

City of Santa Fe
Governing Body
Findings of Fact and Conclusions of Law

Case #2015-30

Tune-Up Cafe General Plan Amendment

Case #2015-31

Tune-Up Cafe Rezoning to C-2

Owner's Name – JC Rivera LLC

Applicant's Name – Liaison Planning, Inc.

THIS MATTER came before the Governing Body of the City of Santa Fe for hearing on July 29, 2015 upon the application (Application) of Liaison Planning, Inc. as agent for JC Rivera LLC (Applicant).

On May 7, 2015 the Planning Commission (Commission) voted to recommend, subject to certain conditions (the Conditions), that the Governing Body approve (1) an amendment to the City of Santa Fe General Plan Future Land Use Map (Plan) changing the designation of 0.13 ± acres of land located at 536 Cortez Street (Property) from Low Density Residential (3-7 dwelling units/acre) to “Community Commercial” and (2) the rezoning of the Property from R-5 to C-2 (General Commercial) (the Rezoning). Findings of Fact and Conclusions of Law (Commission Findings and Conclusions) embodying the Commission's vote recommending that the Governing Body approve Application subject to the Conditions were adopted by the Commission on June 4, 2015 and were filed with the City Clerk as Item #15-0448.

In accordance with the foregoing, and after conducting a public hearing, and having heard from staff, the Owner and its representatives, residents of the neighborhood in which the Property is located, and certain interested others, the Governing Body hereby FINDS as follows:

FINDINGS OF FACT

1. The Governing Body has authority, under Santa Fe City Code (Code) Sections 14-2.1 Table 14-2.1-1 and 14-2.2(A) to review and finally decide upon applications for amendments to the Plan in accordance with the procedures set forth in Code Section 14-3.2(D)(3) and applying the criteria set forth in Code Section 14-3.2(E)(1).
2. The Governing Body has authority, under Code Sections 14-2.1 Table 14-2.1-1 and 14-2.2(A) to review and finally decide upon applications for rezoning in accordance with the procedures set forth in Code Section 14-3.5(B)(2) and applying the criteria set forth in Code Section 14-3.5(C).
3. Code Section 14-3.1(H)(2) requires that notice of a public hearing before the Governing Body be provided in accordance with Code Section 14-3.1(H)(1)(a) and that, in addition, the applicant publish notice in a local daily newspaper of general circulation at least fifteen calendar days prior to the public hearing (collectively, the Notice Requirements).
4. The Notice Requirements have been met.

5. The Governing Body reviewed the report dated July 16 for the July 29, 2015 City Council Hearing prepared by City staff (Staff Report) summarizing the Application and the Commission vote recommending that the Governing Body approve the Application, subject to the Conditions; the Commission Findings and Conclusions embodying said vote; and the evidence introduced at the hearing in accordance with the requirements of Code Section 14-3.5(B)(2)(a).
6. The Governing Body heard direct testimony from City staff, the Applicant’s representative, residents of the neighborhood in which the Property is located, and certain interested others.
7. Commission Findings of Fact 2 through 8, 10 through 13 and 14 through 18 accurately reflect the facts in this matter as presented at the hearing.
8. Commission Conclusions of Law 1 through 5 are within the authority of the Commission and are reasonably based upon the Commission Findings of Fact.

CONCLUSIONS OF LAW

Under the circumstances and given the evidence and testimony submitted at the hearing, the Governing Body hereby CONCLUDES as follows:

1. The Commission Findings and Conclusions, a copy of which is attached hereto as **Exhibit A**, are adopted in part by the Governing Body as follows: Commission Findings 2 through 8, 10 through 13 and 14 through 18 and Conclusions of Law 1 through 5. The foregoing enumerated Findings of Fact and Conclusions of Law are hereby adopted by the Governing Body and are incorporated in these Findings of Fact and Conclusions of Law as if set out in full herein. Those Findings of Fact and Conclusions of Law not specifically adopted herein are specifically not adopted.
2. The proposed Plan amendment meets the criteria established by Code Section 14-3.2(E)(1).
3. The proposed Rezoning meets the criteria established by Code Section 14-3.5(C)

WHEREFORE, IT IS ORDERED ON THE _____ OF AUGUST 2015 BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

That the Application is approved, subject to the Conditions set forth on **Exhibit B**, a copy of which is attached hereto.

Mayor

Date:

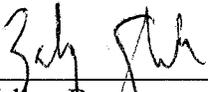
[REMAINING SIGNATURES APPEAR ON FOLLOWING PAGE]

FILED WITH THE CITY CLERK:

Yolanda Y. Vigil
City Clerk

Date:

APPROVED AS TO FORM:



Kelley Brennan
City Attorney



Date:

ITEM # 15-0448

City of Santa Fe
Planning Commission
Findings of Fact and Conclusions of Law

Case #2015-30

Tune Up Cafe General Plan Amendment

Case #2015-31

Tune Up Cafe Rezoning to C-2

Owner's Name – JC Rivera LLC

Applicant's Name – Liaison Planning, Inc.

THIS MATTER came before the Planning Commission (Commission) for hearing on May 7, 2015 upon the application (Application) of Liaison Planning, Inc. as agent for JC Rivera LLC (Applicant).

The property is located at 536 Cortez Street (Property) and is comprised of 0.13± acres with the Future Land Use designation of Low Density Residential (3-7 dwelling units per acre) and is zoned R-5 (Residential, 5 dwelling units per acre).

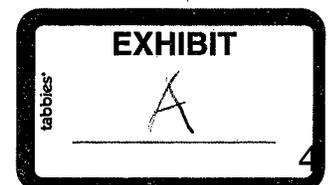
The Applicant seeks: (1) approval of an amendment to the City of Santa Fe General Plan Future Land Use Map (Plan) changing the Future Land Use designation of 0.13± acres from Low Density Residential (3-7 dwelling units per acre) to Community Commercial and (2) to rezone 0.13± acres of the Property from R-5 (Residential, 5 dwelling units per acre) to C-2 (General Commercial).

After conducting a public hearing and having heard from staff and all interested persons, the Commission hereby FINDS as follows:

FINDINGS OF FACT

General

1. The Commission heard testimony and took evidence from staff, the Applicant, and members of the public interested in the matter.
2. Santa Fe City Code (Code) §14-3.2(D) sets out certain procedures for amendments to the Plan, including, without limitation, a public hearing by the Commission and recommendation to the Governing Body based upon the criteria set out in Code §14-3.2(E).
3. Code §§14-3.5(B)(1) through (3) set out certain procedures for rezonings, including, without limitation, a public hearing by the Commission and recommendation to the Governing Body based upon the criteria set out in Code §14-3.5(C).
4. Code §14-3.1 sets out certain procedures to be followed on the Application, including, without limitation, (a) a pre-application conference [§14-3.1(E)(1)(a)(i)]; (b) an Early



- Neighborhood Notification (ENN) meeting [§14-3.1(F)(2)(a)(iii) and (xii)]; and (c) compliance with Code Section 14-3.1(H) notice and public hearing requirements.
5. Code §14-3.1(F) establishes procedures for the ENN meeting, including (a) scheduling and notice requirements [Code §14-3.1(F)(4) and (5)]; (b) regulating the timing and conduct of the meeting [Code §14-3.1(F)(5)]; and (c) setting out guidelines to be followed at the ENN meeting [§14-3.1(F)(6)].
 6. An ENN meeting was held on the Application on November 24, 2014 at the DeVargas Mall, Community Room.
 7. Notice of the ENN meeting was properly given.
 8. The ENN meeting was attended by the Applicant and City staff; there were eleven members of the public in attendance and concerns were raised.
 9. Commission staff provided the Commission with a report (Staff Report) evaluating the factors relevant to the Application and recommending approval by the Commission of the proposed Plan amendment and the rezoning and lot split.

The General Plan Amendment

10. Code §14-3.2(B)(2)(b) requires the City's official zoning map to conform to the Plan, and requires an amendment to the Plan before a change in land use classification is proposed for a parcel shown on the Plan's land use map.
11. The Commission is authorized under Code §14-2.3(C)(7)(a) to review and make recommendations to the Governing Body regarding proposed amendments to the Plan.
12. The Commission has considered the criteria established by Code §14-3.2(E)(1) and finds the following facts:
 - (a) *Consistency with growth projections for the City, economic development goals as set forth in a comprehensive economic development plan for the City, and with existing land use conditions, such as access and availability of infrastructure [§14-3.2(E)(1)(a)].*

The proposed use of the subject property will provide parking for an existing restaurant that currently provides employment and a service to the neighborhood and Santa Fe residents.
 - (b) *Consistency with other parts of the Plan [§14-3.2(E)(1)(b)].*

The general plan policy states that there shall be a mix of uses and housing types in all parts of the City and along this area of Hickox, the zones are mixed C-2 and residential. The proposed use of the subject project will be consistent with this policy and will increase opportunities for service to the neighborhood and Santa Fe residents.
 - (c) *The amendment does not: (i) allow uses or a change that is significantly different from or inconsistent with the prevailing use and character of the area; (ii) affect an area of less than two acres, except when adjusting boundaries between districts; or (iii) benefit one of a few landowners at the expense of the surrounding landowners or the general public [§14-3.2(E)(1)(c)].*

The area to the north, east and west of the subject property is primarily residential. The properties to the south all along Hickox are zoned for community commercial. Upon approval, the subject property will be consolidated with the adjacent property to the south that has been utilized as commercial.

- (d) *An amendment is not required to conform with Code §14-3.2(E)(1)(c) if it promotes the general welfare or has other adequate public advantage or justification [§14-3.2(E)(1)(d)].*

The proposal conforms with § 14-3.2(E)(1)(c) and is consistent with the City's land use policies, ordinances, regulations and plans as they relate to the City's desire to maintain a compact urban form, encourage infill development and mixed use neighborhoods.

- (e) *Compliance with extraterritorial zoning ordinances and extraterritorial plans [§14-3.2(E)(1)(e)].*

This criterion is no longer relevant since the adoption of SPaZZo and the relinquishment of the land use regulatory authority outside the city limits and the transfer of authority from extraterritorial jurisdiction to the City.

- (f) *Contribution to a coordinated, adjusted and harmonious development of the municipality which will, in accordance with existing and future needs, best promote health, safety, morals, order, convenience, prosperity or the general welfare as well as efficiency and economy in the process of development [§14-3.2(D)(1)(f)].*

Use of the subject property for expansion of an historically/existing commercial use will continually provide centrally located employment and service to the neighborhood and will maintain and promote the mixed use character of the neighborhood.

- (g) *Consideration of conformity with other city policies, including land use policies, ordinances, regulations and plans.*

This request is consistent with the City's land use policies, ordinances, regulations and plans as they relate to the City's desire to maintain a compact urban form, encourage infill development and mixed use neighborhoods.

13. The Commission has considered the criteria established by Code §14-3.2(E)(2) and finds the following facts:

- (a) *the growth and economic projections contained within the general plan are erroneous or have changed.*

The neighborhood has developed over the years and the need for additional off street parking is apparent.

- (b) *no reasonable locations have been provided for certain land uses for which there is a demonstrated need.*

The location for additional parking for the commercial property to the south by providing off street parking that is directly adjacent to and can be accessed through the restaurant parking lot is a reasonable use of this lot.

- (c) *conditions affecting the location or land area requirements of the proposed land use have changed, for example the cost of land space requirements, consumer acceptance, market or building technology.*

The proposed amendment will bring the general plan up to date with the historic use and character of the area.

The Rezoning

14. Under Code §14-3.5(A)(1)(d) any person may propose a rezoning (amendment to the zoning map)

15. Code §§14-2.3(C)(7)(c) and 14-3.5(B)(1)(a) provide for the Commission's review of proposed rezonings and recommendations to the Governing Body regarding them.

16. Code §§14-3.5(C) establishes the criteria to be applied by the Commission in its review of proposed rezonings.
17. The Commission has considered the criteria established by Code §§14-3.5(C) and finds, subject to the Conditions, the following facts:
- (a) *One or more of the following conditions exist: (i) there was a mistake in the original zoning; (ii) there has been a change in the surrounding area, altering the character of the neighborhood to such an extent as to justify changing the zoning; or (iii) a different use category is more advantageous to the community, as articulated in the Plan or other adopted City plans [Code §14-3.5(C)(1)(a)].*
The neighborhood has increased in density and the need for off street parking is apparent. The proposed use would allow for additional parking and relieves some of the on street parking which justified the change for zoning.
 - (b) *All the rezoning requirements of Code Chapter 14 have been met [Code §14-3.5(C)(1)(b)].*
All the rezoning requirements of Code Chapter 14 have been met.
 - (c) *The proposed rezoning is consistent with the applicable policies of the Plan [Section 14-3.5(C)(1)(c)].*
The proposed rezoning is consistent with the Plan.
 - (d) *The amount of land proposed for rezoning and the proposed use for the land is consistent with City policies regarding the provision of urban land sufficient to meet the amount, rate and geographic location of the growth of the City [Code §14-3.5(C)(1)(d)].*
The rezoning request will provide infill development and promotes mixed land uses that provide an adequate balance of service retail and employment opportunities.
 - (e) *The existing and proposed infrastructure, such as the streets system, sewer and water lines, and public facilities, such as fire stations and parks, will be able to accommodate the impacts of the proposed development [Section 14-3.5(C)(1)(e)];*
The proposed rezoning will not increase the sewer, water lines and public facilities. There will be less impact on public street by providing off street parking.
18. The Commission has considered the criteria established by Code §§14-3.5(D) and finds, subject to the Conditions, the following facts:
- (1) *If the impacts of the proposed development or rezoning cannot be accommodated by the existing infrastructure and public facilities, the city may require the developer to participate wholly or in part in the cost of construction of off-site facilities in conformance with any applicable city ordinances, regulations or policies;*
 - (2) *If the proposed rezoning creates a need for additional streets, sidewalks or curbs necessitated by and attributable to the new development, the city may require the developer to contribute a proportional fair share of the cost of the expansion in addition to impact fees that may be required pursuant to Section 14-8.14.*
Preliminary analysis by city staff indicates that the likely future development will be accommodated by the existing infrastructure and public facilities.

19. The Commission adopts Staff conditions, except for the requirement to apply for a PUD.

CONCLUSIONS OF LAW

Under the circumstances and given the evidence and testimony submitted during the hearing, the Commission CONCLUDES as follows:

General

1. The proposed Plan amendment and rezoning were properly and sufficiently noticed via mail, publication, and posting of signs in accordance with Code requirements.
2. The ENN meeting complied with the requirements established under the Code.

The General Plan Amendment

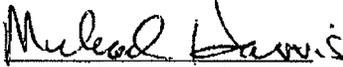
3. The Commission has the power and authority at law and under the Code to review the proposed amendment to the Plan and to make recommendations to the Governing Body regarding such amendment.

The Rezoning

4. The Applicant has the right under the Code to propose the rezoning of the Property.
5. The Commission has the power and authority at law and under the Code to review the proposed rezoning of the Property and to make recommendations regarding the proposed rezoning to the Governing Body based upon that review.

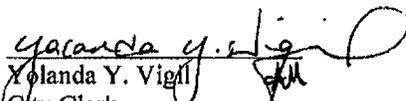
WHEREFORE, IT IS ORDERED ON THE 4th DAY OF JUNE, 2015 BY THE PLANNING COMMISSION OF THE CITY OF SANTA FE:

- A. That for the reasons set forth in the foregoing Findings of Fact and Conclusions of Law, the Commission recommends approval of the Plan Amendment to Community Commercial to the Governing Body.
- B. That for the reasons set forth in the foregoing Findings of Fact and Conclusions of Law, the Commission recommends approval of the rezoning request to C-2 to the Governing Body.


Michael Harris, Chair

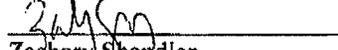
6/4/15
Date:

FILED:


Yolanda Y. Vigil
City Clerk

6/5/15
Date:

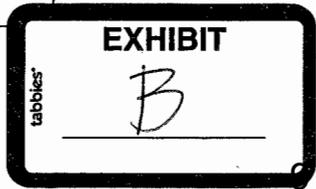
APPROVED AS TO FORM:


Zachary Shandler
Assistant City Attorney

6/4/15
Date:

536 Cortez
 General Plan Amendment (Case #2015-30)
 Rezoning (Case #2015-31)
 Resolution #2015-

DRT Conditions of Approval	Department	Staff
<p>1. The Developer shall eliminate the four (4) perpendicular parking spaces on Cortez Street; abandon the existing curb cut; and restore the sidewalk to a typical sidewalk section and install vertical curb and gutter.</p> <p>a. On street parallel parking of one to two vehicles will be permitted along this new curb provided that sight distance requirements are met.</p> <p>i. This sight distance triangle shall be based on the American Association of State Highway and Transportation Officials (AASHTO) standards per City code regarding commercial use of property that accesses a public street.</p> <p>2. The Developer shall work with the City of Santa Fe Parking Division to establish a loading zone on Hickox Street in front of the Tune Up Café; this loading zone shall be marked with appropriate signage.</p> <p>3. The Developer shall install a "do not enter" sign on Cortez Street at the exit of the one way portion of the parking lot.</p>	<p>Traffic Engineering/Public Works</p>	<p>John Romero (per Sandra Kassens)</p>
<p>1. A lot consolidation must be recorded after rezoning. 2. At the time of building permit, all terrain management requirements of the Land Development Code must be met. 3. At the time of Building permit, all sidewalks and curb cuts must meet City requirements for construction and ADA accessibility.</p>	<p>Land Use Engineer</p>	<p>RB Zaxus</p>



536 Cortez
General Plan Amendment (Case #2015-30)
Rezoning (Case #2015-31)
Resolution #2015- _____

<ol style="list-style-type: none"> 1. Remove the back-out spaces along the east side of the Tune-Up Café building since they obstruct the sidewalk (which is at least partly outside the ROW) and are into the public ROW, which is a public safety and ADA access issue. 2. The Tune-Up Café shall not operate with entertainment after 10 pm. Any move to do so would require approval of a use permit to convert from a restaurant to a nightclub per Chapter 14. 3. Obtain building permit for the walk-in freezer and storage area along the north property line that was built in several years ago without a permit. sometime between the 2008 aerial photo and the 2011 aerial photo. <ol style="list-style-type: none"> a. The permit in 2011 identifies that portion of the building as "existing;" 4. Screen the dumpster where shown on the site plan, per 14-_____ 5. Resolve issues with front patio as it encroaches into Hickox ROW 6. Resolve issue with Tune-Up Café sign at the corner of Hickox and Cortez 7. Provide lighting plan to ensure all lighting be directed away from surrounding residential properties. 8. Landscape plan details – work with adjacent property owner to resolve issue with opening in wall at his 	<p style="text-align: center;">Land Use Senior Planner/Case Manager</p>	<p style="text-align: center;">Donna Wynant</p>
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