

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

Case #2015-43

2749 & 2751 Agua Fria Street General Plan Amendment

Case #2015-44

2749 & 2751 Agua Fria Street Rezoning to C-2

Owner's Name – Emelecio (Leroy) Romero

Agent's Name – James W. Siebert and Associates

THIS MATTER came before the Planning Commission (Commission) for hearing on September 3, 2015 upon the application (Application) of James W. Siebert and Associates as agent for Emelecio (Leroy) Romero (Applicant).

The Applicant requests an amendment to the General Plan Future Land Use map to change the designation of 2.20± acres of land from Mountain/Corridor Density Residential to Community Commercial and requests rezoning of 2.20± acres of land from R-1 (Residential, 1 dwelling unit per acre) to C-2 (General Commercial). The property is located at 2749 & 2751 Agua Fria Street.

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 fifteen 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 General Plan (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) sets 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)]; (b) an Early Neighborhood Notification (ENN) meeting [§14-3.1(F) 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 April 15, 2015 at the Southside Library.
  7. Notice of the ENN meeting was properly given.
  8. The ENN meeting was attended by the Applicant and City staff; there were eight 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.
  10. Code §14-3.2(B)(2)(b) requires the City's official zoning map to conform to the General 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 General Plan.
  12. City Land Use Department staff reviewed the Application and related materials and information submitted by the Applicant for conformity with applicable Code requirements and provided the Commission with a written report of its findings Staff Report, subject to certain conditions (the Conditions) set out in such report.

#### General Plan Amendment

13. Under Code § 14-3.2, an amendment to the General Plan requires submittal of an application for review and recommendation to the Governing Body by the Planning Commission.
14. The Commission has considered the criteria established by Code §14-3.2(E)(1)(a) 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 City is attempting to provide for a diversity of uses in the area along Agua Fria and Siler Road. A traffic impact study prepared by the Applicant indicates it would be feasible to provide access from Agua Fria for commercial development on the project site.
15. The Commission has considered the criteria established by Code §14-3.2(E)(1)(b) and finds the following facts: (b) *Consistency with other parts of the Plan.* [§14-3.2(E)(1)(b)]. Since the 1960's, this area has consisted of a mix of housing and small scale commercial businesses. This property is not located within the boundaries of the Southwest Sector Plan and a definition of appropriate land uses is derived more from consistency with recently approved zoning applications and existing mix of uses rather than reliance on specific plan policy statements.
16. The Commission has considered the criteria established by Code §14-3.2(E)(1)(c) and finds the following facts: (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. [§14-3.2(E)(1)(c)].* Commercial uses have existed in the vicinity for several decades. The City Council has recently approved C-2 zoning on the land just east and west of the properties.
17. The Commission has considered the criteria established by Code §14-3.2(E)(1)(c) and finds the following facts: (c) *The amendment does not: (ii) affect an area of less than two acres, except when adjusting boundaries between districts. [§14-3.2(E)(1)(c)].* The site is greater than two acres.
  18. The Commission has considered the criteria established by Code §14-3.2(E)(1)(c) and finds the following facts: (c) *The amendment does not: (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 proposed General Plan Amendment will not benefit a few landowners at the expense of surrounding landowners as there have been several similar plan amendments during the past several years.
  19. The Commission has considered the criteria established by Code §14-3.2(E)(1)(d) and finds the following facts: (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 Code §14-3.2(E)(1)(c).
  20. The Commission has considered the criteria established by Code §14-3.2(E)(1)(e) and finds the following facts: (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.
  21. The Commission has considered the criteria established by Code §14-3.2(E)(1)(f) and finds the following facts: (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)].* This area along Agua Fria Road has a long history of diverse land uses, first under County jurisdiction prior to 1990, and then under extraterritorial jurisdiction from 1991 to 2009. It was common for many decades for Santa Fe families to buy land in this area along Agua Fria and construct their homes and start a small business at the same location. This practice has continued as new generations of family members continue to reside on the property and continue the family business.
  22. The Commission has considered the criteria established by Code §14-3.2(E)(1)(g) and finds the following facts: (g) *Consideration of conformity with other city policies, including land use policies, ordinances, regulations and plans.* The proposal is consistent with land use policies, ordinances, regulations and plans.
  23. The Commission has considered the criteria established by Code §14-3.2(E)(2)(a) and finds the following facts: (a) *the growth and economic projections contained within the general plan are erroneous or have changed.* When the existing General Plan was adopted in 1999, it did not recognize the land use complexity of

Agua Fria Street. The current Mountain/Corridor Density Residential and R-1 designations are inconsistent with the pattern of Santa Fe families buying land in this area along Agua Fria and constructing their homes and starting a small business at the same location.

24. The Commission has considered the criteria established by Code §14-3.2(E)(2)(b) and finds the following facts: *no reasonable locations have been provided for certain land uses for which there is a demonstrated need*. The Applicant has resided at this location for many decades. The application of the C-2 zoning is a better step, as opposed to maintaining the status quo, to allow the Applicant's children to benefit from the property and to try to address the mix of residential and commercial uses on this property on this particular street.
25. The Commission has considered the criteria established by Code §14-3.2(E)(2)(c) and finds the following facts: *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 conditions affecting the subject land are jurisdictional rather than a result of market conditions.

#### Rezoning

26. Under Code §14-3.5(C), the Commission may review the proposed rezonings and make recommendations to the Governing Body by the Planning Commission.
27. The Commission has considered the criteria established by Code §14-3.5(C)(1)(a) and finds the following facts: *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 current R-1 zoning designation is inconsistent with the historical pattern of Santa Fe families buying land in this area along Agua Fria and constructing their homes and starting a small business at the same location. The City Council recently approved C-2 zoning for the nearby Boylan property and Rivera property. Given the discrepancy between the zoning maps and the actual land use, it would be advantageous to recognize the existing land use pattern for these areas as part of amending the city maps.
28. The Commission has considered the criteria established by Code §14-3.5(C)(1)(b) and finds the following facts: *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.
29. The Commission has considered the criteria established by Code §14-3.5(C)(1)(c) and finds the following facts: *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.

30. The Commission has considered the criteria established by Code §14-3.5(C)(1)(d) and finds the following facts: *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 for the subject property should be considered an infill development rather than a property that is located in the path of the future growth of the community. There is larger other undeveloped C-2 zoned land available in the southern region of the urban area, generally along Cerrillos Road, the Las Soleras and Entrada Contenta developments.
31. The Commission has considered the criteria established by Code §14-3.5(C)(1)(e) and finds the following facts: *(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)];* Public utilities are available on Agua Fria, including water, gas and electric lines, cable and telephone lines. A traffic impact study prepared by the Applicant indicates it would be feasible to provide access from Agua Fria from commercial development on the project site.
32. The Commission has considered the criteria established by Code §§14-3.5(D)(1),(2) and finds the following facts: *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; 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.* Existing infrastructure is available to serve this development and has the capacity to accommodate the project at full development.

### CONCLUSIONS OF LAW

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

#### General

1. The proposals 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.
4. The Applicable Requirements have been met.

The Rezoning

5. The Applicant has the right under the Code to propose the rezoning of the Property.
6. 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.
7. The Applicable Requirements have been met.

**WHEREFORE, IT IS ORDERED ON THE \_\_\_\_ DAY OF OCTOBER, 2015 BY THE PLANNING COMMISSION OF THE CITY OF SANTA FE:**

That for the reasons set forth in the foregoing Findings of Fact and Conclusions of Law, the Commission recommends approval of the General Plan Amendment to Community Commercial to the Governing Body.

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, subject to Staff Conditions.

\_\_\_\_\_  
Michael Harris, Chair

\_\_\_\_\_  
Date:

FILED:

\_\_\_\_\_  
Yolanda Y. Vigil  
City Clerk

\_\_\_\_\_  
Date:

APPROVED AS TO FORM:

\_\_\_\_\_  
Zachary Shandler  
Assistant City Attorney

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Date: