

APACHE COUNTY COMMUNITY DEVELOPMENT

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**PLANNING AND ZONING COMMISSION
MINUTES FOR November 7, 2024**

Commissioners

District I

Carey Dobson
Bobby Fite
Brad Jarvis

District II

Kay Hauser
Dan Muth, Chair

District III

Brad Peterson
Bob Pollock
Travis Johnson

Alternate

Michael Bragiel

Staff Members in attendance

Matthew Fish, Director
Shanna Pearce, Plan Reviewer

Roxanne Drye, Appraiser III
Monica Garcia, Appraiser I

Working Lunch Session

Mr. Muth called the working lunch session called to order at 12:13 p.m.

Discussion of Article 24 Single-Family-Nightly Rentals.

Mr. Fish provided an overview of the current situation, noting that the county’s ordinance was out of alignment with state law, particularly A.R.S §11-269.17, which preempts local regulation of short-term rentals. He mentioned that enforcement has been minimal, with only two complaints in the past 2 ½ years, and that most complaints were handled by the Sheriff’s Department rather than through a dedicated enforcement officer. The discussion revealed concerns about the enforceability of the current ordinance and the potential for litigation if it were strictly enforced. Commissioners agreed to revisit the issue in January, considering whether to amend the ordinance to align with state law or repeal it altogether.

No further discussion.

Discussion of amending the subdivision ordinance to include process and procedures for the Planning and Zoning Commission and Board of Supervisors regarding condominium plats.

Mr. Fish noted that Apache County was growing. He explained that the land had been sectioned off and parceled since at least the 1960s. He outlined the process for splitting or combining properties within a county-approved subdivision and those outside of it.

Additionally, he explained that there is no formal process in place for properties over 10 acres or 36 acres; these are recorded at the county, and neither his office nor the Commission had any say over it. He asked if we would like to start exercising more oversight in this situation.

He pointed out that there are easement problems, particularly with some 36-acre parcels where access is only possible via state trust land, BLM lands, or federal land. Typically, each parcel must be reviewed by the state to ensure that existing access is legal. Most of these roads were originally established by ranchers many years ago, likely to provide access to water sources like dirt tanks or windmills for cattle. Over time, these roads have been built upon and improved, though some remain primitive two-track roads. As a result, ranchers and others in the area still drive on these unpaved, basic roads.

He noted that we have several parcels both inside and outside county-approved subdivisions, specific in Greer. Some had gone through a condominium plat process, some of which already have cabins that were used as rental properties, likely since the 1970s or '80s. The owners have since decided to convert these properties to creating individual condominium units rather than continuing to rent out the cabins, with each one having its own parcel number and tax classification.

He explained that for properties outside a county-approved subdivision, the process is straightforward. While we ensure there is adequate parking, we do not check for things like fire extinguishers or other features typically required in subdivisions, as we cannot enforce those regulations through the subdivision ordinance. He added that the situation differs for parcels inside county-approved subdivisions. For example, he shared that one specific parcel soon to be presented to the Commission, would potentially add 21 cabins to the site. Although there are no issues with this plan in principle, because it is inside a county-approved subdivision, it automatically triggers the Subdivision Ordinance regulations. This means the project will undergo public scrutiny, and the owner must meet requirements such as parking, road access, and other subdivision-related standards.

He asked if there was a desire from the Commission to refine the process. Specifically, should we have oversight of the division of large parcels, such as splitting off 230-acre plots into 36-acre parcels?

Mr. Muth stated that, at a minimum, there needed to be some sort of review for properties within the 36-acre subdivisions and those 10 acres or more. While we cannot regulate these properties directly, we can still consider factors such as location—does it fit within the county plan? Are the roads adequate? Does it align with our zoning guidelines?

Mr. Fish shared an example of a county-approved subdivision divided in the 1960s and 1970s which was approved for half-acre parcels. There were no sewer facilities for these parcels, so property owners would need to install septic tanks. However, septic system setbacks require a minimum of one acre per parcel. This has created a "lose-lose" situation: the owners cannot easily sell their properties, and if they want to combine

parcels, they will need to negotiate with their neighbors to purchase additional land to meet the one-acre minimum required for septic systems. This was a classic example of a lack of oversight in the subdivision process.

Mr. Peterson agreed with Mr. Muth that many of the issues stem from decisions made 50 to 60 years ago. He added that while we can't fix what was done back then, we can take steps to prevent similar issues from arising in the future. "We don't want to create situations where the next landowner can't use the property for its intended purpose," he said. He agreed that something needs to be done.

Mr. Muth added that we didn't need to create restrictive codes or new subdivision rules; we could work within the current framework. He said that what we should be doing is adopting policies to ensure that when people come into the county to develop property, they are following the established guidelines and ensure that projects align within those parameters. He added that we need to find creative solutions to make things congruent—either through zoning changes or minor adjustments.

Mr. Fish and Mr. Johnson discussed how many cattle Mr. Johnson had lost due to trash and debris. Mr. Fish added that enforcement is something we can do, but he believes that by addressing some of these property splits and subdivisions early, we could prevent these issues before they become major problems.

Mr. Fish stated that most people buy property in good faith, and real estate agents often do whatever they can to sell the property, but many are uneducated about the process. If there is no requirement for these buyers to deal with the county regarding property splits and ordinances, they have no idea what is truly going on, what the statutes and regulations are, or what the CC&Rs say. Therefore, there needs to be a way to educate both the real estate agents and the property buyers. Once they are informed of the regulations, we must hold ourselves accountable to enforce them and address any issues that arise.

Mr. Muth felt that the county's strongest position in addressing this issue was through the enforcement of existing policies. He noted that we have a county plan with designated Rural Ranch areas, various zoning classifications, and different area designations, all of which regulate population densities, development densities, etc. He explained that the first criterion would be to ensure any proposed division of property is evaluated against the county plan. Does it fit with the plan? Does it have access to water, a flushing toilet, or a grocery store? Is there access, physical or legal?

The second criterion would be to develop policies through the zoning code. He pointed out that there are properties that no longer meet the criteria for their original zoning. He recommended rezoning these properties to residential, since that's how they were being taxed and used and that we become more proactive with new developments and subdivisions, requiring rezonings before allowing minor land divisions.

He stated that these were actions we could take right now under existing rules and the zoning process to improve conformance and compliance.

No further discussion.

Discussion of commercial properties in Alpine.

Mr. Fish explained the purpose of rezoning properties based on their actual use. He also mentioned that he had taken pictures of 10 properties in Alpine that were being used commercially. However, he added that he did not have time to check with the Assessor's office to determine whether they were being taxed as commercial properties. He stated that he would like this to become ongoing discussion throughout the county. He said he started with Alpine simply because it is in the southeastern corner of the county. He recommended starting with three or four of these properties and work their way north.

Mr. Fish shared pictures of the properties in Alpine and discussed their history.

Mr. Muth spoke specifically about Foxfire and asked if building permits had been issued for the new construction. Mr. Fish confirmed and added that while we know the property is being used for commercial purposes, it is not zoned for commercial use.

Mr. Muth stated that this directly relates to what was discussed in the previous item: a permit should not have been issued until the property owner requested a rezoning to bring the property into compliance with the zoning code.

Mr. Fish asked if anyone had a recommendation for a starting point in the process of potentially rezoning.

The Commissioners discussed and agreed that more investigation was needed to determine all the properties in Alpine, and then bring them to the Commission under one action. The Commission and staff also discussed the process and fees, agreeing that this would be county-initiated and that no fees would be charged to the property owners during this specific rezone.

Mr. Fish stated that the Assessor's office had already completed their assessments, and designated which properties were being used commercially, taxing them accordingly. He added that he would cross-reference this information with the Assessor's office and bring those properties to the Commission.

Mr. Fite asked if someone who owned a piece of vacant land in Alpine that they believed was suitable for commercial use could be included in this process. Mr. Fish explained that each property would need to be evaluated individually, and each would have to be discussed before a final decision could be made.

Mr. Fish explained the process, allowing 30 days for those who may want to be involved. He added that if a landowner wishes to rezone after that, they will have to go through the process and pay the associated fee.

Discussion on any agenda item.

No discussion.

Working lunch session adjourned at 1:10 p.m.

Public Meeting

Call to Order.

Mr. Muth called the public meeting to order at 1:10 p.m. MST in the Board of Supervisors' Hearing Room, County Annex Building, 75 West Cleveland Street, St. Johns, Arizona.

Roll Call/Determination of a Quorum.

Mr. Muth determined a quorum was present by roll call. Present were Commissioners Bobby Fite, Kay Hauser, Bob Pollock, Carey Dobson, Brad Peterson, Travis Johnson. Staff present were Matt Fish, Shanna Pearce, Roxanne Drye, and Monica Garcia.

Review and approval of the minutes of the Planning and Zoning Commission working lunch session and public meeting held on October 3, 2024.

Mr. Muth opened for discussion and a motion.

No discussion.

Mrs. Hauser motioned to approve, seconded by Mr. Fite.

No discussion.

The vote was unanimous - 7 ayes to 0 nays.

Motion carried.

Notification of Attendance – Repsol will be holding public meetings on behalf of the Lava Run Wind and Solor projects on Wednesday, November 20, from 5pm to 7:30pm at the Coronado Elementary School Cafeteria, 50 N. Water St., St Johns, AZ 85936 and on Thursday, November 21 from 5pm to 7:30pm at the Round Valley High School Gym, 550 N. Butler St., Eagar, AZ 85925. Five or more members of the Apache County Planning and Zoning Commission may be in attendance.

For more information, questions, or to request accommodations email:
info@lavarunprojects.com

No discussion. No action.

Call to the Public

No comments from the public.

PUBLIC HEARING(S)

CONDITIONAL USE PERMIT 2024-55 Dusty Fitzwater: Discussion, consideration, and possible recommendation of approval to add two (2) RV pads for non-commercial family use and a future cabin-built home. The property is located in the Luna Lake Village subdivision at 4 county road 2096 in Alpine, AZ. A.P.N. 101-28-029 Section 18 Township 5N Range 31E. This item was tabled from the October 3, 2024 meeting.

Mr. Muth opened the public meeting.

Susan Hartman spoke in opposition and reiterated the points she made at the last meeting, expressing concern that this would open the door for more of the same.

Mr. Fite asked if she had brought the deed restrictions discussed at the last meeting. She confirmed that they had been provided to Mr. Fish. The commissioners then discussed CC&Rs and deed restrictions.

Mr. Johnson asked if there was an active Homeowners Association. Mrs. Hartman replied that there was not. Mr. Johnson suggested that it might be an avenue for residents to explore to administer their CC&Rs.

Paul Harrington, speaking on the phone, asked whether the property was commercial and how it might affect the surrounding properties. He also expressed concerns about the impact of future land divisions, potential zone changes, and privacy fences. Mr. Fish addressed his questions and concerns, explaining the regulations and Mr. Fitzwater's request for a CUP. He clarified that Mr. Fitzwater was not requesting a rezoning, but rather an exception to the zoning rules outlined in Sections 403 and 750.

Applicant Dusty Fitzwater addressed the commission and explained his development plans. He plans to build a permanent cabin, place a permanent park model, and have a temporary RV on the property. The RV will not be a permanent residence and will not remain on-site year-round; it will be used only by family and friends. He also provided an update on the construction completed to date.

Mr. Muth clarified that he had a cabin and a guest home (park model) and asked what would happen to the RV pad after the cabin was constructed. Mr. Fitzwater explained that it would remain for occasional use by family and friends. He added that he wasn't planning to pour concrete or lay down gravel; it would essentially be a temporary, easy-access setup. He further explained that he could have an RV there regardless, and this

arrangement would simply make it easier for visitors to park without needing to run water, electricity, or other utilities.

Mr. Muth explained and clarified the code regarding the use of multiple dwellings, confirming that under the rules and regulations, what Mr. Fitzwater was proposing would make his property a quasi-trailer park. He added that he believed this was the issue raising concerns among his neighbors. For clarification, Mr. Muth asked if Mr. Fitzwater was requesting a conditional use permit for a guest house, not a trailer park. Mr. Fitzwater agreed.

Mr. Muth continued, explaining that the only way the three structures could coexist on the property would be if one of them was temporarily in place and directly tied to the construction of the cabin. Once the cabin was complete, either the park model or the RV pad would have to be vacated. If Mr. Fitzwater wanted the RV pad to remain, he would have to treat his property as a trailer park. Mr. Muth then explained the definition of an RV pad, including that it is an improved pad with connections to water, sewer, and electricity.

Mr. Fish noted that Section 403 outlines permitted uses subject to conditional use permits. He explained that the Commission could grant any type of conditional use with specific conditions. There is a possibility for Mr. Fitzwater to have an RV pad with hookups and build a future house, provided the Commission approves this arrangement and includes it in the conditions of the CUP, with final approval from the Board of Supervisors.

The commissioners discussed possible conditions for the CUP. Mr. Fish noted that the minimum setback requirement is 10 feet, so Mr. Fitzwater would need to adjust the setback by an additional 2 feet into his property. This adjustment would be addressed during the building process.

No further discussion.

Mr. Muth opened for discussion and a motion.

Mr. Fite asked for staff's recommendation. Mr. Fish stated that, given the opposition, his recommendation was to allow only one pad for either the RV or the park model. While Mr. Fitzwater is in the process of building the cabin, he could have a second RV pad, but once the cabin is completed and a Certificate of Occupancy (CO) is issued, the second RV pad must be removed. Additionally, there should be a limitation on the time allowed for building the cabin. Mr. Fish explained that typically, once a permit is issued, the permit holder has 18 months to complete construction, though this timeline could be extended under extenuating circumstances. The Commission could place a condition to reevaluate the CUP if the building permit needs to be extended or if construction has not started within the stipulated timeframe.

Mr. Dobson motioned to approve the conditional use permit with the stipulation that there be only one pad for the park model and a second pad for the RV, or two RVs, with an 18-month timeframe. The second pad must be removed after 18 months unless there are extenuating circumstances preventing the developer from completing the project on time.

Mr. Muth seconded the motion and requested an amendment to include that the RV pad be tied directly to the building permit, as stated. Any extension of the building permit would require the conditional use permit to be reevaluated. Upon issuance of the Certificate of Occupancy by the county, the RV pad shall no longer be used for occupancy; it may be stored but cannot be occupied.

Staff and commissioners discussed the amended motion, focusing on what would be considered abandonment, the lack of connection or occupancy, and the length of temporary stays, which would be limited to 14 days.

Mr. Muth asked if Mr. Carey accepted the amendment and if there were any objections from the commissioners. Mr. Carey accepted the amendment, and there were no objections.

Mr. Muth clarified the motion to accept the CUP with the allowance of a park model pad and the future construction of a home. A second RV space would be permitted, but it cannot be occupied until a building permit is issued. The CUP will be reevaluated if the building permit is extended. Once the house has received the Certificate of Occupancy, the second RV space must be abandoned, RV may be stored but not occupied.

The commissioners discussed enforcement. Mr. Fish noted that enforcement would be governed by Article 13.

No further discussion.

Mr. Muth called the question. Vote was 6-ayes to 1-nay.

Motion carried.

Report from Staff to the Commission.

Mr. Fish encouraged the commissioners to attend the public meetings being proposed by Repsol for the Lava Run Project and advised that staff had posted a Notification of Attendance for both meetings.

Mr. Fish noted that the Triple Oaks Renewable Energy Project was still in the study phase, with the application expected closer to 2027.

Mrs. Hauser updated the commission on the high-speed fiber broadband project and the upcoming ribbon cutting in Round Valley and Saint Johns. The commissioners discussed the expansion of fiber optics in the county.

Adjournment.

Mr. Muth opened for a motion.

Mrs. Hauser motioned to adjourn.

The public meeting was adjourned at 2:02 p.m. MST.