



Agenda

CITY CLERK'S OFFICE

DATE 3/31/16 TIME 10:20

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AMENDED

PLANNING COMMISSION
Thursday, April 7, 2016 - 6:00pm
City Council Chambers
City Hall 1st Floor - 200 Lincoln Avenue

- A. ROLL CALL**
- B. PLEDGE OF ALLEGIANCE**
- C. APPROVAL OF AGENDA**
- D. APPROVAL OF MINUTES AND FINDINGS/CONCLUSIONS**

MINUTES: February 18, 2016
March 3, 2016

FINDINGS/CONCLUSIONS:

Case #2016-02. 3760 Buffalo Grass Preliminary Subdivision Plat.

Case #2016-03. Vista Serena, Tract 49 Tierra Contenta, Final Subdivision Plat.

Case #2016-04. Estancias de Las Soleras Unit 1C Final Subdivision Plat.

Case #2016-06. 1503 Cerros Altos Terrain Management Variance.

- E. OLD BUSINESS**
- F. NEW BUSINESS**

1. An ordinance amending Subsection 14-6.2(H); creating a new Subsection 14-6.2(J) of the Land Use Development Code to establish urban agricultural activities and uses for commercial purposes; and making other such changes as necessary to carry out the purpose of this ordinance. (Mayor Gonzales and Councilor Ives) (John Alejandro) **(POSTPONED)**
 - a) A resolution adopting the City of Santa Fe policies, procedures and guidelines for Urban Farms. (Mayor Gonzales and Councilor Ives) (John Alejandro) **(POSTPONED)**
2. An ordinance amending Subsection 14-6.2 of the Land Use Development Code to remove certain limitations on Short-Term Rental Dwelling Units; amending the fee schedule for a Short-Term Rental permit; and requiring that permit holders pay all applicable taxes or be subject to certain penalties. (Councilor Maestas, Mayor Gonzales, Councilor Ives) (Lisa Martinez/Randy Randall/Noah Berke)
 - a) A resolution establishing the number of Short-Term Rental permits the City of Santa Fe Land Use Department may issue. (Councilor Maestas and Mayor Gonzales, Councilor Ives) (Lisa Martinez/Randy Randall/Noah Berke)

3. **Case #2016-13. 451 Circle Drive Escarpment Variance.** Buena Vistas Designs, agent for Catherine and Don Lucas, request approval of a variance to allow an addition to a house within the Ridgetop Subdistrict of the Escarpment Overlay District. The 2.05 acre property is zoned R-1 (Residential – 1 unit per acre). (Katherine Mortimer, Case Manager)
4. **Case #2016-17. 195 Brownell Howland Road Escarpment Variance.** Thomas Lechner, agent for Anne Thompson Davenport, request approval of a variance to allow an addition to an attached garage within the Ridgetop Subdistrict of the Escarpment Overlay District. The 5.08 acre property is zoned R-1 (Residential – 1 unit per acre). (Katherine Mortimer, Case Manager)
5. **Case #2016-18. 165 Brownell Howland Road Escarpment Variance.** JenkinsGavin Design and Development, agent for B & L Land, LLC., request approval of a variance to allow an addition to an accessory structure within the Ridgetop Subdistrict of the Escarpment Overlay District. The 5.46 acre property is zoned R-1 (Residential – 1 unit per acre). (Katherine Mortimer, Case Manager)

G. STAFF COMMUNICATIONS

H. MATTERS FROM THE COMMISSION

I. ADJOURNMENT

NOTES:

- 1) Procedures in front of the Planning Commission are governed by the City of Santa Fe Rules & Procedures for City Committees, adopted by resolution of the Governing Body of the City of Santa Fe, as the same may be amended from time to time (Committee Rules), and by Roberts Rules of Order (Roberts Rules). In the event of a conflict between the Committee Rules and Roberts Rules, the Committee Rules control.
- 2) New Mexico law requires the following administrative procedures to be followed by zoning boards conducting “quasi-judicial” hearings. By law, any contact of Planning Commission members by applicants, interested parties or the general public concerning any development review application pending before the Commission, except by public testimony at Planning Commission meetings, is generally prohibited. In “quasi-judicial” hearings before zoning boards, all witnesses must be sworn in, under oath, prior to testimony and will be subject to reasonable cross examination. Witnesses have the right to have an attorney present at the hearing.
- 3) The agenda is subject to change at the discretion of the Planning Commission.
***Persons with disabilities in need of special accommodations or the hearing impaired needing an interpreter please contact the City Clerk’s Office (955-6520) 5 days prior to the hearing date.**



Agenda

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SUMMARY INDEX
PLANNING COMMISSION

April 7, 2016

ITEM	ACTION TAKEN	PAGE(S)
A. Roll Call	Quorum Present	1
B. Pledge of Allegiance	Recited	
C. Approval of Agenda	Approved as amended	2
D. Approval of Minutes & Findings and Conclusions		
Minutes: February 18, 2016	Approved as presented	2
March 3, 2016	Approved as amended	2
Findings of Fact & Conclusions of Law		
• <u>Case #2016-02</u> 3760 Buffalo Gras Preliminary Subdivision Plat	Approved	3
• <u>Case #2016-03</u> Vista Serena Tract 49 Final Subdivision Plat	Approved	3
• <u>Case #2016-04</u> estancias de Las Soleras Unit 1C Final Subdivision Plat	Approved	3
• <u>Case #2016-06</u> 1503 Cerros Altos Terrain Management Variance	Approved	3
E. Old Business	None	4
F. New Business		
1. Urban Agriculture Ordinance Amendment	Postponed	
a. Urban Farms Resolution	Postponed	
2. Short-Term Rental Ordinance Amendment	Recommended approval	4-12
a. Short-Term Rental Permits Resolution		
3. <u>Case #2016-13</u> . 451 Circle Drive Escarpment Variance	Withdrawn	12
4. <u>Case #2016-17</u> . 195 Brownell Howland Road Escarpment Variance	Approved with conditions	13-14
5. <u>Case #2016-18</u> . 165 Brownell Howland Road Escarpment Variance	Approved with conditions	14-16
G. Staff Communications	Discussion	16
H. Matters from the Commission	Discussion	17-19
I. Adjournment	Adjourned at 8:02 p.m.	19

PLANNING COMMISSION
Thursday, April 7, 2016 - 6:00pm
City Council Chambers
City Hall 1st Floor - 200 Lincoln Avenue

CALL TO ORDER

A regular meeting of the City of Santa Fé Planning Commission was called to order by Chair Vince Kadlubek on the above date at approximately 6:00 p.m. in the Council Chambers at City Hall, 200 Lincoln Avenue, Santa Fé, New Mexico.

A. ROLL CALL

Roll Call indicated the presence of a quorum for the meeting.

Members Present

Commissioner Vince Kadlubek, Chair
Commissioner Brian Patrick Gutierrez, Vice-Chair
Commissioner John B. Hiatt, Secretary
Commissioner Roman Abeyta
Commissioner Justin Greene
Commissioner Stephen Hochberg
Commissioner Piper Kapin
Commissioner Sarah Cottrell Propst

Members Absent

Commissioner Mark Hogan

OTHERS PRESENT:

Ms. Lisa Martínez, Land Use Department Director
Mr. Greg Smith, Current Planning Division Director and Staff Liaison
Mr. Noah Berke, Current Planning Division, Senior Planner
Ms. Katherine Mortimer, Current Planning Division, Senior Planner
Mr. Zach Shandler, Assistant City Attorney
Mr. Randy Randall, Tourism Santa Fe, Executive Director
Mr. Carl Boaz, Stenographer

NOTE: All items in the Committee packet for all agenda items are incorporated herewith by reference. The original Committee packet is on file in the Planning and Land Use Department.

B. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

C. APPROVAL OF AGENDA

Chair Kadlubek noted that Item one is postponed and asked for other changes.

Mr. Smith said item #3 has been withdrawn. The application was filed in error and it will be eligible for administrative siting before a variance is requested. Some Commissioners have received emails about this case and he would have included that as part of the minutes.

Chair Kadlubek asked if that same email would be included if it comes back to the Commission.

Mr. Smith said it depends on whether the administrative siting is approved.

Commissioner Hiatt moved to approve the agenda as amended with the first case postponed and the third case withdrawn. Commissioner Greene seconded the motion and it passed by unanimous voice vote.

D. APPROVAL OF MINUTES AND FINDINGS OF FACT

1. MINUTES:

a. February 18, 2016

Commissioner Kapin moved to approve the minutes of February 18, 2016 as submitted. Commissioner Hiatt seconded the motion and it passed by unanimous voice vote.

b. March 3, 2016

Commissioner Hiatt requested the following changes:
On page 3 where "Cindy" should be "Renee Martinez."
On page 6 last paragraph to delete "44."
On page 9 to capitalize Mr. Smith's name.

Commissioner Greene requested a change on page 4 where it should say \$15 million; not \$15.

Commissioner Hiatt moved to approve the minutes of March 3, 2016 as amended. Commissioner Kapin seconded the motion and it passed by unanimous voice vote.

2. FINDINGS OF FACT & CONCLUSIONS OF LAW

a. Case #2016-02. 3760 Buffalo Grass Preliminary Subdivision Plat.

A copy of the Findings of Fact and Conclusions of Law for Case #2016-02 is attached to these minutes as Exhibit 1.

Commissioner Hiatt moved to approve the Findings of Fact and Conclusions of Law for Case #2016-02 as presented. Commissioner Hochberg seconded the motion and it passed by unanimous voice vote.

b. Case #2016-03. Vista Serena, Tract 49, Tierra Contenta, Final Subdivision Plat.

A copy of the findings of Fact and Conclusions of Law for Case #2016-03 is attached to these minutes as Exhibit 2.

Commissioner Kapin moved to approve the Findings of Fact and Conclusions of Law for Case #2016-03 as presented. Commissioner Hochberg seconded the motion and it passed by unanimous voice vote.

c. Case #2016-04. Estancias de Las Soleras, Unit 1C, Final Subdivision Plat.

A copy of the findings of Fact and Conclusions of Law for Case #2016-04 is attached to these minutes as Exhibit 3.

Commissioner Hochberg moved to approve the Findings of Fact and Conclusions of Law for Case #2016-04 as presented. Commissioner Hiatt seconded the motion and it passed by unanimous voice vote.

d. Case #2016-06. 1503 Cerros Altos Terrain Management Variance.

A copy of the findings of Fact and Conclusions of Law for Case #2016-06 is attached to these minutes as Exhibit 4.

Commissioner Hochberg moved to approve the Findings of Fact and Conclusions of Law for Case #2016-06 as presented. Commissioner Hiatt seconded the motion and it passed by unanimous voice vote.

F. OLD BUSINESS

There was no old business.

G. NEW BUSINESS

- 1. An ordinance amending Subsection 14-6.2(H); creating a new Subsection 14-6.2(J) of the Land Use Development Code to establish urban agricultural activities and uses for commercial purposes; and making other such changes as necessary to carry out the purpose of this ordinance. (Mayor Gonzales and Councilor Ives) (John Alejandro)**

- a. A resolution adopting the City of Santa Fe policies, procedures, and guidelines for Urban Farms. (Mayor Gonzales and Councilor Ives) (John Alejandro)**

For this case, both ordinance and resolution were postponed.

- 2. An ordinance amending Subsection 14-6.2 of the Land Use Development Code to remove certain limitations on Short-term Rental Dwelling Units; amending the fee schedule for a Short-term Rental permit and requiring that permit holders pay all applicable taxes or be subject to certain penalties. (Councilor Maestas, Mayor Gonzales, Councilor Ives) (Lisa Martínez, Randy Randall, Noah Berke)**

- a. A resolution establishing the number of Short-Term Rental permits the City of Santa Fe Land Use Department may issue. (Councilor Maestas, Mayor Gonzales, Councilor Ives) (Lisa Martínez, Randy Randall, Noah Berke)**

A copy of the proposed ordinance amendment with the FIR is incorporated herewith to these minutes as Exhibit 5. A copy of the proposed resolution is incorporated herewith to these minutes as Exhibit 6.

Mr. Shandler asked if any Commissioners have a short-term rental permit. Commissioner Greene said he does. Mr. Shandler recommended that he recuse from this matter. He also clarified that the Commission's vote is a recommendation to the Governing Body.

Commissioner Greene asked if he could ask questions about the legislation for clarity.

Mr. Shandler said he could only as a member of the public.

Commissioner Greene left the bench to sit in the public.

Ms. Martínez introduced Randy Randall, Tourism Santa Fe Director and said Noah Berke has also worked hard on the proposed changes to this ordinance and resolution. She presented an overview of the change to the Commission.

At the September 30, 2015 Council meeting, Resolution 2015-89 was approved which would analyze the current Land Development Code and make recommendations regarding Short-Term Rentals. The resolution noted an increase in Short-Term Rentals in Santa Fe with many unpermitted STRs being offered on-line. Those units do not contribute Lodgers' Taxes or GRT.

She said the City currently has 350 licenses for STR and estimated approximately 1,000 to 1,200 STRs existing in the City now. The Ordinance and Resolution changes proposed are to increase the number of permits and amend the applicable fee schedule also and require all STR owners to pay all applicable taxes and those without permits would face certain penalties. The penalties are intended to be stringent to bring owners into compliance.

The City has a waiting list now that grew from 30 to about 70 while working on the changes. The proposal also would increase staffing from one presently to three for code enforcement

Staff has worked with public and industry over several months and held two public hearings. The first had 150 attend and the other had 70-80. Staff also worked closely with the Santa Fe Realtors' Association for feedback and support.

In the packet is a list of all proposed changes to the ordinance and the resolution is to help work through the process. Permits would be increased to 1,000 in the resolution and could provide more if more come forward. That is in the resolution so it is easier to change the amount.

Public Hearing

Chair Kadlubek opened this matter for public comments.

Mr. Kurt Hill, 610 Paseo Corte, said he was representing the Santa Fe Association of Realtors as the Chair of Government Affairs. He read from a written statement which is incorporated herewith to these minutes as Exhibit 7 and included a letter from the Association and a letter from Commissioner Hiatt from 2008 when he was in charge of the Land Use Department.

He said the Association has a desire for transfers of these permits at the sale of the property. They saw no legal harm for the transfer. He read their proposed as: "If an owner of an existing short-term rental permit sells his or her property that currently has a permit, then the new owner may apply for a permit within 30 days of closing. The new owner shall provide a copy of the deed to the City when applying for the new permit. If an inspection has not been done within six months of the application date, then new inspections shall be required in order to obtain the permit." He said as the bottom line here, that "you consider yourself in a position of owner of a rental for years and have to sell the property on short notice and canceling the bookings will be difficult and detrimental and make everyone look bad."

Mr. Justin Greene, 611 Quintana Place, owns a vacation rental and thought this is great legislation but had a couple of questions on issues that might come up.

For the realtors, he didn't know if this should be passed out with every home sale. That might be excessive and the Commission might consider deleting that requirement.

In the fee structure, it shows that it is more expensive for a second unit in a compound. He recommended that the fee on page 11 of the ordinance be a fee of \$325 for first unit and \$300 or \$250 for the second.

On page 12, the paragraph of line four through twelve will create a bureaucracy to refund money and didn't think that would be necessary. And on page 12, paragraph x noted there will be a finance position just to provide refunds.

On page 8 at the top in paragraph xiii, it requires insurance but it should specify what kind of insurance, whether it is general liability, renter's insurance, contents insurance or whatever pertains there.

On page 7, paragraph vi, where it says short-term rentals can't be used for non-residential purposes, the film industry might want to use a short-term rental unit for a commercial production.

Lastly, and the most tricky, is on page 6, paragraph ii. He asked how the City could enforce two people on the same street who have rentals. One of them might become unallowable and that means it is neighbor against neighbor.

Ms. Colleen Green, 3928 Fairly Road, said she is also a realtor and in unique position to see the potential difficulties in the ordinance. Most of the changes are great. One thing Kurt Hill didn't mention that might have been overlooked is the logistical nightmare of trying to maintain only one rental unit per block. Santa Fe is not a grid city. She asked how they would define what is across the street or catty-corner.

Secondly, with an existing homeowner, realtors have been told there is no problem for people who have a permit, selling the property and the next owner being able to get a permit because there would be plenty of permits. What if a person pays all taxes and the new owner applies and a new owner nearby got a permit in close proximity to the short-term rental? She thought this was unintended. But if the City doesn't allow an easy transfer, it could end up with someone buying property with a permit before and not being able to get one.

There were no other speakers from the public and the public hearing was closed.

Mr. Randall responded to the public comments. He pointed out that the density issue is in any residential neighborhood. The commercial rentals don't need permits but would have to register and operate within the commercial zoning. The idea of not having more than two rentals adjacent (not 3 in a row or an entire street of rentals) seemed to make sense to the Council and the public at the hearings. The ordinance allows anyone currently in the business, even illegally, within first 90 days, to apply even if that would be three in a row. So the first to sell likely would not get a permit. He didn't think having a short-term rental is a right in residential ownership.

Ms. Martínez added that the concern was raised by public with too many in the neighborhood. The enforcement will be a challenge but somehow that has to be balanced with not creating neighborhoods that are solely short-term rental neighborhoods. So Staff will keep working on enforcement solutions.

Mr. Randall agreed. The whole ordinance for the City was a challenge in 2008 and it got ahead of one enforcement officer and 350 permits that caused these changes.

Regarding the second issue of permits becoming a commodity, if you want to sell liquor, the license is sold to the highest bidder. There is a finite number of permits and no transfer would allow it to keep its value. If the demand gets ahead of permits is why Staff made that part a separate resolution so we don't have to change the ordinance for number of permits. It allows the ordinance to stand on its own and Council can change the number of permits as needed. Staff will review that in 18 months with Council and if it is found there are not sufficient permits and allowing the transfer with the sale, it can be considered at that time.

As to non-repurposing of a residential unit, it is not to preclude a film being shot in the house but to prevent wedding receptions with 200-300 in attendance or a series of fraternity parties, etc. With these on a short-term basis, events can happen and life moves on but the purpose should be for a residence and parties should be located where parties are more appropriate.

Commissioner Kapin pointed out that most resort cities deal with this issue and she could see both sides. She sympathized with the realtors. Dealing with what is adjacent is problematic. If a person gets the permit and holds on to it forever, it is not fair to the neighbors.

Mr. Randall suggested that being able to rent your home in a neighborhood is not a right. The purpose is to prevent a virtual motel street. Other cities have put in far more density restrictions. This is far more liberal than most others.

Commissioner Kapin agreed that model makes more sense to pick areas instead of house by house. Santa Fe is not a grid. The analogy with alcohol is interesting. There are full licenses and restaurant licenses. They are not transferable. If you pass the application, you are in.

She asked, if they already have a thousand identified units, why the City is approving just 1000 now.

Mr. Randall said they are not identified. It is an abstract number. And if the ordinance is approved, we can deal with that. Or we could mistakenly eliminate a whole lot of those already in business. We don't intend to eliminate anyone in the first 90 days. So there is a sense of urgency to get them registered. There are at least a couple hundred in the residential areas. If we had an unlimited number, there would not be any sense of urgency. But if more are needed, it can be done.

Commissioner Propst referred to page 7, paragraph vi, regarding outdoor events, and asked whose discretion it was to determine "and the like." She felt that needs more detail there.

Ms. Martínez explained that the idea behind Short-Term Rental is for residential purposes. In a city like Santa Fé where people like to come visit, some homes have been rented out for big weddings and large parties and parking over a weekend and neighbors have complained about that. So the City is trying to limit those large activities. She agreed that "and the like" is very general. Maybe someone has suggested language.

Commissioner Propst said they are trying to address the number of people and maybe it should be based on space in the house without trying to list every kind of event.

Mr. Randall said they will develop a series of policies and procedures in the enforcement side that are easier to change. If your next door neighbors have a wedding, there will probably be the whole neighborhood invited. But in a rental, it is whole different situation.

Commissioner Propst acknowledged that makes sense.

Ms. Martínez said they also have talked about the number of individuals who could stay in the house but that is impossible to enforce.

Commissioner Propst went to page 8 regarding insurance and asked if what is adequate property insurance coverage will be spelled out in the policies.

Ms. Martínez agreed. Staff will provide information on type and amount of what is most appropriate. That needs some research and it will be included in administrative policies.

Mr. Randall said liability is the biggest concern. He asked if it should be \$1 million or \$2 million.

Chair Kadlubek said his next door neighbor has parties regularly with cars parked on down the street. He asked if there are proper steps to take. If it is loud, there is a noise ordinance. What he feared is that like Commissioner Greene said, a filming where the City could cite them for nonresidential use but without the impact. He thought there were existing ordinances.

Ms. Martinez agreed there are ordinances for some of those matters. There are also a lot of Home Owner Associations around the City that have such policies in place. Maybe a homeowner has teen kids and lots of parties and the HOA can address it internally. So there are mechanisms in place and they would also apply to short-term rentals.

Chair Kadlubek asked then why they would add other language to address the impacts that can already be addressed. If it is worry about noise and traffic only, maybe the current code can handle it.

Mr. Randall said this sets the rules for the owners to convey to their guests. The enforcement of what is on the books requires notice. So they need to know there are certain un-allowed activities. The City will intend to be reasonable in enforcement.

Chair Kadlubek understood. He asked the realtor is it would be hard to sell a house with a lot of rentals on the street.

Mr. Hill said in the downtown, you could expect more inner city activity. He lives behind a B & B and expected a little more traffic. He has managed a few associations. In a condo association there a house that became a short-term rental and he heard many complaints. Weddings was the biggest issue. On had a big tent. But he didn't think this ordinance has anything to do with that.

Chair Kadlubek said the ramification is a neighborhood filling up with short-term rentals and the current residents living there for many years don't want to have to deal with it. The concern is about trying to preserve the character of a neighborhood.

Commissioner Abeyta said Section vi is confusing. He wondered if it would be better to say outdoor events are prohibited.

Commissioner Propst agreed.

Commissioner Abeyta said it should just say they are prohibited.

Ms. Martínez agreed. It should not be a double negative.

Commissioner Kapin mentioned the impact on long term rentals which already has a shortage. She asked if there is anything creative being done to incentivize those neighbors to creatively use their properties for affordable long-term rentals. Maybe they could come up with a way to do that.

Mr. Randall agreed. There are many cities waiting to see what Santa Fe is going to do. Some have just prohibited short-term rentals. The business has gotten far too big for that to happen. It was probably more appropriate in 2008. The purpose is better management of them now. That is part of revisit in 18 months.

Commissioner Kapin thought this is the perfect time to deal with that. A lot of renters here are struggling with it. We just need to be really careful with it. We should not wait too long. We already have the numbers and could come up with something.

Mr. Randall agreed and they will be thinking about that during the 18 months.

Ms. Martínez added that it is a great idea to think about that issue and how we can mesh them together. She gave Mr. Berke a lot of credit for his nationwide research. A lot of people will be watching us to see what we are doing. So she asked Commissioners to please pass their ideas along to Staff. We are open to those considerations.

Chair Kadlubek said it does seem there is lots of forethought to protect existing homeowners and neighborhoods and for new renters, Staff is saying we will do that later. There is a culture of how we treat development, neighborhoods and who gets their language in ordinances and others get ignored. Those

renters need to be considered. He would really like to see how we are compensating. It also doesn't say where the revenue goes. Supply and demand will raise the cost of living here. So it is important to do more than just talk about it in the future.

Commissioner Hochberg agreed. This is a situation with several hundred people with permits and more waiting in line for permits and a substantial amount unregistered and unregulated. He agreed with all the concerns for maintaining affordable long-term rental. But we are a tourist city.

The Staff has done a great job with the public and it is not a closed book. He thought the language on insurance and outdoor events can be easily fixed and the selling of short-term rental property. The buyer should not be pushed out but grandfathered in.

Chair Kadlubek pointed out that the Commission's job is to make recommendations before the final vote. So we do some vetting first.

Commissioner Kapin observed on the FIR that this will make some money. Sometimes having an intent with these taxes will affect long-term affordable housing. She asked if there is a way to put some of the income toward that purpose.

Ms. Martinez clarified that it is not a revenue-generating venture. The funds collected from fees and registration will come to Land Use but it is specifically for enforcement purposes with two added staff and management of the program and media outreach. Mr. Randall will be able to collect Lodgers Tax and can explain its use. But the fees go to management.

Mr. Randall said the \$500,000 in GRT revenue is determined by Council and \$650,000 in Lodgers Tax will be in accord with the Lodgers' Tax Ordinance - generally to market our city effectively. These unregistered short-term rentals are getting a free ride right now. By statute, none of this can be used for affordable housing. Hopefully some could be used for Economic Development.

Commissioner Kapin asked if the City could have another tax.

Mr. Randall explained that taxes can only be established by the State.

Mr. Smith recalled the initial version of the Short-Term Rental ordinance did include a revenue generating part but that was struck down by the courts.

Mr. Randall recalled it originally had a thousand-dollar fee and the court struck that down. You can only collect a fee to cover the expenses associated.

Commissioner Kapin observed this is very different than with hotels and lodgers. It is going out to residential areas and thought should be given to how it benefits the whole community, not just marketing for tourists.

Chair Kadlubek said the impact on the rental market is the issue. The City should be collecting GRT and Lodgers Tax from these rentals. No one disputes that. But he asked how it compensates for the impacts in the neighborhoods - on home owners and the long-range rental market. He asked if GRT revenue is also restricted.

Mr. Randall explained that the use of the GRT is not from an additional percentage but just the standard GRT charged against everything. It cannot be specified other than how it is already defined.

Commissioner Propst said the concern of impact on the long-term rental market is already flagged in the minutes. She also wondered if Staff have looked into whether short-term rentals are really eliminating long-term rentals. Some might use the house for a portion of the year so they would never consider long-term rentals. She asked if that is part of the study by Staff.

Mr. Randall said it is to some extent. There are concerns among realtors about not being allowed to use it as it has been. The difference of short-term versus long-term rental is really an economic concern by the owner.

Ms. Martinez said they don't have enough research on that and are just trying to address the issue in before the Commission.

Mr. Berke reported that in his research, the displacement is happening where landlords are seeing a chance to make more money with short-term rentals. It tends to be a better process for benefit of the landlords. They can maintain them regularly. Airbnb has shown us that having one-bedroom rentals instead of a roommate is more rewarding. It helps supplement the mortgage. It is a very big concern in hundreds of cities around the country. But it is hard to directly correlate them.

Commissioner Hiatt moved to recommend approval to the Governing Body of the short-term rental ordinance amending Section 14-6.12 of the Land Development Code without amendment. Commissioner Abeyta seconded the motion.

Chair Kadlubek asked what the length of short-term is.

Mr. Randall said short-term means under 30 days.

Chair Kadlubek wanted to make sure all the public comments are addressed. He asked about the \$25 more for a second unit.

Mr. Randall said that is incorrect. The fee of the second unit is the same as the first and the overall price was reduced \$25, with the thought that with the larger number of permits being issued, there would be sufficient funds at the \$325 level to cover the costs. He thought that might have been left over from the original and he would make sure that is clear in the proposed ordinance. The other suggestions on nonresidential use and insurance, he will incorporate when it goes to Council.

Commissioner Kapin said there is also the question about the transfers. She asked that it also be addressed.

Mr. Randall said he would. From his perspective, he preferred to deal with control on number of permits being adequate.

Chair Kadlubek asked about the adjacent language, other than just to see how it goes and hoped the permits would be used rather than sitting on them to protect the neighborhood.

Chair Kadlubek asked that it be amended to include at page 7, paragraph vi to fix the wording to communicate the intent and a term other than "and the like."

Commissioner Hiatt accepted as a friendly amendment Commissioner Abeyta's language – "that outdoor events such as weddings and large parties be prohibited."

Chair Kadlubek asked that it also include that Council look at specific types of insurance.

Commissioner Hiatt said that will be in the rules and regulations.

Commissioner Hochberg said it should not be just types but also amounts in the rules and regulations.

Chair Kadlubek added that the fee is the same for the second unit.

The motion to approve passed unanimously by roll call vote with Commissioner Kapin, Commissioner Kadlubek, Commissioner Gutierrez, Commissioner Propst, Commissioner Abeyta, Commissioner Hiatt and Commissioner Hochberg voting in the affirmative; none voting against. Commissioner Greene was recused and did not vote.

Commissioner Hiatt moved to recommend approve the short-term resolution to the Governing Body. Commissioner Hochberg seconded the motion and it passed by unanimous voice vote except Commissioner Greene was recused and did not vote on the motion.

Commissioner Greene returned to the bench after the vote.

- 3. Case #2016-13. 451 Circle Drive Escarpment Variance.** Buena Vistas Designs, agent for Catherine and Don Lucas, request approval of a variance to allow an addition to a house within the Ridgetop Subdistrict of the Escarpment Overlay district. The 2.05 acre property is zoned R-1 (Residential - 1 unit per acre). (Katherine Mortimer, Case Manager)

This case was withdrawn by the applicant.

4. **Case #2016-17, 195 Brownell Howland Road Escarpment Variance.** Thomas Lechner, agent for Anne Thompson Davenport, requests approval of a variance to allow an addition to an attached garage within the Ridgetop Subdistrict of the Escarpment Overlay District. The 5.08 acre property is zoned R-1 (Residential - 1 unit per acre). (Katherine Mortimer, Case Manager)

Ms. Mortimer presented the staff report for this case. The report is incorporated herewith as Exhibit 8. Please refer to Exhibit 8 for details concerning this staff report.

Ms. Mortimer reviewed the escarpment ordinance for the Commission. She said the Ridgetop was mapped with unsophisticated techniques of driving around and pointing. So some are not all that visible. Staff consider them on a case-by-case basis and look at the intent of the ordinance to determine whether it would have an impact or not. There are other restrictions such as regulation of colors, heights, styles, grading, vegetation, siting, etc. She explained that the overlay is not to protect views from private property but to protect public views from public rights of way and public spaces. This is the first of two cases.

Ms. Mortimer explained that this lot was split in 2009 which made it subject to a code amendment from 2005 that effectively prohibits development in the Ridgetop. Thus, the variance is requested to have an addition to the guest house. It is limited to 300 square feet. There is room for it on north without a variance but it would have to be a new building of 650 square feet and is on the far side of the driveway. It is only visible from the road nearby and would not be counter to the escarpment overlay intent. While it would not need a variance, it would create a greater disturbance. The proposed conditions are in Exhibit A of the Staff report.

Applicant's Presentation

Mr. Thomas Lechner, 24 Vista de Loma Drive, was sworn. He noted, as Staff reported, that this is a small addition. At one point, this structure was a one-car garage. The house was built in 1958 and is a John Gaw Meem house and it will maintain the same characteristics and it will meet all restrictions including fire, terrain management and is roughly just keeping everything tight to the site and not disturbing more area than needed.

Public Hearing.

There were no speakers from the public regarding this case.

Commission Questions:

Commissioner Propst asked if Mr. Lechner was okay with staff conditions.

Mr. Lechner agreed.

Commissioner Greene pointed out that the intent of the escarpment language is to protect views from major thoroughfares and not every public right of way, so it is to protect the view sheds. He asked how far this is from those major roads and whether it is visible from Bishop's Lodge or Hyde Park Roads.

Ms. Mortimer said it is not visible from any of those roads.

Commissioner Greene asked for Staff to provide some documentation for enforcement by taking pictures or pointing out the location from the closest preserved viewsapes.

Ms. Mortimer said Staff can do that but in this case it is completely invisible. It would be difficult without GPS, to show its exact location.

Mr. Smith said if that is the consensus of the Commission, Staff will provide that information from here on out.

Commissioner Greene thanked him. A picture is worth a thousand words.

Commissioner Kapin noted there was not any map of the area with houses and asked how far away the neighbors are.

Ms. Mortimer said there are neighbors on that road and it is a very curvy road. There are no neighbors across the street.

Mr. Lechner added that this property is at the end of Brownell Howland; to the east is Shirley McClain's property. It is not visible from any houses down the roads and it is in the trees so it is not visible from any residences.

Commissioner Abeyta moved for approval of Case #2016-17 - 195 Brownell Howland Road Escarpment Variance with all staff conditions. Commissioner Hochberg seconded the motion and it passed by unanimous voice vote.

5. **Case #2016-18. 165 Brownell Howland Road Escarpment Variance.** JenkinsGavin Design and Development, agent for B & L Land, LLC., requests approval of a variance to allow an addition to an accessory structure within the Ridgetop Subdistrict of the Escarpment Overlay District. The 5.46 acre property is zoned R-1 (Residential - 1 unit per acre). (Katherine Mortimer, Case Manager)

Commissioner Hochberg recused himself and left the meeting.

Ms. Mortimer presented the staff report for this case. The report is incorporated herewith as Exhibit 9. Please refer to Exhibit 9 for details of the staff report.

Ms. Mortimer explained that the lot split was approved this morning at the Summary Committee, making it subject to the prohibition of development within the Ridgetop Subdistrict. All the area outside of the escarpment district has extremely steep slopes and not developable. The barn will be removed and the stable expanded. It is a net decrease in developed area and height and the project is only visible from Brownell Howland Road at the driveway entrance. So even neighbors across the street cannot see it. A letter from that neighbor in support of this project is in the packet.

A copy of the support letter from Merrilee Caldwell and Marcus Randolph is incorporated herewith to these minutes as Exhibit 10.

So the proposed change of use and configuration of the structure is not contrary to the purpose or intent of the escarpment overlay district. She said if the Commission determines that it meets the variance criteria, the Commission may approve the variance, subject to the conditions in Exhibit A of the report.

Applicant's Presentation

Ms. Jennifer Jenkins, 130 Grant Avenue, Suite 101 was sworn.

Ms. Jenkins explained that the only developable area is in the Ridgetop Subdistrict and the rest is outside the escarpment overlay but it is too steep for any development. The key component is reducing the square footage so they are reducing the nonconformity by reducing height and square footage.

This property is 1/3 mile from Bishop's Lodge Road and it can't be seen from any major thoroughfare.

Ms. Jenkins provided two renderings and a site plan drawing. A copy of these submittals is incorporated herewith to these minutes as Exhibit 11. She pointed out the portion of the stable to be demolished and the dimensions for the four car garage and conceptual design of the garage and a comparison with existing stables as a before and after shot.

Public Hearing

There were no speakers from the public regarding this case and the public hearing portion was closed.

Commission Discussion

Commissioner Greene asked if the property has city water.

Ms. Jenkins agreed. It has a septic tank but city water.

Commissioner Greene asked how it qualifies for this addition.

Mr. Smith clarified in the code that the density is a minimum 2.5 acres with no utilities and if either water or sewer is provided it is one-acre minimum. This has two principal units on it and is why the lot split was allowed.

Also for the Commission's information, Staff has the plat for the subject property and asked that the Summary Committee members sign it after the meeting tonight.

Commissioner Greene asked if there is a well on the property now.

Ms. Jenkins agreed. The well is shared. It was an old family compound and the well is just used for irrigation. She didn't know what the usage is.

Commissioner Greene said once somebody has city water, it can be measured. So he would require metering and reporting because the City can work toward decommissioning the well.

Ms. Jenkins explained that the well is metered. She just didn't come with that information this evening.

Chair Kadlubek asked if she would be open to letting him know that information.

Ms. Jenkins agreed.

Commissioner Propst asked what that has to do with a garage.

Commissioner Greene clarified that it is a variance so it can be an impact.

Commissioner Hiatt moved to approve Case #2016-18 - 165 Brownell Howland Road Escarpment Variance subject to staff conditions. Commissioner Greene seconded the motion and it passed by unanimous voice vote.

Mr. Smith announced that the Findings of Fact and Conclusions of Law for this case will be presented at the April 21 meeting, rather than the May meeting.

G. STAFF COMMUNICATIONS

Mr. Smith said the meeting is scheduled for April 21 with a development review for two properties including one at the Railyard with significant public comment and testimony. He will release the meeting schedule for the second half of 2016. In September and December, rather than 1st and 3rd Thursdays, the meetings will be on the 2nd and 4th Thursdays and better coordinate with Council for September and December.

Mr. Shandler announced an improper email was sent and advised Commissioners not to open or read it and notify staff whenever that occurs. There might be ways to cure that.

H. MATTERS FROM THE COMMISSION

Commissioner Greene said for the public record that we have been part of the West River Planning Area and will have an open house next Tuesday at 5-7 pm at Frenchy's Field and on the Wednesday on the 20th as well. It is expected to come to the Planning Commission as early as the second meeting in May. There has been lots of progress and individual owners are requesting changes in zoning voluntarily. It is a good mix.

Commissioner Gutierrez updated the Summary Committee meeting earlier in the day with one case on the agenda that was approved.

Regarding Long Range Planning, Commissioner Greene said they are trying to make progress. They had a presentation from the Santa Fe MPO. It was a great presentation to understand how the MPO does their long range planning on transportation for 25 years out. It goes along with the CIP stuff at the last Commission meeting. He wondered if the final version of the CIP budget would be heard at next Planning Commission meeting.

At the next meeting, the LRP will discuss Agua Fria and the General Plan amendments and how to move forward. They are now meeting for two hours and he is encouraging two meetings per month in order to catch up on deferred planning. The Committee needs to know the topics the Commission wants studied. It is a place where we can percolate up ideas such as affordable housing and short-term rentals.

Commissioner Kapin added that in the conversation about long-range planners, they have put together a preliminary update on the General Plan and we keep bumping into the need for it. So LRP will be discussing that and bringing a plan to the Commission soon.

Commissioner Propst asked if the green building code update is part of that.

Commissioner Greene said it is not specifically part of it. Under Sustainable Santa Fe we are working on land use and construction industries. Ms. Mortimer is chairing much of that and ordinance changes will be coming.

Ms. Martinez said Staff does have some big changes on the green code and that is working its way through committees and looking forward to getting them approved.

Chair Kadlubek would like to better understand the purpose of the Long Range Planning Committee and the mechanism for achieving that purpose. If the purpose of it is only for educational study sessions, he didn't have an interest in serving on it much longer. But if it is for other purposes that actually serve needs, he would consider staying on it. He liked the MPO presentation but didn't have time for 90-minute educational presentations twice a month.

Ms. Martínez said she sat in on one a couple of weeks ago. She had a light bulb go off and ideas of a very useful purpose for that committee. It is not under her department and she is having preliminary conversations with the City Manager and with Kate Noble to help the Commission with the long term - not just focused on the ideas in front of the Commission but the bigger picture overall for the City.

Commissioner Kapin was happy to hear that. She felt the same way as Chair Kadlubek. she wanted it to be productive and bring information to the Planning Commission. Some of the study sessions are relevant. But she is really looking forward to that change - it is necessary.

Commissioner Hiatt reminded them that it is on our list to make sure LRP comes back to Ms. Martinez.

Chair Kadlubek agreed and also to have appropriate minutes of those meetings. We need proper minutes from those meetings.

Commissioner Greene had informal conversations on that with the new appointee and he thought they can vet some early initiatives for affordable housing - how to cut energy use or water saving projects long range. The Commission should be talking about these things.

Chair Kadlubek said we can adopt this committee to see it do things we think need to happen or to review some LRP.

Commissioner Kapin said obviously the work for the West River Corridor popped up and the question of why LRP staff are handling that. They are spending a ton of time like three a week for six weeks - 18 meetings. But she questioned why it landed there. The subcommittee is not doing much planning.

Ms. Martínez commented that several months ago ordinances were passed by Council to look at West River Corridor and Old Pecos Trail and the FIRs regarding the load on the Land Use Staff's plates and a request for a facilitator to do it. Ultimately the consultant was struck from the budget and put on the Staff. So Land Use took Old Pecos Trail Corridor and LRP took the West River Corridor to balance the work load.

Commissioner Kapin thought a lot of it had to do with annexation and the issues around it. There is a phase 3 hanging out there and the Commission should dig into that and plan for it.

Ms. Martínez recalled what prompted the ordinances came out of the controversy over Morningstar. So all these people are requesting changes in their zoning and need to have an overlay that will work.

Mr. Smith added that the Current Planning Division is working as closely as possible with LRP in weekly staff meetings. The River Corridor will involve changes in the General Plan and perhaps writing of overlay rules. The topics in the LRP has a paragraph in the code which he read.

Commissioner Hiatt gave kudos for the Chair. For the last few weeks he has been through a lot and done a lot for the City.

Chair Kadlubek thanked him and said he felt most unprepared for this meeting because he has been really busy.

I. ADJOURNMENT


Having completed the agenda and no other business to come before them, the Planning Commission meeting was adjourned at 8:02 p.m.

Approved by:



Vince Kadlubek, Chair

Submitted by:


Carl Boaz for Carl G. Boaz, Inc

Planning Commission
April 7, 2016

EXHIBIT 1

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

Case #2016-02

3760 Buffalo Grass Preliminary Subdivision Plat

Owner's Name- Buffalo Grass LLC

Agent's Name- Santa Fe Planning Group, Inc.

THIS MATTER came before the Planning Commission (Commission) for hearing on March 3, 2016 upon the application (Application) of Santa Fe Planning Group as agent for Buffalo Grass LLC (Applicant).

The Applicant seeks the Commission's approval of the preliminary subdivision plat to divide 1.1.93 acres into five for +/- .24 acre lots. The property is located at the southeast corner of Airport Road and Buffalo Grass Road. The property is zoned Mixed Use (MU) and is located in the Airport Road Overlay zone.

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

FINDINGS OF FACT

1. The Commission heard reports from staff and received testimony and evidence from the Applicant and there were no members of the public in attendance to speak.
2. Pursuant to Code § 14-2.3(C)(1), the Commission has the authority to review and approve or disapprove subdivision plats.
3. Pursuant to Code § 14-3.7(A)(1)(b) subdivision of land must be approved by the Commission.
4. Code § 14-3.7 (B)(1) requires applicants for preliminary plat approval to comply with the pre-application conference procedures of Code § 14-3.1(E).
5. Pursuant to Code § 14-3.1(E)(1)(a)(ii), pre-application conferences are required prior to submission of applications for subdivisions unless waived.
6. A pre-application conference was held on August 13, 2015 in accordance with the procedures for subdivisions set out in Code §§ 14-3.1(E)(2)(a) and (c).
7. Code § 14-3.7(B)(2) requires compliance with the early neighborhood notification (ENN) requirements of Code § 14-3.1(F) for preliminary subdivision plats and provides for notice and conduct of public hearings pursuant to the provisions of Code §§ 14-3.1 (H), and (I) respectively.
8. Code §§ 14-3.1(F)(4) and (5) establish procedures for the ENN.
9. The Applicant conducted an ENN meeting on November 12, 2015 at the Southside Side Library at 6599 Jaguar Drive in accordance with the notice requirement of Code § 14-3.1(H).
10. The ENN meeting was attended by the Applicant and City staff; there were two members of the public in attendance and concerns were raised.

11. Code § 14-3.7(C) sets out certain findings that must be made by the Commission to approve a preliminary subdivision plat.
12. The Commission finds the following facts:
 - a. *In all subdivisions, due regard shall be shown for all natural features such as vegetation, water courses, historical sites and structures, and similar, community assets that, if preserved, will add attractiveness and value to the area or to Santa Fe.* The proposed subdivision does not contain any natural features, historical sites or other community assets.
 - b. *The Planning Commission shall give due regard to the opinions of public agencies and shall not approve the plat if it determines that in the best interest of the public health, safety or welfare the land is not suitable for platting and development purposes of the kind proposed.* The land to be subdivided meets applicable standards and is eligible for the development purposes proposed.
 - c. *All plats shall comply with the standards of Chapter 14, Article 9 (Infrastructure Design, Improvements and Dedication Standards).* The proposed plat complies with applicable standards of Chapter 14, Article 9 if it includes the condition of approval to provide screening from Airport Road.
 - d. *A plat shall be not approved that creates a nonconformity or increases the extent or degree of an existing nonconformity with the provisions of Chapter 14 unless a variance is approved concurrently with the plat.* The proposed plat does not create or increase any nonconformity with the applicable standards of Chapter 14, as residential use is a permitted use in a mixed-use district.
 - e. *A plat shall be not approved that creates a nonconformity or increases the extent or degree of an existing nonconformity with the applicable provisions of other chapters of the Santa Fe City Code unless an exception is approved pursuant to the procedures provided in that chapter prior to approval of the plat.* The proposed plat will not create a nonconformity with any other chapter of the Santa Fe City Code.
13. The Commission finds under Code § 14-8.6(C)(1) that due to a lack of curbside parking and that the lot sizes will limit the amount of off-street parking, the Applicant shall provide a plan to address visitor parking at the Final Plat stage.
14. The Land Use staff directed that a condition of approval be added to Exhibit A to require the Applicant to provide a plan to address the parking at the final plat phase.
15. The Traffic Division staff directed that a condition of approval be added to Exhibit A require the Applicant to provide sight triangles shown on the documents.
16. The Commission finds under Code § 14-9.2(C)(8)(c) that the proposed lot access driveway is permissible because no public street is needed to provide access to the property because the existing road (Buffalo Grass Road) sufficiently serves and connects with the lot access driveway for the properties.
17. The Commission finds under Code § 14-9.2(D)(8) that a cul-de-sac is permitted to be constructed as a lot access driveway based on the physical layout and lot configuration of the site.
18. Code § 14-3.7(B)(3)(b) requires the Applicant to submit a preliminary plat prepared by a professional land surveyor, together with improvement plans and other specified supplementary material and in conformance with the standards of Code § 14-9 (collectively, the Applicable Requirements).

19. 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) together with a recommendation that the preliminary subdivision plat be approved, subject to certain conditions (the Conditions) set out in such report.
20. The information contained in the Staff Report, along with conditions in Exhibit A and in Findings #14, 15 is sufficient to establish that the Applicable Requirements have been met.

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 preliminary subdivision plat was properly and sufficiently noticed via mail, publication, and posting of signs in accordance with Code requirements.
2. The Applicant has complied with the applicable pre-application conference and ENN procedure requirements of the Code.

The Preliminary Subdivision Plat

3. The Commission has the authority to review and approve the preliminary plat subject to conditions.
4. The Applicable Requirements have been met.

**WHEREFORE, IT IS SO ORDERED ON THE 7th OF APRIL 2016 BY THE
PLANNING COMMISSION OF THE CITY OF SANTA FE**

That the Applicant's requests for preliminary subdivision plat is approved, subject to Staff conditions.

Vince Kadlubek
Chair

Date:

FILED:

Yolanda Y. Vigil
City Clerk

Date:

APPROVED AS TO FORM:

Zachary Shandler
Assistant City Attorney

Date:

Planning Commission
April 7, 2016

EXHIBIT 2

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

Case #2016-03

Vista Serena, Tract 49 Tierra Contenta Preliminary Subdivision Plat

Applicant's Name- Homewise, Inc.

Agent's Name-Oralynn Guerrerortiz

THIS MATTER came before the Planning Commission (Commission) for hearing on March 3, 2016 upon the application (Application) of Ms. Oralynn Guerrerortiz, agent for Homewise, Inc. (Applicant).

The Applicant seeks the Commission's approval of the final subdivision plat for 50 lots on 12.7+/- acres at Vista Serena, Tract 49 Tierra Contenta Phase 2C, located on the south side of Plaza Central Road, east of Contenta Ridge Road. The property is zoned PRC (Planned Residential Community, 6-9 dwelling units per acre). The Applicant is also seeking approval of the development plan.

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

FINDINGS OF FACT

1. The Commission heard reports from staff and received testimony and evidence from the Applicant; there was one member of the public in attendance to speak.
2. Pursuant to Santa Fe City Code (Code) §14-2.3(C)(1), the Commission has the authority to review and approve or disapprove subdivision plats and development plans.
3. Pursuant to Code §14-3.7(A)(1)(b) subdivisions of land must be approved by the Commission.
4. Code §14-3.7 sets out certain general principles governing the subdivision of land and establishes certain standards and procedures for the Commission's review and approval of a Final Subdivision Plat [Code §14-3.7(B)(4)] and criteria for the Commission's approval [Code §14-3.7(C)] (collectively, the Applicable Requirements).
5. Code §14-9 sets out infrastructure design, improvement, and dedication standards and requirements.
6. Code §14-3.7(B)(2) requires compliance with the early neighborhood notification (ENN) requirements of Code §14-3.1(F) for subdivision plats.
7. Code §14-3.1(F)(2)(a)(v) requires an ENN for subdivision plats, except for Final Subdivision Plats for which ENN procedures were followed at the Preliminary Plat review stage.
8. An ENN meeting on the Applicant's application for Preliminary Plat approval was held on December 16, 2014 at the Genoveva Chavez Center; therefore no ENN is required for Final Subdivision Plat approval in this case.

9. The conditions under Code § 14-3.7(D)(2) are present to allow for the deferral of public or semipublic improvements until such time as the lots are developed.
10. The Preliminary Subdivision Plat was approved by the Commission on January 7, 2016.
11. The Final Subdivision Plat substantially conforms with the Preliminary Plat as approved under Code § 14-3.7(B)(4)(a).
12. Tierra Contenta development rules and standards require any applicant to submit concurrently submit a Development Plan with a Final Subdivision Plat.
13. 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)]. *The Commission has the authority under the section of Code Chapter 14 cited in the Application to approve the development plan.*
 - b. That approving the development plan for the Project does not adversely affect the public interest [§ 14-3.8]. *The Project will not adversely affect the public interest because the development plan is in compliance with the standards required by the Land Development Code.*
 - 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)]. *The use is compatible and adaptable to buildings, structures and uses of the abutting property and other properties in the Tierra Contenta vicinity.*
14. 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**) together with a recommendation that the Final Subdivision Plat be approved, subject to certain conditions (the **Conditions**) set out in such report.
15. The existing phrase "is working" from the Staff Condition from the Wastewater Management Division shall be deleted and replaced with the new phrase "will work."
16. The Staff Condition from the Parks Division shall be deleted and replaced with: "Trail details shall be approved by the Parks Division and recorded on the plat."
17. The information contained in the Staff Report is sufficient to establish that the Applicable Requirements have been met.

CONCLUSIONS OF LAW

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

1. The Commission has the authority under the Code to approve the Final Subdivision Plat and Development Plan for the Property.
2. The Applicable Requirements have been met.

WHEREFORE, IT IS ORDERED ON THE 7th OF APRIL 2016 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 Final Subdivision Plat and Development Plan for the Property is approved, subject to Conditions.

Vince Kadlubek
Chairperson

Date: _____

FILED:

Yolanda Y. Vigil
City Clerk

Date: _____

APPROVED AS TO FORM:

Zachary Shandler
Assistant City Attorney

Date: _____

Planning Commission
April 7, 2016

EXHIBIT 3

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

Case #2016-04

Estancia de Las Soleras Phase 1C Final Subdivision Plat

Owner's Name- Pulte Group

Agent's Name- James W. Siebert and Associates

THIS MATTER came before the Planning Commission (Commission) for hearing on March 3, 2016 upon the application (Application) of James W. Siebert and Associates as agent for the Pulte Group (Applicant).

The Applicant seeks the Commission's approval of the final subdivision plat for 67 lots located on 25.86+/- acres, Tract 11A of the Las Soleras Master Plan. Tract 11A is zoned R-6 (Residential, 6 units per acre). The plat is the final unit of Phase 1 of the overall Pulte residential development. The Preliminary Subdivision Plat was approved by the Planning Commission on January 7, 2016. Findings for that case were approved by the Planning Commission on February 4, 2016.

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

FINDINGS OF FACT

1. The Commission heard reports from staff and received testimony and evidence from the Applicant; there were no members of the public in attendance to speak.
2. Pursuant to Santa Fe City Code (Code) §14-2.3(C)(1), the Commission has the authority to review and approve or disapprove subdivision plats and development plans.
3. Pursuant to Code §14-3.7(A)(1)(b) subdivisions of land must be approved by the Commission.
4. Code §14-3.7 sets out certain general principles governing the subdivision of land and establishes certain standards and procedures for the Commission's review and approval of a Final Subdivision Plat [Code §14-3.7(B)(4)] and criteria for the Commission's approval [Code §14-3.7(C)] (collectively, the Applicable Requirements).
5. Code §14-9 sets out infrastructure design, improvement, and dedication standards and requirements.
6. Code §14-3.7(B)(2) requires compliance with the early neighborhood notification (ENN) requirements of Code §14-3.1(F) for subdivision plats.
7. Code §14-3.1(F)(2)(a)(v) requires an ENN for subdivision plats, except for Final Subdivision Plats for which ENN procedures were followed at the Preliminary Plat review stage.
8. An ENN meeting on the Applicant's application for Preliminary Plat approval was held on December 16, 2014 at the Genoveva Chavez Center; therefore no ENN is required for Final Subdivision Plat approval in this case.

9. The conditions under Code § 14-3.7(D)(2) are present to allow for the deferral of public or semipublic improvements until such time as the lots are developed.
10. The Preliminary Subdivision Plat was approved by the Commission on January 7, 2016.
11. The Final Subdivision Plat substantially conforms with the Preliminary Plat as approved under Code §14-3.7(B)(4)(a).
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) together with a recommendation that the Final Subdivision Plat be approved, subject to certain conditions (the Conditions) set out in such report.
13. The Staff Condition from the MPO shall be changed to be consistent with the modified Exhibit B-7, as provided at the meeting, which included:
 - a. retaining the central public trail in Applicant's Trail Map Sheet 19 (with HOA maintenance, 8 foot width, paved trail);
 - b. removing the trail spur connecting the central trail (directly above the Lluvia Encantada cul-de-sac) to Railrunner Road;
 - c. but connecting the central trail with a future continuous connection (in Phase II) to the property's northern most trail.
14. The information contained in the Staff Report is sufficient to establish that the Applicable Requirements have been met.

CONCLUSIONS OF LAW

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

1. The Commission has the authority under the Code to approve the Final Subdivision Plat for the Property.
2. The Applicable Requirements have been met.

WHEREFORE, IT IS ORDERED ON THE 7th OF APRIL 2016 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 Final Subdivision Plat for the Property is approved, subject to Conditions.

Vince Kadlubek
Chairperson

Date:

FILED:

Yolanda Y. Vigil
City Clerk

Date:

APPROVED AS TO FORM:

Zachary Shandler
Assistant City Attorney

Date:

Planning Commission
April 7, 2016

EXHIBIT 4

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

Case #2016-06

1503 Cerros Altos Terrain Management Variance

Applicant's Name – Julie Silverstein Trust and Kim M. Colweck Trust

THIS MATTER came before the Planning Commission (Commission) for hearing on March 3, 2016 upon the application (Application) of Julie Silverstein Trust and Kim M. Colweck Trust (Applicant). The Applicant seeks the Commission's approval for a variance from City of Santa Fe (City) Land Development Code (Code) Section 14-8.2(D)(3)(b) having more than one half of the building footprint on slopes exceeding 20% percent. The property contains both Foothills and Ridgetop Subdistricts of the Escarpment Overlay. The property is 4.337 acres and is zoned R-1 (Residential- One Dwelling Unit per Acre).

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

FINDINGS OF FACT

1. The Commission heard reports from staff and received testimony and evidence from the Applicant and written comments from two members of the public interested in the matter.
2. SFCC §14-2.3(C)(5)(a) authorizes the Commission to review and grant or deny requests for variances from the Ordinance in compliance with SFCC §14-3.16.
3. SFCC §14-3.16(B) authorizes the Commission to approve, approve with conditions or deny the variance based on the Application, input received at the public hearing and the approval criteria set forth in SFCC §14-3.16(C).
4. Pursuant to SFCC §14-3.1(F)(2)(a)(vii) an Early Neighborhood Notification (ENN) meeting is not required for variances requesting construction of an individual single-family dwelling and appurtenant accessory structures.
5. City Land Use Department staff reviewed the Application and related materials and information submitted by the Applicant for conformity with applicable SFCC requirements and provided the Commission with a written report of its findings (Staff Report) together with a recommendation that the Commission approve the variances, subject to certain conditions (the Conditions) set out in such report.
6. The information contained in the Staff Report and the testimony and evidence presented at the hearing is sufficient to establish with respect to the Applicant's request for a variance from the requirements of SFCC §14-3.16(C) that:
 - a. Pursuant to Section 14-3.16(C)(1), there are unusual physical characteristics with the land as the property is within both the Foothills and Ridgetop Subdistricts of the Escarpment Overlay District. The property is generally a steep site, which means the locations where slopes flatten correspond, all or in part, with the

Ridgetop Subdistrict. The building site, in order to be sited only in the Foothills Subdistrict, must be placed in an area that has some terrain of 20% in slope.

- b. Pursuant to Section 14-3.16(C) (2), special circumstances make it infeasible to develop the Property in compliance with the Ordinance and Section 14-8.2 based on terrain constraints; the proposed location for construction is the most optimal site for their development and cause the least disturbance to the property and natural terrain;
 - c. Pursuant to Section 14-3.16(C) (3), the intensity of development will not exceed that which is allowed on other properties in the vicinity that are subject to the Ordinance; the proposed house would be one of the large homes in the subdivision and the immediate neighborhood, but it would represent the smallest percentage of footprint compared to the size of the site in comparison to the neighboring residences;
 - d. Pursuant to Section 14-3.16(C) (4), the variance is the minimum variance possible for the reasonable use of the Property as approval of either the requested variance or a variance to the prohibition on development within the Ridgetop Subdistrict would be necessary for development of the property for its approved use as a single family dwelling and;
 - e. Pursuant to Section 14-3.16(C) (5), the variance is not contrary to the public interest because the development will include several measures which mitigate potential impact from building on steep slopes and if the home was to be built on either of the other potential sites identified then it would have greater visual impacts on the Ridgetop Subdistrict.
7. 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) together with a recommendation that the variance be approved, subject to certain conditions (the Conditions) set out in such report.
 8. Based upon the analysis contained in the Staff Report and the evidence presented at the public hearing, approving the Application will not adversely affect the public interest as it will permit the development of the Property for the residential use for which it was created and minimize visual impact and disturbance of slopes in having more than one half of the building footprint on slopes exceeding 20% percent in accordance with the stated purposes and intent of the Ordinance and §14-8.2.
 9. SFCC §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 evidence and testimony submitted during the hearing, the Commission **CONCLUDES** as follows:

1. The Commission has the power and authority at law and under the SFCC to review and approve with conditions the Applicant's request for the variances.

Case No. 2016-06

1503 Cerros Altos Terrain Management Variance

Page 2

2. The Applicant has met the criteria for a variance to SFCC §14-8.2(D)(3)(b) set forth in SFCC §14-3.16(C).

WHEREFORE, IT IS ORDERED ON THE 7th OF APRIL 2016 BY THE PLANNING COMMISSION OF THE CITY OF SANTA FE:

That the variance to SFCC §14-8.2 (D)(3)(b) is approved as applied for, subject to the Conditions.

Vince Kadlubek
Chair

Date:

FILED:

Yolanda Y. Vigil
City Clerk

Date:

APPROVED AS TO FORM:

Zachary Shandler
Assistant City Attorney

Date:

Planning Commission
April 7, 2016

EXHIBIT 5

City of Santa Fe, New Mexico

LEGISLATIVE SUMMARY

Bill No. 2016-__

Short Term Rental Update

SPONSOR(S): Councilors Maestas, Mayor Gonzales, Councilor Ives

SUMMARY: The proposed bill amends the short-term rental ordinance to increase the number of permits, amending the applicable fee schedule, and requiring that permit holders pay all applicable taxes, and those that aren't permit holders face certain penalties as well.

PREPARED BY: Jesse Guillen, Legislative Liaison

FISCAL IMPACT: Yes

DATE: March 3, 2016

ATTACHMENTS: Bill
FIR

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2016-

INTRODUCED BY:

Councilor Joseph M. Maestas

Mayor Javier M. Gonzales

Councilor Peter N. Ives

AN ORDINANCE

AMENDING SECTION 14-6.2 OF THE LAND USE DEVELOPMENT CODE TO
REMOVE CERTAIN LIMITATIONS ON SHORT-TERM RENTAL DWELLING UNITS;
AMENDING THE FEE SCHEDULE FOR A SHORT-TERM RENTAL PERMIT; AND
REQUIRING THAT PERMIT HOLDERS PAY ALL APPLICABLE TAXES OR BE
SUBJECT TO CERTAIN PENALTIES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Subsection 14-6.2 of the Land Use Development Code (being Ord.

#2011-37 (as amended)) is amended to read:

14-6.2 USE-SPECIFIC STANDARDS

(A) Residential Uses

(1) Continuing Care Community

(a) Density

Independent *dwelling units* are subject to the *density* standards of the
district in which the *continuing care community* is located.

- 1 (b) Compliance with state and federal law
2 *Continuing care communities* must comply with all applicable *state* and
3 federal laws and regulations.
- 4 (2) Mobile Home, Permanent Installation
5 In any district in which permanent single-family occupancy of a *mobile home* on
6 an individual *lot* is allowed as a special use *permit* by the board of adjustment,
7 the following minimum standards apply:
8 (a) the *mobile home* shall be anchored to a concrete foundation and skirted
9 as specified by the *land use director*;
10 (b) the rental or lease of *mobile homes* used as single-family residences on
11 individual *lots* is prohibited; and
12 (c) minimum requirements for *lot* size, *front, side and rear yards*, and all
13 other standards pertaining to single-family residential land use set forth
14 in Chapter 14 apply.
- 15 (3) Mobile Home Park
16 (a) Applicability
17 New *mobile home parks* are prohibited as of December 10, 2012
18 (effective date of this Ordinance No. 2012-37). In a district in which
19 *mobile home parks* are allowed, the minimum standards set out in this
20 section apply.
21 (b) License
22 Prior to beginning operation, a *mobile home park* owner or operator must
23 obtain a business license from the *city* under the provisions of Article 18-
24 1 SFCC 1987.
25 (c) Inspection

- 1 The *city* may inspect a *mobile home park* for conformance with the
2 provisions of this section.
- 3 (d) Transfer of License
- 4 The *city* may issue a transfer of the license only after the following:
- 5 (i) *application* in writing for transfer of a license and payment of
6 the transfer;
- 7 (ii) an inspection report by the *land use director* has been submitted
8 to the *governing body*, stating conformance or nonconformance
9 with the provisions of this section;
- 10 (iii) approval by the *governing body*.
- 11 (e) Revocation of License
- 12 The *governing body* may revoke a license to maintain and operate a
13 *mobile home park*, as provided in Article 18-1 SFCC 1987 when the
14 *licensee* has violated any provision of this section.
- 15 (f) Posting
- 16 The license certificate shall be conspicuously posted in the office of or
17 on the *premises* of the *mobile home park* at all times.
- 18 (g) Standards
- 19 *Mobile home parks* shall comply with the standards set forth in
20 Subsection 14-7.2(1).
- 21 (4) Manufactured Homes
- 22 *Manufactured homes*:
- 23 (a) are permitted in any district in which site-built, *single-family dwellings*
24 are allowed;
- 25 (b) shall meet all requirements of other site-built, *single-family dwellings* in

1 the same district and all applicable historic or aesthetic standards set
2 forth in Chapter 14; and

- 3 (c) shall be constructed according to the Manufactured Home Construction
4 and Safety Standards, 24 CFR Section 3280.

5 (5) Short-Term Rental of Dwelling Units – Residentially Zoned Property

6 (a) Dwelling Units

7 *Dwelling units* located on *residentially zoned property* may not be rented
8 for less than thirty days except as set forth in this Subsection 14-
9 6.2(A)(5).

10 (b) Short-Term Rental Units

11 *Short-term rental units* are prohibited on *residentially zoned property*
12 except as provided in this Subsection 14-6.2(A)(5)(b).

- 13 (i) ~~[An owner may rent the dwelling unit that the owner normally~~
14 ~~resides in for two rental periods within a calendar year. The~~
15 ~~general provisions set forth in Subsection 14-6.2(A)(5)(c) do not~~
16 ~~apply and a permit is not required.]~~

17 [(ii)] *Short-term rental units* that are operated in compliance with
18 Subsection 14-6.3(D)(1) (Accessory Dwelling Units) and in
19 compliance with this Subsection 14-6.2(A)(5)(b)[(ii)](i) are
20 allowed.

21 ~~[(iii)] *Short-term rental units* owned by the property owner who~~
22 ~~resides on a contiguous lot and in compliance with this~~
23 ~~paragraph are allowed. The operation of the short-term rental~~
24 ~~shall cease immediately upon sale of either or both properties or~~
25 ~~if the property owner no longer resides on the contiguous lot.]~~

1 ~~[(iv)]~~ ii *Short-term rental units* located in a *development* containing
2 resort facilities approved pursuant to a special use *permit* [~~prior~~
3 ~~to January 30, 2008,~~] which are owned in common by the
4 owners within the *development*, are allowed. As used in this
5 item, "resort facility" means any combination of swimming
6 pools, spa facilities, golf courses, restaurants and tennis facilities.
7 ~~[The general provisions set forth in Subsection 14-6.2(A)(5)(e)~~
8 ~~shall not apply except for Item (ix) regarding applicable taxes.]~~

9 ~~[(v)]~~ iii The *land use director* may issue [~~up to three hundred fifty short-~~
10 ~~term~~] *rental permits* in a quantity approved by the governing
11 body through adoption of a resolution for *residential units* not
12 otherwise qualifying for *permits* under Items (i) (ii) ~~[(iii) or~~
13 ~~(iv)]~~ above. *Dwelling units* on non-residentially zoned property
14 pursuant to §14-6.2(6) are not subject to the *permit* limit
15 imposed by this subsection.

16 ~~[(vi)]~~ iv Whenever the [~~number of~~] demand for short-term rental units
17 exceeds the number permitted in accordance with Item ~~[(v)]~~ iii
18 above [~~falls below three hundred fifty~~], the number of additional
19 ~~[new]~~ *permits* may be authorized by the governing body through
20 adoption of a subsequent resolution and issued by the *land use*
21 *director*. New *permits* shall be issued in the order that qualifying
22 *applications* are received.

23 ~~(vii) Permit holders who have been issued a permit prior to October~~
24 ~~14, 2009 are not required to reapply for a permit; provided,~~
25 ~~however, if the permit expires pursuant to Subsection 14-~~

1 6.2(A)(5)(d)(x), a new application may be submitted to the land
2 use director in accordance with Item (vi) above.]

3 (c) General Provisions

4 Unless otherwise stated, the following general provisions apply to *short-*
5 *term rental units*:

6 (i) no more than one rental is allowed within a seven consecutive
7 day period;

8 ~~[(ii) short-term rental units described in Subsection 14-~~
9 ~~6.2(A)(5)(b)(v) are limited to seventeen rental periods per~~
10 ~~calendar year;]~~

11 (ii) short-term rental permits will not be issued to allow more than
12 two short-term rentals units directly adjacent to each other on a
13 residentially zoned street. Directly adjacent for the purposes of
14 this subsection means directly next to another structure on the
15 same side of the street or directly across from another structure
16 on the opposite side of the street. The only exception would be
17 for condominiums, apartment complexes and residential
18 compounds;

19 (iii) *off-street parking* shall be provided on site as follows: 1) one
20 bedroom, one parking space; and 2) two or more bedrooms; two
21 parking spaces

22 (iv) all applicable building and fire life safety codes shall be met and
23 all toilets, faucets and shower heads shall meet the water
24 conservation requirements described in Section 25-2.6 SFCC
25 1987;

(v[i]) occupants shall not park *recreational vehicles* on site or on the street;

(vi) short-term rentals will not be permitted to be used for non-residential purposes. This excludes the use of short-term rentals permits for outdoor events, weddings and the like.

(vii) the total number of persons that may occupy the short-term rental unit is twice the number of bedrooms;

(viii) noise or other disturbance outside the short-term rental unit is prohibited after 10:00 p.m., including *decks, portals, porches, balconies or patios*;

(ix) all occupants shall be informed in writing of relevant *city* ordinances, including the *city's* nuisance and water conservation ordinances, by the *owner/operator* of the short-term rental unit. All occupants shall comply with all relevant *city* ordinances and comply with all provisions of the lodger's tax ordinance;

(x) the *owner/operator* shall pay all applicable local, *state* and federal taxes, including lodgers' tax, gross receipts tax and income taxes;

(xi) should the *owner/operator* neglect to pay all applicable taxes, the *owner/operator* shall be subject to penalties pursuant to Subsection 14-6.2(A)(5)(f).

~~[(xi)]~~(xii) the *owner/operator* shall make available to the *city* for its inspection all records relating to the operation of the short-term rental unit to determine compliance with this paragraph~~[- The *owner/operator* shall report to the *land use director* on a monthly~~

1 basis in a format provided by the ~~land use director~~]; and
2 [(~~xii~~)](xiii) the owner shall maintain adequate property insurance
3 coverage for the short-term rental unit. Proof of insurance shall
4 be required at the time the permit is issued and such other times
5 as requested by the land use director.
6 (xiv) should ownership of a short-term rental unit transfer from one
7 owner to the other, the short-term rental permit is canceled and
8 shall revert to the land use department. If the new owner wishes
9 to continue using the property as a short-term rental unit, a new
10 application shall be made with the land use department.
11 (d) Applications
12 Unless otherwise stated, an application for a permit for a short-term
13 rental shall be submitted to the city as follows:
14 (i) the application shall include the name and phone number of the
15 owner/operator who is available twenty-four hours per day,
16 seven days per week to respond to complaints regarding the
17 operation or occupancy of the short-term rental unit as well as
18 the name and phone number of city staff responsible for
19 enforcing this section;
20 (ii) the application shall include a [verified, notarized] statement
21 signed by the owner/operator that the short-term rental shall be
22 operated in compliance with this paragraph and all other
23 applicable city codes and that the operation of the short-term
24 rental is in compliance with any applicable legally binding
25 private covenants, including those that prohibit the presence of

1 short-term rental;

2 (iii) all applicants must submit proof of all required inspections with
3 their initial application. Renewal applications for the same
4 property may submit proof of all required inspections in the form
5 of a statement attesting to self-compliance of all fire, health and
6 safety requirements. The city shall perform random inspections
7 to ensure compliance.

8 ~~[(iii)]~~(iv) prior to issuance of a *permit*, a *certificate of occupancy*
9 is required to ensure compliance with this paragraph and all
10 applicable codes;

11 ~~[(iv)]~~(v) the *permit* is not transferable to another *person* or
12 *property*;

13 ~~[(v)]~~(vi) within ten days of the issuance of the *permit*, the
14 *owner/operator* shall mail notice by first class mail, with
15 certificate of mailing, to the *owners* of *properties* within two
16 hundred (200) feet of the subject *property*, exclusive of *rights of*
17 *way*, as shown in the records of the *county* ~~[treasurer]~~ assessor,
18 and by first class mail to the physical addresses of such
19 *properties* where such address is different than the address of the
20 *owner and the land use department*. Notice shall be on a form
21 approved by the *land use director*, and shall contain the name
22 and phone number of the *owner/operator* who will be available
23 twenty-four hours per day, seven days per week to respond to
24 complaints regarding the operation or occupancy of the short-
25 term rental as well as the name and phone number of *city* staff

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responsible for enforcing this paragraph. Copies of all required mailing lists and mailing certificates shall be provided to the *land use director* within ten days of the mailing. Failure to notify neighbors as described is subject to penalties and prosecution pursuant to Subsection 14-6.2(A)5(f);

~~[(v+)]~~(vii) each *application* shall be accompanied by a fee of one hundred ~~[fifty]~~ dollars (\$~~[150]~~ 100) to cover *application* processing and inspections. This application fee is non-refundable.

~~[(vii)]~~(viii) The annual *permit* fee schedule is as follows;

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

Annual Permit and Registration Fees*		
Short-term Rental Type	Permit Fee per Unit	Registration Fee per Unit
§14-6.2A(5)(b)(i) — Primary Residence; 2 rental periods per year]	[\$ 0.00]	
§14-6.2A(5)(b)((ii))(i) — Accessory Dwelling Units	[\$175.00] <u>\$325.00</u>	
§14-6.2A(5)(b)(iii) — Unit(s) on Contiguous Lot]	[\$175.00]	
§14-6.2A(5)(b)((iv))(ii) — Resort Units	[\$150.00] <u>\$100</u>	<u>\$100</u>
§14-6.2A(5)(b)((v))(iii) — Residential Units	[\$350.00**] <u>\$325.00**</u>	
<u>§14-6.2A(6) — Commercial Districts</u>	<u>[\$100]</u>	<u>\$100</u>
<u>Initial Application and Processing Fee (one-time)</u>	<u>\$100</u>	
*The annual permit fee shall not be prorated for a portion of the year.		
* *If there is more than one short-term rental unit on a lot, the permit fee is		
<u>[\$140.00]</u> <u>\$350.00</u> for each additional unit.		

~~(viii)~~(ix) The annual fee includes the city's business registration
fee and inspections related to issuance of the short-term rental

1 *permit*. Revenue from fees imposed pursuant to this paragraph
2 shall be used only to administer, manage, and enforce this
3 section.

4 ~~[(ix)]~~(x) If payment of a *permit* fee was in excess of that for
5 which a *person* was liable, the *person* may claim a refund by
6 directing to the city ~~[treasurer]~~finance director a written claim
7 for refund no later than one year from the date payment was
8 made. Every claim for refund shall state the amount and basis
9 for the claim. The city ~~[treasurer]~~finance director may allow the
10 claim in whole or in part or may deny it. If the claim is not
11 allowed in whole, the *person* may appeal the decision pursuant
12 to Section 14-3.17.

13 ~~[(x)]~~x Unless revoked as set forth in Subsection 14-6.2(A)(5)(e), a
14 *permit* holder may renew the *permit* annually. If not renewed by
15 March 15 of each year, the ~~[permit expires]~~ the owner/operator
16 may pay late fee of fifty dollars (\$50) which will permit them to
17 renew by April 15. An *owner* of an expired *permit* may submit a
18 new *application* for a short-term rental *permit* to the *land use*
19 *director* in accordance with Subsection 14-6.2(A)(5)(b)(vi)
20 subject to availability of *permits* ~~[within the three hundred fifty~~
21 ~~limit]~~.

22 ~~[(xi)]~~(xii) [The] A valid permit number shall be included in all
23 advertising of the short-term rental, including listings on web-
24 based rental sites.

25 (e) Violations

1 (i) The *land use director* shall document all alleged violations of
2 this paragraph and shall pursue enforcement through the
3 municipal court as set forth in Article 1-3 SFCC 1987 or in
4 another appropriate court of law. The City shall give the owner
5 a written Notice of Violation, which shall be mailed either to the
6 owner's local or business address or agent's address, informing
7 the owner of the violation. If corrective action is not completed
8 within fifteen (15) days of the date of the letter, the City may file
9 a criminal complaint in municipal court. Upon conviction of a
10 [third] first violation, the *land use director* shall revoke the
11 permit and operation of the short-term rental shall cease within
12 thirty days.

13 (ii) An *owner* who offers for rent as a short-term rental a *dwelling*
14 *unit* that is not permitted for use as a short-term rental is in
15 violation of this paragraph and is subject to penalties, property
16 liens and/or prosecution pursuant to Subsection 14-.2(A)(5)(f).

17 (iii) An agent who knowingly assists an *owner* in advertising or
18 renting a *dwelling unit* as a short-term rental unit that is not
19 permitted under this paragraph is subject to penalties and
20 prosecution [and the agent's business license is subject to
21 revocation] pursuant to Subsections 18-1.7 through 18-1.9.

22 (f) Penalties

23 (i) If an owner fails to report [their lodgers' tax] all applicable taxes,
24 including gross receipts tax and lodger's tax, they shall be
25 subject to [the provisions of the Lodgers' Tax Ordinance,

1 ~~Section 18-11.11 SFCC 1987, and shall be~~ all enforcement
2 authority permissible under the short-term rental ordinance and
3 any applicable city, county, state, or federal law or statute. The
4 owner shall also be subject to revocation of their short term
5 rental permit pursuant to Subsection 14-6.2(A)(5)(f)(ii).

6 (ii) If an owner is found guilty of operating a short term
7 rental without a valid permit, they shall be fined five hundred
8 dollars (\$500). The city may ask the municipal court to treat each
9 day after the initial written notice of violation as a separate
10 violation and assess two hundred fifty dollars (\$250) for each
11 day of these daily violations for a total cumulative fine amount.
12 If the city is awarded money as part of this court hearing and
13 defendant does not make timely payments to the city, the city
14 may bring an action in lien or equity for the collection of any
15 amounts due.

16 ~~((f))~~(g) Private restrictive covenants, enforceable by those governed by
17 the covenants, may prohibit short-term rental units.

18 ~~((g))~~(h) Real estate brokers listing *residential property* in Santa Fe shall
19 provide prospective buyers a current copy of this ~~[paragraph]~~ ordinance.

20 ~~((h))~~(i) The *land use director* shall establish administrative procedures
21 necessary to implement, manage and enforce this paragraph.

22 (6) Short-term Rental of Dwelling Units – Non-residentially Zoned Property
23 Short-term rental of *dwelling units* on *non-residentially zoned property* is
24 permitted as set forth in Table 14-6.1-1, required to register; pay a one-time \$100
25 application fee; one-time \$100 application, inspection and processing fee; and

1 comply with submission requirements of all applicable taxes.

2 (7) Dwelling Units in Specified Commercial Districts

3 In the C-2 and SC Districts, *dwelling units* do not include *mobile homes* or
4 *recreational vehicles* and shall be either:

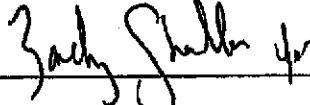
- 5 (a) *accessory dwelling units* for occupancy only by *owners, employees* or
6 *tenants* of *nonresidential* uses that are operated on the same *premises*;
7 (b) part of a planned *development*; or
8 (c) part of a use for which a *development plan* or special use *permit* is
9 required.

10 (8) Effective Date.

11 The provisions of Article 14-6.2(A)(5) of the Land Use Development Code shall
12 go into effect immediately upon approval of the governing body. A ninety (90)
13 day grace period shall be given for affected units to enter into full compliance
14 with this ordinance. All owners who have a current 2016 permit shall pay the
15 new application and permit fees, but shall receive a credit for amounts already
16 paid to the City for current 2016 permits. All owners who have a current 2016
17 permit under Subsection 14-6.2(A)(5)(b)(iii) who reapply subject to these
18 revisions to Subsection 14-6.2(A)(5) within sixty (60) days of the Effective Date
19 and who meet all requirements shall be guaranteed to receive one of the
20 allowable permits for 2016. This guarantee shall only apply for 2016. All
21 owners who have a current 2016 permit who reapply subject to these revisions to
22 Subsection 14-6.2(A)(5) within sixty (60) days of the Effective Date and meet all
23 requirements shall be grandfathered in and are not subject to the geographic
24 requirements of Subsection 14-6.2(A)(5)(c)(ii).
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APPROVED AS TO FORM:



KELLEY A. BRENNAN, CITY ATTORNEY

City of Santa Fe Fiscal Impact Report (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

Section A. General Information


(Check) Bill: X Resolution: X
(A single FIR may be used for related bills and/or resolutions)


Short Title(s): AN ORDINANCE AMENDING SECTION 14-6.2 OF THE LAND USE DEVELOPMENT CODE TO REMOVE CERTAIN LIMITATIONS ON SHORT-TERM RENTAL DWELLING UNITS; AMENDING THE FEE SCHEDULE FOR A SHORT-TERM RENTAL PERMIT; AND REQUIRING THAT PERMIT HOLDERS PAY ALL APPLICABLE TAXES OR BE SUBJECT TO CERTAIN PENALTIES.

Sponsor(s): Councilor Maestas, Mayor Gonzales, Councilor Ives

Reviewing Department(s): Land Use/Tourism

Person Completing FIR: Lisa Martinez/Randy Randall Date: 3/1/16 Phone: x6957

Reviewed by City Attorney:  Date: 3/5/16
(Signature)

Reviewed by Finance Director:  Date: 3-2-2016
(Signature)

Section B. Summary

Briefly explain the purpose and major provisions of the bill/resolution.

This bill amends the short-term rental ordinance to increase the number of permits, amending the applicable fee schedule, and requiring that permit holders pay all applicable taxes, and those that aren't permit holders face certain penalties as well. The City currently has a waiting list for the 350 short-term rental permits, and many properties operate without a permit. The City cannot guarantee these properties adhere to applicable safety code, and the majority do not pay gross receipts or lodgers' tax on the revenue. This bill aims to streamline the process and make it more transparent and fair.

Section C. Fiscal Impact

Note: Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

- a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
- b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
- c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)*

1. Projected Expenditures:

- a. Indicate Fiscal Year(s) affected – usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)

- b. Indicate: "A" if current budget and level of staffing will absorb the costs
 "N" if new, additional, or increased budget or staffing will be required
- c. Indicate: "R" – if recurring annual costs
 "NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
- d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns
- e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

Column #:	1	2	3	4	5	6	7	8
	Expenditure Classification	FY 16/17	"A" Costs Absorbed or "N" New Budget Required	"R" Costs Recurring or "NR" Non-recurring	FY 17/18	"A" Costs Absorbed or "N" New Budget Required	"R" Costs – Recurring or "NR" Non-recurring	Fund Affected
	Personnel*	\$164,000	N(\$110,000)	R	\$164,000	N	R	
	Fringe**	\$82,000	N(\$55,000)	R	\$82,000	N	R	
	Capital Outlay	\$			\$			
	Land/ Building	\$			\$			
	Professional Services	\$9,700	N	NR(\$8,000) R(\$1,700)	\$			
	All Other Operating Costs	\$121,800	N (\$70,500)	NR(\$53,000) R (\$68,800)	\$70,500	N	R	
	Total:	\$377,500			\$316,500			

* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. **For fringe benefits contact the Finance Dept.

2. Revenue Sources:

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.

Column #:	1	2	3	4	5	6
	Type of Revenue	FY 16/17	"R" Costs Recurring or "NR" Non-recurring	FY 17/18	"R" Costs – Recurring or "NR" Non-recurring	Fund Affected
	Fees	\$350,000		\$350,000		
	GRT	\$500,000		\$500,000		
	LT	\$650,000		\$650,000		
	Total:	\$1,500,000		\$1,500,000		

3. Expenditure/Revenue Narrative:

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

Fee and permit schedule changes, and stronger enforcement of Gross Receipts and Lodgers Tax requirements will generate additional revenue for the city. Expenditures will be covered by expected revenue increases, and include the hiring of one additional code enforcement officer, and a program manager/enforcement supervisor. No funding for this program will not come from the General Fund; this program will be self-sustaining, and provide additional GRT and Lodgers Tax revenue to the City.

Section D. General Narrative

1. Conflicts: Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

This bill modifies existing code, but does not conflict with any other existing ordinance.

2. Consequences of Not Enacting This Bill/Resolution:

Are there consequences of not enacting this bill/resolution? If so, describe.

The number of permits would remain at 350, and many properties would continue to operate outside the legal framework of the ordinance. Gross Receipts and Lodger's tax would continue to not be paid in an appropriate manner by certain properties.

3. Technical Issues:

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

None identified.

4. Community Impact:

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

Planning Commission
April 7, 2016

EXHIBIT 6

City of Santa Fe, New Mexico

LEGISLATIVE SUMMARY

Resolution No. 2015-____ Short-Term Rental Permit Limit

SPONSOR(S): Councilor Maestas, Mayor Gonzales and Councilor Ives

SUMMARY: The proposed resolution establishes the number of short-term rental permits the City of Santa Fe Land Use Department may issue.

PREPARED BY: Rebecca Seligman, Legislative Liaison Assistant

FISCAL IMPACT: No

DATE: March 3, 2016

ATTACHMENTS: Resolution
FIR

CITY OF SANTA FE, NEW MEXICO

RESOLUTION NO. 2016-

INTRODUCED BY:

Councilor Joseph M. Maestas

Mayer Javier M. Gonzales

Councilor Peter N. Ives

A RESOLUTION

**ESTABLISHING THE NUMBER OF SHORT-TERM RENTAL PERMITS THE CITY
OF SANTA FE LAND USE DEPARTMENT MAY ISSUE.**

WHEREAS, the City of Santa Fe established regulations governing short-term rentals in 2011, and is codified as Subsection 14-6.2(A)(5); and

WHEREAS, current regulations limit the number of city-issued permits to 350; and

WHEREAS, a study by the City of Santa Fe revealed nearly 1000 short-term rentals exist in Santa Fe, and are advertised on such sites as Airbnb, VRBO and Craigslist; and

WHEREAS, many of these rentals fail to collect and/or report requisite lodger's and gross receipts taxes; and

WHEREAS, Airbnb has had numerous discussions with city staff and appears willing to enter into a Voluntary Collection agreement when the number of available permits will be sufficient to meet their host membership demand; and

WHEREAS, legislation is being considered that would remove certain limitations on short-term rentals, amend the permit fee schedule, require all permit holders to pay applicable

1 taxes, and establish penalties for owners/operators who offer a short-term rental without a valid
2 permit; and

3 WHEREAS, the Governing Body desires to establish the number of short-term rental
4 permits the Land Use Department may issue through adoption of a resolution.

5 NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE
6 CITY OF SANTA FE that the City of Santa Fe Land Use Department is to issue no more than
7 one thousand short-term rental permits to qualifying properties pursuant to Subsection 14-
8 6.2(A)(5) of the Land Use Development Code.

9 PASSED, APPROVED AND ADOPTED this _____ day of _____, 2016.

10
11 _____
12 JAVIER M. GONZALES, MAYOR

13 ATTEST:

14
15 _____
16 YOLANDA Y. VIGIL, CITY CLERK

17 APPROVED AS TO FORM:

18
19  _____
20 KELLEY A. BRENNAN, CITY ATTORNEY

Planning Commission
April 7, 2016

EXHIBIT 7

City of Santa Fe Short Term Rental Permit Transfer to New Property Owner Issues

The City of Santa Fe Land Use Division has established and represented to the regulated community a process for allowing a legal short term rental permit attached to a property to be applied for by a new property owner at the time of sale recognizing that such permits are not transferable. As you will note in the attached letter, Realtors have disclosed to property owners and buyers in the City of Santa Fe the process for continuing a legal short term rental permit when the property is sold.

The Santa Fe Association of REALTORS® respectfully urges City Council to codify this process as part of the proposed changes to the City's Short Term Rental laws.

"If an owner of an existing short term rental permit sells his or her property that currently has a permit, then the new owner may apply for a permit within 30 days of closing. The new owner shall provide a copy of the deed to the City when applying for the new permit. If an inspection has not been done within six months of the application date, then new inspections shall be required in order to obtain the permit."

The Santa Fe Association of REALTORS® believes this action will provide certainty in the real estate market as properties are bought and sold operating as a short term rental due to the following rationale:

- The current property owner has met all of the existing requirements to legally obtain and maintain a short term rental permit.
- The current property owner may have existing rental agreements that may need to be honored as a condition of the sale to the new owner.
- The current property owner has an ongoing business that can be profitably continued by the new owner.
- The current property owner has expended significant resources to grow his or her short term rental business and clients that can be profitably continued by the new owner.
- A new condition is being proposed that would *limit the density of short term rentals* and it is unclear how existing legal short term rental permit holders who want to sell a property to a new owner who wants to retain the short term rental business would be impacted by this proposed condition. Codifying the process will remove any uncertainty.
- Codifying the process creates a limit on when and how a new property owner can access an existing short term rental permit.
- There is no identifiable "harm" in allowing a legal, current permit to transfer to the new owner - only additional revenue for the city.

Santa Fe



Association of REALTORS®

March 28, 2016

Mayor Javier Gonzales
200 Lincoln Avenue
P.O. Box 909
Santa Fe, NM 87504-0909

Dear Mayor Gonzales:

An ordinance to change the way the City of Santa Fe regulates short term rentals has been introduced by city staff at the direction of City Council. The Santa Fe Association of REALTORS® is concerned that the proposal does not codify an existing practice by the city land use department that has been used when a property holding a legal permit is sold to another owner.

The City of Santa Fe Land Use Division has established and represented to the regulated community a process for allowing a legal short term rental permit attached to a property to be applied for by a new property owner at the time of sale recognizing that such permits are not transferable. For at least seven years, Realtors have disclosed to property owners and buyers in the City of Santa Fe the process for continuing a legal short term rental permit when the property is sold.

The Santa Fe Association of REALTORS® respectfully urges City Council to codify this process as part of the proposed changes to the City's Short Term Rental laws by specifically adding the following language, **"If an owner of an existing short term rental permit sells his or her property that currently has a permit, then the new owner may apply for a permit within 30 days of closing. The new owner shall provide a copy of the deed to the City when applying for the new permit. If an inspection has not been done within six months of the application date, then new inspections shall be required in order to obtain the permit."**

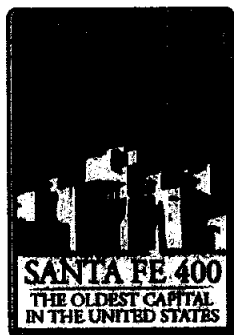
An attached issue paper outlines the concern raising a number of valid reasons for adding this process to the ordinance under consideration along with an official letter from the city land use department describing the current practice.

Thank you for your serious consideration.

Sincerely yours,

Gary Bobolsky
2016 SFAR President

Cc: Lisa Martinez, City of Santa Fe Land Use Director



City of Santa Fe, New Mexico

200 Lincoln Avenue, P.O. Box 909, Santa Fe, N.M. 87504-0909

David Coss, *Mayor*

Councilors:

Rebecca Wurzbarger, Mayor Pro Tem, Dist. 2

Patti J. Bushee, Dist. 1

Chris Calvert, Dist. 1

Rosemary Romero, Dist. 2

Miguel M. Chavez, Dist. 3

Carmichael A. Dominguez, Dist. 3

Matthew E. Ortiz, Dist. 4

Ronald S. Trujillo, Dist. 4

DEC 24 2008

December 22, 2008

Ms. Donna M. Reynolds
Chief Executive Officer
Santa Fe Association of Realtors, Inc.
510 North Guadalupe Street, Suite E
Santa Fe, New Mexico 87501

Dear Ms. Reynolds:

In accordance with the Short Term Rental Ordinance 14-6.2(A)(6)(a)(vi) SFCC 1987, effective May 30, 2008, real estate brokers should inform prospective buyers that a short term rental permit is not transferable to another person on property.

However, if an owner of an existing permit sells his or her property that currently has a permit, then the new owner may apply for a permit within 30 days of closing. The new owner shall provide a copy of the purchase agreement to the City when applying for the permit. If an inspection has not been done within six months of the application date, then new inspections shall be required in order to obtain the permit.

Should you have any questions regarding the short term rental ordinance, please feel free to contact the City's short term rental enforcement staff at 955-6001.

Thank you for your assistance.

Sincerely,

John B. Hiatt
Land Use Department

Encl: Short Term Rental Compilation



Planning Commission
April 7, 2016



EXHIBIT 8


City of Santa Fe, New Mexico

memo

DATE: March 30, 2016, for the April 7, 2016 Meeting

TO: Planning Commission

VIA: Lisa Martinez, Director, Land Use Department 
Greg Smith, AICP, Division Director, Current Planning Division 

FROM: Katherine Mortimer, Supervising Planner, Land Use Department 

Case #2016-17. 195 Brownell Howland Road Escarpment Variance. Thomas Lechner, agent for Anne Thompson Davenport, request approval of a variance to allow an addition to an attached garage within the Ridgetop Subdistrict of the Escarpment Overlay District. The 5.08 acre property is zoned R-1 (Residential – 1 unit per acre). (Katherine Mortimer, Case Manager)

RECOMMENDATION

If the Commission determines the proposed 300 square-foot addition to the existing residence meets the variance criteria outlined below, the Commission may **APPROVE WITH CONDITIONS**. Appropriate conditions are provided in Exhibit A of this report.

I. BACKGROUND

The applicant requests a variance to Section 14- 5.6(D)(1) "Location of Structures; Buildable Site" which states:

"For all lots subdivided or resubdivided on or before February 26, 1992, all structures shall be located within the foothills subdistrict unless the only buildable site is located within the ridgetop subdistrict. For all lots subdivided or resubdivided after February 26, 1992, development in the ridgetop subdistrict of the escarpment overlay district, other than driveway access and utilities, is prohibited." [Underlining added for emphasis.]

Because this lot was created by a lot split in 2009, no additional development may occur in the Ridgetop unless a variance is approved.

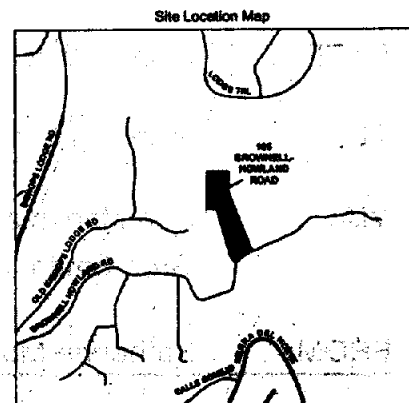
II. EXECUTIVE SUMMARY

Should the Commission approve the requested variance, an application for building permit shall incorporate all conditions of approval and be consistent with the building and features included in the application for variance before construction can proceed. The variance is limited to the building footprint as shown on the plans submitted with this application. The addition shall further comply with all other requirements of the Escarpment Overlay District and Chapter 14.

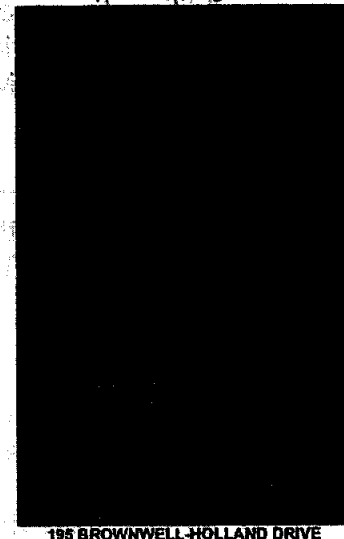
The applicant proposes a 300 square-foot addition to the east side of the 4,112 square-foot footprint of the existing home to create an attached accessory dwelling unit (guest house). An existing studio (former single-car garage) would also be converted and included in the guest house. The guest house would be used for housing a future guest or for domestic help.

Almost all of the existing home and all of the proposed addition are within the Ridgetop Subdistrict of the Escarpment Overlay District. None of the lot is within the Foothills Subdistrict. The proposed addition would only be visible from Brownell-Howland Road adjacent to the site and within a short distance up and down the road. An attached or detached guest house located on the north side of the house would reduce or eliminate the encroachment into the escarpment district, but would involve additional grading on a steeper portion of the lot. If located elsewhere on the site the existing studio could not be incorporated.

If the Commission determines that special circumstances apply to the lot, the variance may be approved. The proposed location for the addition on the southwest corner of the residence would limit visibility from locations other than the property frontage and would minimize grading and removal of existing trees.



Escarpment Zoning Subdistricts



III. ACCESSORY DWELLING UNIT

Accessory dwelling units are permitted in the R-1 zoning district and must comply with the regulations set forth in Section 14-6.3(D)(1) including, but not limited to:

- Meet parking standards as set forth in Section 14-8.6 which requires 2 spaces for the principle dwelling unit and any accessory dwelling unit exceeding 1000 sf or 1 space for accessory dwelling units that are less than

1000 sf;

- shall be limited to one story and shall not exceed fourteen (14) feet to the top of the parapet or to the highest point of the roof if there is no parapet;
- shall be of the same architectural style as the principal dwelling unit;
- shall record a restrictive covenant that requires the current property owner and all future property owners to comply with Subsection 14-6.3(D)(1);
- shall not be subdivided from a principal dwelling unit or sold under separate ownership from a principal dwelling unit unless the accessory dwelling unit meets all applicable requirements for a principal dwelling unit.

The proposed guest house would comply with all of these requirements.

IV. ESCARPMENT OVERLAY ZONING DISTRICT

Land within the Escarpment Overlay district is considered to have significant visual impact to the City. Within the Overlay District, the Ridgetop Subdistrict is considered more visible than the Foothills Subdistrict. In addition to placement restrictions, buildings within the Escarpment Overlay District are subject to height, color, exterior lighting, and landscaping restrictions intended to reduce potential visual impacts as set forth in Section 14-5.6. Should the variance be granted, the proposed addition would be required to comply with the following requirements.

The purpose of the Escarpment Overlay Zoning District per Section 14-5.6(A)(1) is to:

- (a) Promote the economic, cultural, and general welfare of the people of the city;
- (b) Ensure the harmonious, orderly, and efficient growth and development of the city;
- (c) Conserve the value of buildings and land;
- (d) Encourage the most appropriate use of land; and
- (e) Preserve the natural environment and the distinctive and historic ridgetop and foothills area environment as a visual asset for the benefit of the community and to maintain and encourage the sense of the city as a small community.
- (f) Reduce the risk to life and health of residents in the escarpment by reducing wildfire risk; and
- (g) Encourage the conservation of water, especially for maintaining landscaping materials.

The intent of the Escarpment Overlay District per Section 14-5.6(A)(3) is:

- (a) Preservation of the city's aesthetic beauty and natural environment is essential to protect the general welfare of the people of the city, to

- promote tourism and the economic welfare of the city, and to protect the cultural and historic setting of the city;
- (b) Development is highly visible on or about the ridgetop areas of the foothills for great distances and detracts from the overall beauty of the natural environment and adversely impacts the aesthetics of the mountain and foothill vistas as seen from the city;
 - (c) Land within the escarpment overlay district is environmentally sensitive due to the presence of steep slopes, erosion problems, drainage problems and other environmental attributes;
 - (d) The interest and welfare of the people of the city is to prohibit development on ridgetop areas of the foothills to the extent possible as allowed by law; and
 - (e) The interest and welfare of the people of the city is to restrict development in the escarpment overlay district to preserve the aesthetic beauty and natural environment of the ridgetop areas of the foothills and to protect the mountain views and scenic vistas from the city to the extent possible.

V. ESCARPMENT-SPECIFIC VARIANCE APPROVAL CRITERIA

The Escarpment Overlay District includes the following two variance criteria, in addition to criteria applicable to all variances to Chapter 14. Those criteria are (14-5.6(K)):

(1) Where the planning commission finds that extraordinary hardship may result from strict compliance with these regulations, it may vary the regulations so that substantial justice may be done and the public interest secured; provided that such variation shall not have the effect of nullifying the intent and purpose of these regulations.

(2) In granting variances or modifications, the planning commission may require such conditions as will, in its judgment, assure substantially the objectives of the standards or requirements so varied or modified.

The intent of the Escarpment Overlay District lists preservation of Santa Fe's aesthetic beauty, mountain views and scenic vistas. Since the project would not be visible except in the immediate vicinity of the property, the proposed addition would not be counter to the protection of those views. Additionally, disturbance of natural vegetation and associated erosion and drainage challenges at the proposed location would be limited to those associated with the 300 sf addition. Other possible siting locations on the site, that would avoid the requested variance, would result in greater disturbance of natural vegetation.

VI. VARIANCE PROCEDURES

The variance process balances reasonable use of the applicant's property against compliance with the letter and intent of adopted regulations. Subsection 14-3.16(C) lists six approval criteria must be met in order to approve a variance request.

Those criteria set up a two-stage review process.

In the first stage of review, the Commission must determine that special circumstances apply to the property that make it infeasible, for reasons other than financial cost, to develop the property in compliance with the standards of Chapter 14. Special circumstances may include physical characteristics that distinguish the property from others in the vicinity, such as unusual topography. Special circumstances may also include conflicting regulations that prevent development of the property without a variance to one or more of the regulations.

VII. VARIANCE APPROVAL CRITERIA

Criteria in Subsections 14-3.16(C)(1) through (5) are required to grant a variance. The property must be consistent with at least one of the circumstances listed in items 1a through 1d and must meet all of the criteria in items 2 through 5. Staff analysis shows that this application is consistent with item 1a and meets the criteria in items 2 through 5.

(1) One or more of the following special circumstances applies:

(a) unusual physical characteristics exist that distinguish the land or structure from others in the vicinity that are subject to the same relevant provisions of Chapter 14, characteristics that existed at the time of the adoption of the regulation from which the variance is sought, or that were created by natural forces or by government action for which no compensation was paid;

Applicant Response:

This residence was designed as a low profile structure facing the road by the Architect John Gaw Meem in 1958. This building is smaller than [the] majority of the other surrounding area residences with only 2,655 heated square footage [sic]. By adding another structure on the property outside of the Ridge Top boundary would change the character of the house and site by destroying the surrounding landscape. The proposed addition is in scale with the existing residence stepping down from the adjacent structure. The new addition is screened by existing trees from the road and is located on the North [sic] slope going away from the City.

Staff Analysis:

There are unusual physical characteristics that distinguish the land and structure from others in the vicinity that are subject to the Escarpment Overlay Zone. The Escarpment Overlay Zone was created after the existing house was constructed in 1958. The home was constructed consistent with the regulations in effect at that time. In order to create an accessory dwelling unit (guest house) it would require either adding 300 square feet to the existing structure and remodeling of the existing studio or, to construct a

larger detached accessory dwelling unit outside of the Ridgetop Subdistrict. Construction of a detached structure approximately 20 feet north of the existing house could eliminate the variance requirement. A 650 square-foot addition attached to the existing structure would reduce, but not eliminate, the extent of the variance. Either option would increase disturbance of existing natural vegetation both for its construction and to get access to that location from the road, and would require grading on steeper portions of the site.

- (b) the parcel is a legal nonconforming lot created prior to the adoption of the regulation from which the variance is sought, or that was created by government action for which no compensation was paid;**

Applicant Response:

195 Brownell Howland is a legal nonconforming lot created in 1958. The owner was not aware of the restriction being placed on the house when the lot was split in 2009. The new parcel that was created did have a building site designated outside of the Ridge Top boundary.

Staff Analysis:

The lot split which created the current lot configuration occurred after the regulations were changed in 2005, however, that lot split did not alter the existing condition of the house being located almost entirely within the Ridgetop Subdistrict. The parcel is not technically legally nonconforming, although development in compliance with escarpment and grading regulations would disturb much of the site.

While location of a separate structure outside of the Escarpment Overlay Zone area would avoid the conflict with the prohibition of constructing within the Ridgetop Subdistrict, it would conflict with the purpose of the Escarpment District to "Preserve the natural environment" by disturbing substantially more natural vegetation than the location proposed. The proposed structure would be located on the east side of the existing house. Due to the existing natural vegetation and topography, neither the existing house nor the proposed addition would be visible from any anywhere other than Brownell-Howland Road in the immediate vicinity of the subject property and therefore would be more consistent with the purpose of the Escarpment Overlay District than the alternative siting options.

- (c) there is an inherent conflict in applicable regulations that cannot be resolved by compliance with the more-restrictive provision as provided in Section 14-1.7; or**

Applicant Response:

No response provided.

Staff Analysis:

Although there is no inherent conflict in the specific requirements of regulations, the application involves balancing the purpose and intent of the escarpment and terrain management regulations.

- (d) the land or structure is nonconforming and has been designated as a landmark, contributing or significant property pursuant to Section 14-5.2 (Historic Districts).**

Applicant Response:

No response provided.

Staff Analysis:

This section does not apply to this property as it is not located in an historic district.

- (2) The special circumstances make it infeasible, for reasons other than financial cost, to develop the property in compliance with the standards of Chapter 14.**

Applicant Response:

By adding another structure with the sufficient size as guest house, a minimum of 650 square foot structure on the property outside of the Ridge Top boundary would also change the character of the site by destroying the surrounding landscape. This would not only disturb the area with construction around the new structure and the existing residence, additional disturbance by having to install a new septic system and utilities. This new construction would impact the existing residence by diminishing the existing vegetation and limiting the views from the existing residence. Additional terrain management constraints will have to be met with a larger project.

Staff Analysis:

Staff concurs that by not taking advantage of the existing studio space and locating the proposed guest house outside of the Escarpment Overlay Zone would result in greater disturbance of natural vegetation. Since the site is not visible from anywhere other than Brownell-Howland Road in the vicinity of the subject property, the proposed location would not be contrary to the purposes and intent of the Escarpment Overlay District and could be viewed as being more consistent with the purpose of the Escarpment Overlay Zone by limiting the impact to the natural environment.

- (3) The intensity of development shall not exceed that which is allowed on other properties in the vicinity that are subject to the same relevant provisions of Chapter 14.**

Applicant Response:

By adding the small addition the intensity of the development is minimal and will have little or no impact on the surrounding properties in the area. All chapter 14 provisions will be met. Stucco colors, details, and window colors will match the existing residence. The location for the proposed addition limits the amount circulation needed to go from the existing residence to the proposed guest dwelling.

Staff Analysis:

Chapter 14 defines intensity as "The extent of development per unit of area; or the level of use as determined by the number of employees and customers and degree of impact on surrounding properties such as noise and traffic." With regard to the intensity of use, the amount of development on the site, including the house and stable, is, and would continue to be, one of the smallest homes in the surrounding neighborhood. The footprints of the development on other lots in the same subdivision range from 4,800 to 9,300 square feet. The proposed footprint, including the addition, would be 4,412 square feet. This data was taken by analyzing nine homes located partially or completely within the Ridgetop Subdistrict on Circle Drive. The proposed 4,771 square foot footprint would be substantially less than the median footprint size of 5,970 square feet.

Based on this definition, the intensity of development of the home, including the proposed addition, would not exceed developments that are allowed on other similar properties in the vicinity. Noise and traffic will be no different from any other properties in the vicinity. The size of the proposed attached addition and the extent of proposed grading, are generally consistent with the development of other nearby lots. The addition will comply with all other Escarpment Overlay regulations and the rest of Chapter 14.

(4) The variance is the minimum variance that will make possible the reasonable use of the land or structure. The following factors shall be considered:

(a) whether the property has been or could be used without variances for a different category or lesser intensity of use;

Applicant Response:

No response provided.

Staff Analysis:

The proposal to expand an existing single-family structure and convert an existing studio to create an accessory dwelling unit is consistent with this zoning designation. As noted above, the size of the footprint of the home would not exceed the median footprint size in the surrounding area. Therefore, staff believes the addition represents a reasonable use of the

property.

(b) consistency with the purpose and intent of Chapter 14, with the purpose and intent of the articles and sections from which the variance is granted and with the applicable goals and policies of the general plan.

Applicant Response:

As noted above we are trying to limit the visual impact and lot disturbances in the Ridge Top designated area. Another dwelling could be constructed on the site without a variance and would be outside of the escarpment area. By getting the variance for the small addition on the side and North slope of the residence we are limiting the visual impact to the adjacent sites.

Staff Analysis:

The purpose and intent of the Escarpment Overlay District is provided in Section III of this report. While the addition would be contrary to the prohibition of building in the Ridgetop Subdistrict of the Escarpment Overlay Zoning District, it would not be contrary to the purpose and intent of the Subdistrict. It would not impact the City's aesthetic beauty nor cultural or historic setting as it could not be seen from any public areas or rights-of-way. For this same reason it would not impact mountain views or scenic vistas from the City. It would have little impact on environmentally sensitive areas or cause erosion nor drainage problems. It would not be contrary to goals of any other Section of Chapter 14.

(5) The variance is not contrary to the public interest.

Applicant Response:

The request for this variance should not be contrary to the public interest. This small 300 square foot addition is not imposing visually or physically to any of the adjacent sites or from the City.

Staff Analysis:

The public interest in relation to Section 14-5.6 "Escarpment Overlay District" includes protecting, maintaining and enhancing the health safety and general welfare of the citizens. It also includes protecting the visual impact of development and the natural environment of Santa Fe. The proposed addition would not be visible except from Brownell-Howland Road in the vicinity of the project site and ensures sound and orderly development while adhering to the Escarpment Overlay Regulations. Staff does not believe that the proposed request for a variance to the Escarpment Overlay District violates the purpose and intent of the regulations as set forth in Section 14-5.6.

VIII. ATTACHMENTS:

EXHIBIT A: Conditions of Approval

EXHIBIT B: City Staff Memoranda

1. Waste Water Division Engineer Memorandum, Stan Holland
2. Fire Department Memorandum, Rey Gonzales
3. Escarpment and Landscape Memorandum, Somie Ahmed
4. Terrain Management Memorandum, RB Zaxus
5. Water Division Memorandum, Dee Beingessner
6. Traffic Engineering Division Memorandum, Sandra Kassens
7. Metropolitan Planning Organization Memorandum, Keith Wilson

EXHIBIT C: Maps and Photos

1. General Plan Land Use Designation Map
2. Zoning Map
3. Aerial Photo

EXHIBIT D: Applicant Submittals

City of Santa Fe, New Mexico

Planning Commission

Exhibit A

**Escarpment Variance
Conditions of Approval**

Exhibit A
Conditions of Approval
195 Brownell-Howland Road Escarpment Variance
Case #2016-17

	DRT Conditions of Approval	Department	Staff
1	The subject property is not accessible (within 200 feet) to the City public sewer system. Prior to any new construction on the lot, the owner shall obtain a septic system permit from the State of New Mexico Environment Department.	Wastewater Management Division	Stan Holland
2	<p>1. All Fire Department access shall be no greater than a 10% grade throughout.</p> <p>2. Fire Department Access shall not be less than 20 feet width.</p> <p>3. Shall meet the 150 feet driveway requirements must be met as per IFC, or an emergency turn-around that meets the IFC requirements shall be provided.</p> <p>4. Fire Department shall have 150 feet distance to any portion of the building on any new construction.</p> <p>5. Shall have a water supply that meets fire flow requirements as per IFC.</p> <p>6. Must meet all fire protection requirements set forth by IFC 2009 edition for its classified occupancy.</p>	Fire Marshal	Reynaldo Gonzales
3	<p>1. Height of addition being proposed must meet the height requirements of Article 14-5.6(F)(4) "Architectural & Site Standards" in the Ridgeway subdistrict.</p> <p>2. Building color, exterior lighting & exterior glazing shall comply with Article 14-5.6(F) "Architectural & Site Standards."</p> <p>3. Chimneys may exceed the max height by not more than 3' above the immediately adjacent roof as per Article 14-5.6 (F)(4) "Architectural & Site Standards."</p> <p>4. Landscaping shall comply with Article 14-5.6(G) "Landscaping."</p>	Escarpment + Landscaping	Sornie Ahmed
4	No comment	Terrain Management	RB Zaxus

Exhibit A
Conditions of Approval
195 Brownell-Howland Road Escarpment Variance
Case #2016-17

5	No Comment		Water Division	Dee Beingessner
6	No Comment		Traffic Engineering	Sandra Kassens
7	No Comment		Metropolitan Planning Organization	Keith Wilson

City of Santa Fe, New Mexico

Planning Commission

Exhibit B

Development Review Team Memoranda

City of Santa Fe



New Mexico

MEMO

Wastewater Management Division DEVELOPMENT REVIEW COMMENTS

E-MAIL DELIVERY

Date: February 29, 2016

To: Kathrine Mortimer, Case Manager

From: Stan Holland, P.E.
Wastewater Management Division

Subject: Case 2016-17 195 Brownell Howland Road Escarpment Variance

The subject property is not accessible (within 200 feet) to the City public sewer system. Prior to any new construction on the lot, the owner shall obtain a septic system permit from the State of New Mexico Environment Department.

The Wastewater Division has no other conditions required for the granting of the variance.

EXHIBIT B-1

City of Santa Fe, New Mexico

memo

DATE: March 14, 2016

TO: Katherine Mortimer, Case Manager

FROM: Reynaldo Gonzales, Fire Marshal *RDG*

SUBJECT: Case #2016-17-18 195 Brownell Howland

I have conducted a review of the above mentioned case for compliance with the International Fire Code (IFC) Edition. If you have questions or concerns, or need further clarification please call me at 505-955-3316.

Prior to any new construction or remodel shall comply with the current code adopted by the governing body due to a change of use occupancy.

1. All Fire Department access shall be no greater than a 10% grade throughout.
2. Fire Department Access shall not be less than 20 feet width.
3. Shall meet the 150 feet driveway requirements must be met as per IFC, or an emergency turnaround that meets the IFC requirements shall be provided.
4. Fire Department shall have 150 feet distance to any portion of the building on any new construction.
5. Shall have a water supply that meets fire flow requirements as per IFC.
6. Must meet all fire protection requirements set forth by IFC 2009 edition for its classified occupancy.

EXHIBIT B-2

City of Santa Fe, New Mexico

memo

DATE: March 3, 2016
TO: Katherine Mortimer, Planner Supervisor
FROM: Somie Ahmed, Planner Technician Senior
SUBJECT: Comments for Case #2016-17, 195 Brownell Howland Road Escarpment Variance

Below are staff's final comments for 195 Brownell Howland Road Escarpment Variance.
These comments are based on documentation and plans dated February 22nd, 2016:

1. Height of addition being proposed must meet the height requirements of Article 14-5.6(F)(4) "Architectural & Site Standards" in the Ridgetop subdistrict.
2. Building color, exterior lighting & exterior glazing shall comply with Article 14-5.6(F) "Architectural & Site Standards."
3. Chimneys may exceed the max height by not more than 3' above the immediately adjacent roof as per Article 14-5.6 (F)(4) "Architectural & Site Standards."
4. Landscaping shall comply with Article 14-5.6(G) "Landscaping."

MORTIMER, KATHERINE E.

From: ZAXUS, RISANA B.
Sent: Tuesday, March 29, 2016 4:02 PM
To: MORTIMER, KATHERINE E.
Subject: RE: Comments on Cases for Planning Commission

Katherine -

I have no review comments on these cases.

RB

From: MORTIMER, KATHERINE E.
Sent: Tuesday, March 29, 2016 4:01 PM
To: ZAXUS, RISANA B.
Subject: Comments on Cases for Planning Commission

RB:

Do you have any comments on the following three escarpment variance cases?

2016-13 - 451 Circle Drive Escarpment Variance
2016-17 - 195 Brownell Howland Road Escarpment Variance
2016-18 - 165 Brownell Howland Road Escarpment Variance

Thank you.

*Katherine Mortimer
Land Use Department
City of Santa Fe, NM
(505) 955-6635*



There is no path to peace, peace is the path. -Gandhi

EXHIBIT B4

MORTIMER, KATHERINE E.

From: BEINGESSNER, DEE
Sent: Wednesday, March 02, 2016 2:34 PM
To: MORTIMER, KATHERINE E.
Subject: Cases 2016-17, 2016-18, and 2016-19

Katherine,

I don't have any comments on any of the three subject cases listed above.

Dee

EXHIBIT B-5

MORTIMER, KATHERINE E.

From: KASSENS, SANDRA M.
Sent: Tuesday, March 08, 2016 10:40 AM
To: MORTIMER, KATHERINE E.
Cc: ROMERO, JOHN J
Subject: 195 Brownell-Howland Road

RE: 195 Brownell-Howland

Katherine,
The Traffic Engineering Division has no comments on the Escarpment Variance at 195 Brownell-Howland Road, case # 2016-17.

Sandra Kassens
Engineer Assistant
Engineering Division
Public Works Department
City of Santa Fe
505-955-6697

EXHIBIT B-6

MORTIMER, KATHERINE E.

From: WILSON, KEITH P.
Sent: Wednesday, March 02, 2016 12:18 PM
To: MORTIMER, KATHERINE E.
Subject: Request for Additional Submittals

Hi Katherine:

I have no comments on the following cases:

Case #2016-13. 451 Circle Drive Escarpment Variance.
Case #2016-17. 195 Brownell Howland Road Escarpment Variance.
Case #2016-18. 165 Brownell Howland Road Escarpment Variance.

Keith P. Wilson
MPO Senior Planner
Santa Fe Metropolitan Planning Organization
Mailing: P.O. Box 909
Santa Fe, NM 87504-0909
Office: 500 Market St, Suite 200 (Above REI Store)
Santa Fe, NM
Map: <http://tinyurl.com/l6kejeg>
Directions & Parking: <http://www.railyardsantafe.com/north-railyard/>
Phone: 505-955-6706
Email: kpwilson@santafenm.gov
santafemppo@santafenm.gov

Please Visit Our Website at: www.santafemppo.org



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City of Santa Fe, New Mexico

Planning Commission

Exhibit C **Maps and Photos**

General Plan Future Land Use Designation Map

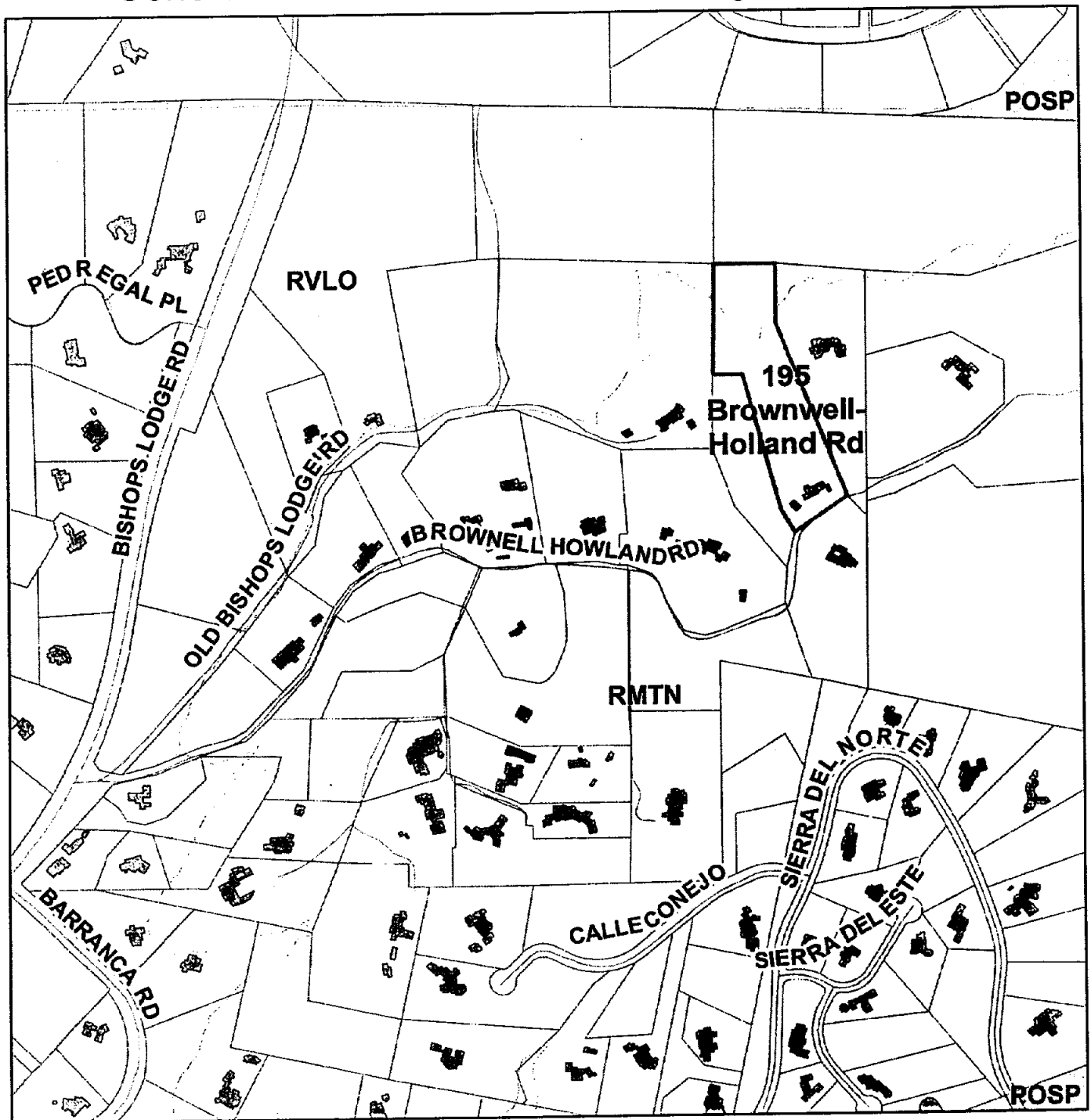


EXHIBIT C1

Zoning Map

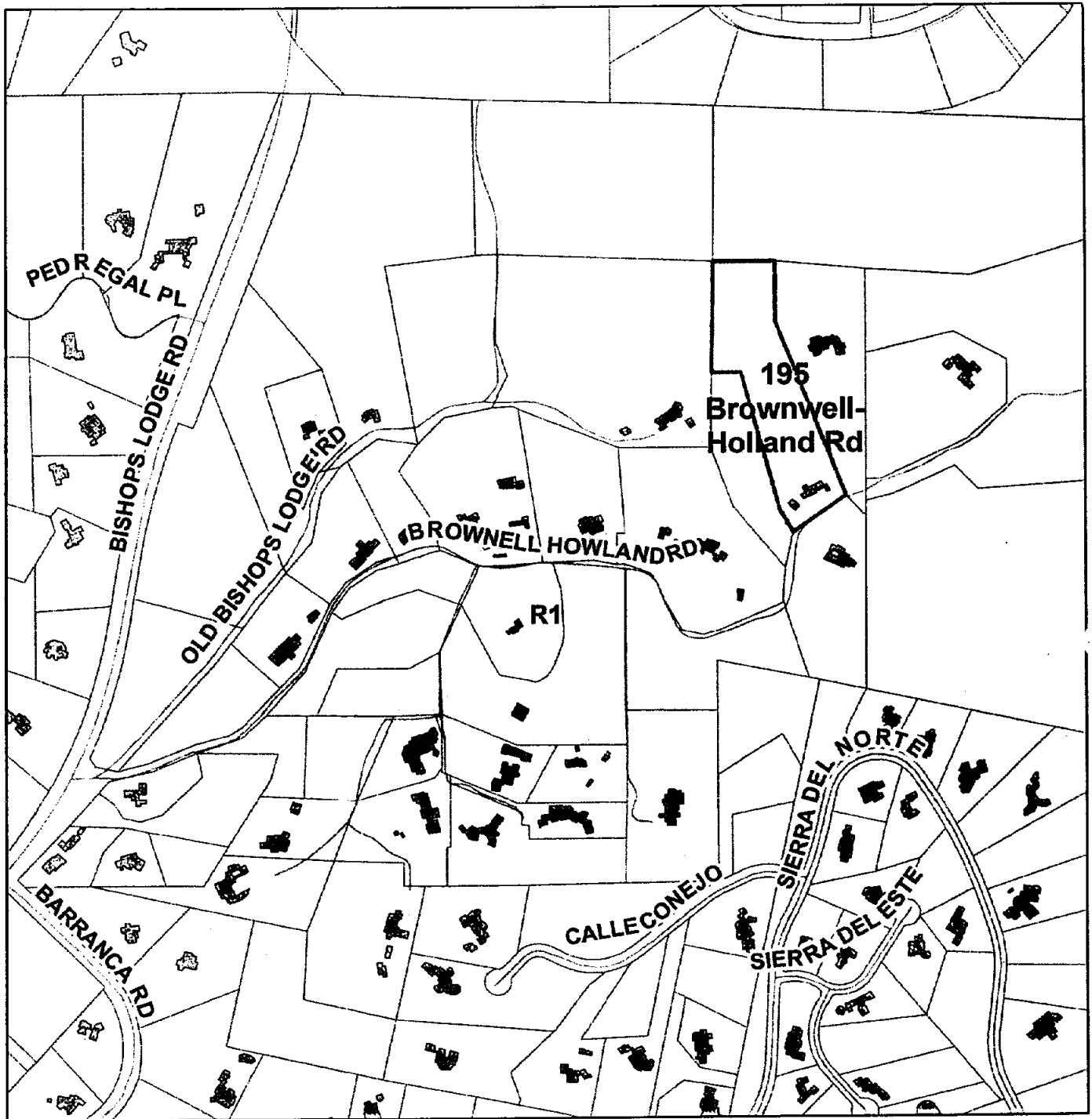
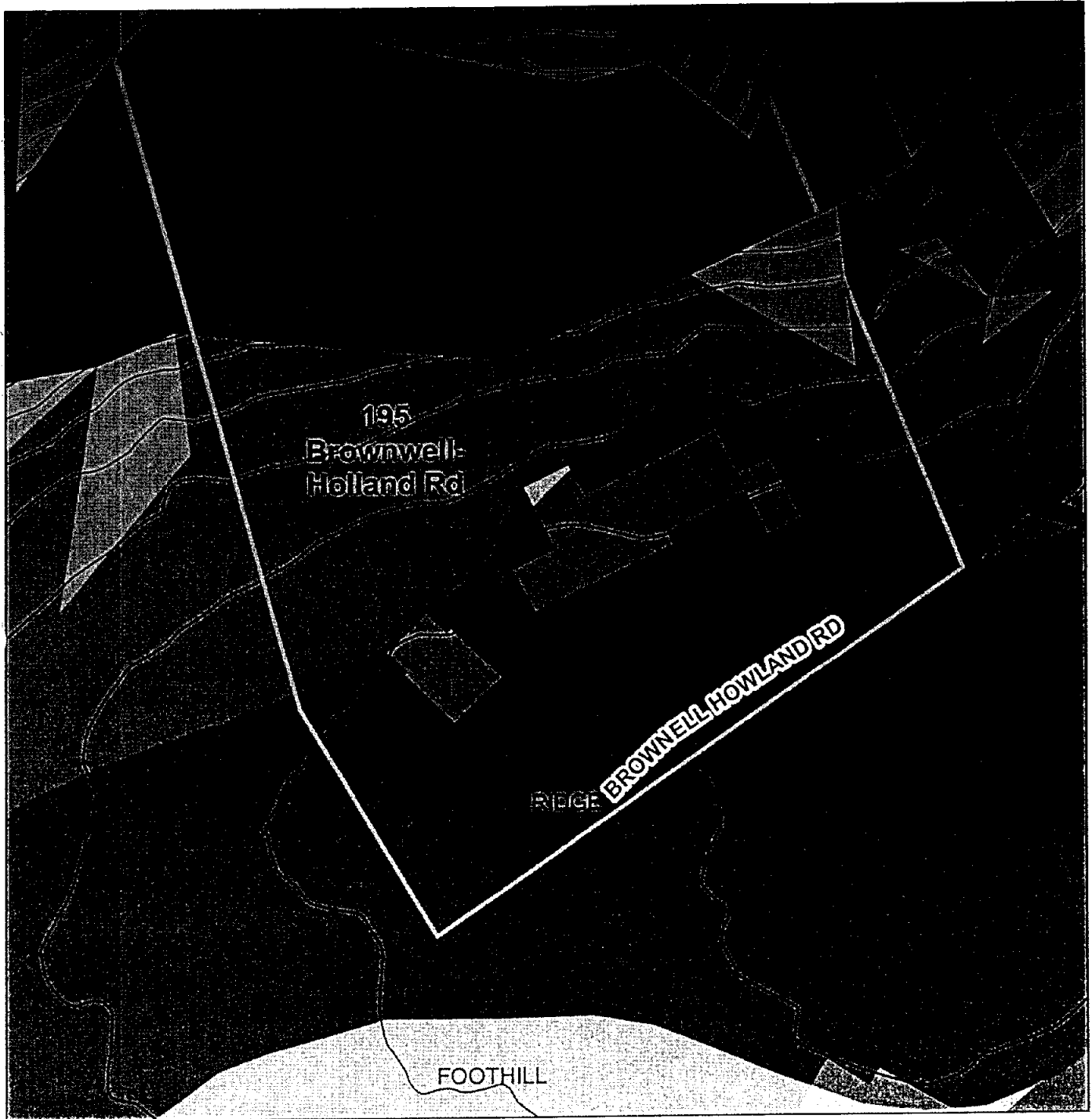


EXHIBIT C2

Slope Analysis with Escarpment Subdistricts



Legend






— 4 Ft. Contours	Slopes
Escarpment Subdistricts	 0% to 10%
 FOOTHILL	 10% to 20%
 RIDGE	 20% to 30%

EXHIBIT C3

City of Santa Fe, New Mexico

Planning Commission

Exhibit D **Applicant Submittals**

Planning Commission
April 7, 2016

EXHIBIT 9

City of Santa Fe, New Mexico

memo

DATE: March 29, 2016, for the April 7, 2016 Meeting
TO: Planning Commission
VIA: Lisa Martinez, Director, Land Use Department
Greg Smith, AICP, Division Director, Current Planning Division
FROM: Katherine Mortimer, Supervising Planner, Land Use Department

Case #2016-18. 165 Brownell Howland Road Escarpment Variance. JenkinsGavin Design and Development, agent for B & L Land, LLC., request approval of a variance to allow an addition to an accessory structure within the Ridgetop Subdistrict of the Escarpment Overlay District. The 5.48 acre property is zoned R-1 (Residential – 1 unit per acre). (Katherine Mortimer, Case Manager)

RECOMMENDATION

If the Commission determines the proposed 738 square-foot addition to the existing stable building meets the variance criteria outlined below, the Commission may **APPROVE WITH CONDITIONS**. Appropriate conditions are provided in Exhibit A of this report.

I. BACKGROUND

The applicant requests an escarpment variance to Section 14- 5.6(D)(1) "Location of Structures; Buildable Site" which states:

"For all lots subdivided or resubdivided on or before February 26, 1992, all structures shall be located within the foothills subdistrict unless the only buildable site is located within the ridgetop subdistrict. For all lots subdivided or resubdivided after February 26, 1992, development in the ridgetop subdistrict of the escarpment overlay district, other than driveway access and utilities, is prohibited." [Underlining added for emphasis]

Since the lot was resubdivided in 1995 (a lot line adjustment), a variance is required for any development in the Ridgetop portion of the lot. A lot split was recently approved for the property, but has not been recorded at the time this report is prepared.

II. EXECUTIVE SUMMARY

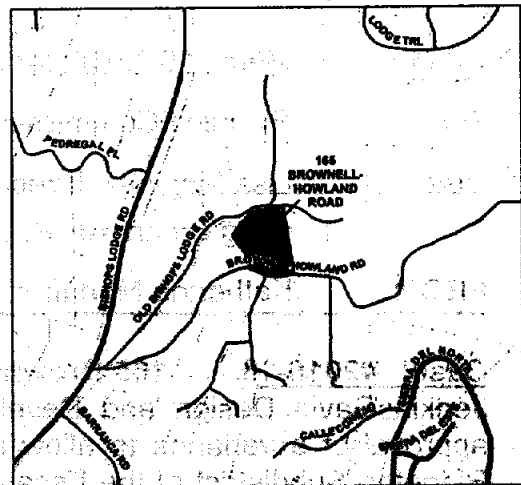
Should the Commission approve the requested variance, an application for building permit shall incorporate all conditions of approval and be consistent with the building and features included in the application for variance before construction can proceed. The variance is limited to the building footprint as shown on the plans submitted with this application. The addition shall further comply with all other requirements of the Escarpment Overlay District and Chapter 14.

The applicant proposes to demolish 904 square feet of an existing stable and add 783 on a different side of the building, keeping 606 square feet, to convert it into a garage. All of the existing structure and the proposed addition are within the Ridgetop Subdistrict of the Escarpment Overlay District. The application represents a reduction in square footage of development over the existing condition.

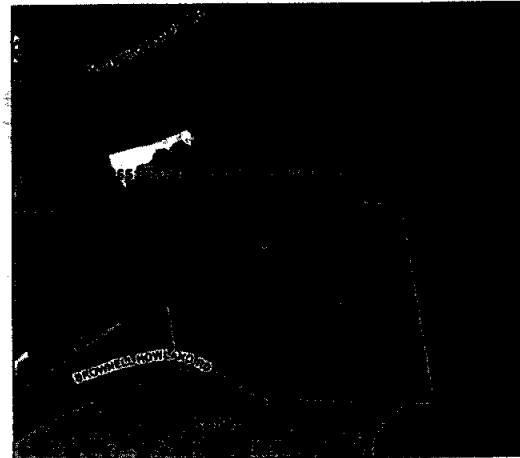
There is a narrow strip of the subject property along the road that is within the less-restricted Foothill Subdistrict, ranging from zero to 24 feet wide. However, that strip is too narrow to locate a garage, which has a 20-foot setback requirement. North of the Foothill strip is a large area of Ridgetop Subdistrict, where the existing buildings are located. The land north of that that is not within the Escarpment Overlay District, but consists of slopes steeper than 30% slopes.

The Summary Committee on March 3rd approved a lot split, which will create a separate lot of record for each of the principal dwelling units on the property. (Exhibit C) The lot split does change the process or approval criteria for the variance application.

Site Location Map



Escarpment Zoning Subdistricts



III. ESCARPMENT OVERLAY ZONING DISTRICT

Land within the Escarpment Overlay district is considered to have significant visual impact to the City. Within the Overlay District, the Ridgetop Subdistrict is considered more visible than the Foothills Subdistrict. In addition to placement restrictions, buildings within the Escarpment Overlay District are subject to height, color, exterior lighting, and landscaping restrictions intended to reduce potential visual impacts as set forth in Section 14-5.6. Should the variance be granted, the proposed addition would be required to comply with the following requirements.

The purpose of the Escarpment Overlay Zoning District per Section 14-5.6(A)(1) is to:

- (a) Promote the economic, cultural, and general welfare of the people of the city;
- (b) Ensure the harmonious, orderly, and efficient growth and development of the city;
- (c) Conserve the value of buildings and land;
- (d) Encourage the most appropriate use of land; and
- (e) Preserve the natural environment and the distinctive and historic ridgetop and foothills area environment as a visual asset for the benefit of the community and to maintain and encourage the sense of the city as a small community.
- (f) Reduce the risk to life and health of residents in the escarpment by reducing wildfire risk; and
- (g) Encourage the conservation of water, especially for maintaining landscaping materials.

The intent of the Escarpment Overlay Zoning District per Section 14-5.6(A)(3) is:

- (a) Preservation of the city's aesthetic beauty and natural environment is essential to protect the general welfare of the people of the city, to promote tourism and the economic welfare of the city, and to protect the cultural and historic setting of the city;
- (b) Development is highly visible on or about the ridgetop areas of the foothills for great distances and detracts from the overall beauty of the natural environment and adversely impacts the aesthetics of the mountain and foothill vistas as seen from the city;
- (c) Land within the escarpment overlay district is environmentally sensitive due to the presence of steep slopes, erosion problems, drainage problems and other environmental attributes;
- (d) The interest and welfare of the people of the city is to prohibit development on ridgetop areas of the foothills to the extent possible as allowed by law; and
- (e) The interest and welfare of the people of the city is to restrict development in the escarpment overlay district to preserve the aesthetic beauty and natural environment of the ridgetop areas of the foothills and to protect the mountain views and scenic vistas from the city to the extent possible.

IV. ESCARPMENT-SPECIFIC VARIANCE APPROVAL CRITERIA

The Escarpment Overlay District includes the following two variance criteria, in addition to criteria applicable to all variances to Chapter 14. Those criteria are (14-5.6(K)):

(1) Where the planning commission finds that extraordinary hardship may result from strict compliance with these regulations, it may vary the

regulations so that substantial justice may be done and the public interest secured; provided that such variation shall not have the effect of nullifying the intent and purpose of these regulations.

(2) In granting variances or modifications, the planning commission may require such conditions as will, in its judgment, assure substantially the objectives of the standards or requirements so varied or modified.

The intent of the Escarpment Overlay District lists preservation of Santa Fe's aesthetic beauty, mountain views and scenic vistas. Since the project would not be visible except in the immediate vicinity of the property, the proposed addition would not be counter to the protection of those views. Additionally there would be no disturbance of natural vegetation, steep slopes, and associated erosion and drainage challenges at the proposed location as opposed to other possible locations on the subject property.

V. VARIANCE PROCEDURES

The variance process balances reasonable use of the applicant's property against compliance with the letter and intent of adopted regulations. Subsection 14-3.16(C) lists the criteria which must be met in order to approve a variance request. Those criteria set up a two-stage review process.

In the first stage of review, the Commission must determine that special circumstances apply to the property that make it infeasible, for reasons other than financial cost, to develop the property in compliance with the standards of Chapter 14. Special circumstances may include physical characteristics that distinguish the property from others in the vicinity, such as unusual topography. Special circumstances may also include conflicting regulations that prevent development of the property without a variance to one or more of the regulations.

If the Commission determines that there are special circumstances that make it infeasible to develop the property, the second stage involves a determination of the minimum variance that would be needed to permit reasonable use of the property.

VI. VARIANCE APPROVAL CRITERIA

Criteria in Subsections 14-3.16(C)(1) through (5) are required to grant a variance. The property must be consistent with at least one of the circumstances listed in items 1a through 1d and must meet all of the criteria in items 2 through 5. Staff analysis shows that this application is consistent with item 1a and 1b and meets the criteria in items 2 through 5.

(1) One or more of the following special circumstances applies:

(a) unusual physical characteristics exist that distinguish the land or

structure from others in the vicinity that are subject to the same relevant provisions of Chapter 14, characteristics that existed at the time of the adoption of the regulation from which the variance is sought, or that were created by natural forces or by government action for which no compensation was paid;

Applicant Response:

The stables were constructed decades prior to the creation of the Escarpment Overlay. Originally, construction in the Ridgetop was permitted if no other buildable site was available. However, the Escarpment Ordinance was amended in 2006, which prohibited all development in the Ridgetop. Typically properties in the Escarpment Overlay are within the Foothills Sub-district, in which development is permissible, or within both the Foothills and the Ridgetop. The subject parcel is unique in that it lies only in the ridgetop, which comprises the vast majority of the property's buildable area.

Staff Analysis:

Unique physical characteristics do exist that distinguish the land from others in the vicinity that are subject to the escarpment overlay district. Due to the unique topography of the site there are no buildable sites on the property that are accessible from the road that are not within the Ridgetop Subdistrict. The portion of the site that is not within the Escarpment Overlay District is on the north side of the property, where the property sharply slopes down away from the street access with slopes greater than 30%. The applicant wishes to reuse an existing stable and convert it into a garage, with a net reduction in square footage, reducing the current amount of development within the Ridgetop Subdistrict.

(b) the parcel is a legal nonconforming lot created prior to the adoption of the regulation from which the variance is sought, or that was created by government action for which no compensation was paid;

Applicant Response:

N/A

Staff Analysis:

165 Brownell Howland is a legal nonconforming lot, since there is no buildable site that would comply with escarpment and slope standards.

(c) there is an inherent conflict in applicable regulations that cannot be resolved by compliance with the more-restrictive provision as provided in Section 14-1.7; or

Applicant Response:

SFCC § 14-10.3(A) states the following:

(A) No increase in Nonconformity

A legal nonconforming structure shall not be enlarged or altered in a way that increases the degree or extent of its nonconformity. This Section 14-10.3 is not intended to prohibit additions or alterations that do not increase the nonconformity.

The proposed alterations to the stable building will reduce the nonconformity and, therefore, is clearly in conformance with this section. However, this provision is in direct conflict with SFCC § 14.5.6(D)(1), which prohibits all development in the Ridgetop, even development that reduces nonconformities.

Staff Analysis:

Staff concurs that the proposed demolition of part of the nonconforming structure would decrease the extent of nonconformity, but does not concur that reconstruction would constitute an inherent conflict in applicable regulations. Because the application meets the criteria in (1)(a) and (1)(b), however, it is not required to meet the (1)(c) criterion.

(d) the land or structure is nonconforming and has been designated as a landmark, contributing or significant property pursuant to Section 14-5.2 (Historic Districts).

Applicant Response:

N/A

Staff Analysis:

This section does not apply to this property as it is not located in an historic district.

(2) The special circumstances make it infeasible, for reasons other than financial cost, to develop the property in compliance with the standards of Chapter 14.

Applicant Response:

It is infeasible to convert the stables into a garage, because all new construction is prohibited in the Ridgetop Sub-district.

Staff Analysis:

Staff concurs that the fact that the stable structure is completely within the Ridgetop Subdistrict makes conversion of that structure infeasible without a variance. Similarly, locating the proposed garage elsewhere on the site would be infeasible due to the steep slopes outside of the Ridgetop Subdistrict.

- (3) The intensity of development shall not exceed that which is allowed on other properties in the vicinity that are subject to the same relevant provisions of Chapter 14.

Applicant Response:

Accessory structures, such as garages, studios, and guest houses are common in the area. The stables building is the only accessory structure on the property, so there is not excessive development.

Staff Analysis:

Chapter 14 defines intensity as "The extent of development per unit of area; or the level of use as determined by the number of employees and customers and degree of impact on surrounding properties such as noise and traffic." With regard to the intensity of use, the amount of development on the site, including the house and stable is, and would continue to be, one of the smallest in the surrounding neighborhood. The footprints of the development on other lots around the subject lot range from 1,527 to 9,290 square feet. The proposed footprint, including the reconfigured stable/garage, would be 4,597 square feet. This data was taken by analyzing nine homes located adjacent to, or within 2 lots, of the subject property. Most are either partially or completely within the Ridgetop Subdistrict. The proposed 4,597 square foot footprint would be less than the median footprint size of 5,070 square feet.

Based on this definition, the intensity of development would not exceed developments that are allowed on other similar properties in the vicinity. Noise and traffic will be no different from any other properties in the vicinity. The size of the proposed attached addition and the extent of proposed grading are generally consistent with the development of other nearby lots. The addition will comply with all other Escarpment Overlay regulations and the rest of Chapter 14.

- (4) The variance is the minimum variance that will make possible the reasonable use of the land or structure. The following factors shall be considered:

- (a) whether the property has been or could be used without variances for a different category or lesser intensity of use;

Applicant Response:

The granting of this variance will actually result in a reduction in use intensity on the property. A stables building has a much greater impact on the neighborhood than a garage, with the odors, dust, and flies associated with horses, as well as the impact of horse trailers regularly utilizing Brownell Howland Road. The proposed garage is a significantly less

intensive use.

Staff Analysis:

The site is zoned R-1, one residential dwelling unit per acre, and the applicant has taken steps to reduce impacts by using an existing structure and replacing less square footage than the existing building. The proposal is consistent with this zoning designation. As noted above, the size of the footprint of the home would not exceed the median footprint size in the surrounding area, and the addition will be in the same area as the existing structure. Therefore, staff believes the addition represents a reasonable use of the property.

- (b) consistency with the purpose and intent of Chapter 14, with the purpose and intent of the articles and sections from which the variance is granted and with the applicable goals and policies of the general plan.**

Applicant Response:

This variance promotes health, safety, and the general welfare by terminating the stables activity and reducing the impact of a legal, nonconforming building. Furthermore, the following purposes of the escarpment Overlay are specifically fulfilled by this request:

- (1) Conserve the value of building and land; and (2) Encourage the most appropriate use of land.*

Allowing reasonable alterations to the stables building preserves the value of the subject property. Furthermore, elimination of the stables activities preserves neighboring property values, as well.

Staff Analysis:

The purpose and intent of the Escarpment Overlay District is provided in Section III of this report. While the addition to the stable building would be contrary to the prohibition of building in the Ridgetop Subdistrict of the Escarpment Overlay Zoning District, it would not be contrary to the purpose and intent of the Subdistrict, because the proposed addition would not be seen from any public areas or rights-of-way. For this same reason it would not impact mountain views or scenic vistas from the City. It would have little impact on environmentally sensitive areas nor cause erosion or drainage problems. It would not be contrary to purpose or intent of any other Section of Chapter 14.

- (5) The variance is not contrary to the public interest.**

Applicant Response:

This variance is in the public interest by reducing the square footage and height of an existing nonconforming structure.

Staff Analysis:

The proposed addition would not be contrary to the public interest. The public interest in relation to Section 14-5.6 "Escarpment Overlay District" includes protecting, maintaining and enhancing the health safety and general welfare of the citizens. It also includes protecting the visual impact of development and the natural environment of Santa Fe. The proposed building reconfiguration would not be visible except from the driveway entry on Brownell-Howland Road and ensures sound and orderly development while adhering to the Escarpment Overlay Regulations. Staff does not believe that the proposed request for a variance to the Escarpment Overlay District violates the purpose and intent of the regulations as set forth in Section 14-5.6.

VII. ATTACHMENTS:

EXHIBIT A: Conditions of Approval

EXHIBIT B: City Staff Memoranda

1. Waste Water Division Engineer Memorandum, Stan Holland
2. Fire Department Memorandum, Rey Gonzales
3. Escarpment and Landscape Memorandum, Somie Ahmed
4. Terrain Management Memorandum, RB Zaxus
5. Water Division Memorandum, Dee Beingessner
6. Traffic Engineering Division Memorandum, Sandra Kassens
7. Metropolitan Planning Organization Memorandum, Keith Wilson

EXHIBIT C: Maps and Photos

1. General Plan Land Use Designation Map
2. Zoning Map
3. Aerial Photo
4. Street View Photo from Circle Drive at center of property line
5. Street View Photo from Circle Drive at driveway entry

EXHIBIT D: 2016 Lot Split Plat (Approved, but not yet filed)

EXHIBIT E: Applicant Submittals

City of Santa Fe, New Mexico

Planning Commission

Exhibit A

**Escarpment Variance
Conditions of Approval**

Exhibit A
Conditions of Approval
165 Brownell-Howland Road Escarpment Variance
Case #2016-18

	DRT Conditions of Approval	Department	Staff
1	The subject property is not accessible (within 200 feet) to the City public sewer system. Prior to any new construction on the lot, the owner shall obtain a septic system permit from the State of New Mexico Environment Department.	Wastewater Management Division	Stan Holland
2	<p>1. All Fire Department access shall be no greater than a 10% grade throughout.</p> <p>2. Fire Department Access shall not be less than 20 feet width to any new/remodel construction or automatic sprinkler systems may be required.</p> <p>3. Shall meet the 150 feet driveway requirements must be met as per IFC, or an emergency turn-around that meets the IFC requirements shall be provided. If this cannot be met an automatic sprinkler system may be required.</p> <p>4. Fire Department shall have 150 feet distance to any portion of the building on any new construction.</p> <p>5. Shall have water supply that meets fire flow requirements as per IFC</p>	Fire Marshal	Reynaldo Gonzales
3	<p>1. Height of addition being proposed must meet the height requirements of Article 14-5.6(F)(4) "Architectural & Site Standards" in the Ridgeway subdistrict.</p> <p>2. Building color, exterior lighting & exterior glazing shall comply with Article 14-5.6(F) "Architectural & Site Standards."</p> <p>3. Chimneys may exceed the max height by not more than 3' above the immediately adjacent roof as per Article 14-5.6 (F)(4) "Architectural & Site Standards."</p> <p>4. Landscaping shall comply with Article 14-5.6(G) "Landscaping."</p>	Escarpment + Landscaping	Somie Ahmed
4	No Comment	Terrain Management	RB Zaxus

Exhibit A
Conditions of Approval
165 Brownell-Howland Road Escarpment Variance
Case #2016-18

5	No Comment	Water Division	Dee Beingessner
6	No Comment	Traffic Engineering	Sandra Kassens
7	No Comment	Metropolitan Planning Organization	Keith Wilson

City of Santa Fe, New Mexico

Planning Commission

Exhibit B

Development Review Team Memoranda

City of Santa Fe



MEMO

Wastewater Management Division DEVELOPMENT REVIEW COMMENTS

E-MAIL DELIVERY

Date: February 29, 2016

To: Kathrine Mortimer, Case Manager

From: Stan Holland, P.E.
Wastewater Management Division

Subject: Case 2016-18 165 Brownell Howland Road Escarpment Variance

The subject property is not accessible (within 200 feet) to the City public sewer system. Prior to any new construction on the lot, the owner shall obtain a septic system permit from the State of New Mexico Environment Department.

The Wastewater Division has no other conditions required for the granting of the variance.

EXHIBIT B-1

City of Santa Fe, New Mexico

memo

DATE: March 18, 2016

TO: Katherine Mortimer, Case Manager

FROM: Reynaldo Gonzales, Fire Marshal *RDG*

SUBJECT: Case #2016-18 165 Brownell Howland.

I have conducted a review of the above mentioned case for compliance with the International Fire Code (IFC) Edition. If you have questions or concerns, or need further clarification please call me at 505-955-3316.

Prior to any new construction or remodel the current code adopted by the governing body would need to be met.

1. All Fire Department access shall be no greater than a 10% grade throughout.
2. Fire Department Access shall not be less than 20 feet width to any new/remodel construction or automatic sprinkler systems may be required.
3. Shall meet the 150 feet driveway requirements must be met as per IFC, or an emergency turn-around that meets the IFC requirements shall be provided. If this cannot be met an automatic sprinkler system may be required.
4. Fire Department shall have 150 feet distance to any portion of the building on any new construction.
5. Shall have water supply that meets fire flow requirements as per IFC

EXHIBIT B-2

City of Santa Fe, New Mexico

memo

DATE: March 3, 2016
TO: Katherine Mortimer, Planner Supervisor
FROM: Somie Ahmed, Planner Technician Senior
SUBJECT: Comments for Case #2016-18, 165 Brownell Howland Road Escarpment Variance

Below are staff's final comments for 165 Brownell Howland Road Escarpment Variance:

1. Height of addition being proposed must meet the height requirements of Article 14-5.6(F)(4) "Architectural & Site Standards" in the Ridgetop subdistrict.
2. Building color, exterior lighting & exterior glazing shall comply with Article 14-5.6(F) "Architectural & Site Standards."
3. Chimneys may exceed the max height by not more than 3' above the immediately adjacent roof as per Article 14-5.6 (F)(4) "Architectural & Site Standards."
4. Landscaping shall comply with Article 14-5.6(G) "Landscaping."

EXHIBIT B-3

MORTIMER, KATHERINE E.

From: ZAXUS, RISANA B.
Sent: Tuesday, March 29, 2016 4:02 PM
To: MORTIMER, KATHERINE E.
Subject: RE: Comments on Cases for Planning Commission

Katherine -

I have no review comments on these cases.

RB

From: MORTIMER, KATHERINE E.
Sent: Tuesday, March 29, 2016 4:01 PM
To: ZAXUS, RISANA B.
Subject: Comments on Cases for Planning Commission

RB:

Do you have any comments on the following three escarpment variance cases?

2016-13 - 451 Circle Drive Escarpment Variance
2016-17 - 195 Brownell Howland Road Escarpment Variance
2016-18 - 165 Brownell Howland Road Escarpment Variance

Thank you.

*Katherine Mortimer
Land Use Department
City of Santa Fe, NM
(505) 955-6635*



There is no path to peace, peace is the path. -Gandhi

EXHIBIT B4

MORTIMER, KATHERINE E.

From: BEINGESSNER, DEE
Sent: Wednesday, March 02, 2016 2:34 PM
To: MORTIMER, KATHERINE E.
Subject: Cases 2016-17, 2016-18, and 2016-19

Katherine,

I don't have any comments on any of the three subject cases listed above.

Dee

MORTIMER, KATHERINE E.

From: KASSENS, SANDRA M.
Sent: Tuesday, March 08, 2016 10:46 AM
To: MORTIMER, KATHERINE E.
Cc: ROMERO, JOHN J; Jenkins Jennifer (jennifer@jenkinsgavin.com)
Subject: 165 Brownell-Howland

Re: 165 Brownell-Howland Rd. Escarpment Variance

Katherine,
The Traffic Engineering Division has no comments on the request for escarpment variance at 165 Brownell-Howland Road, case # 2016-18.

Sandra Kassens
Engineer Assistant
Engineering Division
Public Works Department
City of Santa Fe
505-955-6697

MORTIMER, KATHERINE E.

From: WILSON, KEITH P.
Sent: Wednesday, March 02, 2016 12:18 PM
To: MORTIMER, KATHERINE E.
Subject: Request for Additional Submittals

Hi Katherine:

I have no comments on the following cases:

Case #2016-13. 451 Circle Drive Escarpment Variance.
Case #2016-17. 195 Brownell Howland Road Escarpment Variance.
Case #2016-18. 165 Brownell Howland Road Escarpment Variance.

Keith P. Wilson
MPO Senior Planner
Santa Fe Metropolitan Planning Organization

Mailing: P.O. Box 909
Santa Fe, NM 87504-0909

Office: 500 Market St, Suite 200 (Above REI Store)
Santa Fe, NM

Map: <http://tinyurl.com/l6keieg>

Directions & Parking: <http://www.railyardsantafe.com/north-railyard/>

Phone: 505-955-6706

Email: kpwilson@santafenm.gov
santafemppo@santafenm.gov

Please Visit Our Website at: www.santafemppo.org



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Follow us on Twitter

City of Santa Fe, New Mexico

Planning Commission

Exhibit C

Maps and Photos

General Plan Future Land Use Designation Map

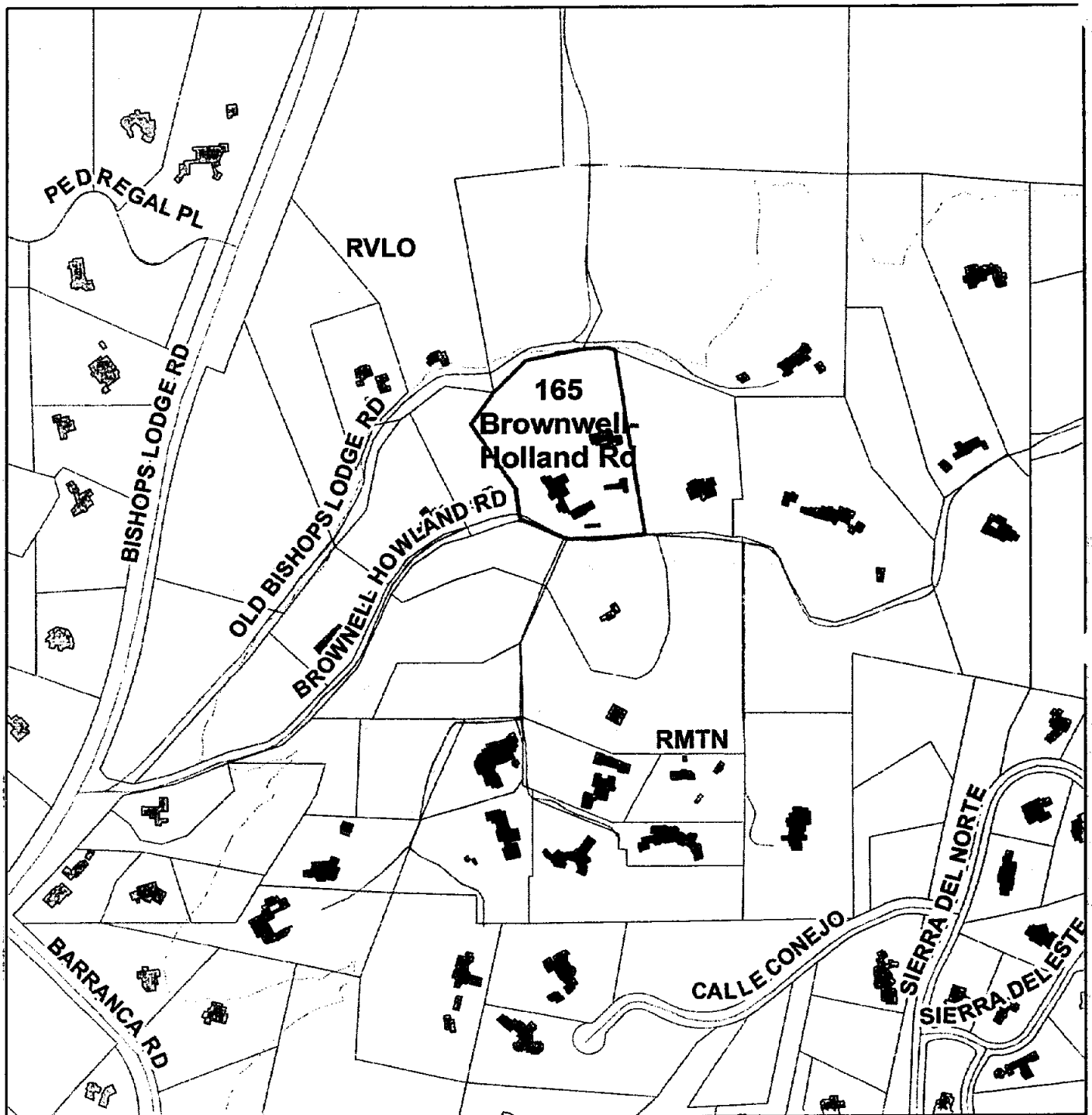


EXHIBIT C1

Zoning Map

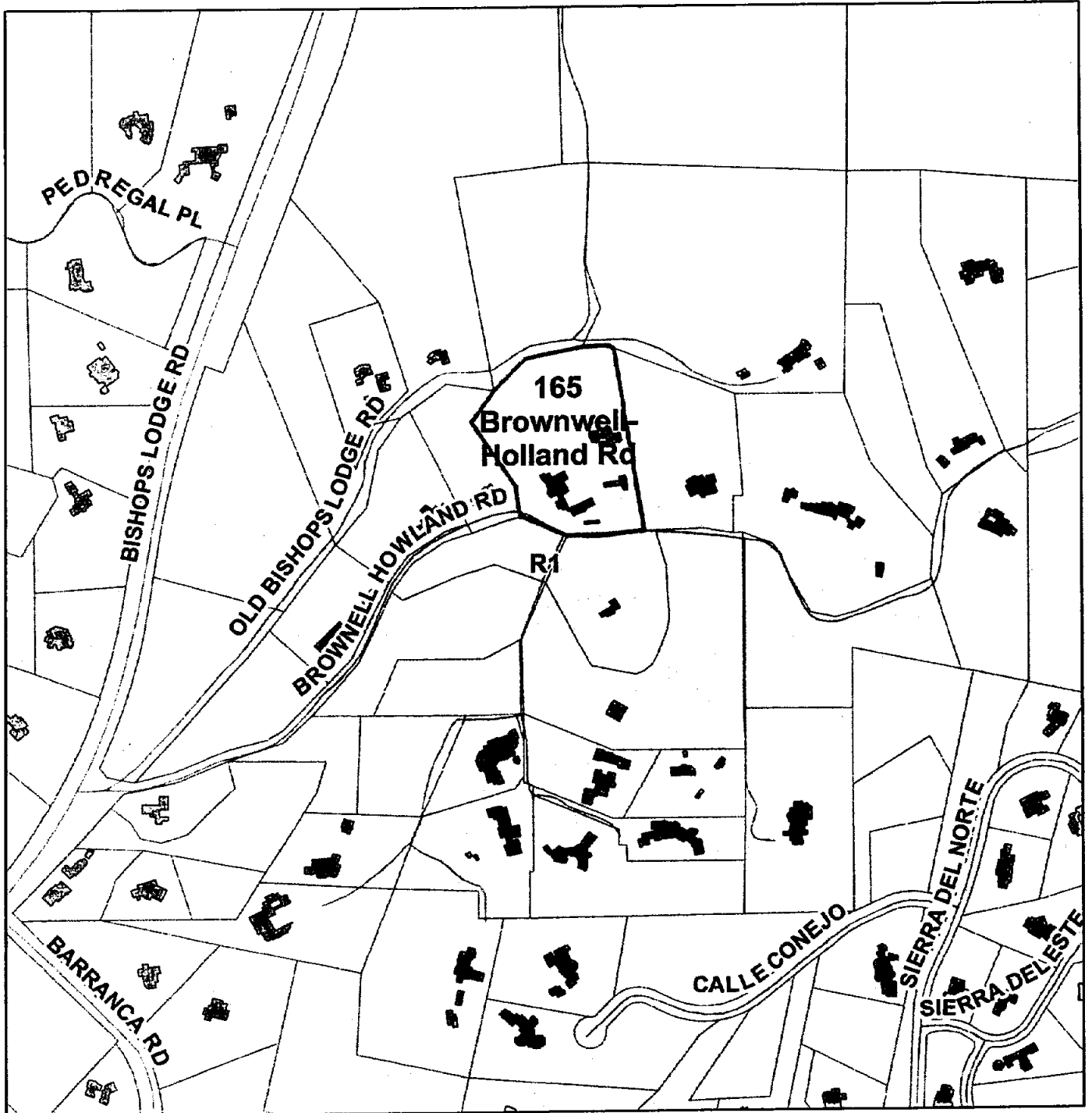


EXHIBIT C2

Aerial Photo

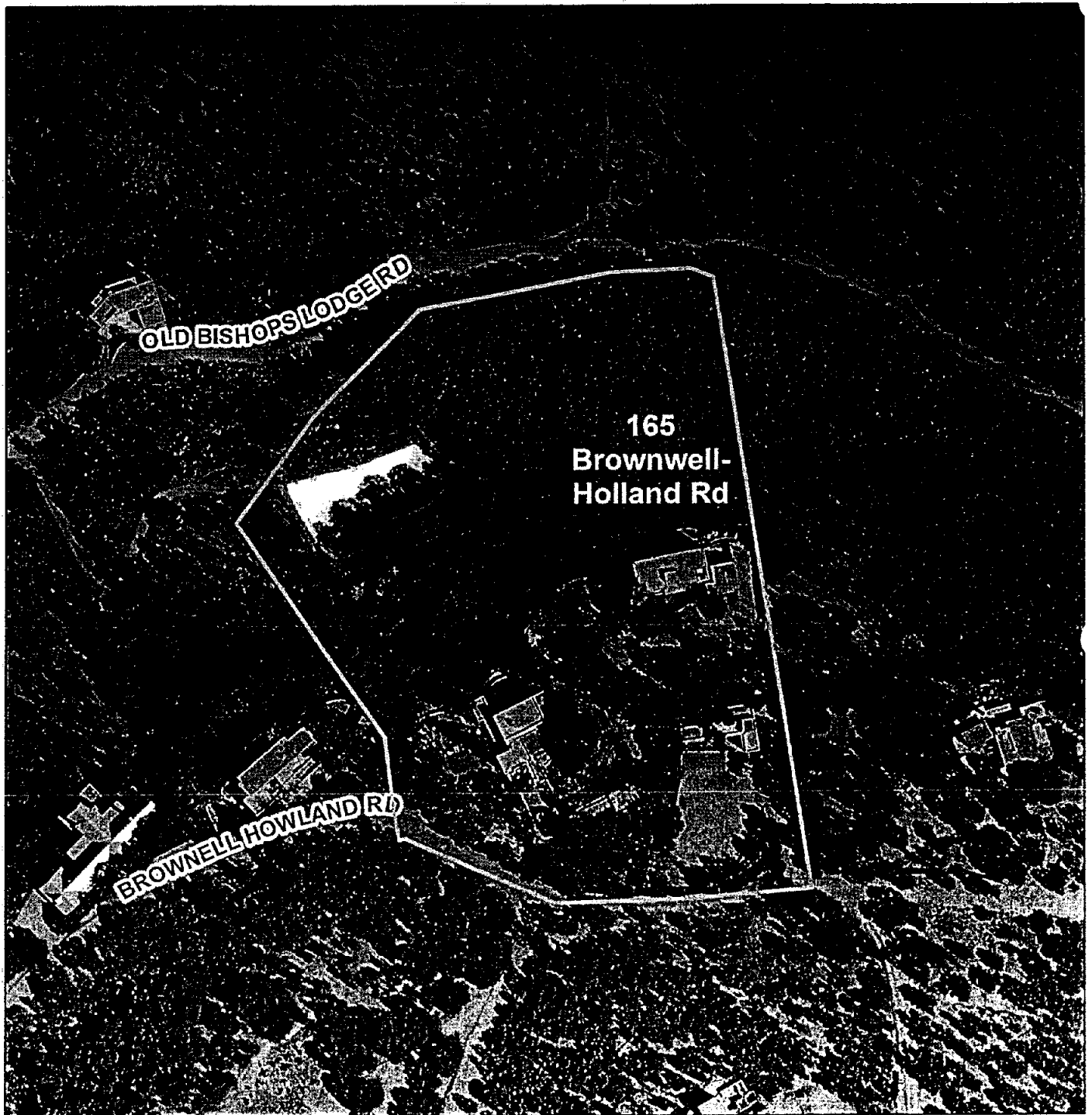


EXHIBIT C3

City of Santa Fe, New Mexico

Planning Commission

Exhibit D

2016 Lot Split Plat

(Approved, but not yet filed)

Planning Commission
April 7, 2016

EXHIBIT 10

Merrilee Caldwell and Marcus Randolph
160-170 Brownell Howland Road
Santa Fe, New Mexico 87501
505 660 4977

April 5, 2016

City of Santa Fe Planning Commission
City Hall
200 Lincoln Ave
Santa Fe, NM 87501

RE: 165 Brownell Howland Road
Variance Request #2016-18

Dear Chair and Planning Commission Members

I am writing this letter on behalf of the property owners identified below in support of the variance request submitted for the property at 165 Brownell Howland Road. That request seeks to convert a private stable to a residential garage.

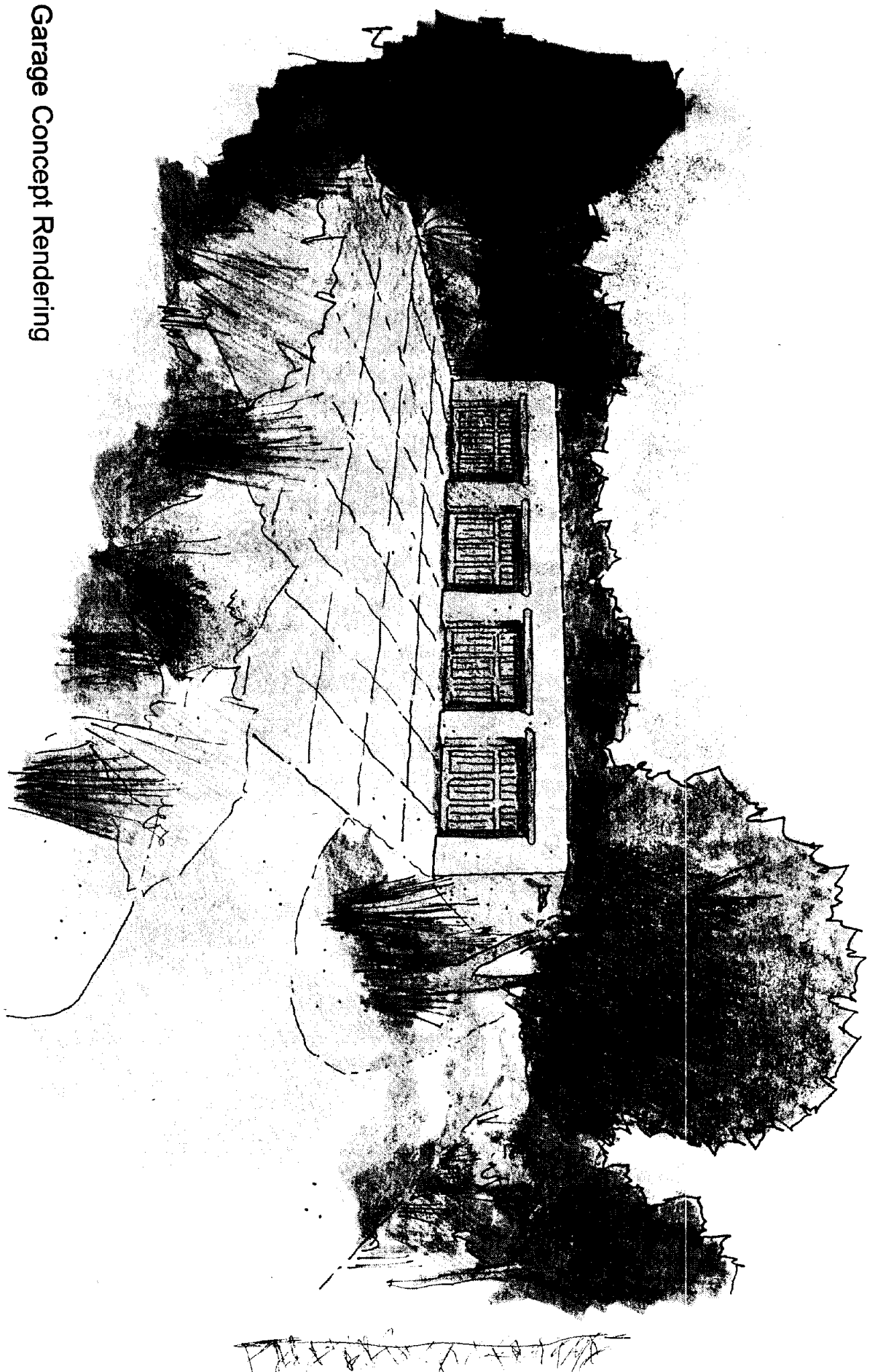
My husband, Marcus Randolph, and I are the owners and residents of 160 and 170 Brownell Howland Road, directly across the street from 165 Brownell Howland Road. We also own 408 Brownell Howland Road, where a family member lives, and which, in spite of its street number, is also quite near 165 Brownell Howland Road. Our neighbors Jed and Samantha Foutz are the residents and contractual owners of 175 Brownell Howland Road. Their property is adjacent to 165 Brownell Howland Road to the east. The Foutzs are out of town, as we will be at the time of the hearing, and have requested and authorized me to include them in this letter.

We all believe that a residential garage is more in keeping with the current residential character of our neighborhood. There are no other stables in our immediate area. To our knowledge, the nearest stables are at Bishops Lodge. As neighbors next to and across the street from 165 Brownell Howland Road, we would prefer not to have the issues typically related to stables, such as smell, flies and to a lesser extent noise, present in our neighborhood.

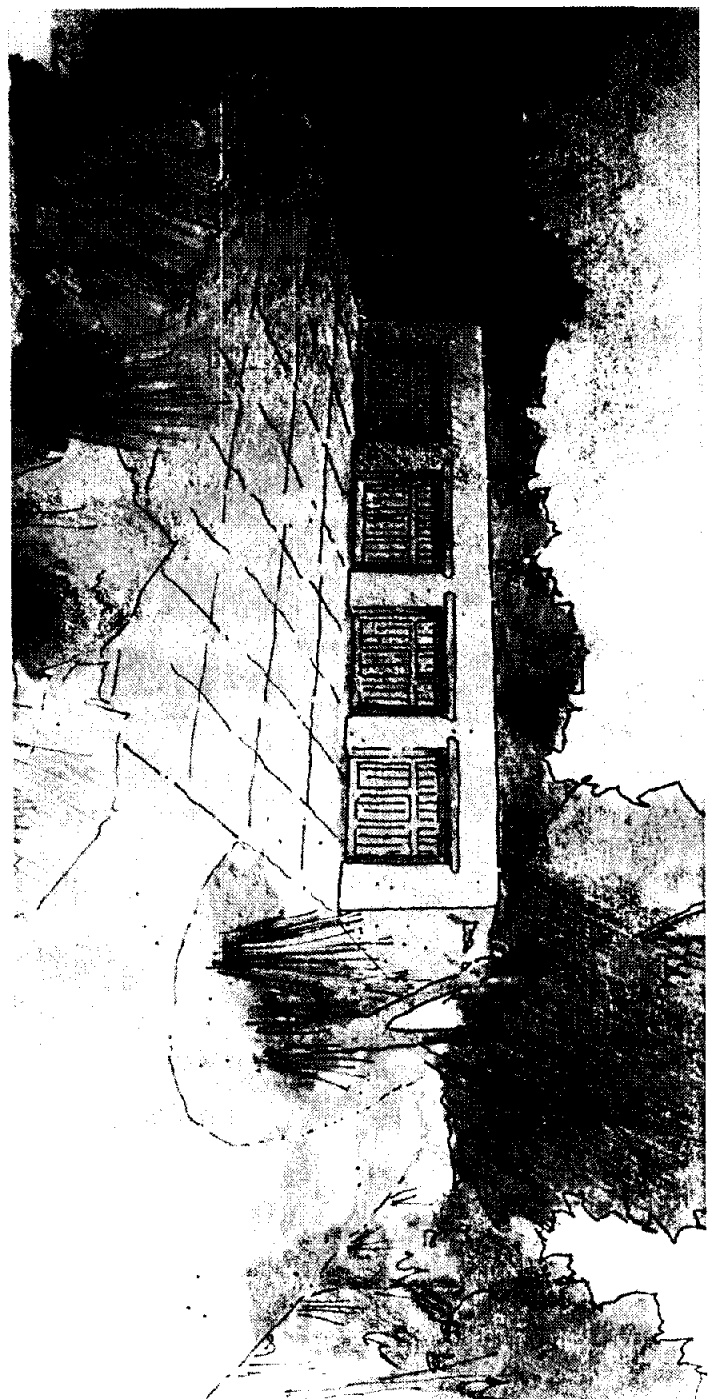
It is our understanding that the stables at 165 Brownell Howland Road are to be replaced with a residential garage which we believe will be more in keeping with our neighborhood. We recognize that the property in question is within the escarpment overlay, as are our properties. As such, we believe that the proposed replacement structure, which will be lower in height and have less square footage, so have a

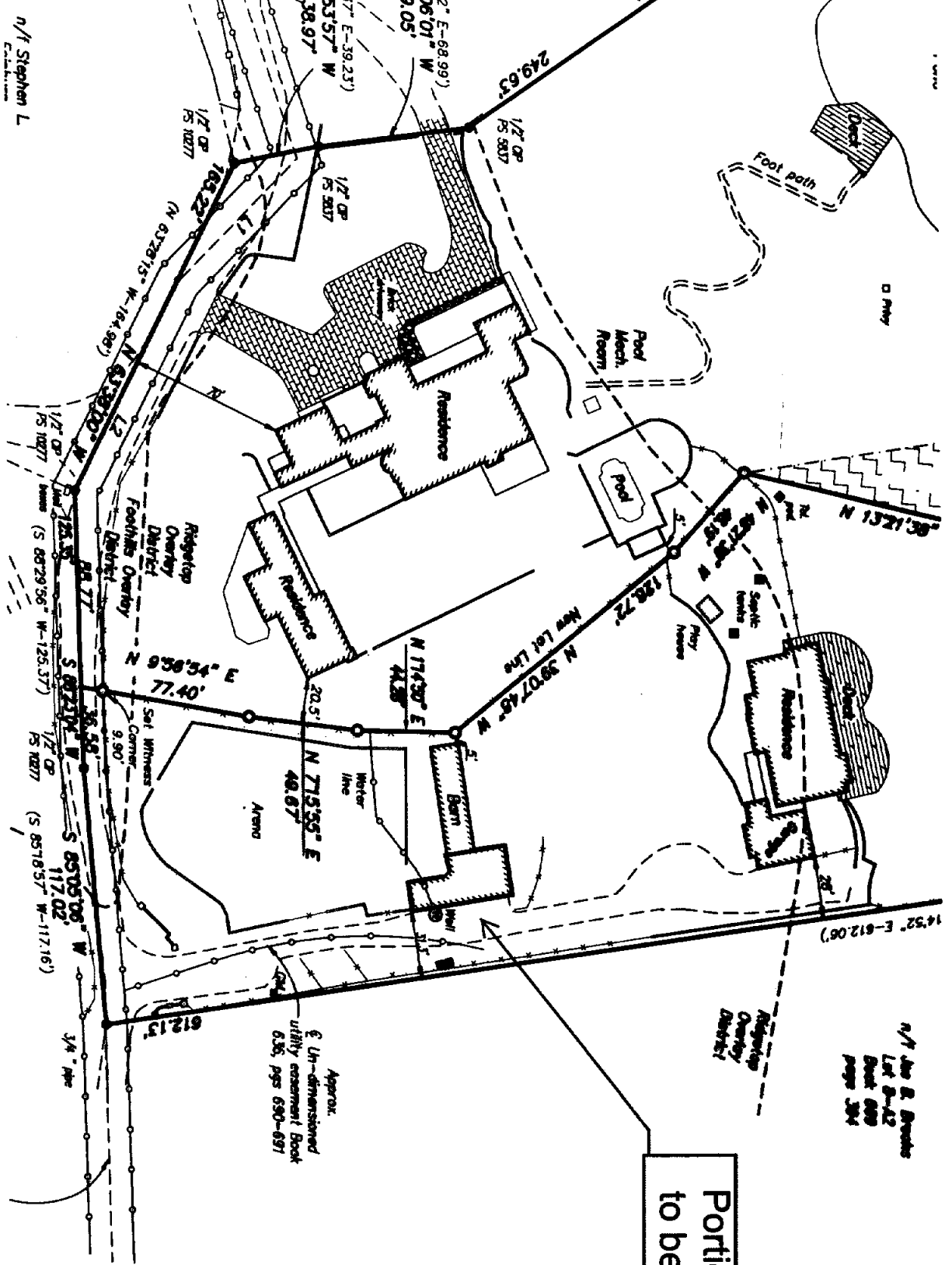
Planning Commission
April 7, 2016

EXHIBIT 11



Garage Concept Rendering





Portion of stables
to be demolished

n/f Joe B. Brooks
Lot 2-42
Book 689
page 384

Approx.
6 1/2 ft-dimensioned
utility easement Book
635, pgs 690-691

n/f Stephen L
Book 689
page 384