



**Call to Order**

Chairperson Gillespie called the meeting to order at 6:00 PM.

**Roll Call and Introduction of New Members**

|                   |         |               |         |
|-------------------|---------|---------------|---------|
| Vice Chair Kiyler | Present | Member Kevin  | Present |
| Member Cox        | Present | Member Lovett | Present |
| Member Dixon      | Present | Member Smith  | Present |
| Member Gonzales   | Present |               |         |

**Staff Present:**

Steve Horton, City Attorney  
George Gehlert, Community Development Director  
Wes Ballew, Planner  
Charlie Scully, Planner  
Carol Hulse, Planning Technician

**Public Present:**

|                |                  |
|----------------|------------------|
| Terri Gage     | Nancy Kores      |
| Joseph Guthrie | Bob Oliphant     |
| Dave Kanaly    | Dr. Bob Richards |

Director Gehlert introduced the new Commission members, Pat Dixon and Raymond Cox. The new members shared information about their backgrounds and reasons for applying for positions on the Commission.

**Update Regarding Design Review Process, Policies, and Training Opportunities.**

Director Gehlert said that the Design Review Board function was passing to the Planning and Zoning Commission. The amendment to accomplish the transition was under revision. He expected Council to hear it on March 3 and March 17 and to pass the amendment on March 17. Based on that schedule, the amendment would be effective the third week of April.

Gehlert said the Commission was currently meeting on the third Monday of the month, except when that date was adjusted for holidays. If the caseload in the future warranted it, they might meet on the in-between Mondays as well.

Gehlert said the City currently had no design code or written design polices and until they do, they would need a Commission with design background. Staff planned to develop design policies for the Commission to review. He was uncertain if that would be in the form of code or a policy manual.

Director Gehlert explained the hearing agenda, legal advertising requirements, postings, and notification processes.

Gehlert said City staff planned to hold board/commission training sessions annually. The first one would be March 5 from 10:00 a.m. to 12:00 p.m. in the Public Safety conference rooms. He said there would also be additional training specific to planning and zoning.

He reviewed and explained the agenda structure and the consent agenda.

### **Call to the Public**

Bob Oliphant responded to the call to the public. Oliphant thanked the Commission and staff for moving the call to near the top of the agenda. He talked about what he called “the Great Locals’ Land Grab of 2005” (the Happy Jack property leased from the City). He claimed the property was being used inappropriately. The use should have been for economic development and creating jobs. He described the amount of money the City receives from the lease agreement compared to a much greater estimated amount the lessee takes in. He noted that screening requirements of a County document were not met. Oliphant said this was another example of a local insider taking advantage of a well-meaning City Council, and unfortunately, when Planning and Zoning granted the Conditional Use Permit, they were not fully informed about the purposes of that property.

### **CONSIDERATION OF MINUTES OF DECEMBER 15, 2008**

***Motion:***        *To accept the minutes of December 15, 2008 as written.*  
***Moved by:***    *Gonzales*  
***Second:***      *Lovett*  
***Vote:***          *Approved unanimously.*

### **ELECTIONS**

#### **1. Chairperson**

***Motion:***        *That current Vice Chair Ed Kiyler serves as Chair for 2009.*  
***Made by:***      *Gonzales*  
***Second:***      *Smith*  
***Vote:***          *Approved unanimously.*

#### **2. Vice Chairperson**

Darold Smith nominated Richard Kevin, who declined and suggested Diane Lovett for the position. Smith withdrew his nomination of Kevin.

***Motion:***        *that Diane Lovett serves as Vice Chair for 2009.*  
***Made by:***      *Smith*  
***Second:***      *Gonzales*  
***Vote:***          *Approved unanimously.*

**ANNUAL REVIEW OF COMMISSION BYLAWS AS REQUIRED BY SECTION IV.402 OF THE BYLAWS**

Director Gehlert directed attention to the cover memo in the packet that outlined recommendations for minor changes to the bylaws, primarily of a housekeeping nature. The memo said, in part, "Bylaws of the Planning and Zoning Commission of the Town [City] of Cottonwood were adopted September 19, 1977. Section IV.402 calls for the Secretary to schedule an annual review of these rules and procedures at the first regular meeting of each calendar year. Staff suggests consideration of amendments summarized below."

Consider proposing amendments to the by-laws as follows.

1. Section I.101 - to change the election of officers from the last regular meeting of the year to the first regular meeting of the year to allow for appointments/reappointments to the membership.
2. Replace all instances of "Town" with "City."
3. Replace all instances of "Chairman" with "Chair" and "Vice-Chairman" or "Vice Chairman" with "Vice Chair."
4. Replace "...or Matter pertaining to Legal interpretation or advice request for advice and/or interpretation shall be by Commission action" with "...or Matter pertaining to Legal interpretation or advice. Request for advice and/or interpretation shall be by Commission action."
5. Delete entire Section I.107 EX-OFFICIO MEMBERS, as it no longer applies.
6. Insert "Call to the Public" as item C in Section 207 and re-letter the current items C-I as D-J.
7. Any other amendments the Commission deems necessary.

During Commission discussion, Diane Lovett noted that the current wording states that the Chair would call for statements from property owners who were in favor but does not mention those opposed. City Attorney Horton recommended that wording should ask for discussion pro and con. Lovett recommended clarification of Section 208.3.

Chairperson Kiyler asked Counsel if the above proposal should be clarified and brought back at the next meeting. Horton advised that the Commission could have staff further revise the bylaws based on the above comments and return with them next month. However, he felt the direction was clear enough that the Commission could act on the amendments that evening.

Richard Kevin noted two typographical errors in Section 208.5. The first word in Section 208.5 is "Format" and it should be "Formal." The last sentence in Section 208.5 began with "A recommendation the the Commission ..." He believed it should say "of the" rather than "the the."

***Motion: To amend the Bylaws per staff recommendations plus the following three (3) amendments/corrections (additions in brackets, deletions lined through):***

1. **Section 208.3** "The Chair will call for statements from property owners [in support of] or opposed to the proposed Zoning Changes, ..."
2. **Section 208.5** "~~Format~~ [Formal] voting ..."
3. **Section 208.5** Change last sentence as follows, "A recommendation ~~the~~ [of] the Council ..."

**Made By:** Kevin  
**Second:** Gonzales  
**Vote:** Unanimously in favor of the motion.

### **UNFINISHED BUSINESS**

None

**CONSENT AGENDA** to officially terminate or alter existing conditional use permits as outlined below. The following items are considered by staff to be routine and non-controversial and may therefore be considered by the Commission as part of a single motion. There will be no separate discussion of these items unless a Commission Member or a citizen so requests, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.

1. **PCU 00-035** Void a permit to allow an Auto dealership in a C-1 zone. Use is inactive. Krempel Auto Dealership; 501 N. Main Street (on curve where U-Haul is currently); APN: 406-37-168.

Diane Lovett asked if both the car dealerships on the consent agenda were under conditional use permits to operate in a C-1 zone and Director Gehlert said they were.

2. **PCU 73** Convey permanent status to a permit that allowed retail and wholesale activity in an R-3 zone. Holsum Bread; 1635 E. Cherry Street; APN: 406-04-009. All stipulations were satisfied.
3. **PCU 01-015** Convey permanent status to a permit that allowed an auto service bay addition in a C-1 zone. Cottonwood Auto Sales; 755 E. Hwy. 89A; APN: 406-06-268A. All stipulations were satisfied.

**Motion:** to accept the recommendations for the individual items on the Consent Agenda

**Moved by:** Kevin

**Second:** Gonzales

**Vote:** Unanimous approval.

**NEW BUSINESS** The following items are for the Planning & Zoning Commission's discussion, consideration, and possible legal action. The Commission will not consider documents or written comments unless they were submitted at least three working days before the meeting. A verbal comment period will be provided during each hearing item. The Chairperson may impose a time limit on each speaker.

Darold Smith questioned the statement "The Commission will not consider documents or written comments unless they were submitted at least three working days before the meeting" printed above. He acknowledged that the Commission discussed such a policy but did not believe they had adopted it as policy. Smith said packet materials do not come out in time for people to comply with the three-day requirement and that people would have to look at the tedious public notices in the newspaper every day to know when there was something for comment. This was too difficult. Director Gehlert explained that the advance submission would allow staff to

include those documents in the packets. Chair Kiyler said that if someone submits a five-page document immediately before the meeting or at the meeting the Commission members do not have time to read or consider the document. However, a person could make comments or read their document during the comment portion of an item. This was not an agenda item and no action was taken.

1. **EX 07-041** Request an exception from surfacing requirements for parking areas, as provided by the Cottonwood Zoning Ordinance (Section 406.C.2.d), on ½ acre (approx.) located in a C-2 zone at 170 E. Hwy. 89A. APN: 406-06-247A. Applicant: Mingus Park and Sell LLC. Agent: Joseph Guthrie.

Planner Ballew presented the staff memo. Using projected graphics, he explained the site plan, landscape plan, site photos, and photos of the surrounding lots. He also explained the location, surrounding zoning, and uses.

Ballew said the proposed use is allowed by right. The request concerns only the surfacing requirement. The applicant requested an exception to Section 406.C.2.d, which requires that “all off-street parking areas, access ways, and driveways shall be... surfaced with a minimum 2” asphaltic concrete.” The same section of the ordinance allows for an exception to that rule if granted by the Planning and Zoning Commission. When reviewing a request for chip sealing, the Zoning Ordinance lists four criteria that the Commission should base its decision on: the nature of the use, the amount of traffic generated or expected, the grading and drainage plan for the parking lot, and other relevant factors.

The applicant proposed a 40-space “park and sell” lot on the property, similar to the one located at the corner of 10<sup>th</sup> street and Hwy. 89A. The site would be landscaped and minimal grading was proposed. No lighting would be installed and the only proposed structure was the kiosk that would accept payments.

The proposal was referred to the Public Works Department for comment. They approved the exception but asked the applicant to “double chip seal” the parking areas.

Ballew said staff supported approval of **EX 07-041** with six stipulations, which he read.

A summary of Commission discussion follows.

Lovett – asked if ADOT must approve the driveway. Ballew said the cut was approved and Gehlert said they have an approved driveway. However, they would need an access permit from ADOT.

Cox – asked if the Commission could require the applicant to landscape and maintain the ADOT right of way. Ballew said the ordinance required it.

Joseph Guthrie, the applicant, offered to answer questions.

Chair Kiyler invited comments from the public either for or against the proposal. When there was no response, he closed the floor to the public.

Discussion between the Commission, the applicant, and Staff covered the following.

- Kevin asked for an explanation of recommendation #4 requiring double chip seal. Gehlert explained that the ordinance required asphaltic concrete but because this would be a static display area, staff felt chip seal was adequate. The City engineer recommended double chip seal. Kiyler asked the applicant if he agreed. Guthrie said he would prefer to do one layer but would do two.
- Two commission members raised questions about ADOT approval. Gehlert said that ADOT would not allow them to operate until they have ADOT approval.

**Motion:** *To approve EX 07-041 (Guthrie Exception) with the following six (6) stipulations.*

- 1. That the development conform to the site and landscaping plans dated 01/27/09 and the letter of intent dated 01/27/09, as may be further modified by Design Review Board.*
- 2. That all Code Review Comments from the meeting of 10-18-07 and Public Works Comments from 10-11-07 be addressed.*
- 3. That grading and drainage plans be submitted prior to the Design Review Board Hearing*
- 4. That the lot be double chip sealed as requested by the Public Works Department*
- 5. That a final inspection be made by the Public Works Department to ensure that the chip seal meets their standards.*
- 6. That the right of way directly in front of the property be landscaped, preferably with plants that require no irrigation*

**Moved by:** *Lovett*

**Second:** *Gonzales*

**Vote:** *Unanimous approval.*

2. **ZO 08-051** Amendments to the Cottonwood Zoning Ordinance pertaining to Section 201. Definitions regarding new definitions for various types of housing, including boarding house, bed and breakfast establishment, group home for the disabled, correctional transitional facility, and similar institutional housing types; and to Section 404 (General Provisions) adding procedures and standards for boarding house, correctional transitional facility, and bed and breakfast establishments.

Planner Scully presented the 10-page staff memo regarding proposed amendments to the Zoning Ordinance that related to housing types. Some of the topics covered were:

- Background/historical
- Fair Housing Act
- New Definitions
- Fair Housing and the Americans with Disabilities Act (ADA)
- What are “Places of Public Accommodation” and “Commercial Facilities” under ADA?

- ADA and Enforcement
- Summary of Proposed Housing Amendments
  1. Group Home Registration Requirements
  2. Group Home for the Handicapped
  3. Boarding House
  4. Correctional Transitional Facility
  5. Bed and Breakfast Facilities.

Scully provided in-depth explanations for each topic.

A lengthy discussion that involved staff (including City Attorney Horton) and the Commission ensued. Much of that discussion centered around effects of group homes on the surrounding neighborhoods and rights of the neighborhoods and of the clients served by group homes. A summary of that discussion follows.

Regarding group homes:

- There could be no discrimination. Handicapped people must be allowed to do the same things as non-handicapped people.
- Group homes are normally located in residential districts. They cannot be disallowed but could have registration requirements and some rules to provide a level of review.
- Reasonable, neutral actions to preserve the residential character of a neighborhood could be taken but there can be no discrimination.
- Attorney Horton said the goal is not to become one of those (discriminatory) cases that become part of federal enforcement. Sometimes cities need to reasonably accommodate. That could mean taking an otherwise perfectly lawful piece of the zoning ordinance or other regulation and ignoring it.

Regarding correctional/transitional facilities

- Housing types such as “Correctional Transitional Facility” could not be disallowed but could be restricted. They do not necessarily have to go in residential districts.
- You can prohibit dangerous individuals. Dangerousness is to be assessed on a particularized level. Horton said the assessment must be made based on the nature, duration, and severity of the risk of injury to others, the probability that injury would actually occur, and whether there were any reasonable accommodations to eliminate the threat. It could not be based on stereotypes.”
- Active addiction to prescription or illegal drugs or active alcoholism is not a protected disability but being in recovery is.
- ADA accessibility requirements for wheel chair accessibility, etc. cannot be piled on in advance. If someone had that need, they could request that the operator of the facility address it.

Some of Director Gehlert’s possible solutions were as follows.

- Regulate correctional/transitional facilities to commercial zones.
- Require a process similar to a zoning clearance.
- Set up a spacing requirement so they do not all end up in the same neighborhood.
- Any question of endangerment could revoke the zoning clearance.

As the discussion continued in the vein of what the City can and cannot do, Attorney Horton said they (he and City staff) agonized over the issue. He stressed that even enforcement was a necessary component.

Director Gehlert emphasized the need for a better code. He said there are all kinds of group homes – some are truly exempt from zoning and some are not. Exemption is often dependent on their handicap status but we cannot ask about that. The Ordinance is not clear. Group homes have the same rights as a family. The question is what level of regulation would be imposed on a family? Gehlert explained how the proposed amendments would improve the existing code.

Planner Scully noted there were several policy issues in the language of the revisions beyond the boarding/recovery house controversy. He said there were a few things to tweak, but it was close to being ready to go forward.

Chair Kiyler invited comments from the public.

Terri Gage responded and spoke at length. She said she was an active member of the Main and Mingus Neighborhood Watch group. Citing conversations she had with Joshua Rucker, Project Director for the Fair Housing Accessibility Act, she said the City was responsible for monitoring what goes on in these homes. There are many ways the City could apply the Zoning Ordinance without overstepping anything.

Gage said the current proposal was much broader than the October proposal and she encouraged the following.

- Extensive definitions
- Many of these (housing types) become businesses and they should be defined as businesses
- Consider registration with certain requirements such as a monthly inspection or report - that could be broadly applied if applied to everyone equally.

Gage read the following into the record. “Those who are not covered or protected under the Fair Housing Act are current users of illegal controlled substances, persons convicted of illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are specifically not considered disabled under the Fair Housing Act by virtue of that status. Persons released from prisons, for example, that also happen, coincidentally, to be recovering drug or alcohol patients are likewise not automatically covered by the Fair Housing Act by virtue of their former drug use.” She said this was something to keep in mind and the burden fell on the City to determine who was in one of these group homes. Residents who were not protected would disqualify that home for protection under the Fair Housing Act.

Bob Oliphant spoke saying there were currently recovery houses operating illegally within the City and there had been little or no enforcement to shut them down. Landlords saw there was almost no enforcement and that made the City of Cottonwood a gold mine for slum landlords. The options were to stop paying attorney fees or go at it aggressively and run some risk of getting into a lawsuit.

Dr. Bob Richards spoke next. After commending Mr. Scully on the work he had done and noting it was very complicated he commended Commissioners Lovett and Smith for actually reading the document. He also said it takes more than reading, it takes study. The study would include the history of the Fair Housing Act so they could formulate questions to ask staff and make decisions they felt comfortable with rather than looking at the clock and saying, "We have to pass it."

Chair Kiyler asked if anyone else wanted to speak. When no one responded, he closed the floor to the public.

Darold Smith asked to have the proposal sent back for further review and to allow an opportunity for the two new commissioners to come up to speed. Each Commission member expressed feelings similar to Smith's.

Richard Kevin said he feared there were some clever people taking advantage of Cottonwood and doing as they pleased. Cottonwood was just a small piece of this geographically. It seemed ridiculous for this type of work to stop at a street with 11,000 people (in the County) living on the other side of that street. His understanding was that a halfway house and a correctional/transitional facility were not synonymous. He wanted to make a distinction between "halfway houses" (recovery houses) and "correctional/transitional facilities.

**Motion:** *To continue ZO 08-051 allowing staff to make refinements and new Commission members to become familiar with the proposal*

**Moved by:** *Gonzales*

**Second:** *Smith*

**Vote:** *Unanimous approval.*

3. **ZO 08-026** Amendments to Section 407.Landscaping Requirements, including revised property development standards for landscaping and an updated plant and tree list to address appropriate low-water use plants for Cottonwood.

Planner Scully gave a lengthy presentation about the proposal to amend the landscaping requirements in the Zoning Ordinance. He gave several reasons to justify the amendments and said there were two main parts of the proposal

1. Looking at standards, methodology, landscaping, and site plans differently
2. Looking at the recommended plant list differently.

Scully said understanding the benefits of good landscaping was the first step but regardless of the benefits, some people recommend less landscaping because of water issues.

In summary, some of the things the proposed amendments would accomplish would be

- To discontinue looking at simple percentages of landscaping and provide guidelines regarding what we are trying to accomplish
- Better organize the recommended plant list
- Recommend fewer medium water usage plants and more xeriscape type plants
- Set standards about size of landscape islands in parking lots to improve survival of the plantings
- Improve quality of site plans around the buildings such as pedestrian quality and landscape architecture

- Blend retention basins with the environment rather than being only a public works feature
- Require screening of backflow prevention devices making them part of the landscaping feature
- Provide education regarding water conservation
- Provide the opportunity to propose non-listed plants and use them if they fit the overall goals in the plan.

Scully emphasized this would only apply to commercial and industrial. None of it would apply to single-family residential, unless in a planned development. None of it would be applied retroactively.

Scully said a number of landscape professionals looked at the proposal to assure the recommended plants were available locally. He also said it warranted further review by landscape professionals.

He said that changing the system would change ways that developers look at landscaping and they might have to reconsider their site plans.

Commission members commented as follows.

- Darold Smith - suggested having master gardeners, Dr. Jay Fleishman in particular, review the proposal.
- Ray Cox – liked structure that puts plants together that would grow together. Believed oleander should be on the prohibited list. Said it should be strongly recommended to homeowner associations to require landscaping to come from the proposed plant list.
- Diane Lovett – thought it was great and she enjoyed reading it. She asked if the developer could be asked to include landscaping requirements in the deed restrictions. Director Gehlert said they currently do with PADs but the current code does not require that of a subdivision.
- Richard Kevin – glad they were doing this - it was timely. Answering Kevin’s question about application to single-family residential, Scully said a homeowner might use it as an educational tool. Kevin also felt the oleander should be prohibited.
- Pat Dixon – agreed it was a good idea. Developers, especially ones from out of the area, would welcome the list.

Chairperson Kiyler invited comments from the public. When none was forthcoming, he closed the floor.

Director Gehlert asked for ideas to simplify the lengthy code. Darold Smith said the master gardeners might have ideas.

**Motion:** *To continue ZO 08-026 for further consideration.*

**Moved by:** *Gonzales*

**Second:** *Cox*

**Vote:** *Unanimous approval*

4. **GP 08-063** Proposed bicycle plan.

Director Gehlert introduced the topic and gave a brief history of how the bicycle plan began. City Council asked staff to develop a plan based on the collector street system so it would require little capital improvement and lower costs. Planner Ballew worked on it for several months with Members of the Verde Valley Cyclists Coalition, Dr. Bob Richards and Randy Victory. Gehlert said it was a work in progress and they were looking for commentary to guide it to completion. He explained the public review process.

Using a projected map, Gehlert explained the proposed routes and highlighted bus stops. He explained potential links to future systems in the unincorporated areas and Clarkdale. He said part of the task was demonstrating where people lived and where bike routes were needed.

Gehlert said the plan resulted in a task list with assignments directing the management of the project to the City Council and their boards and commissions. It talked about:

- the City becoming a leader by accommodating bicycles at all their facilities to encouraging bicycle use
- encouraging their employees to ride bicycles
- putting up bike racks and shelters where needed
- continuing to work with the Verde Valley Cyclist Coalition to develop data and suggestions for improvements or additional links that might benefit the system
- directing the CAT (Cottonwood Area Transit) to add bike racks to the busses, and to get double duty out of the shelters by using them for promotional and directional signage.
- overlaying the bicycle routes onto the City's fixed-route bus system would produce a multimodal opportunity.

Gehlert explained that the bulk of the task list falls to Public Works because they are the "keeper of the streets," (where the system would exist). For the most part, bike routes were a series of stripes and signage on existing streets. Public Works would be responsible for developing and adopting the design standards that would accommodate bicycle traffic on all new streets as part of the collector system and maintaining the system.

Gehlert noted that the Parks and Recreation and Police departments were involved. He said the public process would occur during March and April and the plan would probably come back to the Commission for a recommendation in May.

Diane Lovett noted that the plan showed some bicycle routes along the Verde River, which had long been an equestrian trail. Those trails would have to accommodate more than bicycles. Gehlert said the scope of this project was an on-street system. However, they made some suggestions about other linkages in the process. Lovett urged the inclusion of other entities while planning the system.

Chairperson Kiyler said Dr. Bob Richards wanted to speak. However, Dr. Richards said he would pass.

***Motion:*** *This was an update only. No action was taken.*

## **DISCUSSION ITEMS**

1. Possible future work sessions – No discussion.
2. Departmental reports, such as Building Department and Code Enforcement reports.

Darold Smith asked when David Carl would be shut down. Gehlert said after the administrative process was exhausted, it went into the criminal phase, but the City Magistrate refused to hear it.

## **Informational Reports and Updates**

Director Gehlert announced

- The DRB had four items on their February 26 agenda and he described those items
- joint session with City Council on March 12 re: housing and economic development
- Wood burning and noise ordinance and DRB code amendment items would be on the City Council agenda on March 3
- Planning and Zoning Commission agenda on March 26 would include continuations of the Happy Jack Materials yard and Materials Resource use permits
- A training session on March 26 for the newly adopted Rental Maintenance Code – primarily for staff but the Commission and public were welcome to attend
- On January 20 the City Council approved the final site plan for the Fry's Gas Station, Coppergate Industrial subdivision, Camping, and Graffiti ordinances
- Issued a temporary certificate of occupancy to the Family Dollar store but are still working on landscaping details.

## **Call to the Public**

No response.

## **Adjournment**

*Chairperson Gillespie adjourned the meeting at 9:02 p.m.*

*Minutes prepared by:* Carol Hulse

*Date Approved:* \_\_\_\_\_