

ATTACHMENT E

June 10 & 11, 2014

Letters of Concern

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June 10, 2014

WRITERS DIRECT LINE

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Gregory Rose
City Manager's Office
39700 West Civic Center Plaza
Maricopa, Arizona 85138

Re: Zoning Code Rewrite

Dear Mr. Rose:

On behalf of the law firm of Gammage & Burnham, I am writing to share some important observations about the City's new proposed zoning ordinance. As you know, we have represented various land owners over the past several years and we have closely followed and participated in the zoning ordinance rewriting process since it began. We have attended all of the meetings of the Zoning Code Rewrite Task Force, so the following views are considered and serious—not the product of “last minute” attention to the process.

In a nutshell, we are concerned that the current draft is too regulatory for a developing, young community like Maricopa. One goal of the zoning rewrite was to facilitate Maricopa's growth and economic health by creating a less restrictive code. But the proposed code falls short of that goal and, in fact, we worry that if the currently-proposed text were adopted it would actually deter our clients from bringing projects to Maricopa.

The private sector likes predictable rules. Uncertain legal rules just create another type of risk that, over time, will tend to undercut private sector activity. The new code leaves numerous ambiguities that will lead to constant debate and interpretation. A code that requires constant interpretation from staff leads to an unpredictable application of its provisions.

In particular, we want to draw attention to four examples of such ambiguities:

1. Rules of Transition - In any transition from old rules to new, a property owner can expect to find safety and security in a “transition” provision. The whole point

of any “transition” rule is to protect those who relied on the old code with some type of grandfathering. Throughout the entire Task Force discussion, everyone was assured that properties with existing PAD overlays would be grandfathered.

Thus, we are extremely dismayed to see that the currently-proposed transition rules in Article 101.06 turn that whole concept upside down. They require that projects that have obtained various approvals under the existing code be reviewed for compliance with the new code in order to obtain needed extensions. Forcing old projects to comply with new code requirements can be onerous, confusing and costly to the land owner. Further exacerbating this problem, the new code does not specify what provisions need to be complied with to grant such extensions. This omission may give way to an interpretation that existing projects must be in *full* compliance with the new code. Simply put, it would be hard to imagine a “transition” provision that would be worse from the point of view of the private sector.

2. Development Standards - Article 101.06(D) states that the new code's development standards shall apply only if not specifically modified by the PAD Overlay or specifically regulated by the existing code. From attending the task force meetings, we understand that the intent is to grandfather in existing PAD Overlays. Under Section 101.06(D), however, it appears as if the existing PAD Overlays must partially comply with the new code. The application and intent of this section is confusing.
3. Master Plan Required Overlay District - The new code includes a concept of a Master Land Required Overlay District (Article 301) which is designed to regulate the development of large, non-subdivided parcels of land. This provision is aimed at a few parcels of land that are mostly surrounded by partially-developed projects that have already brought in utilities and infrastructure.

We have been informally told that the aim of this provision is to prevent land splits and “wildcat” subdivisions. But, that is not what the proposed code says. Article 301.01(C) states that the purpose is to avoid "premature or inappropriate development that would result in incompatible uses or create public service demands exceeding the capacity of existing or planned facilities." The proposed code, however, does not define “premature or inappropriate development.” Regulating land use on the basis of whether it is “appropriate” is a hopelessly vague and subjective standard—nobody knows what this means because every person’s opinion would differ. This type of vague language will inevitably cause legal problems and challenges and will sow enormous doubt and confusion in the meantime.

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4. Extensions and Revocations – Article 502 of the new code inappropriately treats zoning approvals the same as all permits for the purposes of extensions and revocations. State law affords zoning approvals more permanence than granted permits. Applying the same revocation procedures to zoning approvals and granted permits ignores the greater protections that state law gives to zoning approvals.

Similarly, the new zoning code confusingly lumps zoning approvals together with permits for the purposes of granting extensions. Article 502.11(B) states that the zoning administrator may grant a one-year extension of any "permit or [zoning] approval." As previously stated, zoning approvals are permanent decisions that should be treated differently than the mere granting of permits. As such, it makes no sense to have procedures in place to grant extensions to zoning approvals.

Having these provisions, which are inconsistent with state law, will lead to numerous interpretations and applications. Some staff will follow the established state law procedures, while others will follow the new code.

Simply put, the ambiguity in the proposed code does not provide Maricopa's customers with clear guidance as to the Maricopa's intent or zoning process. As drafted, several new code provisions are too subjective and dependent on individual staff interpretation. The subjectivity will inevitably lead to inconsistent application of its provisions.

We appreciate your taking the time to review these concerns.

We have participated in the long and sincere efforts of the Task Force to draft a proposal, and we acknowledge and respect those efforts. If you want, I will be more than happy to meet with you to further discuss my firm's concerns. In the end, we are all working towards the same goal—ensuring that Maricopa ends up with a new zoning code that will help facilitate future economic growth and development.

Sincerely yours,

GAMMAGE & BURNHAM, P.L.C.



By for
Cameron Artigue

CA/efy

Dana Burkhardt

From: Scott Cole <scole@colepartnerships.com>
Sent: Wednesday, June 11, 2014 2:08 PM
To: Dana Burkhardt
Cc: Micah Miranda; Paul Jepson; Kazi Haque
Subject: Maricopa Zoning Code update

Dana Burkhardt, AICP
Planning Division
City of Maricopa

Dana

There are three areas of the draft zoning code that I believe need further revision. These three areas are 1) annexation, 2) expiration dates for new zoning cases and pre plats, and 3) grandfathering of existing entitlements. I believe that these concerns should be addressed prior to forwarding the draft code to the Planning Commission.

Annexation

The draft as written seems to require that newly annexed property be zoned within 6 months of annexation. This would seem to imply that a newly annexed property which has County entitlements must scrap these entitlements, and start over in the City, forcing the landowner to annex into the unknown, wasting years of work and substantial sums of money spent of the existing entitlements, and then being forced spend several more years obtaining new entitlements in the City, and spending additional substantial sums of money as the price of annexing into the City. It also seems to prohibit annexing property's that have more intensive zoning than allowed in the current general plan.

Given these circumstances I believe these sections of the draft zoning code would be a poison pill, needlessly constraining Council from annexing property that the City wishes to annex, and causing most owners to elect not to annex, and to remain and develop within the County. This could substantially constrain annexation by the City, of its planning area.

Solutions for this would be 1) to either delete the language in question from the draft zoning code and let annexation decisions be a negotiated by the owner and the City, subject to a pre annexation development agreement 2) revise the code to allow for projects subject to annexation with existing entitlements to have the projects lot count, density, lot coverage, lot sizes, open space requirements and other basic parameters of the County zoning grandfathered upon annexation, subject to updates of certain study's such as a traffic, and life safety issues, prior to obtaining final plat at the City. A section requiring the owner to obtain a general plan amendment consistent with the property's existing County entitlements concurrently with annexation could be added.

Time stipulations

In various places throughout the draft code the draft code seeks to place time stipulations on entitlements, and require meaningful progress to develop, or the existing entitlements are subject amendment or revocation by Council. As written I believe this will place the City into a competitive disadvantage with other Cities and Counties in the Phoenix metro area. In order to be competitive the City needs projects who's entitlements are "shovel ready". Requiring that zoning and plats be renewed every two years, and that entitlements are subject to City revocation or amendment if no meaningful progress to develop is determined by the City, will create a City with projects who's entitlements are constantly in a state of flux, re approval, subject to change, and which are therefore unappealing to homebuilders

Homebuilders deciding where to build in the Phoenix metro area are looking for fully entitled projects that they can record final plat and start construction on in a relatively brief period of time, with no risk that the entitlements for the property will change or expire. Projects which do not have these virtues are routinely passed on by homebuilders. It is the developers job to take a piece of raw land and spend several years and substantial sums of money to take a property to a state of entitlements acceptable to a home builder, and then to compete with other projects to attract homebuilders and commercial users. While this multiyear process is occurring a developer must also deal with cycles in the market, which cycles pay no attention to a property's entitlements time stipulations. Given the length of time required to take a project from raw unentitled land to the actual construction of homes, a two year time stipulation simply does not work, and needlessly puts the City at a great competitive disadvantage.

A solution could be for the City to rise above the competition and provide a number of shovel ready master planned communities, who's entitlements are ready to be built upon. A means of doing this would be to grandfather certain aspects of a property's entitlements such as density, lot count and other aspects central to the projects entitlements. The length of time between renewal of time stipulations should be greatly lengthened (or eliminated), with a presumption in the draft code that the entitlements, including zoning and plats based upon the zoning are to be renewed with no changes to the grandfathered aspects of the project. Other aspects of the project such as new code requirements, which do not affect the basic entitlements could be required to be updated prior to final plat, along with certain study's such traffic. An affirmative section grandfathering certain aspects of entitlements should be added to the draft code so an owner or builder does not have to look and interpret various section of the code to find guidance on these matters.

This solution would allow landowners, developers and homebuilders a level of certainty regarding their projects, and will at the same time allowing certain aspects of the projects to be updated to current code, life safety requirements and study's. Maricopa would then become a leader in providing shovel ready master planned communities, and therefore attract the best and the most developers and builders into the City.

Projects with existing entitlements

Various section of the daft code seem to affect projects with existing entitlements. Some of these sections are vague, subject to interpretation, and not clearly dealt with in one place. It is not clear to a reader of the code how existing entitlements are to be treated.

A solution would be to include a new section in the draft code affirmatively stating that existing zoning, and any plats based upon the existing zoning are grandfathered, along with a new section dealing with time stipulations (as discussed above) for existing zoning and related plats. Existing entitlements with no time stipulations should not have new time stipulations added. Plats based upon existing zoning should be grandfathered, and any renewal requirements in the existing entitlements should contain a presumption in the draft code that they will be renewed as long as they comply with the underlying existing zoning. New plats

for projects with existing zoning should be reviewed and approved based upon the existing zoning. The provision in the draft code stating that zoning and PADs which do not show meaningful progress to develop may be modified or rescinded by Council should be removed from the draft code.

If the committee will consider changes to the draft code as suggested above, I believe the City will have a code that not only makes improvements to the existing code, but also insures that the code fosters and promotes investment and ecommerce development within the City.

Please forward this memo to the members of the committee.

Scott

Scott H. Cole
Member
Hartman Ranch LLC
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Dana Burkhardt

From: Kelly Anderson <apfarms@cgmailbox.com>
Sent: Tuesday, June 10, 2014 6:43 PM
To: Dana Burkhardt; Kazi Haque
Subject: RE: Zoning Code Rewrite Public Review Draft 3

Dana,

Wanted to thank you for your time last week.

The only request that I would have is to leave our property out of the “required” designation. I base this on our discussion about the overlay and its purposes and the farm doesn’t seem to have the issues which the “required” overlay addresses.

Thanks again,

Kelly

From: Dana Burkhardt [<mailto:Dana.Burkhardt@maricopa-az.gov>]
Sent: Friday, May 30, 2014 6:21 AM
To: Kazi Haque
Subject: Zoning Code Rewrite Public Review Draft 3

Zoning Code Rewrite Stakeholders:

The **Zoning Code Public Review Draft Version 3** is now available. The low resolution file is attached and some images maybe blurry, the high resolution file is available for download [here](#). As a reminder, the Zoning Code Rewrite Task Force will meet to discuss the proposed Zoning Code at the following time and location:

ZONING CODE REWRITE TASK FORCE MEETING

When: Wednesday, June 11, 2014 @ 6pm
Where: City Hall Council Chambers
39700 W. Civic Center Plaza
Maricopa, AZ 85138

If you have any remaining questions or concerns on the revised draft Code, please contact me to schedule a time to review and discuss. Please also visit the Zoning Code Rewrite Website for additional information and updates at <http://zoningcode.maricopa-az.gov>.

Sincerely,

Dana Burkhardt, AICP
Planning Division

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City of Maricopa