



Staff Report

Agenda Item: **WORKSESSION TO DISCUSS SB 1575** - Discussion and update on SB 1575 to allow counties, cities and towns to require a new subdivision, located outside an Active Management Area, to have an adequate water supply.

Sponsored By: Mayor Von Gausig

Staff Contact: Gayle Mabery, Town Manager

Meeting Date: July 8, 2008

Background: The following information was published by the Arizona Department of Water Resources, and is a summary of SB 1575, which was adopted during the 2007 Legislative Session.

SUMMARY OF SB 1575

Water Adequacy Amendments

SB 1575 allows counties, cities and towns to require new subdivisions that are located outside an Active Management Area (AMA) to have an adequate water supply in order for the proposed development to be approved.

History

The Statewide Water Advisory Group (SWAG) was formed in 2006 to discuss statewide water resource issues, methods to provide reliable future water supplies issues and to develop recommendations regarding long-term water resource development for the state. SWAG began meeting in May 2006 and continued through the summer and fall. HB 2693 includes SWAG recommendations regarding adequate water supplies for new subdivisions that are located outside AMAs.

Under current law, real estate developers must follow certain requirements when subdividing land. When a developer applies for approval of a subdivision that is outside an AMA, the Arizona Department of Water Resources (ADWR) determines if the subdivision will have an adequate or inadequate water supply. An adequate water supply is one that will be available for current and committed uses for at least 100 years. The one hundred year supply must be physically, legally and continuously available.

If the supply is determined to be inadequate, lots may still be sold, however the information regarding the supply must be included in documents pertaining to the initial sale of the property.

Provisions

Authority to adopt adequate water supply requirements

Authorizes a county board of supervisors to adopt a provision, by unanimous vote, that requires a new subdivision, located outside an AMA, to have an adequate water supply in order for the subdivision to be approved by the platting authority. (ARS 11-806.01, subsection F)

Provides that if a county adopts an adequacy provision, cities and towns within the county may not approve a new subdivision, located outside an AMA, unless the subdivision has an adequate water supply. (ARS 9-463.01, subsection J)

If a county does not adopt an adequacy provision, a city or town may adopt a local adequacy ordinance to require that a new subdivision, located outside an AMA, demonstrate that an adequate water supply exists before the final plat can be approved. A municipality that enacts a local adequacy ordinance must notify the Director of ADWR, the Department of Environmental Quality (DEQ), State Real Estate Commissioner and the Board of Supervisors of the county in which the city is located. (ARS 9-463.01, subsection O)

States that a county shall not rescind the adequacy requirement. (ARS 11-806.01, subsection G, paragraph 3)

Provides that a water provider in a city, town or county that has adopted an adequate water supply requirement may be eligible for financial assistance. (ARS 9-463.01, subsection O and ARS 11-806.01, subsection G)

Adequate Water Supply

Defines *adequate water supply* as sufficient groundwater, surface water or effluent of adequate quality to satisfy the needs of the proposed use for at least 100 years. The supply must be continuously, legally and physically available. In addition, the financial capability to construct the water delivery, treatment and storage facilities must exist. (ARS 45-108, subsection I)

Exemptions from Adequacy Requirements

Allows a city, town or county to provide an exemption for a subdivision if the water supply will be delivered by motor vehicle or train. The local governing body must determine there is no alternative water supply and the delivery will not cause significant risk to the residents of the subdivision. If the transported water will be taken from the service area of a municipal provider, the provider must consent to the withdrawal or diversion. (ARS 9-463.01 subsection K and ARS 11-806.01 subsection G)

Requires written notice and certified copy of approval of the hauled water exemption to be provided to the Director of ADWR, DEQ and the State Real Estate Commissioner. Requires notice to the same parties if the exemption is rescinded. If the exemption is rescinded it can not be readopted for at least five years after the rescission becomes effective. (ARS 9-463.01 subsection L and ARS 11-806.01 subsection G)

Provides an exemption for subdividers who have made a substantial capital investment toward construction of the project or received a final plat approval before the adequacy provision was adopted by the city, town or county. Requires ADWR to determine whether a development qualifies for this exemption. (ARS 45-108.02, ARS 9-463.01, subsection P and ARS 11-806.01, subsection H)

Provides an exemption from the adequacy requirement if the subdivision will be served by a water supply project that is under construction. The project must be completed within 20 years, the subdivision must have an adequate water supply when the project is completed and an interim water supply must provide enough water until the project is completed. Requires ADWR to determine whether a development qualifies for this exemption. (ARS 45-108.03)

Real Estate Provisions

Requires the Real Estate Commissioner to deny issuance of a public report for a subdivision or timeshare that is located in a city, town or county that has adopted a local adequacy requirement if the subdivision or timeshare does not have: 1) an adequate water supply, 2) an exemption from the adequacy requirements or 3) final plat approval before the adequacy requirement has become effective. (ARS 32-2183 and ARS 32-2197.08)

Requires specific information regarding adequacy of water supplies and any exemptions to be included in promotional material and contracts for the sale of the lot. This information must also be recorded on the face of the subdivision's plat.

Requires information regarding any exemption from an adequate water supply requirement based on hauled water to be recorded with the plat. (ARS 33-406)

Department of Water Resources (DWR)

Requires the Director of ADWR to send a copy of an adequacy determination for a subdivision that is located outside an AMA to the city, town or county responsible for platting the subdivision. (ARS 45-108, subsection B) The Director is currently required to provide this information to the Real Estate Commissioner.

Requires the Director to notify cities and towns that are located in a county that has adopted an adequate water supply provision. States that the city or town must comply with the provisions. (ARS 45-108, subsection H)

Outlines the process for ADWR to provide notice and an opportunity for residents and landowners to file a written objection to an application for a water report or a designation of an adequate water supply. (ARS 45-108.01, subsections A and B)

Authorizes the Director to conduct an administrative hearing on an application before making a decision. If a hearing is held, a notice of the hearing must be provided to the applicant and to anyone who filed an objection. The hearing must be held in the groundwater basin in which the use is located. (45-108.01, subsection C and G)

Allows an applicant or a person who filed an objection to seek judicial review of the Director's final decision in superior court.(45-108.01. subsection F)

Requires the Director to consider existing and projected uses when determining whether an adequate water supply exists. (Session law)

Requires the Director to adopt rules that incorporate the adequate water supply provisions included in HB 1575. (Session law)

Various other documents are attached to this staff report as background information on this item. They include:

- A Power Point presentation given by Doug Dunham (Deputy Assistant Director of the Water Management Division of the ADWR) on June 4, 2008 to the Yavapai County Water Advisory Committee and interested public. The Power Point provides information on the current status of the Rule Making process.
- Hydrologic Data and Draft Recommendations Related to the Review of 100-Year Physical Availability Depth Criteria for Demonstrating Adequate Water Supplies (Study in support of the requirements of SB 1575)
- The May 14, 2008 draft of the Proposed Rule Language for SB 1575

Mayor Von Gausig will also be prepared to give a verbal update to the Council on this topic.

Recommendation: This is a worksession only, and requires no action by the Council at this time.