

Appeal to Maricopa County Planning Commission and Board of Supervisors  
RE: MCTA 2018001 billboard  
Submitted 9.24.21 by Neal Haddad and Paul Barnes

The Board of Supervisors may not consider the Text Amendment (MCTA2018001-billboards), or must remand this matter back to the Planning and Zoning Commission (PZC), because the PZC action is arbitrary and capricious, and not in accordance with the procedure required by state law and by the PZC's own By Laws, and therefore is null and void, not ripe for consideration by the Board of Supervisors, and not properly before the Board of Supervisors for a vote on the Text Amendment. The PZC decision was also unsupported by substantial evidence because it failed to even consider several substantive points raised by opponents Here is a further explanation of the first point.

The County Attorney correctly stated that a quorum of the PZC is 6 members. See ARS 11-802.D ("each county planning and zoning commission shall consist of ten members") and ARS 11-802.K ("a majority of the commission constitutes a quorum for the transaction of business"). In this matter, only 5 members of the PZC were actually present and voted on the Text Amendment because one member recused himself due to a conflict of interest and he did not vote -- in fact, he recused himself even before any discussion of the Text Amendment, there is no indication that he was "present" during the discussion of the Text Amendment, and he came back only when the vote was taken so that he could be present at the moment that the other members voted. He did not vote at all, not even abstain; he simply was "present" when they voted.

In light of what happened regarding the "recused" member, there is a fundamental question about whether the "recused" member can be counted for establishing a quorum. See By Laws, Article II, Section 7(a) ("All references herein to a majority of the Commission shall mean a majority of the Commissioners **present and voting**, unless otherwise specifically stated in these By Laws or specifically required by statute or ordinance (unless a majority vote of the entire commission is required by the provisions of these by laws).") Because the "recused" member was not "present and voting," he should not be considered to determine a quorum, and thus there were only 5 PZC members to be counted, which is not a majority -- because, as the County Attorney said, 6 is a majority, and 6 constitutes a quorum. There was no quorum, and therefore no basis for action by the PZC. The Board of Supervisors must send the Text Amendment back to the PZC to be voted on at a meeting at which there is a quorum because 6 PZC members are "present and voting".

The County Attorney referred to Robert's Rules of Order, which he said allows the recused member to be counted towards a quorum -- the five voting-members plus the "recused" present-members add up to 6 members. But even if Robert's Rules would count the "recused" member, Robert's Rules cannot override other parts of the By Laws or state law. See Bylaw's Article II, Section 11(a).

Finally, even if the "recused" member can be counted to establish a quorum of 6, the Text Amendment was not voted on by a majority of the PZC members (only 5 voted) and it did not receive a majority vote of the 6 PZC members (it received only 3 votes in favor, not 4 votes -- which would be a majority of the quorum of 6 members). This action by the PZC cannot be considered an "official action" and cannot be considered as such by the Board of Supervisors. See By Laws, Article II, Section 7(a) (" a majority vote of the quorum shall be required for any official action"). Because there was no "official action", the Board of Supervisors must send this Text Amendment back to the PZC for "official action."