

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

Case No. 2015-51

Appellants – Southeast Neighborhood Association, for its Members and Jim Dyke and Jerry T. Christopher, Individually

THIS MATTER came before the Governing Body of the City of Santa Fe for hearing on July 8, 2015 (the July 8 Hearing) upon the appeal (Appeal) of the Southeast Neighborhood Association (SENA) for its members and Jim Dyke and Jerry T. Christopher, individually (collectively, Appellant) from the May 7, 2015 Decision of the Planning Commission (Decision) approving: (1) the Benevolent and Protective Order of the Elks Lodge No. 460's (BPOE) request to divide the property at 1615 Old Pecos Trail into two lots of 3.85± acres of land (Lot B-1) and 4.77± acres of land (Lot B-2) respectively (the Subdivision); and MVG Development/ Morningstar Senior Living's (Morningstar) request for (2) a special use permit (the SUP) and (3) development plan (the Development Plan) to build an approximately 73,550 square-foot building to operate a 104-bed continuing care facility (CCF) on Lot B-1 (the Project).

At the July 8, 2015 meeting, the Governing Body voted to deny the Appeal. On July 29, 2015, the Governing Body voted to reconsider its July 8, 2015 decision at its next regular meeting on August 12, 2015. On August 12, 2015, the Governing Body voted to postpone its reconsideration to September 9, 2015 in accordance with the request of the parties to afford them an opportunity to negotiate an agreement to mediate. Reconsideration was postponed again on September 9, 2015 to October 14, 2015 and on October 14, 2015, was postponed to October 28, 2015.

On October 28, 2015, the Governing Body voted to consider separately the appeal by the SENA from the Decision approving the application of the Benevolent and Protective Order of the Elks Lodge No. 460 (BPOE) for the Subdivision (The Subdivision Appeal) in accordance with the August 11, 2015 written request of the BPOE (the BPOE Letter) and to take a separate vote on the matter, leaving the appeals on the SUP and the Development Plan (the Remaining Appeals) to be decided together.

The record on the Appeal (the Record) includes the following documents:

1. Memorandum dated June 30, 2015 for the July 8, 2015 Meeting of the Governing Body to the Members of the Governing Body from Zachary Shandler, Assistant City Attorney, regarding Case No. 2015-51 – Appeal of the Appellant from the Decision, with Exhibits A-E (Background Memo).
2. The Verified Appeal Petition filed on May 18, 2015 (Exhibit A to the Background Memo);
3. The relevant portion of the minutes of the April 2, 2015 and May 7, 2015 Commission meetings (Exhibit B to the Background Memo);

4. Findings of Fact and Conclusions of Law in Case Nos. 2015-14, 2015-15 and 2015-16 adopted by the Commission at its May 7, 2015 meeting and identified in the records of the City as Item #15-0324, attached hereto as **Exhibit A** (Exhibit C to the Background Memo);
5. A copy of the City of Santa Fe Future Land Use Map, submitted by City staff to the Governing Body at its July 8, 2015 meeting and incorporated in the minutes of said meeting (July 8 Minutes) as Exhibit 6;
6. Applicant's submittals to the Governing Body at the July 8 Hearing (incorporated in the July 8 Minutes as Exhibits 7 and 8);
7. Appellant's submittals to the Governing Body at the July 8 Hearing (incorporated in the July 8 Minutes as Exhibits 9 through 14); and
8. Materials submitted to the Governing Body by members of the public at the July 8 Hearing (incorporated in the July 8 Minutes as Exhibits 15 through 33);
9. Relevant portions of the minutes of the July 29, August 12, September 9, and October 14, 2015 meetings of the Governing Body;
10. The BPOE Letter (incorporated in the Governing Body's packet for the October 24, 2015 meeting);
11. Written submittal by SENA dated September 20, 2015 (incorporated in the Governing Body's packet for the October 24, 2015 meeting);
12. Letter dated October 6, 2015 submitted on Morningstar's behalf by Sommer, Karnes and Associates, LLP (incorporated in the Governing Body's packet for the October 24, 2015 meeting);
13. The relevant portion of the minutes of the October 28, 2015 meeting of the Governing Body (October 28 Minutes); and
14. Letter dated October 26, 2015 submitted to the Governing Body at its October 28, 2015 meeting on Morningstar's behalf by Sommer, Karnes and Associates, LLP (incorporated in the October 28 Minutes as Exhibit _).

After conducting a public hearing and having reviewed the Record and heard from City staff, the Appellant, Morningstar and the BPOE (collectively, the Applicants), and their respective representatives, residents of the neighborhood in which the Property is located and certain other interested members of the public, the Governing Body hereby FINDS, as follows:

FINDINGS OF FACT

1. The Governing Body reviewed the Record and heard the report of City staff and received testimony and evidence from the Appellant and the Applicants and their respective representatives and witnesses and from members of the public interested in the matter.
2. Pursuant to Santa Fe City Code (Code) §14-2.2(F), the Governing Body hears and decides appeals of final actions of any Land Use Board *de novo* after giving notice in accordance with the notice provisions of Code §14-3.1(H)(4).
3. Pursuant to Code §14-3.17(A)(1)(b), final actions of a Land Use Board include a decision made after a public hearing.
4. The Decision is a final action subject to appeal to the Governing Body to hear and decide the matter.

5. Notice of the Appeal was properly given in accordance with the notice provisions of Code §14-3.1(H)(4).
6. Commission Findings of Fact 1 through 33, 39 through 41 and 44 accurately reflect the facts in this matter as presented at the July 8 Hearing.
7. Commission Conclusions of Law 1 through 5 and 9 are within the authority of the Commission and are reasonably based upon the Commission Findings of Fact.
8. The Commission's Order with respect to item 1 is within the authority of the Commission.
9. In place of the Commission's Findings of Fact 37, 38, 42 and 43, the Governing Body finds that the Project is not compatible with and adaptable to adjacent properties and other properties in the vicinity of the Property in that it is too large in scale in relation to the single-family homes prevalent in the immediate vicinity east of Old Pecos Trail; and the proposed use is too intense in relation to the episodic use of the BPOE Lodge or immediately adjacent single-family residential uses. Non-residential uses on the opposite west side of Old Pecos Trail, while large in scale, are located downgrade from Old Pecos Trail, are not visually obtrusive and, generally, do not immediately abut single-family residential neighborhoods.
10. For the reasons set forth in paragraph 9 above, the Project adversely affects the public interest.
11. For the reasons set forth in paragraph 9 above, the Project, as shown on the Development Plan is not appropriate for the Property.

CONCLUSIONS OF LAW

Under the circumstances and given the evidence and testimony submitted at the Hearing, the Governing Body hereby CONCLUDES:

1. In approving the Subdivision, the Commission acted in accordance with law and in reliance on substantial evidence in the record before it.
2. The Project is not compatible with and adaptable to adjacent properties and other properties in the vicinity of the Property and Morningstar is therefore not entitled to an SUP for the Project.
3. The Project, as shown on the Development Plan, is not appropriate for the Property.
4. Commission Findings of Fact 1 through 33, 39 through 41 and 44 accurately reflect the facts in this matter as presented at the July 8 Hearing.
5. Commission Findings of Fact 1 through 33, 39 through 41 and 44 and Conclusions of Law 1 through 5 and 9 are herewith adopted by the Governing Body in their entirety.

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

The Appeal is denied in part and approved in part as follows:

1. That for the reasons set forth in the foregoing Findings of Fact and Conclusions of Law, the Appeal is DENIED with respect to the Subdivision. The Subdivision is herewith APPROVED, with the following conditions:

- (a) That the new property line between Lot B-1 and Lot B-2 shall provide for a 25-foot setback for the existing BPOE building;
- (b) All other conditions set forth in paragraph 1 of the Commission's Order relating to the Subdivision, but not including those conditions relating to the construction and operation of the Project, which shall be void and without effect as a result of the this Order; and
- (c) That Lot B-1 and B-2 comply with all applicable requirements of Code in effect at the time of development, as the same is defined in Code §14-12.1.

2. That for the reasons set forth in the foregoing Findings of Fact and Conclusions of Law, the Appeal is GRANTED with respect to the SUP and the Development Plan. The SUP and the Development Plan are herewith DENIED.

Mayor

Date:

FILED WITH THE CITY CLERK:

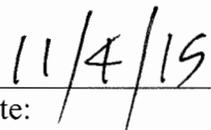
Yolanda Y. Vigil
City Clerk

Date:

APPROVED AS TO FORM:



Kelley A. Brennan
City Attorney



Date:

ITEM # 15-0324

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

Case #2015-14

1615 Old Pecos Trail Lot Split

Case #2015-15

1615 Old Pecos Trail Special Use Permit

Case #2015-16

1615 Old Pecos Trail Development Plan

Owner's Name – The Benevolent and Protective Order of Elks, Lodge No. 460

Applicant's Name – MVG Development and Morningstar Senior Living

Agent's Name – Montoya Land Use Consulting, Inc.

THIS MATTER came before the Planning Commission (Commission) for hearing on April 2, 2015 upon the application (Application) of Montoya Land Use Consulting, Inc., as agent for The Benevolent and Protective Order of Elks, Lodge No. 460 (BPOE) and MVG Development and Morningstar Senior Living (collectively, the Applicant).

The property is comprised of 8.62± acres of land located at 1615 Old Pecos Trail improved with a two-story 11,222 square-foot building and related improvements (the Property) and is zoned R-1 (Residential – 1 dwelling unit/acre).

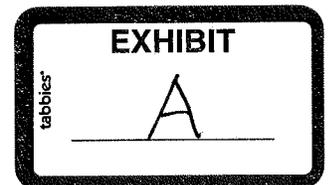
The Applicant seeks (1) to divide the Property into two lots of 3.85± acres of land (Lot B-1) and 4.77± acres of land (Lot B-2) respectively (the Subdivision); (2) a special use permit to operate a 104-bed continuing care facility (the CCF) on Lot B-1; and (3) development plan approval for the construction on Lot B-1 of an approximately 73,550 square-foot building to house the CCF operation (the Project).

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

FINDINGS OF FACT

General

1. The Commission heard reports from staff and received testimony and evidence from the Applicant and members of the public interested in the matter.
2. Under Code §14-2.3(C)(1) the Commission has the authority to review and approve or disapprove subdivision plats.
3. Pursuant to Code §14-2.3(E)(2) and (3)(a), the Commission has delegated to the Summary Committee its authority to hear and decide applications for the division of land into two lots (a Lot Split), except for those powers retained by the Commission.



4. Where a Lot Split is part of another request requiring Commission review, the Commission retains its authority to review and approve or disapprove the subdivision.
5. Pursuant to Code §14-3.7(D), Lot Splits are subject to the procedural requirements, approval criteria and development standards that apply to other subdivisions, except that no preliminary plat hearing is required and certain other exceptions that do not apply in this matter.
6. Code §14-3.7(B) sets out certain procedures required for the review and approval of Lot Splits, including, without limitation:
 - (a) A pre-application conference [Code §14-3.7(B)(1)]; and
 - (b) An ENN meeting [Code §14-3.7(B)(2)].
7. The Commission has the authority under Code §14-2.3(C)(1) to review and decide applications for development plan approval.
8. The Commission has authority under Code § 14-2.3(C)(3) to hear and decide requests for special permits pursuant to Code § 14-3.6 when they are part of a development request requiring Commission review.
9. Pursuant to Code §14-3.6(B), the Commission has the authority to hear and decide applications for special use permits; to decide questions that are involved in determining whether special use permits should be granted; and to grant special permits with such conditions and safeguards as appropriate under Code Chapter 14 or to deny special use permits when not in harmony with the intent and purpose of Code Chapter 14.
10. Code §14-3.8(C)(2)(b) requires that a request for a special use permit be reviewed concurrently and approved or denied by the land use board that reviews the development plan.
11. Pursuant to Code §14-3.8(B)(3)(b), a development plan is required prior to new development with a gross floor area of ten thousand square feet or more in a residential district.
12. The Project includes new development with a gross floor area of approximately 73,550 square feet.
13. A development plan is required for the Project.
14. Pursuant to Code §14-6.1(C) Table 14-6.1-1, entitled “Table of Permitted Uses”, “Continuing Care Community” is a permitted use in an R-1 district with a special use permit.
15. The Property is zoned R-1.
16. A special use permit is required for the Applicant’s operation of the CCF on Lot B-1.
17. Code §14-3.8(B)(1) requires an ENN, notice and a public hearing on development plans in accordance with the provisions of Code §§14-3.1(F), (H) and (I).
18. 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)(ii)]; (b) an Early Neighborhood Notification (ENN) meeting [§14-3.1(F)(2)(a)(iv), (v), and (viii)]; and (c) compliance with Code Section 14-3.1(H)(1)(a)-(d) and (I) notice and public hearing requirements.
19. A pre-application conference was held on November 20, 2014.
20. 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)].

21. Two ENN meetings were held on the Application, the first on December 11, 2014 at the Santa Fe Women's Club at 1616 Old Pecos Trail and the second on January 22, 2015 at the same location.
22. Notice of the ENN meetings was properly given.
23. The ENN meetings were attended by the Applicant, City staff, with approximately 47 members of the public interested in the matter in attendance at the first ENN meeting and approximately 170 at the second.
24. Code §14-3.1(J) provides that applications may be approved with conditions of approval to ensure compliance with the purpose and intent or any section of Chapter 14 and any applicable City land use policy.
25. 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 Lot Split, special use permit and development plan, all subject to the conditions set out in the Staff Report (Conditions).

The Lot Split

26. Code §14-3.7(C) sets out the approval criteria for subdivisions, including Lot Splits (Subdivision Approval Criteria).
27. The Applicant has complied with the submittal requirements of Code §14-3.7(B)(4)(b).
28. Based upon the analysis contained in the Staff Report and the evidence presented at the Hearing, the proposed Lot Split complies with the Subdivision Approval Criteria.

The Special Use Permit

29. Code §14-3.6(C) sets out the procedures to be followed prior to the grant by the Commission of a special use permit, including:
 - (a) Approval of a site plan and other site development drawings necessary to demonstrate that the Project can be accomplished in conformance with applicable Code standards [§14-3.6(C)(1)];
 - (b) Submittal of an application indicating the Code section under which the special use permit is sought and stating the grounds on which it is requested [§14-3.6(C)(2)]; and
 - (c) That a special use permit is limited to the specific use and intensity granted, requiring a new or amended special use permit if the use is changed or intensified [§14-3.6(C)(3)].
30. Code §14-3.6(D)(1) sets out certain findings that the Commission must make to grant a special use permit, including:
 - (a) That the Commission has the authority to grant a special use permit for the Project [§14-3.6(D)(1)(a)];
 - (b) That granting a special use permit for the Project does not adversely affect the public interest [§14-3.6(D)(1)(b)]; and
 - (c) That the Project is compatible with and adaptable to adjacent properties and other properties in the vicinity of the Project [§14-3.6(D)(1)(c)].

31. Code §14-3.6(D)(2) authorizes the Commission to specify conditions of approval for a special use permit to accomplish the proper development of the area and to implement the policies of the general plan.
32. The Applicant submitted a site plan and an application indicating the Code section under which the special use permit was being sought and stating the grounds for the request.
33. Pursuant to Code § 14-12.1, a “Continuing Care Community” is, in relevant part, “[a] residential community that provides a variety of living accommodations and differing levels of health care services to elderly or persons with disabilities...[which] shall include: ...(1) congregate housing in which residents live in rooms without individual kitchen facilities and in which at least the following services are provided: common meal preparation, common dining, recreation and social areas, room cleaning, laundry and transportation; and (2) a full nursing care unit with beds;...[and which] may include: (1) independent dwelling units for the elderly or persons with disabilities who are not in need of the level of care or services provided in congregate housing or an extended care facility, but who desire to live in a community where such services are available; and (2) an extended care facility...”
34. Based upon the analysis contained in the Staff Report and the evidence presented at the Hearing, the CCF is a Continuing Care Community, in that it will provide private and shared residential suites without individual kitchen facilities to elderly residents in an assisted living unit and a memory care unit, with common meal preparation and dining, common recreation and social areas, and room cleaning, laundry, transportation and other services, together with differing levels of health care services, including full-time nursing care by licensed RNs and LPNs 24 hours a day, 7 days a week, under a license issued by the New Mexico Department of Health.
35. The City of Santa Fe General Plan Future Land Use Map (the Plan) classifies the Property as “Public/Institutional”, which “...provides for schools, child care facilities, human service facilities, museums, libraries, fire and police stations, government offices, transit sites, airport, and other facilities that have a unique public character...”
36. The CCF is consistent with the “Public/Institutional” classification of the Property under the Plan.
37. Based upon the analysis contained in the Staff Report and the evidence presented at the Hearing, granting the special use permit for the Project will not adversely affect the public interest in that it will provide a needed service to a growing segment of the City of Santa Fe population in an area of the City with a larger percentage of aging residents; has been sited and designed to avoid adverse visual, traffic, noise and other impacts, including, without limitation, meeting the more restrictive standards of the South Central Highway Corridor Protection District, which are not applicable to the Project; and otherwise complies with all applicable Code requirements. .
38. Based upon the analysis contained in the Staff Report, the evidence presented at the Hearing and the facts set forth in paragraph 37 above, the Project is compatible with and adaptable to adjacent properties and to other properties in the vicinity of the Project, in that the building and related improvements are sited and designed to minimize visual impact, including, without limitation, by using building setbacks and second-story stepbacks that exceed applicable requirements; by varying the massing of the building; by sinking the building to reduce height above grade for compatibility with two-story buildings in the immediate

vicinity of the Property; by utilizing differences in site elevation and landscaping to buffer adjacent residential properties; and by designing the building in the Spanish Pueblo Revival style to integrate it with the design of other buildings in the immediate vicinity.

The Development Plan

39. Code §14-3.8(C)(1) requires applicants for development plan approval to submit certain plans and other documentation that show compliance with applicable provisions of Code (the DP Submittal Requirements).
40. The Applicant has complied with the DP Submittal Requirements.
41. Code §14-3.8(D)(1) sets out certain findings that must be made by the Commission to approve a development plan, including:
 - (a) That it is empowered to approve the development plan for the Project [§14-3.8(D)(1)];
 - (b) That approving the development plan for the Project does not adversely affect the public interest [§14-3.8(D)(1)]; and
 - (c) That the use and any associated buildings are compatible with and adaptable to buildings, structures and uses of the abutting property and other properties in the vicinity of the Project [§14-3.8(D)(1)].
42. Based upon the analysis contained in the Staff Report, the evidence presented at the public hearing and the facts set forth in paragraph 37 above, approving the development plan will not adversely affect the public interest.
43. Based upon the analysis contained in the Staff Report, the evidence presented at the public hearing and the facts set forth in paragraph 38 above, the Project is compatible with and adaptable to adjacent properties and to other properties in the vicinity of the Project.
44. Code §14-3.8(D)(2) provides that the Commission may specify conditions of approval that are necessary to accomplish the proper development of the area and to implement the policies of the general plan.

CONCLUSIONS OF LAW

Under the circumstances and given the information contained in the Staff Report and the evidence submitted during the Hearing, the Commission CONCLUDES as follows:

General

1. The proposed Lot Split, special use permit and development plan were properly and sufficiently noticed via mail, publication, and posting of signs in accordance with Code requirements.
2. The ENN meetings complied with the requirements established under the Code.

The Lot Split

3. The Commission has the power and authority under the Code to review and approve the Lot Split.

4. The Applicant has complied with all applicable requirements of the Code with respect to the Lot Split, including the Subdivision Submittal Requirements The Special Use Permit
5. The Commission has the power and authority under Code to grant the special use permit applied for.
6. The granting of the special use permit will not adversely affect the public interest.
7. The Project is compatible with and adaptable to adjacent properties and to other properties in the vicinity of the Project.
8. The special use permit granted herewith is granted for the specific use of the Property and intensity applied for and no change of use or more intense use shall be allowed unless approved by the Commission under a new or amended special use permit or as otherwise permitted by applicable Code.

The Development Plan

9. The Commission has the power and authority under the Code to review and approve the Applicant's development plan for the Project.
10. The Applicant has complied with all applicable requirements of the Code with respect to the development plan, including the DP Submittal Requirements.

WHEREFORE, IT IS ORDERED ON THE 7th OF MAY 2015 BY THE PLANNING COMMISSION OF THE CITY OF SANTA FE:

1. That for the reasons set forth in the foregoing Findings of Fact and Conclusions of Law, the Lot Split is approved as applied for, subject to the Conditions, and to the following additional conditions (collectively, the Additional Conditions):
 - (a) That construction hours for outside Project improvements shall be: Monday through Friday, 8 a.m. to 5 p.m.; Saturday, 8 a.m. to 2 p.m., with no work on Sunday; and that all construction vehicles shall be kept onsite, except those required for offsite improvements.
 - (b) That "No Parking" signs be installed on Calle de Sebastian.
 - (c) That the new property line dividing Lot B-1 from Lot B-2 shall provide for a 25-foot setback for the existing BPOE building with an easement across Lot B-2 to provide access for emergency vehicles and the functioning integrity of the Development Plan.
 - (d) That the owners of Lot B-1 and Lot B-2 enter into a shared parking agreement creating access for use for both driveways.
 - (e) That an analysis of drainage going to the box culvert be performed in order to evaluate the impact offsite of the drainage improvements.
 - (f) That the Project building stucco color be light reflective.
 - (g) That generator noise not exceed 50 DBA at any time.
 - (h) That bicycle racks be distributed so that one is located at the front and the other is located as shown.
 - (i) That the BPOE provide overflow parking to the CCF.
 - (j) That the Project and CCF provide for some sort of water harvesting.
 - (k) That all exterior light fixtures be lamped with LED bulbs.
 - (l) That the Project shall incorporate a right-turn deceleration lane for the north driveway.

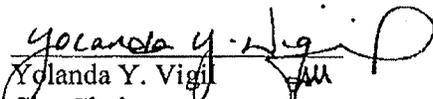
2. That for the reasons set forth in the foregoing Findings of Fact and Conclusions of Law, the special use permit is approved as applied for, subject to the Conditions and to the Additional Conditions.
3. That for the reasons set forth in the foregoing Findings of Fact and Conclusions of Law, the development plan is approved as applied for, subject to the Conditions and to the Additional Conditions.
4. The special use permit granted herewith shall expire if (a) it is not exercised within three (3) years of the date these Findings of Fact and Conclusions of Law are adopted by vote of the Commission, subject to any right of the Applicant under applicable Code to request an extension of such time or (b) it ceases for any reason for a period of one hundred eighty (180) days.



Michael Harris
Chair

5/8/15
Date:

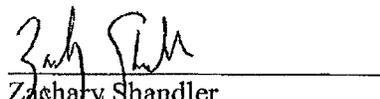
FILED:



Yolanda Y. Vigil
City Clerk

5/8/15
Date:

APPROVED AS TO FORM:



Zachary Shandler
Assistant City Attorney

5/7/18
Date: