

MINUTES

P & Z COMMISSION HEARING

January 20, 2011

**ATTENDANCE
P & Z Commissioners**

ATTENDED

1. **Bill Rawlings**
2. **Chuck Teetsel**
3. **Joel Lawson**
4. **Randy Murph**
5. **Ruth Ann Smith**
6. **Wendell DeCross**
7. **Bob Hall**

Staff Attendance

**Greg Loper
Homero Vela
Lance Payette**

ABSENT

**Carol Davis
Evelyn Meadows
Jason Hatch
Rick Slone
Robert K. Black**

**Trent Larson
Peggy Saunders**

Meeting held at the Navajo County Board of Supervisors Chambers, Holbrook, Arizona – Time: 6:00 p.m. to 7:39 p.m.

Chairman Wendell DeCross called the meeting of the Navajo County Planning & Zoning Commission to order and led the Pledge of Allegiance. Mr. DeCross then explained the meeting procedures to the public.

Item #1 – ORDINANCE AMENDMENT: MEDICAL MARIJUANA

Discussion and possible Commission action on a recommendation concerning possible adoption of a new Article 16A (“Medical Marijuana”) of the Navajo County Zoning Ordinance that defines and regulates Designated Caregiver Cultivation Locations, Dispensaries, Offsite Cultivation Location facilities, and Qualifying Patient Cultivation Locations for Medical Marijuana and related uses.

Greg Loper gave an overview of Article 16A on Medical Marijuana passed by Proposition 203, which provides for two primary types of operation; Commercial and Private.

Commercial Operations include the selling of Medical Marijuana, which is sold through Dispensaries. Along with that is commercial cultivation for the actual growing of Medical Marijuana. Those are the two things the County will regulate. There is a formula for the number of Medical Marijuana dispensaries throughout the State of Arizona, and Navajo County will likely have no more than four dispensaries based on the number of Pharmacies in the County. If you live within a 25 mile radius of a dispensary you cannot grow your own Medical Marijuana. Because of privacy laws, we will not regulate patient cultivation operations. The Ordinance proposes to regulate where a dispensary can occur, how they can occur, and where the cultivation can occur. For both the dispensary and the cultivation areas the Ordinance proposes applicants go through a Special Use Permit process which goes before the Commission and then the Board of Supervisor’s for ultimate

approval. Our draft Ordinance models a similar Ordinance passed by Maricopa County. Arizona Department of Health Services will be issuing the details regarding the Licensing Regulations and criteria for establishing these businesses in early spring and the hope is that everyone will have an ordinance in place by that time. The proposed spacing distances of the Navajo County Ordinance are at least 1,500 feet from a school, church, an adult oriented business, or a business with the same use. Navajo County will restrict the Commercial Dispensary locations to zoning designated as Commercial-Residential, or Industrial. The off-site cultivation areas can be Commercial-Residential, Industrial, or A-General zoning classification.

Comments/Questions from the Public: None

Comments/Questions from the Commission: **Chuck Teetsel** asked for clarification about the non-profit designation and noted that all dispensaries and cultivation centers are supposed to be non profit. He asked the County Attorney's representative to please define Non-Profit. **Lance Payette** said that they haven't focused on that aspect at all because the Arizona Department of Health Services will regulate who can get the licenses. Non Profit has a legal meaning, but it doesn't mean that persons can't receive a substantial salary. **Greg Loper** added that the County hasn't pursued that, other than there is a tax status for non-profits, but the Department of Health Services will issue the licenses and will determine if someone is allowed to use the non-profit status. That question can be brought up as part of the Special Use Permit process.

Joel Lawson asked why there was a designation of 1,500 feet from another Adult Oriented Business. **Mr. Loper** said that Medical Marijuana seems to have a bad connotation for various reasons; as do Adult Oriented Businesses. They wanted to make sure these businesses didn't congregate. Similar separation requirements are proposed between Adult-Oriented Businesses and Medical Marijuana – that is the next item on the agenda. **Mr. Lawson** said he was confused that the County's Medical Marijuana Ordinance says the cultivation area should be no more than 50 square feet whereas Proposition 203 says you may have twelve (12) plants. **Lance Payette** said the County Attorney's primary concern with the whole law is the self grow operations. If you live more than 25 miles from a dispensary, you are allowed to grow your own Medical Marijuana, so it is easy to circumvent law. Patient's or Caregivers have to have a Card before they are allowed to engage in self grow, but once you have that card, regulating what you actually do grow is difficult. A licensed care giver can have responsibility for up to 5 patients; each of whom can theoretically self grow. If a licensed caregiver can grow for his five patients, we have a potential of growing into a full drug dealing operation. The law says 12 plants, so we added a 50 square foot limitation to deal with those situations where a caregiver has multiple patients assigned to him, or multiple patients who congregate in one house. Fifty (50) square feet should be a reasonable growing operation, and would put some kind of limit that we could physically inspect and enforce to prevent it from becoming a drug dealing operation. The County mirrored what Maricopa County passed, so we do have the comfort of knowing the law will be challenged in Maricopa County first.

Wendell DeCross asked about a sentence in the staff report that says "personal cultivation use does not require a Special Use Permit, but it does not to meet some basic requirements."

Greg Loper clarified that it should say "it does need to meet some basic requirements."

Wendell DeCross asked who would be responsible for policing this. **Greg Loper** answered that if

it were a violation of the Zoning Ordinance we would treat it just like any other zoning violation, but that would probably be a side component to a much bigger investigation. The County will not go out knocking on private individual doors to verify the number of plants, but would respond to a complaint. The Commercial operations would be fairly easy to regulate. The main concern is the Zoning, and making sure it meets the requirements of the Ordinance. With regard to licensing, whether or not they are non-profit, or whether they have the correct cards, etc., the Arizona Department of Health Services is working to establish those procedures. **Mr. DeCross** asked, where dispensaries in Navajo County will they get their product. **Mr. Loper** responded that it could be from any number of places. They could ship it from other locations or grow it in Navajo County. That would require that the facility be located in the A-General, Commercial or Industrial district, and they would have to go through the Special Use Permit process. **Mr. Loper** agreed that it will be difficult to police the growing in an individual's home.

Chuck Teetsel made a motion to approve the Draft Ordinance amendment as recommended by Staff. **Randy Murph** seconded the motion. The motion passed unanimously.

Item #2 – ZONING ORDINANCE AMENDMENT; ADULT ORIENTED BUSINESS

Discussion and possible Commission action on a recommendation concerning possible adoption of amendments to Article 16 (“Adult Oriented Business”) of the Navajo County Zoning Ordinance creating a minimum separation distance to certain Medical Marijuana uses, clarifying related resource materials, and making minor grammatical changes.

Greg Loper said that almost all of the recent Medical Marijuana Ordinances that have been adopted include a separation requirement from Adult Oriented Businesses including Navajo County's; and that 1,500' requirement should go both ways. Additionally, Staff noted other grammatical and formatting errors in the ordinance that should be corrected. The ordinance otherwise is unchanged.

There were no comments or questions from the Public or from the Commissioners.

Chuck Teetsel made a motion to approve the Ordinance amendments as recommended by Staff.

Bob Hall seconded the motion. The Motion passed unanimously.

Item #3 – INITIATION OF 60 DAY REVIEW AND COMMENT PERIOD FOR AMENDMENTS TO THE NAVAJO COUNTY COMPREHENSIVE PLAN, INCLUDING THE AZTEC AREA PLAN:

Planning Commission initiation of the statutory 60-day review and comment period and informational presentation of proposed amendments to the Navajo County Comprehensive Plan, including the possible adoption and inclusion of a proposed Aztec Area Plan, which would encompass approximately 227,958.41 acres within Navajo County.

Greg Loper pointed out that the site plan before the Commission consists of two separate components. Aztec Land and Cattle submitted the application for an area plan nearly one year ago, and was presented to the Commission for discussion during the staff presentation portion of the Agenda. This was put on hold largely because we were dealing with the Wind Ordinance. Mr. Brophy is in attendance and has been very patient. In order to correctly identify the area plan, it needs to be included in the Comprehensive Plan for Navajo County which was adopted in 2004 and covers all of the unincorporated, non-tribal areas of Navajo County. To include the area plan as part of the Comprehensive Plan we have to go through what the statute calls a major amendment which

can only be heard once a year. Given the expanse of the area plan itself, we thought it wise to take some time to make sure we really look at how it is integrated into the Comprehensive Plan. That is the reason for bringing the Comprehensive Plan before you, to kick off the 60 day review. As we get into the Comprehensive Plan itself, we find, as with many of our documents, they age over time. There are a number of other things we need to look at as part of the Comprehensive Plan Amendment. Such as beefing up the definitions for area plans that don't exist today, including the Aztec Area Plan, beefing up some of the language regarding amendments to the plan. Clarifying what is required to amend the Comprehensive Plan. There are two transportation plans available, the Southern Navajo/Apache County Sub-Regional Transportation Plan and the one most recently adopted, the Navajo County Central Region Area Transportation Study, which covers Holbrook, Winslow, parts south of Snowflake and Taylor. The Comprehensive Plan has a transportation element to it, but we can't tell what conflicts exist or don't exist between the recently adopted Transportation Plan and the Comprehensive Plan. At a minimum the Comprehensive Plan should contain a reference to those newly adopted plans. We hope to ferret out any conflicts during this 60 day period to come back with a Comprehensive Plan with a transportation element consistent with the two transportation plans. The statute process is unclear as to what formal action needs to be taken to initiate the action. After discussing this with the County Attorney's Office we decided that the best action would be for the Commission to kick off this 60 day review process, and after the 60 day review period we will bring this back before the Commission with a full list of amendments that have been discussed for the Commission to consider and make a recommendation to the Board of Supervisors. The 60 day review period does not coincide with the March scheduled Commission Meeting so we will move the meeting back a week or two to cover the 60 day process. We will keep you apprised of the meeting date change.

Joel Lawson asked, as we review this over the 60 day period, what effect will this plan have, will it be held to an iron clad standard. **Greg Loper** answered that the Comprehensive Plan is a blueprint for how we see the county developing. The one adopted was a developer driven plan, which allowed any land use to occur in any area. The Aztec Area Plan does serve to define certain areas for specific uses, such as industrial, residential, and mixed use. There is a range of uses but it tightens them down more. If adopted, the statute requires that the zoning be consistent with the Comprehensive Plan. The areas outside of the Aztec Area plan, (unless something changes in the next 60 days), will remain the same. We will consider a project just as you do today, primarily on its merits or the application, but if one came forward in the area plan, it would need to be consistent with that area plan. In other words, if it was in an area designated Industrial, and someone came forward with a residential use, staff would likely encourage the Commission and the Board vote against the proposal.

Chuck Teetsel asked if there's a present use in the area plan, would an applicant have to come to the Board to obtain a Special Use Permit to get permission for that use? **Greg Loper** answered yes; they still have to go through the process. The Comprehensive Plan is not an entitlement like zoning. It's a special designation that says this is how we view the land to be used, the statute says you can't zone against that, but it doesn't allow someone to come in tomorrow and pull a permit. We still have to get the correct zoning, and whatever permits are needed.. Procedurally it changes nothing, but it will be an added component. With all the projects, such as Dry Lake II that have come forward in the last year, we now have a line in the staff report that asks, What is the Land Use Designation, and does this conform, Yes or No. In all cases it has, but that is because the current Comprehensive Plan allows just about anything anywhere. We are not proposing to change that,

except in the area plan where the applicant is proposing specific uses in certain locations, not throughout the area plan. Wind farms would still have to go through the Special Use Permit process regardless, but if it is in an area specified for that use, Staff, Commission, or Board approval or denial could be based on that plan. When asked how the County is hindered by not having a plan, or what problems can be solved by approving the Plan, Mr. Loper replied it could be any number of things, such as land use conflicts, the desire to encourage no residential development next to commercial industrial areas which could hinder further growth. The Comprehensive Plan is a blueprint not an entitlement, but it is a way we look at how we would like to see the County grow.

Wendell DeCross asked **Lance Payette** if the statute mandates that each municipality have a comprehensive plan. **Mr. Payette** made it clear that the legally controlling document is always the Zoning Ordinance and the Zoning Maps. The Comprehensive Plan is like a broad vision or guide. You narrow that down to an area plan which is a more focused vision or guide, but the legal controlling document is always the Zoning Ordinance and Zoning Maps. Area plans can define how we may want a rural density, residential community, and if somebody came with a re-zoning proposal, for a high intensity industrial use, or a high intensity residential use, you would look at the General Plan to say it is inconsistent with the General Plan. The legally controlling document is always the Zoning Ordinance and Zoning Maps. This usually comes into play when someone is asking for a Re-zoning, to see if it is consistent with the General Plan but it is not the legally controlling document. **Chuck Teetsel** asked how much input does the staff and County have on the arrangement of land uses. **Greg Loper** said he did not have any issues with the proposal, and was happy with their arrangement of land uses. They put together a very good plan. Through the 60 day review period process, the public, Commission members, or anyone can provide written input into the Comprehensive Plan or the Area Plan and say they don't agree with the land uses in a specific area, and the comments will be taken into context with the overall decision to approve or to not approve. The present Comprehensive Plan allows any use, any where. Area Plans give guidance for specific concerns, for instance, the Comprehensive Plan doesn't prohibit a major industrial use next door to you in the Cedar Hills or Antelope Valley area.

When asked if the County prepared the Comprehensive Plan, **Lance Payette** said the Comprehensive Plan the County had prior to 2004 was so bad, and so out of date, that Bob Worsley of NZ Legacy stepped in and offered to prepare a professional Comprehensive Plan. That was well beyond what staff could do with their own resources, so staff told him to go ahead. Comprehensive Plans are always very general documents, and most Area Plans become a community effort, with staff guiding the community in the direction that the community wants to go. In this case, the Community is Mr. Brophy/Aztec Land and Cattle's Area Plan. The purpose of the review period is to make sure there are no conflicts. As the Area Plans are developed, since they are more focused, they could supersede the Comprehensive Plan, which he doesn't see as inappropriate; so far it hasn't happened, but the potential is there. **Greg Loper** added that the Area Plan doesn't include State Land, or BLM land, only the private holdings of Aztec. They have however been in contact with the State and BLM concerning the area plan, and will continue that contact to see if something comes up. If there are any conflicts, it would be up to staff to bring that up to the Commission. **Joel Lawson** expressed the concern that someone who owns property in the middle of the Aztec Area might be land locked from building on their property. **Mr. Loper** said that is one of the things staff has to review to make sure we ferret out those types of conflicts. But it will also serve as notification to all the owners around the Aztec Area Plan. Most of the intense uses on the Aztec Land are surrounded by State and BLM Land. **Joel Lawson** complimented Mr. Brophy on his

efforts to contact the local land owners to let them know about his Area Plan, Mr. Lawson wanted to make sure Commissioners made decisions very carefully as to some of the wording that has been taken out, that could protect smaller land owners. **Greg Loper** pointed out that the bulk of the Aztec land is more surrounded. **Lance Payette** reiterated that the statute says that Commission would need to make a motion to initiate the 60 day review period. He responded to **Commissioner Lawson** that this Area Plan is not a legal “gotcha” type of document. It is the Zoning Maps and the Zoning Ordinance that tells you what you can and can’t do. Lawsuits don’t come out of the Comprehensive Plan; it is a guide and a tool that has very limited legal effect. It should not be viewed as opening a door for something, or something that might come back to bite the County or the adjoining land owners. **Wendell DeCross** said he would entertain a motion on this item: **Randy Murph** made a motion to initiate the 60 day review period for the Comprehensive and Aztec Area Plans, which was seconded by **Bill Rawlings**. The motion passed unanimously.

Comments from Developer: **Mr. Steve Brophy**, President of Aztec Land and Cattle Company acknowledged that Aztec is owned by the company not him personally; he is a shareholder and has run the company for many years. **Mr. Brophy** gave a complete and comprehensive overview of the history of Aztec Land and Cattle that has been around since 1884. They never gave a thought to the planning document until 2007, although they did have a plan which has changed over the years. The company started with over one million acres of land, which extended from Lake Mary to Silver Creek, and from Heber north to the Little Colorado River. The initial plan was to bring cattle to the area, which they did, 36,000 head between 1886 and 1887. In 1905 they liquidated the cattle and started leasing land to area ranchers some of whom (descendants) still lease our land today. During the course of that time they were involved in lengthy (50-60 year) disputes with the federal government to receive a patent on the land; the last of the disputes was settled in 1955 when a Supreme Court Case ruled that they were entitled to 100,000 acres of land within the Coconino – Apache Sitgreaves National Forest. They received that land and immediately embarked on a series of land exchanges which was part of the plan. Aztec had a process of selling off their land, but the water supply in the area was important. They didn’t want to plan anyone else’s land, so they only planned their own. In looking at the possible growth for the area they took in to account the location of transportation, railroads, interstate highway, natural gas, electricity, and the railroad which has short line from Holbrook to the Paper mill. They hired professionals to prepare an Area Plan that would go along with the Comprehensive Plan. All the elements are there for residential areas, industrial areas along the railroad and Interstate and major roadways. Mr. Brophy pointed out the planned areas on the PowerPoint map displayed, and showed the logical areas that are already designated as industrial uses. We looked at our land to see where it made sense to plan areas for residential development; they wanted to concentrate uses, and the water supply for existing residential uses. They commissioned a study to find out where the wind is on their property for possible Wind Farms, and designated up front where they think there ought to be wind towers. There is adequate sweet water north of the courthouse to designate the area as a possible residential growth area.

Wendell DeCross thanked Mr. Brophy for his very complete and comprehensive report on Aztec’s Land Use proposal.

Comments/Questions from the Public: None

Comments/Questions from the Commission: **Greg Loper** said the Commission Meeting date will be different in March, and Commissioners will be advised as soon as we have a schedule, before this issue comes back before the Commission.

Item #4 – Possible Approval of the 2011 Commission Hearing Schedule.

Approve the Hearing Schedule subject to the change in March. **Joel Lawson** made a motion to approve the 2011 Commission Hearing schedule. **Bob Hall** seconded the motion. The Motion passed unanimously.

Item #5 – Possible approval of the November 18, 2010 Commission Hearing Minutes.

Joel Lawson made a motion to approve the minutes. **Chuck Teetsel** seconded the motion. The Motion passed.

Item #6 – Report from Staff to the Commission.

Nothing to report at this time.

Item #7 – Commissioners Comments and directions to staff. Commissioners may use this time to offer additional comments regarding any item on this agenda or any other topic; and the Commission may direct Development Services Department staff to study or provide additional information on topics of the Commissions' choosing.

Comments/Questions from the Commission. Wendell DeCross thanked staff for the work they have done on the ordinances, and hopes the economy will pick up. **Chuck Teetsel** wished Mr. Brophy success with this project. **Joel Lawson** agreed with the statements made regarding Snowflake and the close proximity of the railway. **Bob Hall** said there is a new plant going in near Winslow, and a new Casino west of Winslow. There are 600 new homes planned north of Winslow for the casino, resort and golf course at Twin Arrows.

With there being no further business to come before the Planning and Zoning Commission, the meeting was adjourned at, 7:39 a motion was made to adjourn the meeting by **Chuck Teetsel**. **Ruth Ann Smith** seconded the motion. Motion carried unanimously.

Approved this _____ day of _____, _____

Chairman, Navajo County Planning & Zoning Commission

ATTEST:

Secretary, Navajo County Planning & Zoning Department