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OF THE BOARD OF ADJUSTMENT MEETING
Tuesday, September 2, 2014

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MINUTES OF THE MEETING OF THE
BOARD OF ADJUSTMENT
CITY COUNCIL CHAMBERS
SANTA FE, NEW MEXICO
Tuesday, September 2, 2014

A. CALL TO ORDER AND ROLL CALL

A regular meeting of the City of Santa Fe Board of Adjustment was called to order by Gary Friedman, Chair, at approximately 12:25 p.m., on Tuesday, September 2, 2014, in the City Council Conference Room, 200 Lincoln Avenue, Santa Fe, New Mexico.

MEMBERS PRESENT:
Gary Friedman, Chair
Coleen Dearing
Douglas Maahs
Daniel H. Werwath

MEMBERS EXCUSED:
Rachel L. Winston, Vice-Chair
Patricia Hawkins
Donna Reynolds

OTHERS PRESENT:
Zachary Shandler, Assistant City Attorney
Tamara Baer, Planning Manager, Current Planning Division
Daniel A. Esquibel, Land Use Planner Senior, Current Planning Division
Melessia Helberg, Stenographer

AUDIENCE:
Former Councilor Karen Heldmeyer
Marian Schreiben

There was a quorum of the membership in attendance for conducting official business.

B. PLEDGE OF ALLEGIANCE

C. APPROVAL OF AGENDA

MOTION: Colleen Dearing moved, seconded by Douglas Maahs, to approve the Agenda, as published.

VOTE: The motion was approved unanimously on a voice vote.

D. APPROVAL OF MINUTES – August 5, 2014

MOTION: Douglas Maahs moved, seconded by Daniel Werwath, to approve the minutes of the meeting of August 5, 2014, as presented.

VOTE: The motion was approved unanimously on a voice vote.

E. FINDINGS/CONCLUSIONS: CASE NO. 2014-69. OLD SANTA FE TRAIL SPECIAL USE PERMIT.

A copy of the City of Santa Fe Board of Adjustment Findings of Fact and Conclusions of Law, in Case #2014-69, Old Santa Fe Trail Special Use Permit, is incorporated herewith to these minutes as Exhibit "1."

MOTION: Colleen Dearing moved, seconded by Douglas Maahs, to approve the Findings of Fact and Conclusions of Law in Case No. 2014-69, Old Santa Fe Trail Special Use Permit, as presented by staff.

VOTE: The motion was approved unanimously on a voice vote.

F. NEW BUSINESS

There was no new business.

G. STAFF COMMUNICATIONS

A copy of *Helpful Practices for Planning Commissioners and Members of other Quasi-Judicial Boards and Committees*, provided by Matthew O'Reilly, Director, Land Use Department, is incorporated herewith to these minutes as Exhibit "2."

Mr. O'Reilly said at the last meeting there was discussion about a list of "household hints," we had prepared for the Planning Commission. He said with this in mind he prepared the list which he is handing-out to the Board [Exhibit "2"]. Mr. O'Reilly reviewed Exhibit "2," with the Board. Please see Exhibit "2" for specifics of this presentation.

The Board commented and asked questions as follows:

- Chair Friedman said the Board has been asking the public to segregate themselves into "those opposed to," and "those in favor of," a case for at least 15 years, but he is happy to do it a different way.

  Mr. O'Reilly said you can ask how many are in attendance to speak on a particular issue, so you can gauge how much time you want to give everyone, but we don't want to make people feel as if they're put into a group. He said people who are not for or against the case, may have something relevant to say and don't want to be grouped into for or against.

  Ms. Baer said the Board should never make a decision based on how many people are for or against something.

- Chair Friedman said he believes this Board is very good at being judicious and fair minded in their decisions and has never felt this Board has made a decision because there are more people on one side than the other.

- Chair Friedman noted we never have security at the meetings of the Board.

  Mr. O'Reilly said the Chair certainly can ask him to make arrangements for a security presence if he feels there is a need.

  Responding to the Chair, Mr. O'Reilly said it is not necessary to reopen the public hearing to ask questions of staff or members of the public after the public hearing is closed.

  Ms. Baer said if you have questions of staff, you are always welcome to contact the staff before a meeting, and it is not *ex parte* communication in any way. If it is something staff needs to look into, if you ask staff beforehand, staff would be happy to answer it beforehand. Or you can wait and ask it at the meeting and staff will be prepared with the answer so everyone can have that information.

Mr. Maahs said, "Just so I'm clear on that, we're not supposed to be discussing any case amongst ourselves, but we can discuss it with our Chair."

Ms. Baer said, "No, you can discuss it only with the staff."

Mr. O'Reilly said, "You shouldn't be talking about anything with any of the other members You shouldn't be going out and looking at the site by yourself or anything like that. The point is, everyone should make the decision based on the same group of information – your packet and the public testimony."

– Mr. Maahs said, "So we're not allowed to go to the site."

Mr. O'Reilly said you should not be going to the site on your own and looking at the site conditions. If you get to the hearing and you think, "I really don't understand this case, I want to go to the site,' you should move to postpone the case and we'll set up a site visit and we'll take the whole Board, all at once to the site. The Planning Commission does that from time to time where they will want to go see something, but they all should see it together."

– Chair Friedman said we used to do that also. We would receive an email telling us we were going to make a site visit and the way it would be done. He asked if we can reinstitute that process.

Mr. Esquibel said he needs to know ahead of time so he can put it on the agenda.

Mr. O'Reilly said it needs to be an agenda item because it is a hearing, a meeting. He said the H-Board gets on a bus and tours the various cases together prior to the meeting at 5:30 p.m. They've all seen the same thing at the same time. He isn't suggesting this for every case, but it can be done where the Board feels it would be helpful.

– Ms. Dearing said it probably would have been helpful to visit the site before considering the last case. She asked how this is requested.

Mr. O'Reilly said you would move to postpone the case for 30 days and to set up a site visit before the Board makes its decision. He said staff will make the arrangements, including an agenda and publishing of notice. He said it could be done the day of the postponed hearing.

– Chair Friedman said it is difficult to postpone when the people are in attendance.

Mr. O'Reilly said, "You need to do whatever you need to do to make a decision."

Mr. Maahs said he totally agrees a site visit would have beneficial for the last case.

- Ms. Dearing asked if it is possible to do it in anticipation of hearing the case.

- Chair Friedman asked how far in advance do you need to publish the agenda for a site visit.

  Mr. O'Reilly said it is 15 days prior to the meeting.

  Mr. Esquibel said the new statutes require 72 hours in advance, but our Code requires 15 days.

- Chair Friedman asked if the site inspection is open to the public.

  Mr. O'Reilly said yes, but you don't have to take public testimony. Under the Open Meetings Act, the site visit has to be advertised because there will be a quorum in attendance. He said staff will take notes on any questions you ask.

- Chair Friedman asked what happens if we schedule a site visit and we don't have a quorum – can we look at the property.

  Mr. O'Reilly said, "I'm not sure if we would want to take you out there if we didn't have a quorum."

  Former Councilor Heldmeyer said, "You aren't making a decision."

  Mr. O'Reilly said, "We're not going to have problems making quorums from now into the future for the Board of Adjustment, so it won't be a problem."

- Chair Friedman said, "All I'm saying is whether or not we would want to put it on the agenda as a rule."

- Mr. Werwath said he doesn't think it's necessary, noting he can think of maybe two cases in two years it's been necessary.

  Mr. O'Reilly said, "If this Board decides they want to do that, staff will arrange it as a matter of course, that there is a site visit the afternoon of the main meeting, if you want to do that."

Ms. Baer said, alternative if you have questions about how it looks, we could provide more graphic information for that particular case – that might be another way to do it. One of the reasons the H-Board goes on site visits is that all of their properties are geographically contained, which isn't true for cases before this Board.

– Chair Friedman said sometimes we have aerial views of the property in the packet so we can see the situation of the property.

Mr. O'Reilly, referring to Item #11 in Exhibit "2," said, "If staff was getting a number of calls from Board members saying I'm not sure where this is, can you provide a different aerial photograph, it may be too late to put that in the packet. But that night at the hearing, like Tamara said, we can do some overhead view, some aerial view that answered those questions if we knew about it ahead of time."

Mr. Esquibel said so everyone could see it at the same time, he could go to the site and take a video clip and put it on the screen as a video so you can see what is happening. He said members can call him ask for videotapes of the traffic and such.

Mr. O'Reilly said, "Mr. Chair, we'd like to keep that to a minimum, so we would only do that if there were real problems and it was clear that multiple Board members weren't understanding the packet or the staff report. Unless, again, the Board decides as a matter of course they want to see something like that, and then we'll do it."

Former Councilor Heldmeyer said, with regard to talking with staff, she has found it helpful to let staff know about any errors in the packet instead of "springing" it on them at the meeting. She thinks staff appreciates that as well.

Mr. Esquibel said we reviewed some of the Board authority under special use permit at the last meeting, so the Board should keep that in mind. He said, "Don't hesitate to ask questions in terms of what your authority is. I put that authority table, the criteria, in the Memo. That gives you an idea of what you can condition, what you can mitigate and don't be afraid to ask questions. We're there to help you.

Chair Friedman asked Mr. O'Reilly to email Exhibit "2" to the members of the Board who are not in attendance.

Chair Friedman thanked the staff for being prepared, being knowledgeable and for doing a great job, which makes our job much easier.

H. MATTERS FROM THE COMMISSION

There were no Matters from the Commission.

I. ADJOURNMENT

There was no further business to come before the Board and the meeting was adjourned at approximately 12:55 p.m.

Gary Friedman, Chair

Melessia Helberg, Stenographer

City of Santa Fe
Board of Adjustment
Findings of Fact and Conclusions of Law

Case #2014-69
Owner's Name – Orchard Metal Capital
Agent's Name – Wayne Lloyd

THIS MATTER came before the Board of Adjustment (Board) for hearing on August 5, 2014 (Hearing) upon the application (Application) of Wayne Lloyd as agent for Orchard Metal Capital (Applicant).

The Application seeks a special use permit to open a restaurant (Project) on property located at 621 Old Santa Fe Trail (Property). The Property is zoned RC-8/AC (Residential Compound – 8 dwelling units/acre – Arts and Crafts Overlay).

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

FINDINGS OF FACT

1. The Board heard reports from staff and received testimony and evidence from the Applicant and members of the public interested in the matter.
2. Pursuant to Code §14-2.4(C)(2) the Board has the authority to hear and decide applications for special use permits as provided in Santa Fe City Code (Code).
3. Pursuant to Code §14-3.6(B) the Board has the authority to hear and decide applications for special use permits in accordance with applicable provisions of Code Chapter 14; to decide questions that are involved in determining whether special use permits should be granted; and to grant special use 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.
4. Pursuant to Code §14-6.1(C) Table 14-6.1-1, entitled "Table of Permitted Uses", full service restaurants are permitted Food and Beverages uses in AC districts if reviewed and approved as special use permits in accordance with the review procedures of §14-3.6.
5. The Property is located in an AC district.
6. Code Section 14-3.6(C) sets out the procedures to be followed prior to the grant by the Board of a special use permit, including:
   (a) Approval of a site plan for the Project and other site development drawings necessary to demonstrate that the Project can be accomplished in conformance with applicable Code standards [Section 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 [Section 14-3.6(C)(2)]; and

Exhibit "N"

(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 [Section 14-3.6(C)(3)].

7. Code Section 14-3.6(D)(1) sets out certain findings that the Board must make to grant a special use permit, including:
   (a) That the Board has the authority to grant a special use permit for the Project [Section 14-3.6(D)(1)(a)];
   (b) That granting a special use permit for the Project does not adversely affect the public interest [Section 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 [Section 14-3.6(D)(1)(c)].
8. Code Section 14-3.6(D)(2) authorizes the Board 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.
9. Code Section 14-3.1(F)(2)(a)(viii) requires an ENN for special use permits and Code Section 14-3.1(F)(4)-(6) establishes procedures for the ENN, including:
   (a) Compliance with the notice requirements of Code Section 14-3.1(H) [Section 14-3.1(F)(4)];
   (b) Timing for the ENN meeting and the principles underlying its conduct [Section 14-3.1(F)(5)]; and
   (c) Guidelines for the conduct of the ENN meeting [Section 14-3.1(F)(6)].
10. Notice was properly given in accordance with the notice requirements of Code Section 14-3.1(H)(1)(a)-(d).
11. An ENN meeting was held on May 14, 2014 at 621 Old Santa Fe Trail in the building planned to house the restaurant use.
12. The ENN meeting was attended by the Applicant, City staff, and other interested parties, and the discussion followed the guidelines set out in Code Section 14-3.1(F)(6).
13. 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.
14. Board staff provided the Board with a report (Staff Report) evaluating the factors relevant to the proposed special use permit and recommending approval by the Board of such special use permit, subject to the conditions that (a) Applicant shall provide four parking spaces with one van accessible parking space to be ADA compliant and all parking shall be developed in compliance with 14-8.6 "OFF-STREET PARKING AND LOADING"; (b) Applicant shall install 15 bicycle parking spaces; (c) shall comply with International Fire Code (IFC) 2009 Edition and (d) Applicant shall provide screening around the dumpster and move it behind Building 3 (Collectively, the Staff Conditions) set out in the Staff Report and Staff presentation.
15. Staff reported that the parking at the property will expand from 22 spaces to 60 spaces.
16. The entry/exit will only be onto Old Santa Fe Trail because use of Halona Street is prohibited under a private easement.
17. The Applicant at the hearing stated that the hours of operation at the property for the existing use are daytime but the restaurant use will be daytime and evening hours.

CONCLUSIONS OF LAW

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

1. The Board has the power and authority under Code §§14-2.4(C)(2) and 14-3.6(B) and Code §14-6.1(C) Table 14-6.1-1 to grant the special use permit applied for.
2. The special use permit was properly and sufficiently noticed via mail, publication, and posting of signs in accordance with Code requirements.
3. The ENN meeting complied with the requirements established under the Code.
4. Based on Findings of Fact #15-17, the intensity of the restaurant use will adversely affect the public interest.
5. Based on Findings of Fact #15-17, the intensity of the restaurant use is not compatible with and adaptable to adjacent properties and to other properties in the vicinity of the Project.

IT IS SO ORDERED ON THE _____ OF SEPTEMBER 2014 BY THE BOARD OF ADJUSTMENT OF THE CITY OF SANTA FE

The special use permit request herewith is **DENIED**.

_____ _____
Gary Friedman Date:
Chair

FILED WITH THE CITY CLERK:

_____ _____
Yolanda Y Vigil Date:
City Clerk

APPROVED AS TO FORM:

_____ _____
Zachary Shandler Date:
Assistant City Attorney

Helpful Practices for Planning Commissioners and Members of other Quasi-Judicial Boards & Committees

City of Santa Fe Land Use Department

1. Be on time for Commission/Board meetings or let the Chair or staff know that you will be late. This is important so as not to keep the public waiting and to ensure a quorum. All commissioners should have the Chair's cell phone number

2. In certain instances, it may be helpful to explain to the public how the commission hearing will be conducted. For example, if there are many people expected to testify or are otherwise crowded into the chambers. This allows the public the opportunity to leave and come back later if they want to.

3. The Chair should recognize Commissioners before they speak.

4. Procedural questions should be put to the Land Use Department staff or the City Attorney by the Chair.

4. Keep questions of staff to a minimum during and immediately after the presentation of the staff report, otherwise the applicant and public are kept waiting to testify.

5. ALWAYS formally announce the opening of "public hearing portion of the meeting" and formally announce that the "public hearing portion of the meeting is closed".

6. NEVER segregate, or ask the public to segregate themselves, into "those opposed to" and "those in favor of" a case. This can intimidate speakers and unintentionally inhibit public testimony.

7. Treat ALL members of the public with respect and courtesy, even if they are difficult. Remember that most people are not used speaking in public and may be nervous, so make them feel welcome. Set reasonable time limits for testimony and stick to them. This requires tact and practice. Thank each member of the public for their comments.

8. NEVER get into an argument with a member of the public that is testifying. Commissioners should NEVER directly engage members of the audience unless the member of the public is at the podium. Commissioners should allow the Chair to control any outbursts or comments from audience members.

9. The Chair should inform the Land Use Director if the Chair is concerned about security in the chambers for a particular meeting. The Director will also inform the Chair if staff feels there may be a security concern. The Director will arrange for police or other security presence when necessary.

Exhibit "2"

10. After the public testimony is concluded, in addition to asking questions of staff or the applicant, the Commissioners may ask questions of a member of the public that testified. If so, a Commissioner should pose these questions through the Chair to avoid the perception that the public hearing has been re-opened. For example: Commissioner: "*Mr. Chair I'd like to ask Mr. Jones a question about his testimony.*" In these cases, the Chair should ask that the member of the public come to the podium.

11. Commissioners may find it helpful to write down their questions while reviewing the case packet prior to the meeting. It is always acceptable for a Commissioner to contact staff prior to the meeting they if have a question; this has the effect of shortening meetings.

12. While asking questions or otherwise discussing a case, Commissioners should avoid statements such as: "*This project doesn't feel right so I am voting against this*" or "*I don't like this project.*" Instead, Commissioners should strive to provide clear reasons for their position on a proposed project, for example: "*I don't believe that the traffic issues have been adequately addressed*" or "*I don't believe that the project meets the criteria for rezoning because* _____."

13. Strive to be courteous to the Chair and to your fellow Commissioners by keeping your comments brief and to the point. Commissioners should be clear and concise when making a motion and avoid making long and complicated motions "off the cuff". Writing down a motion beforehand is helpful in this regard.

14. After a motion and second are made the Chair should restate the motion and ask for discussion. If there is no discussion, the vote should be taken immediately. If there is significant discussion to the point that commissioners may have forgotten the motion, then the Chair should restate the motion again before calling for a vote.

15. When calling for the vote the Chair should say: "*All those in favor say 'Aye'*"; and after hearing the response then say: "*All those opposed say 'No'*". The Chair should then announce the outcome, i.e.: "*The motion has passed*". Calling the roll should be used <u>very</u> sparingly, usually only in instances when the Chair feels there will be a tie and he or she will be required to vote.

16. At very large hearings it may be helpful to call a short recess to allow a crowd to leave the commission chambers before moving on to the next case.

17. It is not necessary to move or vote to adjourn. At the conclusion of all business on the agenda the Chair should simply announce: "*There being no more business before the commission; we are adjourned.*"