City of Santa Fe, New Mexico

memo

TO: MICHAEL HARRIS, CHAIRPERSON
FROM: ZACK SHANDLER, ASSISTANT CITY ATTORNEY
SUBJECT: STUDY SESSION GUIDELINES
DATE: 12/17/14

BACKGROUND

The Planning Commission has scheduled a Study Session for its December 18, 2014 public meeting and has requested guidelines on what can and cannot be discussed during the meeting.

GENERAL RULE

All Commissioners, as decision makers, should operate from the same base of knowledge and information when a quasi-judicial case is under consideration before the Planning Commission. Quasi-judicial means: "essentially judicial in character but not within the judicial power or function especially as constitutionally defined." Citation: www.merriam-webster.com/dictionary/quasi-judicial. This ensures the greatest chance at fairness and non-biased decision-making, which is what appellate courts look for in deciding whether to affirm or overturn municipal actions.

CAN-DO--GUIDELINES FOR STUDY SESSION

- Commissioners may comment during the study session about former, completed quasi-judicial cases.
- Commissioners may comment during the study session on what aspects/characteristics they would like to see in future types of subdivisions, master plans, plats, etc.
- Commissioners may comment about whether these aspects/characteristics should be adopted as legislative code changes in the future. Legislative means: "having the function of making laws." Citation: www.dictionary.reference.com/browse/legislative

CANNOT-DO--GUIDELINES FOR STUDY SESSION

- Commissioners may not comment during the study session about pending quasi-judicial cases (i.e. approved preliminary subdivision plat) because those specific cases were not part of the notice. Citation: Reid v. Board of Examiners in Optometry, 92 NM 414 (1979) (a commissioner shall be disqualified if they make a statement

showing they have made their decision prior to a pending hearing); NM Open Meetings Act, NMSA 1978, § 10-15-1(F) ("Meeting notices shall include an agenda containing a list of specific items of business... .")

- Commissioners may not comment during the study session about cases they may have heard about and which may be filed in the future.

RECOMMENDED GUIDELINES GOING FORWARD

- Commissioners may meet with parties, citizens or other commissioners (as long as there is not a quorum or a rolling quorum) about legislative matters, such as code changes they would like to see added in the future. Citation: NM Open Meetings Act, NMSA 1978, § 10-15-1(B) ("All meetings of a quorum of members of any board, commission... are declared to be public meetings open to the public at all times... .").
- Commissioners should not meet with any parties, including other commissioners, about pending quasi-judicial cases. Citation: SFCC 1987, § 14-2.8G ("A member of a land use board shall not communicate with any interested parties outside of the public meeting and hearing concerning the merits or substance of any quasi-judicial item coming before the board, except in writing filed with the land use director within the prescribed time period for inclusion in the public hearing record, and with copies distributed immediately to all other known parties-in-interest and all other members of the board.").
- Commissioners should not email or otherwise communicate with other commissioners about quasi-judicial pending cases. Citation: NM Inspection of Public Records Act, NMSA 1978, § 14-2-1A ("Every person has a right to inspect public records of this state... ."). Please note, the Inspection of Public Records Act provides that emails regarding public business or cases (even when done on private devices) are public documents subject to public review. There have been approximately 800 public records requests made to Santa Fe officials and appointees in 2014 (and many of them have asked specifically to see emails between parties, including those made on private devices).