

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

Clerk of the Superior Court
CLERK OF THE SUPERIOR COURT

FILED
JAN 09 2025 4:51 p.m.
A. VILLELA, Deputy

CV 2024-024247

01/09/2025

HONORABLE PETER A. THOMPSON

CLERK OF THE COURT
A. Villela
Deputy

HENRY H HAIGHT

PATRICK J PAUL

v.

TOWN OF WICKENBURG, et al.

KRISTIN MACKIN

J CHRISTOPHER GOOCH
JUDGE THOMPSON

Under Advisement Ruling

Plaintiff's First Amended Special Action Complaint seeks Declaratory Relief and Mandamus Relief against the Town of Wickenburg Defendants (the Town), comprised of the Mayor and Town Council, as well as Real Party in Interest Wellik Foundation. Specifically, Plaintiff requests two acts by this Court; first, issuance of an order requiring the Town to hold a hearing to take action on Ordinance 785 pursuant to A.R.S. § 9-462.01(E) and second, order the Town to revert zoning of the parcel affected by Ordinance 785 to its prior status. The parties have stipulated to consolidation of both the injunctive relief and final resolution of the issues on their merits into one hearing pursuant to Rule 65(a), Arizona Rules of Civil Procedure. The parties further stipulated to waive an evidentiary hearing and present the matter for ruling based upon the record in the docket and oral argument.

On January 8, 2025, the Court held oral argument in this case and took the matter under advisement. The Court has now fully considered all points, authorities and arguments presented by counsel at the hearing as well as the pleadings and briefing on the previous Motion to Dismiss filed by the Town of Wickenburg. The Court now enters its ruling.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-024247

01/09/2025

Factual Background

Ordinance 785 was adopted by the Town of Wickenburg in 1995 as a phased rezoning of the property in question. The PAD Zoning approved by the Town Council was for lower density residential housing. The current proposed project is for higher density affordable housing. The parties do not dispute that A.R.S. § 9-462.01 applies to Ordinance 785 and its enforcement.

At the lengthy and involved August 5, 2024 council meeting, residents of Wickenburg spoke both for and against the new project. The focus of this proceeding is not the merits of the project but the zoning status of the parcel to be developed. More specifically, whether the Town Council either took action in excess of its authority or failed to act where non-discretionary action was required.

Plaintiff argues that Ordinance 785 requires automatic reversion of zoning to pre-ordinance status because the phased steps of development did not timely occur. He argues that Ordinance 785 binds the Town Council to hold a hearing and revert the zoning. The Town argues that they were only required to conduct a hearing, which was held, and that the decision to “take no action” is a legislative act which is an option under A.R.S. § 9-462.01(E). They further argue that taking no action leaves the contingent PAD Zoning in place for the new project to move forward. However, neither the Minutes of the Town Council Meeting for August 5, 2024, nor the decision to “take no action” on Ordinance 785 as provided in the Town Council documentation indicate that the Town Council made that decision as a mechanism to elect one of the options available under A.R.S. § 9-462.01(E).

Standing To Bring This Action

The parties have not presented an in-depth analysis of Plaintiff’s standing, or lack thereof, to bring this action. Discussion was held at oral argument as to whether an evidentiary hearing was necessary with the parties expressing willingness to have the Court decide this issue based upon the existing record. Plaintiff is the Trustee of the Henry H. Haight IV Trust which owns property roughly 700 feet from the property which is the focus of the zoning dispute. Plaintiff alleges that the particular location of his home to the proposed low-income housing will result in a disproportionate impact to his enjoyment of his property based upon increased traffic, crime and noise compared to the burden to be borne by Wickenburg citizens as a whole. Although generalized harms are not generally sufficient to confer standing, circumstances where there is a basis to determine a palpable injury to a Plaintiff will support standing to bring an action. In this case, the property affected by the zoning is not merely within the same town boundaries but sits 700 feet from the residential home owned by Plaintiff.

THE COURT FINDS that Plaintiff has standing to bring this action.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-024247

01/09/2025

Declaratory Relief and Mandamus Relief

Plaintiff seeks an order declaring as a matter of law that the Town is required to comply with the language of Ordinance 785 and A.R.S. § 9-462.01(E) by holding a hearing to take administrative action reverting the subject parcel to its pre-Ordinance status. The Town argues that its reading of Section II of Ordinance 785 would establish PAD Zoning permanently in place with no need for completion of anything beyond Phase I of the project so long as Phase One has been submitted to the Planning and Zoning Advisory Commission and Council for approval. Section II provides:

SECTION II. Termination of PAD Zoning

This Zoning Ordinance amendment shall terminate and the zoning classification of the affected property shall revert to its prior district classification at the end of three (3) years following the effective date of this Ordinance if the final development or Site Plan or phase one thereof has not been submitted to the Planning and Zoning Advisory Commission and Council for approval. When the submittal is phased, each subsequent phase shall be submitted within three (3) years of approval of the previous phase. The Council may grant one (1) extension of time not exceeding two (2) years for any phase of the development. The Planning and Zoning Advisory Commission and the Council shall hold a public hearing prior to any such revision.

The Town's interpretation of Section II requires only submission and approval of Phase One by the Planning and Zoning Advisory Commission and Council to satisfy the contingent PAD Zoning. This would render the next two sentences of Section II meaningless. The Court reads all three sentences in Section II in harmony with the others to convey the intent of the plain language. The language clarifies that, if the project was phased in development, Ordinance 785 intended compliance with development of each phase in step with the stated timeline to qualify for the PAD Zoning. This does not mean that completed phases would revert to prior zoning, only that zoning for the uncompleted phases of the property would revert to previous zoning. However, even without the enactment of A.R.S. § 9-462.01, the Town Council recognized that zoning is a legislative act and opted to require a hearing before any zoning revision. That hearing did take place.

The Town presents thorough documentation that a hearing for the specific purposes of addressing A.R.S. § 9-462.01(E) as to the subject property took place on August 5, 2024. The minutes of that duly noticed and held public meeting were provided as a public record under Exhibit F to the Town's Motion. The Town Council was told that the completion of Phase One of the original project, Pueblo Cassandra, was complete. The Town Council was told that

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-024247

01/09/2025

although records of submissions and approval for Phase One were not available, the completion of the project should be considered as evidence that Phase One was accepted and approved by the Planning and Zoning Advisory Commission and Council. There is no dispute that the additional phases of the original project were never submitted within the timelines required by Ordinance 785. The minutes make clear that, initially, since there was no compliance with Ordinance 785 as to the remaining phases of the original project, the hearing was being held to decide which of the options under A.R.S. § 9-462.01 should be taken by the Council. Those options were stated as; “take *administrative* action to (1) extend, (2) remove or (3) determine compliance with the schedule for development or (4) take legislative action to cause the property to revert to its former zoning classification”. See A.R.S. § 9-462.01(E) (*emphasis added*). However, at the conclusion of the two plus hour meeting, the Town Council was told that there was also the option to “take no action”.

Arizona cities and towns are political subdivisions of the State of Arizona and receive their powers to regulate planning and zoning by statute. That statutory scheme sets out the parameters of legislative function for cities and towns for planning and zoning. The procedural history of Ordinance 785 adopted in 1995 is well documented in the Motion, Response and Reply. After adoption of the ordinance, the Arizona legislature enacted A.R.S. § 9-462.01 which applies retro-actively to Ordinance 785. A.R.S. § 9-462.01(E) specifically provides:

E. The legislative body may approve a change of zone conditioned on a schedule for development of the specific use or uses for which rezoning is requested. If, at the expiration of this period, the property has not been improved for the use for which it was conditionally approved, the legislative body, after notification by certified mail to the owner and applicant who requested the rezoning, shall schedule a public hearing to take administrative action to extend, remove or determine compliance with the schedule for development or take legislative action to cause the property to revert to its former zoning classification.

While it is clear that cities and towns within Arizona may enact their own planning and zoning ordinances, where they choose to make a change in zoning contingent or phased based upon stages of development, they must comply with A.R.S. § 9-462.01(E). That statute states that where the required improvements for which the contingent zoning was granted are not completed, the legislative body *shall* “schedule a public hearing to take administrative action to extend, remove or determine compliance with the schedule for development or take legislative action to cause the property to revert to its former zoning classification”. This language respects the legislative discretion of cities and towns by permitting them to administratively modify or remove the time constraints for the contingent zoning, which would effectively make the zoning change permanent without the development timeline requirements or opt to proceed with the legislative option to rezone the parcel. However, there is no “do nothing” option to ignore the

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-024247

01/09/2025

contingent development timeline and still retain the zoning. The “doing nothing” option accepted by the Town Council does not state it was taking no action as the equivalent of administrative action to remove or modify the timeline requirements of Ordinance 785. The Town Council of Wickenburg may either take administrative action it deems appropriate or exercise its full legislative discretion as what option to undertake regarding the zoning adopted in Ordinance 785, as long as it is one of the options prescribed for this situation under A.R.S. § 9-462.01(E).

Plaintiff also argues reversion of zoning of the subject parcel to pre-Ordinance 785 status is an administrative act and not a legislative act. Therefore, Plaintiff contends, this Court may order the town to take action for a non-legislative function. However, this conflicts with the wording of the final sentence of the Ordinance which requires a hearing prior to “any such reversion”. As set forth in the documents provided by the Town of Wickenburg in it’s Motion To Dismiss, there were strong recommendations against reversion of the zoning based upon perceived liability exposure. Ordinance 785 requires a hearing before reversion of the property to its prior zoning status. The requirement to hold a hearing would be meaningless if the Town Council enacting the Ordinance merely required an automatic administrative task. The Court is not persuaded that it may simply order the Town of Wickenburg to take the requested action in the face of the clear language of both Ordinance 785 and A.R.S. § 9-462.01(E).

THE COURT FINDS:

1. That Ordinance 785 and A.R.S. § 9-462.01(E) require the Town Council to hold a properly noticed hearing regarding Ordinance 785;
2. That A.R.S. § 9-462.01(E) requires the Town Council to take one of the specified actions listed therein regarding Ordinance 785;
3. That the failure to take one of the listed actions is an abuse of discretion as to the Town Council’s statutory zoning powers; Therefore,

IT IS ORDERED as follows:

1. Granting, in part, Plaintiff’s request for Declaratory Relief and Injunctive Relief requiring the Town Council of Wickenburg to notice and hold a meeting to take one of the options specified by A.R.S. § 9-462.01(E) as it relates to Ordinance 785 within 120 days from the date of this order;

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-024247

01/09/2025

2. Denying Plaintiff's request for Mandamus Relief in the form of an order requiring the Town of Wickenburg to revert the subject parcel to its zoning status prior to enactment of Ordinance 785.
3. No bond is required in association with the issuance of this Order as the Town of Wickenburg is a political subdivision of the State of Arizona;
4. No further matters remain pending before this Court;
5. This is an appealable order as defined by A.R.S. § 12-2101(A)(5)(b).

DATED this 9th day of January, 2025.

A handwritten signature in black ink, appearing to read "Peter A. Thompson", is written over a horizontal line.

HONORABLE PETER A. THOMPSON
JUDICIAL OFFICER OF THE SUPERIOR COURT