used by a church. Neighbors may think it good since the center is empty during the week. Koestner said that is where she attends. She thought they bought the property. Pupo said his own church, St. Claire's at Cotton and Bell, is probably limited seating, but it's hard to find a place to park when the snowbird are here. If Commission wants to change the Code they can recommend that. It is staff's responsibility to provide you with an overview of the issues are or may be.

Koestner said she still did not have an answer why the church has a fee and other organizations do not. Smith said the fee is for any conditional use and pays the City back for expenses of the hearings and notifications. If they were not a conditional use they would not have a fee. It is not a penalty. The other uses are not conditional. McCarty says that is City policy. The only way to change that is to change the policy. Doede said there has to be some control of meeting places for church or whatever. If 50 to 100 people gather in a house designed for a single family you have an unsafe fire condition. We want to keep it that way to avoid that. McCarty said those meeting in the schools is a policy issue.

Lopez said they paid the fee and asked if there were additional charges. Smith said no, it was paid. The fee is to take the action. The action was continued to next month. Lopez asked why. They paid. Smith explained that the fee is not for approval but for review. There is no additional fee.

## **VI. STAFF REPORT**

Smith provided a list of projects expected to come to the Commission:

1. ATC dealer moving out on Hanna property at Grand Ave. & Luna St.
2. Luke AFB has okayed proposed amendments at Pueblo El Mirage
3. A proposed new church site plan at Desert Cove Rd. & 125<sup>th</sup> Ave.
4. Expansion of existing site at Clayton Industrial Park on El Mirage Rd.
5. Reuse of an existing building at Main St. & Ash St. for a reception hall

## **VII. COMMISSIONER COMMENTS [None]**

## **XIII. ADJOURNMENT**

The Chair adjourned the Commission meeting at 7:28 p.m.

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Mark L. Smith, Senior Planner

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Doug Doede, Chairman