

**ORDINANCE NO. G-4176**

AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE PHOENIX CITY CODE TO REFLECT ESTABLISHMENT OF THE DEVELOPMENT ADVISORY BOARD AND CHANGES MADE IN THE DEVELOPMENT SERVICES DEPARTMENT ORGANIZATION.

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. The definition of "Building Official" set forth in Section 28-1 of the Phoenix City Code is amended as follows:

*"Building Official"* - The Director of the ~~Building and Housing Safety~~ DEVELOPMENT SERVICES Department, or his authorized representative.

SECTION 2. Section 31-45 C. of the Phoenix City Code is amended as follows:

C. Decisions under this section may be appealed within 30 days of the decision to the ~~Deputy City Manager~~ DEVELOPMENT ADVISORY BOARD who shall review the application and decision and make such disposition of the matter as is required by the facts and the applicable law.

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SECTION 3. Section 31-92 (c) of the Phoenix City Code is amended as

follows:

- (c) Appeals from decisions of the Development Services Director in application of the provisions of this Article may be taken to the ~~Deputy City Manager serving as the City Manager's representative.~~ Appeals from decisions of the Deputy City Manager may be taken to the City Council DEVELOPMENT ADVISORY BOARD. The ~~Deputy City Manager and the City Council~~ DEVELOPMENT ADVISORY BOARD, when reviewing an appeal from a decision of the Development Services Director, shall follow the rules and standards set forth in this Article. The appeal fee shall be as set forth in Appendix A.2 of the City Code.

SECTION 4. Section 32-3 of the Phoenix City Code is amended by adding a definition of "Development Advisory Board" and by amending the definitions of "City Manager's Representative" and of "Subdivision Committee" as follows:

DEVELOPMENT ADVISORY BOARD - A BOARD APPOINTED BY THE CITY COUNCIL WHICH ADVISES THE COUNCIL AND DEVELOPMENT SERVICES DIRECTOR ON THE DEVELOPMENT PROCESS, AND HEARS APPEALS OF TECHNICAL REQUIREMENTS.

City Manager's representative -- Development Services DIRECTOR OR DESIGNEE ~~executive assigned by the City Manager to hear appeals from Site Planning Branch of the Development Services Department.~~

Subdivision Committee - Senior staff of the Development Services Department who represent three major disciplines, transportation, civil engineering including the Water Services Department and planning; written communication to this committee should be addressed to the ~~Deputy~~ Development Services Director OR DESIGNEE ~~for Site Development.~~

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SECTION 5. Section 32-20(c) of the Phoenix City Code is amended as

follows:

(c) Upon final plat approval the developer shall submit for City signature, the original plat with all required owner signatures and certifications. The ~~Department's Deputy~~ DEVELOPMENT SERVICES Director ~~Project Engineering Division~~ (or his designee) shall sign the plat. The Department shall determine the next available Council approval date. The Department shall transmit the plat to the City Clerk and the request for Council approval to the City Manager's office. (Ord. No. G-3588, § 2.)

SECTION 6. Section 32-32(a)(3) of the Phoenix City Code, subparagraphs

(J) and (K), are amended as follows:

(J) Transverse street cross section with gutter on the uphill side may be used upon concurrence by the ~~Department's Deputy~~ DEVELOPMENT SERVICES Director OR DESIGNEE. ~~of the Project Engineering Division.~~

(K) All cut and fill slopes shall be within the roadway right-of-way or roadway easement; slope maintenance easement for roadway cuts and fills may be required by the DEVELOPMENT SERVICES ~~Department's Deputy~~ Director OR DESIGNEE. ~~of the Project Engineering Division.~~

SECTION 7. Section 32-32(d)(3) of the Phoenix City Code is amended as

follows:

(3) The CMR shall hold a hearing on applications to exceed the grading standards at which the applicant and any interested parties have an opportunity to be heard. The property which is the subject of the hearing will be posted by the City for a period of 7 days prior to the hearing to notify interested parties of the impending hearing. It shall be the responsibility of the applicant to ensure that the posting remains in place for the entire 7 day period. At least 15 days prior to the hearing, the applicant will notify property owners surrounding the property which is the subject of the appeal to a distance of 300 feet of the impending hearing through a certified letter sent at the applicant's expense. The form of letter shall be

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approved by the Development Services Department. Properties within 300' will be identified by the Development Services Department. The applicant will obtain names and addresses of the owners of these properties from the City Clerk Department Property Book Records Section and will notify these owners at the applicant's expense by certified mail of the impending hearing. Before the appeal is processed, the applicant must provide to the Development Services Department the list of property owners from the City Clerks Department and receipts from the certified letters sent to each of these owners. The CMR's decision shall be final unless the applicant, any interested parties, ~~or a City Council member~~, within 7 10 days after the decision is announced, requests in writing that the ~~City Council~~ DEVELOPMENT ADVISORY BOARD hold a hearing on the appeal, at which the applicant and any interested parties have an opportunity to be heard. Notice of any hearing held pursuant to this paragraph shall be posted on the subject property at least 7 days prior to the hearing.

SECTION 8. Section 32-33 of the Phoenix City Code, subparagraphs

(D)(1) and (E)(1), (9), and (10) are amended as follows:

(D) Construction and Inspection

(1) All relocation, tiling, and reconstruction of irrigation facilities shall be constructed to standards of the owning utility and the City of Phoenix enforced through the ~~Department's Deputy~~ DEVELOPMENT SERVICES Director OR DESIGNEE. ~~Project Engineering Division.~~

(E) Required Improvements.

(1) Streets and alleys. All streets and alleys within the subdivision shall be graded and surfaced to cross-sections, grades and standards approved by the Street Transportation Director on major streets and the ~~Department's Deputy~~ DEVELOPMENT SERVICES Director OR DESIGNEE ~~of the Project Engineering Division~~ for all other streets and alleys. Where there are existing streets adjacent to the subdivision, subdivision streets shall be improved to the intercepting paving line of such existing streets. Dead-end streets serving more than four lots shall be provided a graded and surfaced temporary turning circle.

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(9) Private irrigation facilities. All irrigation facilities to remain within the boundaries of the tract or in an abutting one-half street or alley right-of-way shall be tiled in accordance with standards of the owning agency and/or relocated as may be directed by the Department and the owning agency. Where street improvement requires relocation of control gates or other structures, such relocation and reconstruction shall conform to the ~~Department's Deputy~~ DEVELOPMENT SERVICES Director OR DESIGNEE, ~~Project Engineering Division~~ and owning agency requirements.

(10) Monuments. Permanent monuments shall be installed in accordance with current City standards at all corners, angle points and points of curve of all conservation easements. After all improvements have been installed, a registered land surveyor shall install the monuments and certify their accuracy to the DEVELOPMENT SERVICES DIRECTOR OR DESIGNEE. ~~Project Engineering Division.~~

SECTION 9. Section 32-40 (1) of the Phoenix City Code is amended as

follows:

(1) An action or decision of the Department may be appealed by the applicant within ~~fifteen (15)~~ TEN (10) calendar days to the ~~City Manager's representative~~ DEVELOPMENT SERVICES DIRECTOR OR DESIGNEE if the appeal is from stipulation(s) which are not required by City Ordinance;

a) Appeals shall be in writing on a form provided by the Department. ~~and shall include only those items not agreed upon.~~ An appeal will be heard within fifteen (15) calendar days from the date of submission of an appeal to the ~~City Manager's Representative~~ DEVELOPMENT SERVICES DIRECTOR OR DESIGNEE after the appeal fee is paid. The hearing date, time, and location for the appeal hearing will be set by the ~~City Manager's Representative~~ DEVELOPMENT SERVICES DIRECTOR OR DESIGNEE. Any person invited to the review of the final report with the applicant shall be informed by the Department of the date, time, and location of appeal hearing.

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(b) ~~The Department will submit any background material regarding the appeal to the City Manager's Representative two (2) working days prior to the hearing date.~~

(e)(B) A decision on the appeal will be made at the hearing. An appeal of the decision of the ~~City Manager's representative~~ DEVELOPMENT SERVICES DIRECTOR OR DESIGNEE may be made to the ~~City Council~~ DEVELOPMENT ADVISORY BOARD within ~~fifteen (15)~~ TEN (10) calendar days from the hearing. Appeals shall be in writing on a form provided by the Department. ~~and shall include only those items not in agreement. An appeal to the City Manager's representative shall not diminish the appellant's right to appeal to the City Council.~~

SECTION 10. Sections 32-40 (2), (3), (4) and (5) of the Phoenix City Code are amended as follows:

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- (2). An action or decision of the Department not included in Section 32-40 (1) may be appealed within ~~fifteen (15)~~ TEN (10) calendar days to the ~~City Council~~ DEVELOPMENT ADVISORY BOARD. Appeals shall be in writing on a form provided by the Department. ~~and shall include only those items not in agreement.~~
  - (3). The ~~City Council~~ DEVELOPMENT ADVISORY BOARD shall review the subdivision report and exhibits, if any, and may, at their ITS discretion, hear further oral arguments, hear AND newly discovered evidence not available at the time of the Department approval. ~~, and receive written briefs from both the applicant and the Law Department.~~
  - (4). The ~~City Council~~ may:
    - (a). ~~Affirm the decision of the City Manager's representative; or~~
    - (b). ~~Remand the matter for further proceedings before the City Manager's representative; or~~

~~(c) Reverse or modify the decision of the City Manager's representative.~~

~~(5). Any person aggrieved by a final decision of the City Council may appeal to a court of competent jurisdiction.~~

SECTION 11. Sections 32-42 (1), (2), and (3) of the Phoenix City Code are amended as follows:

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- (1) Except as to grading standards, which are covered by Section 32-32, where there exists extraordinary conditions of topography, land ownership, or adjacent development, or other circumstances not provided for in these regulations, the DEVELOPMENT SERVICES DIRECTOR ~~City Manager~~, or his designee, may modify these ordinance provisions in such manner and to such extent as may be appropriate to the public interest sought to be protected by the provision requested to be modified. IN MODIFYING THE STANDARDS OR REQUIREMENTS OF THESE PROVISIONS, THE DEVELOPMENT SERVICES DIRECTOR OR DESIGNEE MAY MAKE SUCH ADDITIONAL REQUIREMENTS AS APPEAR NECESSARY, IN HIS JUDGMENT, TO SECURE SUBSTANTIALLY THE OBJECTIVES OF THE STANDARDS OR REQUIREMENTS SO MODIFIED. The DEVELOPMENT SERVICES DIRECTOR ~~City Manager~~, or his designee, shall hold an ADMINISTRATIVE hearing in regard to the requested modification at which the applicant has an opportunity to be heard. The ~~City Manager~~ DEVELOPMENT SERVICES DIRECTOR's, or his designee's, decision shall be final unless the applicant, ~~or a City Council member~~, within ~~seven (7)~~ TEN (10) days after the decision is announced, requests in writing that the ~~City Council~~ DEVELOPMENT ADVISORY BOARD hold a hearing on the requested modification.
  - (2) In the case of a plan and program for a complete community, or a complete neighborhood, the ~~Council~~ DEVELOPMENT SERVICES DIRECTOR OR DESIGNEE may modify these provisions in such manner as appears necessary and desirable to provide adequate space and improvements for the circulation, recreation, light, air, and

service needs of the tract when fully developed and populated, and may provide legal provisions as will assure conformity to and achievement of the plan.

- (3) ~~In modifying the standards or requirements of these provisions, as outlined above, the Council may make such additional requirements as appear necessary, in its judgment, to secure substantially the objectives of the standards or requirements so modified.~~

SECTION 12. Section 32A-5 of the Phoenix City Code is amended as

follows:

Appeals from decisions of the Development Services Director in interpreting this chapter may be taken to the DEVELOPMENT ADVISORY Grading and Drainage Appeal Board. ~~which is hereby established to consist of: The City Manager or his designee, Chairman; the Street Transportation Director and the Water Services Director members. The Grading and Drainage Appeal Board shall be advisory to the Development Services Director and shall make recommendations on matters appealed to it. If the applicant is not satisfied with the recommendation and decision resulting from the appeal to the Grading and Drainage Appeal board, the applicant may then appeal to the City Council.~~ (Ord. No. G-1177, § 1; Ord. No. G-1192, § 1; Ord. No. G-1203, § 1; Ord. No. G-1569, § 1; Ord. No. G-3313, § 1; Ord. No. G-3887, § 1.)

SECTION 13. Section 32B-12 of the Phoenix City Code is amended as

follows:

Appeals from decisions of the City Engineer in application of these regulations may be taken to the DEVELOPMENT ADVISORY BOARD ACTING AS THE Floodplain Appeal Board. ~~which consists of the Deputy City Manager, Chairman; the Planning Director, and the Water and Wastewater Director, members. The Floodplain Appeal Board shall be advisory to the City Engineer and shall make recommendations on matters appealed to it. If the applicant is not satisfied with the recommendation and the City Engineer's decision resulting from the appeal to the Floodplain Appeal Board, the applicant may then appeal to the City Council acting as the Floodplain Appeal Board.~~ Any person aggrieved by a decision of the Floodplain APPEAL Board may bring special action in a court of competent jurisdiction. The Floodplain Appeal Board ~~and the Floodplain Board~~, when reviewing an appeal from a decision of the City Engineer, shall



follow the rules and standards set forth in this ordinance. (Ord. No. G-2027, §2; Ord. No. G-3313, § 1.)

SECTION 14. Section 37-145 of the Phoenix City Code is amended as

follows:

An action or decision concerning the determination of the Development Services Director may be appealed to the DEVELOPMENT ADVISORY ~~Building Safety Advisory Board~~ in accordance with the procedures set forth in ARTICLE IX OF THE PHOENIX CITY CODE. ~~the Phoenix Construction Code.~~

SECTION 15. Section 104.1 of the Phoenix Construction Code as adopted

by Ordinance G-4159 is amended as follows:

104.1 Creation of Enforcement Agency. There is hereby established in this jurisdiction a Code enforcement agency which shall be the Development Services Department. The authority and responsibility for administration and enforcement of this Construction Code is hereby assigned to the ~~Assistant~~ Development Services Director OR HIS DESIGNEE who, for the purposes of this Code, shall be known as the building official.

SECTION 16. Section 105.2 of the Phoenix Construction Code as adopted

by Ordinance G-4159 is amended as follows:

**105.2 Duties and Responsibilities.** The Board is established to advise and make recommendations to the building official on matters pertaining to the application, interpretation and amendment of the Construction Code, AND TO HEAR APPEALS FROM THE DECISIONS OF THE BUILDING OFFICIAL. ~~The duties and powers of the Board shall be in an advisory capacity only.~~ The building official shall be an ex-officio member of the Board but shall have no vote on matters before the Board.

1. **Code amendments.** The Board shall review and make recommendations to the building official and to the City Council on all proposed Construction Code amendments. The Board shall conduct a public hearing on any proposal to amend the Code. The Board may also appoint a special study committee to consider proposed amendments. When a study committee is established, the Board chairperson shall appoint a Board member to serve as chairperson of the study committee. The study committee shall report its findings to the Board as soon as possible. Final recommendation of the Board shall be made to the building official and

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to the City Council, which body has sole authority to enact amendments to the codes or ordinances.

2. **Appeals.** Any person ~~dissatisfied with~~ AGGRIEVED BY a formal WRITTEN order, decision or determination OF TECHNICAL REQUIREMENTS made by the building official may request a hearing by the Board. Appeals shall be made in writing on a form provided by the building official and shall be accompanied by a non-refundable appeal fee as set forth in Appendix A.2 of the Phoenix City Code. Appeals must be filed within 10 days of an administrative hearing decision as set forth in Section 104.2.7. All appeal hearings shall be open and public, and any person whose interest may be affected by a recommendation of the Board shall be given an opportunity to be heard. The Board shall render all DECISIONS ~~recommendations in writing to the building official.~~

~~The building official shall make a final decision within 10 days of receiving the Board's recommendation. The building official's decision shall be final except that the Board or the person making the original appeal may within 30 days then further appeal the building official's decision to the City Council. All appeals to the City Council shall be made in writing on a form provided by the City. The appeal shall be delivered to the building official together with a nonrefundable administrative processing fee as set forth in Appendix A.2 of the Phoenix City Code.~~

APPEALS MAY BE FILED ONLY WHEN IT IS CLAIMED THAT:

- (1). THE TRUE INTENT OF THE PHOENIX CONSTRUCTION CODE HAS BEEN INCORRECTLY INTERPRETED; OR
- (2). THE PROVISIONS OF THE PHOENIX CONSTRUCTION CODE DO NOT FULLY APPLY; OR
- (3). AN ALTERNATE METHOD OF COMPLYING WITH CODE REQUIREMENTS SHOULD BE APPROVED BECAUSE THE STANDARDS SET FORTH BELOW ARE MET. THE BURDEN OF PROOF SHALL BE ON THE AGGRIEVED PERSON TO DEMONSTRATE THAT THE STANDARDS ARE MET.
  - (A). SPECIAL CIRCUMSTANCES OR CONDITIONS APPLY TO THIS PERMIT APPLICATION; AND

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- (B). AUTHORIZING THE ALTERNATE METHOD IS NECESSARY FOR THE PRESERVATION AND ENJOYMENT OF SUBSTANTIAL PROPERTY RIGHTS; AND
- (C). AUTHORIZING THE ALTERNATE METHOD WILL NOT BE MATERIALLY DETRIMENTAL TO PERSONS RESIDING OR WORKING IN THE VICINITY, TO ADJACENT PROPERTY, TO THE NEIGHBORHOOD OR TO THE PUBLIC WELFARE IN GENERAL; AND
- (D). AUTHORIZING AN ALTERNATE METHOD OF COMPLIANCE WILL ACHIEVE THE INTENT OF THE CODE AND AUTHORIZING THE ALTERNATE METHOD WILL NOT LESSEN ANY LIFE SAFETY REQUIREMENT, ANY FIRE PROTECTION REQUIREMENT, ANY STRUCTURAL INTEGRITY, OR ANY CAPACITY OF A REQUIRED SEWER, WATER, OR DRAINAGE SYSTEM.

The decision of the ~~City Council~~ BOARD shall be final. Any person aggrieved by a decision ~~by the City Council~~ ON AN APPEAL may at any time within thirty days after THE BOARD HAS RENDERED ITS ~~the filing of the City Council's~~ DECISION, file an appeal with the A SPECIAL ACTION IN SUPERIOR COURT ~~of the County~~ TO REVIEW THE BOARD'S DECISION. ~~by following the various methods of appeal or review procedures in Arizona as set forth by the applicable statutes of the State of Arizona.~~

SECTION 17. Section 105.3 of the Phoenix Construction Code as adopted

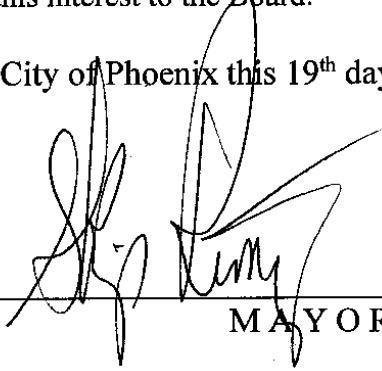
by Ordinance G-4159 is amended as follows:

**105.3 Limitation of Authority.** The ~~b~~Board shall have no authority relative to interpretation of the administrative provisions of this Code nor shall the ~~b~~Board be empowered to waive requirements of this Code. THE BOARD SHALL HAVE NO JURISDICTION OVER ANY REQUIREMENT THAT A PERMIT MUST BE OBTAINED, DECISIONS TO PURSUE ENFORCEMENT ACTIONS IN ACCORDANCE WITH THE PROVISIONS OF THE CITY CODE, OR THE AMOUNT OF ANY FEE PRESCRIBED BY THE CITY CODE.

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No member of the Board shall vote on any question concerning a job or project in which the member is engaged as contractor or material dealer or in the preparation of plans or specifications or on any job or project in which the member has any direct or indirect personal or financial interest. In these instances, the member shall also make full disclosure of this interest to the Board.

PASSED by the Council of the City of Phoenix this 19<sup>th</sup> day of May, 1999.



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MAYOR

ATTEST:

*Tickey Muel* City Clerk

APPROVED AS TO FORM:

*Michael D. House* <sup>ACTING</sup> City Attorney

REVIEWED BY:

*Frank Paulsen* City Manager

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