



Cochise County Board of Supervisors

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RICHARD R. SEARLE
Chairman
District 3

PATRICK G. CALL
Vice-Chairman
District 1

ANN ENGLISH
Supervisor
District 2

JAMES E. VLAHOVICH
County Administrator

EDWARD T. GILLIGAN
Deputy County Administrator

ARLETHE G. RIOS
Clerk of the Board

AGENDA FOR WORK SESSION

Tuesday, August 16, 2016 at 1:30 p.m.

BOARD OF SUPERVISORS EXECUTIVE CONFERENCE ROOM
1415 MELODY LANE, BUILDING G, BISBEE, AZ 85603

ANY ITEM ON THIS AGENDA IS OPEN FOR DISCUSSION

ROLL CALL

Members of the Cochise County Board of Supervisors will attend either in person or by telephone, video or internet conferencing.

INTRODUCTIONS

ITEMS FOR DISCUSSION

Community Development

1. Discussion and possible direction regarding assurance agreement extensions.

Pursuant to the Americans with Disabilities Act (ADA), Cochise County does not, by reason of a disability, exclude from participation in or deny benefits or services, programs or activities or discriminate against any qualified person with a disability.

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Cochise County Board of Supervisors

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DIS-3049

Items For Discussion 1.
Community Development

Work Session Board of Supervisors2

Meeting Date: 08/16/2016

Assurance Agreement

Submitted By: Arlethe Rios, Board of Supervisors

Department: Board of Supervisors

Presentation: No A/V Presentation Recommendation:

Document Signatures: # of ORIGINALS Submitted for Signature:

NAME of PRESENTER: Paul Esparza TITLE of PRESENTER: Planning & Zoning Director

Mandated Function?: Source of Mandate or Basis for Support?:

Information

Agenda Item Text:

Discussion and possible direction regarding assurance agreement extensions.

Background:

The Board requested a work session to discuss assurance agreement extensions.

Department's Next Steps (if approved):

n/a

Impact of NOT Approving/Alternatives:

n/a

To BOS Staff: Document Disposition/Follow-Up:

n/a

Budget Information

Information about available funds

Budgeted:

Funds Available:

Amount Available:

Unbudgeted:

Funds NOT Available:

Amendment:

Account Code(s) for Available Funds

1:

Fund Transfers

Attachments

6.9.14 Minutes.Assurance Agreements

Presentation

**PROCEEDINGS OF THE COCHISE COUNTY BOARD OF SUPERVISORS
WORK SESSION HELD ON
Monday, June 9, 2014**

A work session of the Cochise County Board of Supervisors was held on Monday, June 9, 2014 at 1:30 p.m. in the Board of Supervisors' Executive Conference Room, 1415 Melody Lane, Building G, Bisbee, Arizona.

Present: Ann English, Chairman; Richard R. Searle, Vice-Chairman; Patrick G. Call, Supervisor
Staff Present: Michael J. Ortega, County Administrator
Adam Ambrose, Civil Deputy County Attorney
Beverly J. Wilson, Planning Director
Gussie Motter, Deputy Clerk

Chairman English called the meeting to order at 1:30 p.m.

ANY ITEM ON THIS AGENDA IS OPEN FOR DISCUSSION AND POSSIBLE ACTION

PLEDGE OF ALLEGIANCE

THE ORDER OR DELETION OF ANY ITEM ON THIS AGENDA IS SUBJECT TO MODIFICATION AT THE MEETING

INTRODUCTIONS

ITEMS FOR DISCUSSION

Community Development

1. Discussion and possible direction on establishing time frames for land development entitlements granted by the County.

Chairman English indicated that in the past, the Supervisors terminated Assurance Agreements rather than extend them when no progress had been made on the subdivision. The meeting today is to discuss the ramifications of this policy.

Ms. Beverly Wilson, Planning Director, presented a review of Arizona Revised Statute 11-821.C which requires some form of security to ensure subdivision improvements. Cochise County Subdivision Regulations allow improvements to be secured by Assurance Agreements, Security Bonds, Cash or Letter of Credit. An Assurance Agreement, Ms. Wilson explained is a contract between the Board and the developer in which:

- Land is placed in a third party trust.
- Lots are platted on Assessor Maps.
- Lots cannot be sold until infrastructure improvements are completed.
- Assurance Agreement is recorded.
- A time limit is placed on the development of the subdivision through the Assurances.

- If improvements are not completed in the specified time, the County can unilaterally abandon the plat.

Ms. Wilson explained the advantages of Assurance Agreements:

- Unlike bond/cash/letter of credit, there is no cost to the developers.
- If improvements are not completed, the county does not have to get involved in completing the improvements.
- It is a fairly simple process

Ms. Wilson also noted that other jurisdictions in Arizona require that the entire development be completed prior to approving a final plat. This can cause dust issues as lots are graded, incursion of weeds, disintegrating roads, and utilities being torn apart by copper thieves.

She added that are benefits to retaining the plat in the form of higher land value for the developer. The developer also retains the investment in engineering while waiting for the market to turn around. It also avoids lot splitting. Ms. Wilson commented that while the County may deny building permits for construction in undeveloped subdivisions, it cannot stop the sale of wildcat lots once an Assurance Agreement is terminated and the trust is dissolved. Plat abandonment can also be time-consuming for staff and the cost is paid for by the taxpayers rather than the developer. There is drafting time of 14 to 40 hours, four to eight hours for report and presentation, and the Assessor's cartographer must re-draw the Assessor maps. Finally, the Abandonment must be recorded.

Responding to questions regarding staff time to abandon the plat, Ms. Wilson explained that the process is not as simple as just erasing lot lines but that easements and right-of-ways must also be abandoned and that means dealing with utility providers as well as the highway department.

Supervisor Call asked if the County could ask the developer for an estimated cost to abandon, due at the first extension.

Ms. Wilson responded that it could be done. She estimated \$2,000 for a simple plat and going up in price from there.

She went on to explain the disadvantages of extending time on assurance agreements:

- After many years with no development, the plat might no longer be realistic, although that would be more the developer's problem than the County's.
- There may be new regulations introduced since the original Assurance Agreement that aren't incorporated in that document. For example, there is the requirement for 100-year water adequacy, or creating or tying into a water company.
- If the taxes aren't paid, the tax liens are sold on individual lots of a subdivision that will never be developed as happened with the Bachmann Springs subdivision.

Weighing the advantages with the disadvantages, Ms. Wilson speculated that there was very little downside to extending Assurance Agreements.

Ms. Wilson then introduced some guests and staff she had invited to give input on this topic: Jim Vermilyea, a developer in the Red Hawk subdivision; Debbie Hammett, representing Pioneer Title Company; Rick Coffman, Castle and Cooke; and from the Treasurer's Office, Maria Pitzlin, Brenda Gojkovich Brewster, and Ed White.

Chairman English asked the Treasurer's Office to begin.

Ed White outlined the difficulties that the Treasurer's encountered when the Bachman Springs' Assurance Agreement was terminated. Due to nonpayment of taxes, over 200 Bachman

Springs' parcels were offered in a tax lien sale and 135 were purchased. After the Assurance Agreement was terminated, all of the lien certificates had to be voided and taxes plus interest had to be repaid.

There was general discussion foreclosures and the release of trusts. Ms. Wilson noted that it is usual to ask for a substitute Assurance Agreement when a trust is released due to a foreclosure.

Mr. Searle compared a right-of way, which goes with the land, to the Assurance Agreement and questioned why the agreement did not also stay with the land.

Mr. Ortega agreed that because the Assurance Agreement went with the plat, it should continue even if there is a foreclosure, just as the zoning for the parcel would stay with the land.

Chairman English suggested that the developers give their opinions.

Mr. Vermilyea stated that he would assume that the Assurance Agreement is part of the plat, but also pointed out that the economy really dictates when a project gets built so he would want to be able to extend the agreement until the economy picks up.

Mr. Coffman expressed his view that a developer wants a valid plat and expects to have an Assurance Agreement or a bond, as both work equally well.

Last year, the Supervisors had made a decision not to extend old Assurance Agreements due to the speculative nature of the early 2000's and the lack of progress on many subdivisions.

Chairman English questioned that decision, saying that the Supervisors did not want to be seen as playing favorites but decisions should be made based on the information rather than our associations. Another point that was raised was about new regulations that have come into place since the Assurance Agreement was put into place.

Mr. Ambrose assured that Supervisors that they are entitled to change the terms of the Assurance Agreement when an extension is requested. He also suggested that such wording be part of the original Assurance Agreement.

There was agreement that Assurance Agreement extensions should be considered on a case by case basis. Mr. Ambrose was also tasked with finding a way to tie the conditions of the Assurance Agreement to the plat as well as to craft language for the original Assurance Agreement that says the Supervisors may change the terms of an agreement when an extension is requested. All agreed that taxes should also be checked before an agreement is extended.

Ms. Wilson read a statement from Michael Cerepanya, a developer into the record: "Why would the Board choose not to extend these agreements since there is no cost to the County to do so. By not extending them they would be penalizing the builders and developers in a time when they are struggling to survive in the current horrible market conditions. It could cost them when the market returns in not only the cost of redoing the assurances but in being able to secure loans to move those developments forward when the market does return. It makes no sense to do this at this time and would in effect, hurt and economic recovery."

Mr. Ortega lobbied for some criteria for extending or not extending Assurance Agreements. Staff will come up with three to five items for this as well as a more historical look at the property in question. They will also give the Board an estimate of the cost to abandon the particular Assurance Agreement.

Chairman English adjourned the meeting at 2:43 p.m.

APPROVED:

Ann English, Chairman

ATTEST:

Gussie Motter, Deputy Clerk of the Board

COCHISE COUNTY

**ASSURANCE AGREEMENT EXTENSION
WORK SESSION**

AUGUST 16, 2016



Public Programs...Personal Service

COCHISE COUNTY

BOS Assurance Agreement Work Session held June 9, 2014

Minutes reflect that staff would identify some criteria for extending or not extending assurance agreements.

Staff will come up with three to five items for this.

Give the Board an estimate of the cost to abandon the particular assurance agreement.



COCHISE COUNTY

History of Assurance Agreement Extensions 2010 – 2016

BOS unanimously approved 10 assurance agreement extension requests:

2010/2013/2016 -Rancho Arizona Subdivision

2011 -Rolling Hills Subdivision

2011/2014 -The Oaks Subdivision

2012 -Red Hawk Subdivision Phase 2

2012/2014 -Sonora Verde Subdivision

2013 -Linda Vista Subdivision Phase 4



COCHISE COUNTY

Purpose of an Assurance Agreement

The mechanism to ensure that the subdivision improvements are completed before any lots are released for sale.

ARS Section 11-821:

C. “The regulations shall require the posting of performance bonds, assurances or such other security as may be appropriate and necessary to ensure the installation of required street, sewer, electric and water utilities, drainage, flood control and improvements meeting established minimum standards of design and construction.”

Cochise County Subdivision Regulations: Article 5, Section 501:

“Unless all required improvements are completed, and approved by the County before final plat approval, some method of security to guarantee improvements shall be approved at the time of final plat approval. Any such agreement between the County and the subdivider, Title Company, escrow agent, surety or financial institution shall:

- A. Be in favor of the County.
- B. Be continuous in form.
- C. Designate the County as the beneficiary.
- D. Be approved by the County Attorney.



COCHISE COUNTY

Downside of extending Assurance Agreements

Subdivision plat not subject to new subdivision regulations that may have been adopted since original plat approval.

Traffic impact, street connectivity, drainage issues, water conservation requirements and the general character of the area may have changed since original approval.

If property taxes are not paid, tax liens could be sold on individual lots in a platted subdivision that is never developed.

If the Assurance Agreement is not extended by the BOS, the subdivision plat should be abandoned.



COCHISE COUNTY

Criteria for determining an assurance agreement extension

Considered on a case by case basis.

Property taxes are current on the subject parcels.

Progress made to date on subdivision improvements.

Number of previous extensions granted.

Existing conditions affecting the ability to complete subdivision improvements.



COCHISE COUNTY

Developer Input and Questions

