

**MINUTES
JOINT WORK SESSION
MAYOR and COMMON COUNCIL
and the
PLANNING & ZONING COMMISSION
of the
TOWN OF CAMP VERDE
COUNCIL CHAMBERS
473 S. Main Street, Room 106
WEDNESDAY, JULY 11, 2007
5:00 P.M.**

Minutes are a summary of the actions taken. They are not verbatim.

1. Call to Order

Mayor Gioia called the meeting to order at 5:02 p.m.

2. Roll Call

Mayor Gioia, Vice Mayor Hauser, Mike Parry, Ron Smith, Bob Kovacovich and Norma Garrison, were present, Greg Elmer was absent. Planning and Zoning Commission Members Robb Witt, James Bullard, Bob Burnside and Joe Butner.

Also Present:

Town Attorney William Sims, Interim Town Manager Dave Smith, Dane Bullard, Lynda Moore, Michael Bluff, Ron Long, Deborah Barber, Gerard Laurito and Virginia Jones.

3. The Town Attorney will provide a training session on Proposition 207, a recently enacted law dealing with limitations on condemnation and regulatory takings. Council, the Planning & Zoning Commission, and staff may have discussion concerning these matters.

Attorney Sims presented a power point presentation regarding Proposition 207 Private Property Rights Protection Act. A copy of the presentation is attached and becomes a permanent part of the record. Sims explained Proposition 207 and its applicability to changes in property regulation. Proposition 207 limits the use of condemnation to situations for public use and sets forth the rights of the property owner when the government exercises the power of condemnation. Proposition 207 provides property owners just compensation if the value of a person's property is reduced by enactment of a land use law. If a property owner is successful in a condemnation lawsuit the municipality would be required to pay the land owner's attorney fees and costs.

Sims stated waivers should only be used in legislative context, not administrative items. Sims advised in every case it is best to work closely with property owners and be cautious in asking any property owner to sign the waiver. Council suggested the Manager set a meeting between the Planning & Zoning Office and the Clerk's Office to review the Business License application and process.

4. Adjournment

On a motion by Hauser, seconded by Smith, the meeting was adjourned at 6:00 p.m.

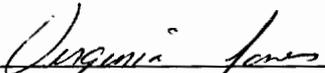


Virginia Jones, Recording Secretary

CERTIFICATION

I HEREBY CERTIFY THAT THE FOREGOING, minutes are a true and accurate accounting of the discussion of the Mayor and Common Council of the Town of Camp Verde during the Work Session of the Town Council of Camp Verde, Arizona held on the 11th day of July 2007. I further certify that the meeting was duly called and held, and that a quorum was present.

Dated this 26 day of July 2007.



~~Deborah Barber, Town Clerk~~
VIRGINIA JONES, Deputy Clerk

PROPOSITION 207 ISSUES

1

CHANGES

- Condemnation
- “Regulatory takings”

2

CONDEMNATION

- The issue: What is a “public use”?
 - U.S. Constitution, Fifth Amendment. “. . . nor shall private property be taken for public use without just compensation.”
 - Arizona Constitution, Art. 2, Sec. 17:
 - “Private property shall not be taken for private use”

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CONDEMNATION-ARIZONA

- Condemnation for redevelopment before 2003.
 - Local governments commonly condemned for economic development and redevelopment purposes.
 - Parties paid own attorneys’ fees and costs.

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CONDEMNATION-ARIZONA

- *Bailey v. Meyers*
 - Bailey’s Brake Service condemned for private redevelopment.
 - Court of Appeals struck down Mesa’s use of condemnation.
 - Public benefits must substantially outweigh the private character of the end use when redevelopment results in private ownership and operation.
 - The intended use’s public benefits and characteristics must substantially outweigh private nature.

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CONDEMNATION – U.S.

- *Kelo v. City of New London*
 - High unemployment, aging population, low tax base.
 - Developer proposes global research facility in exchange for 99-year site lease at \$1 per year.
 - New marina, hotel, 80 housing units, conference center, Coast Guard museum, office. Retail, 850 temporary construction jobs, 940 indirect jobs, \$680,000 to \$1.2 million in tax revenue.
 - Losses: Many existing homes.

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CONDEMNATION – U.S.

- *Kelo v. City of New London*
 - Redevelopment Plan OK.
 - Adopts a broad interpretation of public use as “public purpose.”
 - Defers to legislative determination that the area was distressed enough to justify the economic development project.
 - Rejects rule that economic development is not public use.
 - Dissent (O’Connor, with Rehnquist and Thomas):
 - Nothing under this ruling stops a government “from replacing any Motel 6 with a Ritz Carlton, any home with a shopping mall, or any farm with a factory.”

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PROPOSITION 207

- Reaction to U.S. Supreme Court condemnation ruling: *Kelo*.
- Not really necessary in Arizona: *Bailey*.
- But: significant limitation on regulatory takings.

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Prop. 207: “Land Use Law”

- Any new statute, rule, ordinance, resolution, or law that regulates the use or division of land or any interest in land or farming or fostering practices.

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What does Prop. 207 apply to?

- Rezoning
- Text amendments
- Overlays
- Historical districts
- Design review
- Subdivision plats
- Hillside ordinances

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What does Prop. 207 not apply to?

- General plan
- Development fees
- Right-of-way dedications for traffic
- Other exceptions set out in Prop. 207

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Prop. 207 Increases Regulatory Taking Risk

- Before: Must deny all economically viable use.
- Now: Any diminution in value = liability.

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Is the sky falling?

- Pull any land use regulation into the list of Prop. 207 exceptions.
 - Traffic, fire codes, building codes, health and sanitation, transportation, traffic, pollution, solid/hazardous waste.
 - Nuisance
 - Federal law
 - Sex and drugs
 - Prior regulations
 - Only apply to property owner directly regulated.

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- If not an exception:
 - Request waivers
 - Document property owner approval
 - Show no diminution in value

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- If really encounter a problem, waive the requirement as to the complaining owner. This would be the “we didn’t mean it” excuse.
 - Potential equal protection problems – triggers 42 USC § 1983 exposure.

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What is permitted under the Prop. 207 exceptions?

- Prop. 207 exempts health and safety, but leaves out welfare. Where does this leave restrictions on:
 - Child care in the home
 - B & B’s
 - Guest houses
 - Home occupations
 - Limitations on renting to students
 - Radio antennae

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What about the neighbors?

- Is it possible to impact adjacent properties?
 - If rezone to permit school, twenty-five residences, health care institution or a child care group home adjacent to agricultural use, the farmer will have a claim arising out of restrictions on the use of pesticides under A.R.S. § 3-365.
 - If rezone to permit school, then there are limits on alcohol sales and adult entertainment.
 - Permit a use that imposes greater setbacks on adjacent property (e.g., sewer treatment plant).

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What about waivers?

- Use waivers only in legislative context.
 - Rezoning
 - Overlays (need 100% of the property owners to waive – unless can show increased value).
- Don’t use in administrative proceedings.
 - If ask for waiver and property owner refuses, you have just made the record to document the property owner’s refusal.

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Implicit Waivers

- Get acknowledgment that property owner agrees to the plat, the site plan approval, the conditional use permit or other administrative action.
 - “Property owner hereby agrees and accepts plat.”
 - “Property owner hereby acknowledges no diminution in value.”

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Indemnitees

- Bad idea.
- May have application in annexation context. If only 80% of the property owners in the area to be annexed approve of the annexation, the other 20% could bring a claim. Town could either remove the 20% from the annexation area or try to get indemnity.

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Timing of Waivers

- After P&Z with ability to reconfirm if Council adds new stipulations.
- Don't make the waiver a condition to hearing the matter.

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Other Waiver Issues

- Must be signed by property owner.
- Are waivers needed if the result of the land use regulation does not reduce the property owners value?
- Do waivers need to be recorded?

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Claims Process

- Now property owner has three years to file a cause of action; significant expansion over notice of claim statutes that typically protect cities and towns.
- Property owner need not exhaust administrative remedies. A property owner is not even required to submit a land use application as a prerequisite to demanding or receiving just compensation.

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Attorneys' Fees

- A property owner who prevails in an action for just compensation based on diminution in value receives attorneys' fees – becomes a disincentive to cities and towns to litigate and incentive to the property owner to litigate.
- Cities and towns are expressly prohibited from getting attorneys' fees. Until Prop. 207, a city or town could at least be awarded attorneys' fees if a property owner brought a claim without substantial justification.

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Attorneys' Fees

- If the landowner wins and the taking is determined not to be for a public use, the landowner must be awarded reasonable attorneys' fees, costs and expenses.

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Work With Developers

- If a city or town wants to adopt a land use regulation for which a waiver cannot be obtained (e.g., text amendment; overlay; down-zoning to protect public interest), document how the action does not diminish property values.
- Avoid aggressive actions that helped spawn Prop. 207.
- Try to avoid letting property owners' attorneys take control in order to win an award of attorneys' fees.

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Case Studies

- Time limits on use permits.
- Denial of business license based on zoning ordinance complaint.
- Annexation.
- PAD zones.

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