



Agenda

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PLANNING COMMISSION
Thursday, January 5, 2017 - 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: December 8, 2016

FINDINGS/CONCLUSIONS:

- Case #2016-107. Airport Mini Storage Units Expansion Development Plan.**
- Case #2016-125. 145 Brownell Howland Final Subdivision Plat.**
- Case #2016-126. Kachina Ridge Phase III Final Development Plan.**
- Case #2016-127. Kachina Ridge Phase III Final Subdivision Plat.**
- Case #2016-123. Rodeo Village Multi-Family Community Development Plan**

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

- 1. Case #2016-106. Haciendas del Mirasol, 700 Hyde Park Road, Final Subdivision Plat.** Cody North, agent for 700 HRP, LLC, requests final subdivision plat approval for 8 lots on 28 acres to be accessed by a private driveway via a connector road off of Hyde Park Road. The property is zoned PRC (Estancia Primera Planned Residential Community). (Donna Wynant, Case Manager)
- 2. Case #2016-151. 1326 Rufina Circle Waiver.** Crown Castle applicant, requests a waiver pursuant to 14-6.2(E)(8) "Waivers" and to 14-6.2(E)(k) "Tower Setbacks and Separation Distances Between Towers", to allow a setback less than the maximum height of a tower from any adjoining lot line. The property is zoned I-1(Light Industrial). (Dan Esquibel 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.**

SUMMARY INDEX
PLANNING COMMISSION
 January 5, 2017

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D. Approval of Minutes & Findings and Conclusions Minutes: December 8, 2016	Approved as amended	2
Findings of Fact & Conclusions of Law		
• <u>Case #2016-107</u> . Airport Mini Storage Units Expansion Development Plan	Approved as presented	2
• <u>Case #2016-125</u> 145 Brownell Howland Final Subdivision Plat	Approved as presented	2
• <u>Case #2016-126</u> Kachina Ridge Phase III Final Development Plan	Approved as presented	3
• <u>Case #2016-127</u> Kachina Ridge Phase III Final Subdivision Plat	Approved as presented	3
• <u>Case #2016-123</u> Rodeo Village Multi-Family Community Development Plan	Approved as presented	3
E. Old Business	None	3
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1. <u>Case #2016-106</u> . Haciendas del Mirasol, 700 Hyde Park Road Final Subdivision Plat	Approved	6-12
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I. Adjournment	Adjourned at 7:24 p.m.	13

PLANNING COMMISSION
Thursday, January 5, 2017 - 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 Fe, 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 Stephen Hochberg
Commissioner Piper Kapin

Members Absent

Commissioner Justin Greene [excused]
Commissioner Mark Hogan [excused]
Commissioner Sarah Cottrell Propst [excused]

Others Present:

Ms. Lisa Martinez, Land Use Department Director
Mr. Zach Shandler, Assistant City Attorney
Mr. Dan Esquibel, Planner Senior
Ms. Donna Wynant, Planner Senior
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 requested an amendment to the agenda by switch the order for the new business cases.

MOTION: Commissioner Hiatt moved to approve the agenda as amended with New Business Case #2 heard before Case #1. Commissioner Kapin seconded the motion and it passed by unanimous voice vote.

D. APPROVAL OF MINUTES AND FINDINGS/CONCLUSIONS

1. MINUTES: December 8, 2016

Commissioner Hiatt requested two changes to the minutes: On page 11, third paragraph, to insert "Impact" between "Traffic" and "Analysis. And on Page 15, seventh paragraph, to change "sized" to "sizes.

MOTION: Commissioner Hiatt moved to approve the minutes of December 8, 2016 as amended with minor grammatical corrections that were submitted to the Stenographer. Commissioner Hochberg seconded the motion and it passed by unanimous voice vote.

2. FINDINGS/CONCLUSIONS:

- **Case #2016-107. Airport Mini Storage Units Expansion Development Plan**

The Findings of Fact and Conclusions of Law for Case #2016-107 are available in the packet at the Land Use website.

MOTION: Commissioner Kapin moved to approve the Findings of Fact and Conclusions of Law for Case #2016-107. Airport Mini Storage Units Expansion Development Plan as presented. Commissioner Hiatt seconded the motion and it passed by unanimous voice vote.

- **Case #2016-125 145 Brownell Howland Final Subdivision Plat**

The Findings of Fact and Conclusions of Law for Case #2016-125 are available in the packet at the Land Use website.

MOTION: Commissioner Hochberg moved to approve the Findings of Fact and Conclusions of Law for Case #2016-145. Brownell Howland Final Subdivision Plat as presented. Commissioner Hiatt seconded the motion and it passed by unanimous voice vote.

- **Case #2016-126 Kachina Ridge Phase III Final Development Plan**

- **Case #2016-127 Kachina Ridge Phase III Final Subdivision Plat**

The Findings of Fact and Conclusions of Law for Case #2016-126 and #2016-127 are available at the Land Use website.

MOTION: Commissioner Hiatt moved to approve the Findings of Fact and Conclusions of Law for Case #2016-126. Kachina Ridge Phase III Final Development Plan and Case #2016-127. Kachina Ridge Phase III Final Subdivision Plat as presented. Commissioner Abeyta seconded the motion and it passed by unanimous voice vote.

- **Case #2016-123 Rodeo Village Multi-Family Community Development Plan**

The Findings of Fact and Conclusions of Law for Case #2016-123 are available at the Land Use website.

MOTION: Commissioner Hiatt moved to approve the Findings of Fact and Conclusions of Law for Case #2016-123 Rodeo Village Multi-Family Community Development Plan as presented. Commissioner Kapin seconded the motion and it passed by unanimous voice vote.

E. OLD BUSINESS

There was no old business to consider.

F. NEW BUSINESS

Mr. Fred Rowe stated he was present as Counsel for the Greater Callecita Neighborhood Association and President of the Santa Fe Council for Effective Representation. He handed the Stenographer a Point of Order (appeal to not consider the Mirasol case). His point of order is attached as Exhibit 1.

Chair Kadlubek explained to Mr. Rowe that the Commission is now ready to consider the case for 1326 Rufina Circle Waiver.

Mr. Rowe went ahead and explained his purpose for speaking.

Chair Kadlubek told Mr. Rowe that the Commission could hear his concern at the time that case is considered.

Mr. Rowe said he couldn't hear but wanted to follow the directives and continued to make his case and then sat down.

2. **Case #2016-151 1326 Rufina Circle Waiver.** Crown Castle applicant, requests a waiver pursuant to 14-6.2(E)(8) "Waivers" and to 14-6.2(E)(k) "Tower Setbacks and Separation Distances Between

Towers", to allow a setback less than the maximum height of a tower from any adjoining lot line. The property is zoned I-1(Light Industrial). (Dan Esquibel Case Manager)

Mr. Esquibel presented the Staff Report for Case #2016-151, 1326 Rufina Circle Waiver. The Staff Report for this case is available at the Land Use website.

He explained the waiver is for increasing the height of an existing tower behind Taco Bell on Rufina Street without increasing the setback to the required length as described on page 3 of the report. The balance is handled through a building permit. Staff believed they complied with requirements for the waiver.

Mr. Esquibel recommended approval of the waiver, subject to Staff conditions as listed in Section 2.

Questions to Staff

There were no questions to Staff concerning this case.

Applicant's Presentation

Mr. David McKinley, 8748 West Williams Road, Peoria AZ, was sworn. He stated that he is representing Chrome Castle, who own and operate cell towers around the nation. In this case, he is representing T-Mobile to expand their capacity in this area. The current towers have many users and they need this to expand the tower to off-load the usage of the other tower users. It is proposed at the request of their customers to increase speeds for internet, WiFi, text, etc.

Questions to the Applicant

Chair Kadlubek asked Mr. McKinley if he agreed with Staff conditions of approval.

Mr. McKinley said he did.

Public Hearing

Chair Kadlubek opened the public hearing for this case. There were no speakers from the public regarding this case and the public hearing was closed.

Commission Discussion

Commissioner Kapin was pleased to hear of the expansion in Santa Fe. She said, when reading the packet, it seemed the required setback would be to prevent damage to properties around the tower if the tower comes down. It appears that is needed in at least two directions.

Mr. McKinley clarified that the tower is designed to collapse upon itself and he could provide an affidavit from an engineer on how it will handle the load.

Commissioner Kapin asked if he spoke with neighbors about this.

Mr. McKinley said an ENN meeting was announced publicly and held as required. No one attended the meeting and no comments received by email, phone, or mail.

Commissioner Hochberg asked how much higher the existing tower would be raised.

Mr. McKinley said the request is for 25' more.

Commissioner Hochberg asked if it is in a light industrial area.

Mr. McKinley agreed.

Commissioner Hiatt saw a discussion about camouflage and asked if that is done on a regular basis.

Mr. McKinley agreed but pointed out that this is a monopole and one condition listed on page 1 of 6 requires the addition to match the color of the existing tower. That color is steel; it is not camouflaged. So it will be steel.

Mr. Esquibel added that within the Industrial districts, towers can go up to 100' and this one is within the limits. And since it is an existing tower, the City could not require the stealth provision. They fall under the FCC regulations.

Action of the Commission

MOTION: Commissioner Abeyta moved to approve Case #2016-151 - 1326 Rufina Circle Waiver, on the basis contained in the Staff Report. Commissioner Hiatt seconded the motion and it passed by unanimous voice vote.

Chair Kadlubek asked for an opinion from Mr. Shandler on the point of order that was handed to the Commissioners claiming the Planning Commission had no jurisdiction over this matter.

Mr. Shandler advised the Commission that they could proceed with Case #2016-106 for two reasons: This is a separate application technically, under the Code, and secondly, because the appeal to the Governing Body was denied by a vote of 8-1 to affirm the decision of the Planning Commission. The Findings they will adopt will be a ministerial task that they will adopt at their next meeting.

Commissioner Hiatt was granted permission and shared that information with Mr. Rowe because he had trouble hearing.

Commissioner Hiatt recused himself from consideration of this case and left the room.

Mr. Rowe wanted to speak but Chair Kadlubek asked Ms. Wynant to present the Staff report.

Mr. Rowe said, "It is the Commission's prerogative to cut me off."

1. **Case #2016-106. Haciendas del Mirasol, 700 Hyde Park Road Final Subdivision Plat.** Cody North, agent for 700 HRP, LLC, requests final subdivision plat approval for 8 lots on 28 acres to be accessed by a private driveway via a connector road off of Hyde Park Road. The property is zoned PRC (Estancia Primera Planned Residential Community). (Donna Wynant, Case Manager)

Ms. Wynant presented the Staff Report for Case #2016-106. The Staff Report for this case is available in the packet at the Land Use website.

Ms. Wynant handed out additional information attached as Exhibit 2, which are the declarations and covenants for Haciendas del Mirasol and the definition of the HOA as "Haciendas del Mirasol Owners' Association."

Ms. Wynant spoke with Commissioner Kapin who suggested having one chart showing the conditions from the preliminary subdivision plat and the new conditions. She handed out the chart, attached as Exhibit 3 (labeled DRT Comment Form from July, 2016).

She also received a late email communication from Commissioner Greene regarding Lot 22 A, attached as Exhibit 4.

Commissioner Hochberg asked if the communication from Commissioner Greene was as a Commissioner or as a private citizen.

Ms. Wynant said the communication is from Justin Greene in his private capacity and it was received late this afternoon.

Ms. Wynant said Mr. Stan Holland asked for a note to be placed on the plat that the HOA would be responsible for the maintenance, repair, placement and operation of the private sewer system. That has already been done. She briefly listed the other conditions of approval, as shown in the packet. The Executive Summary gives a little background. The proposal is for 8 lots and the Planning Commission approved the request on August 4. The Findings of Fact and Conclusions of Law were adopted and everything was attached in the packet. The Governing Body heard the appeal of the decision on December 14, 2016 and the appeal was denied 8-1 on a roll call vote and the Applicant now requests Final Subdivision Plat approval.

She included the Council minutes in the packet. She said Mr. Greene included the lot split from some years ago and followed with some work he did himself and provided illustrations on how things could be clustered tighter on the site.

Questions to Staff

There were no questions to Staff.

Applicant's Presentation

Mr. Jim Siebert, 915 Mercer, was sworn. His associate handed out the timeline of the development review for the project. A copy of the handout is attached to these minutes as Exhibit 5. He said he was hearing that the neighborhood association had only ten days to review 350 pages of documents for this project. His intent was to share what the real time line was. He went through the time line, beginning with the ENN meeting on April 11 2016 and the application submission on May 4, 2016. In June and July, this was tabled before the Planning Commission heard the preliminary plat. So, there has been a substantial period of time for the neighborhood association (Greater Callecita) to review the various documents.

The Council heard the appeal in December 14 and was rejected by an 8-1 vote. One thing that was missing in the packet was a condition by Council to prohibit short-term rentals so he handed out the page (34) from the covenants to verify the applicant satisfied that particular condition. There are no changes to what the Commission approved unanimously on the preliminary plat and they answered all the questions in the Department Review process. The Commission heard from the City Attorney and the City Engineer that there are no variances. "We agree with all conditions mentioned by Staff."

Questions to the Applicant

There were no questions to the Applicant.

Public Hearing

Chair Kadlubek opened the public hearing portion for this case.

Mr. Fred Rowe was sworn. He said, "As we previously indicated, we firmly believe, as a matter of fact, that the Commission has no jurisdiction to go further tonight with proceeding on the final plat approval until the Commission has reviewed and abided by the Council's proposed Findings of Fact and Conclusions of Law, which Mr. Shandler has indicated is purely ministerial. Notwithstanding, he asserted purely ministerial character of the Findings and Conclusions which obviously, we have not seen; which presumably Mr. Shandler is drafting [unintelligible] that the Council's action, which raised quite a few concerns among several Councilors, including Councilor Parliamentarian Peter N. Ives, Esq. raises several concerns which cannot be finessed as really ministerial. For example, the limits of the Council's action should clearly reflect the grave legal concerns with the validity and with the conditions put on the preliminary subdivision approval in at least the following way. As it was stated by several Councilors, including parliamentarian Peter Ives, these include the ENN process, following this case which one of the Councilors treated as an

the absence of a Master Plan for this large project, which, by the way, was presented as over 50 units - not 8 units - as over fifty units, all of last year to several notable [unintelligible] and then was delicately cut back to eight, which avoids the technical requirements of affordable housing contributions as well as other requirement aspects which were thereby eliminated, and from which, therefore, the developer was relieved. The Council's concern [unintelligible] not only flooding [unintelligible] considerations, but, in addition, was really over seventy, repeat - over seventy code violations, which some were finessed by being called 'technical violations' or subsequent conditions which might be met later."

"Let me emphasize, at the preliminary subdivision stage, the Council did not address or sanctify or tolerate over 70 code violations which must all be cured or must be addressed before this Commission can give final approval to Haciendas del Mirasol Subdivision - now technically for eight units but realistically for over 50 units to be developed over the coming few years. Also, let me emphasize that the requirement of a Master Plan submittal was required by this Commission... by this Commission in 2014... in 2012 under the developer's request for a lot split. So, the Master Plan issue; the Master Plan being required, not only by Ordinance 1981-3, but by this Planning Commission, itself twelve years ago and, in our view, cannot be finessed or manipulated out of the picture by treating it as quote - ministerial."

"Besides those political concerns, I would stress that this Commission wisely can avoid the otherwise and argued postponement by referring this case for mediation. In our view, mediation can relieve or cure a number of serious legal concerns by moving it aside and come up with a recommendation that will avert litigation for several years, which was the fate of the Los Vecinos Subdivision Plan, which, in our view, is being replicated by Mr. Romero's and Mr. North's Mirasol application. We seriously urge the Commission possibly or even hopefully with Mr. Shandler's compliance and the developer's agreement, to refer this case for mediation, which, in the end, will benefit this community and all parties concerned. Thank you very much for your consideration."

Mr. Richard Folks, Valley Drive, was sworn, and handed out his testimony on behalf of the greater Callecita Neighborhood Association which he said the boiled down to seven concerns. He read the written testimony which is attached to these minutes as Exhibit 6. They asked for conditions that prevent short-term rentals ever being allowed; no pole lighting, locations of water infrastructure, road and gate locations, no guest houses permitted, a 40-foot access if Phase Two is built, protection for adjacent owners from drainage failure and locations of erosion control structures, and no retaining walls higher than six feet.

Ms. Sandra Greene, 611 Gonzales Road, was sworn and said this case should be heard on February 2 instead of tonight for the complete file (from the Council) to be presented to the Commission. She said they have multiple concerns about the project and there is no rush here tonight.

She said, "Countless neighbors have spoken out about traffic, drainage, trails and she couldn't believe that the Staff and the Planning Commission have ignored them. Mediation can allow both sides to be heard and provide the process for a workable plan for this property. The Planning Commission should invest more time and energy in the process to help all parties to come to a workable solution. Up to now, we have shown preference in the record, reports, designs, developer guarantees and public processes."

She asked if there was ever a Master Plan approved for the northern portion. She said she has shown

that she and her husband own property there under 1981-3 that requires master plan of the property. "We have been excluded from planning by staff and the applicant. We have shown that the street work is substandard and unsafe. Traffic is heavy along Hyde Park Road ..." "The Planning Commission should require the investment as part of the development plans - Chapter 14-9.2 - Design Standards." The neighborhood concerns are not being addressed through a complete and error-free ENN process.

She said they are providing "real" information on this project as shown in the attachments. She spoke to over 100 neighbors as stakeholders. The drainage plans are incomplete and should be required. Even now, with the final drawings, the storm runoff will run across her neighbor's property, potentially causing damage. Drainage easements are needed and upgraded storm drains. The Master Plan is required by ordinance and desired by Staff and neighbors. The previous Commission approved Tract B of Estancia Primera on July 9. Also, the scenic byway is going to be harmed and staff did not ask to mitigate the impact. Staff should be asked to protect the escarpment.

Ms. Greene said they developed a better plan and were disregarded. It addressed the developer's concerns and used a design submitted by the developer. "We ask the Planning Commission to wait for the complete file - the Council packed, the minutes and findings to be certified and presented to the Commission. We believe the Planning Commission has an obligation to work for a better solution with the neighbors and the community."

Mr. Peter Thomas White, 501 Hillside Avenue, was sworn. He said he has been a member of the Hillside Neighborhood Association since 1979 and was involved in drafting Ordinance 1981-3 with two other members of the Association. He was also involved in reviewing and commenting on the Estancia Primera development. He is a water rights attorney but not here as an attorney.

He explained he was here, based on his experience in a lawsuit in Rio Rancho between two property owners, filed in 2008 and lasting six years with regard to a retaining wall 15' high and behind it a drainage channel. His client was an elderly retired Native American who lived downstream, and sued because the upstream owner failed to maintain the drainage channel by allowing a tenant to construct a garden in the drainage channel. The retaining wall and channel were built by Amrep. The upstream defendant claimed the wall was improperly engineered. His client pursued the litigation which took six years and was finally resolved by agreement between the owners at a cost of about \$30,000 each to rebuild the wall and the upstream owner paid \$15,000 to rebuild the drainage channel. It took money and time and stress to the owners involved. In it is a clear definition of where the responsibility lies for drainage facilities.

He said the responsibility should not be shifted to private property owners when dealing with public facilities intended to protect property owners. That retaining wall affected 15 property owners up and down the hill. The City of Rio Rancho failed to ensure the channel was kept in good shape. The drainage channel must always be in good shape and not blocked. The City's obligation is that it is operational.

So he proposed conditions of approval, based on the 2008 drainage case and terrain management reports prepared there. He said he took no position in this case either as an engineer or hydrologist to make a judgment. But he asked the Commission to consider the 4 points in his report to help define the responsibility clearly. He handed out his report and a copy is attached to these minutes as Exhibit 7.

Mr. Frank Pierce, 175 Valley Drive, was sworn. He thanked the Commission for hearing all the information provided tonight but wished the Mayor was present also. He said the experience at the last meeting was not very lovable. It was late in the day and people were getting tired and the last portion was on this project. It was such that the time limit for presenters was only a very few minutes and was insulting to the people. There was an architect with lots of studies and had to speak so fast, it was hard to understand. Presenters were pushed to hurry. The information provided by Valley Drive residents was not [??] "Everyone I spoke to found that experience was very insulting and it appeared we were not wanted to make presentations. Thank you for the time to allow me to present tonight."

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

Commission Discussion

Chair Kadlubek wanted clarity on Councilor Lindell's recommendation to add prohibition of short-term rentals condition and why it was not here.

Ms. Wynant clarified that it is in the packet on page 3 of the report, Section 5 and the restriction on short-term rentals in the subdivision. It is in the CC+R's on page 34 and added as Paragraph 7.4. Covenant 7.15 was also read about renting of units or guest houses. She said it complies with this regulation.

Commissioner Kapin asked if this definition of short-term is consistent with the City's definition.

Ms. Martinez agreed.

Chair Kadlubek asked if this design does or does not meet the dark sky requirement.

Mr. John Romero said the design does meet the requirement. The ordinance requires a flat lens, not fish bowl lens.

Chair Kadlubek noted the claim that 16 homes would require a 40' road width. The Commission went over that last time but he wanted clarification on that.

Mr. Romero said 8 units is the threshold and guest houses are accessory so that would not add to that load.

Ms. Martinez said she was comfortable with that clarification. The Fire Marshal is not present but guest house is accessory to the main house so the Fire Department should be able to access them as well.

Commissioner Kapin asked Mr. Romero about question #5. The entrance to this road is stubbed out for other property. She asked if that entrance needs to be widened as part of this development.

Mr. Romero said the intent is that it could be used for future development but that is not entitled now. The intent is for consolidated access to Hyde Park Road. Widening the throat of the road itself is not

required.

Commissioner Kapin asked at what point in numbers of houses for the development would there need to be a change in width.

Mr. Romero explained that the throat can provide for a car entering and a car exiting. He could not envision any need for two cars entering and two cars exiting. So he would not anticipate that happening until hundreds of homes were proposed and it would impossible to have that much density on that property.

Commissioner Kapin asked when a left-hand turn lane would need to happen.

Mr. Romero said that would be done at development and would depend on future plans.

Commissioner Gutierrez referred to the Callecita handout proposed restriction that no retaining wall be higher than six feet and asked if the ordinance allows for retaining walls greater than six feet or are not allowed.

Ms. R B Zaxus stated that the applicant is not proposing any walls higher than six feet.

Chair Kadlubek said if they are not proposing walls higher than six feet, it doesn't make sense to add that as a condition.

Commissioner Gutierrez asked if they do want a retaining wall higher than six feet, how the Commission should address it.

Ms. Zaxus said it would be considered at the time it was proposed.

Commissioner Gutierrez said it appears the applicant has addressed all the concerns. He asked if the CC+R has been recorded from the declaration of covenants.

Mr. Siebert explained that the way it works is as a cross reference between the plat and the covenants and when they record the plat, they record the covenants, as well, at the same time. It then becomes a public record.

Ms. Martinez said she just received confirmation from the Fire Marshal that addition of guest houses would not require a wider road.

Action of the Commission

MOTION: Commissioner Abeyta moved for approval of Case #2016-106, Haciendas del Mirasol, 700 Hyde Park Road Final Subdivision Plat with Staff conditions. Commissioner Gutierrez seconded the motion.

Discussion on the Motion:

Commissioner Kapin asked Staff if there is a blanket construction schedule that developers are held to by City rules.

Ms. Martínez agreed there are some requirements for certain times to be followed for construction. It is from 7 a.m. to 5 p.m., five days per week and exceptions can be made for special circumstances.

Commissioner Gutierrez requested that before the Commission votes to ask Staff to work with Mr. White. He did a lot of homework to make sure all water is to Code.

Ms. Wynant said she would.

Chair Kadlubek noted in reading some of the Council minutes, that Mr. Rowe had accused Planning Commissioners of ex parte communication with Staff on this case. He stated on the record that he did not talk with Staff about this case at all. It was raised in one of the appeals that the applicant was intimidating Commissioners into voting their way. "I just want to be on the record that I, as a Planning Commissioner, was never intimidated by the applicant. I don't know where this goes from here. Having a lawyer state this - I would state that this is not going to be held up because of such [alleged] ex parte communications. I just felt it necessary to say I, personally, never had ex parte communications and was never intimidated by the applicant. Thank you."

The motion passed by unanimous roll call vote with Commissioner Kapin, Commissioner Gutierrez, Commissioner Abeyta and Commissioner Hochberg voting in the affirmative and none voting against.

Commissioner Hiatt did not return to the meeting after the vote was taken.

G. STAFF COMMUNICATIONS

Ms. Martínez wished everyone a Happy New Year and welcome to the new year of planning. She said the Land Use Department is involved in the implementation of the new financial accounting system for the City which includes a component for Land Use to be able to streamline all the operations. They are also doing data cleanup and defining all business practices across the board. The final implementation will be completed by July. Staff members are excited about the resources now provided for Land Use and the new initiative to find information and track records more easily.

H. MATTERS FROM THE COMMISSION

Chair Kadlubek said he probably would not be at the next meeting.

Ms. Martínez said at this point, applications are slowly coming in and there are not enough for a second meeting this month or at most a brief meeting.

Commissioner Abeyta said he would be willing to serve on the Summary Committee this year.

Chair Kadlubek asked for Commissioner Abeyta to replace him on the Summary Committee.

Ms. Martínez said she is working on it and should have information at the next meeting.

Chair Kadlubek said he would be comfortable remaining on the Long-Range Committee. Regarding appointments for Chair, he asked to be reappointed. He asked if all commissioners whose terms are expiring should request reappointment by the Mayor.

Ms. Martínez agreed. Commissioner Kapin, Commissioner Gutierrez, and Commissioner Hochberg's terms are expiring - Commissioner Hochberg's because he was filling an unexpired term.

I. ADJOURNMENT

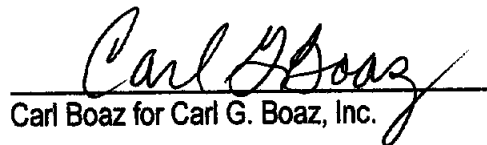
The meeting was adjourned at 7:24 p.m.

Approved by:



Vince Kadlubek, Chair

Submitted by:



Carl Boaz for Carl G. Boaz, Inc.

Planning Commission
January 5, 2017

EXHIBIT 1

Fred Rowe, Counsel for Greater Callecita Neighborhood Association, Jan.5,2017

POINT OF ORDER

The Planning Commission has NO JURISDICTION to consider the El Mirasol FINAL Subdivision application on tonight's agenda.

This is a QUASI-JUDICIAL PROCEEDING, where the Commission cannot consider the proposed FINAL application UNTIL AFTER following and abiding by the Council's findings and conclusions for denying our appeal from the Commission's PRELIMINARY approval, which directives the Council will issue presumably next week.

The minutes of the Council's actions on December 4 reflect grave legal concerns over the validity of this Commission's PRELIMINARY El Mirasol approval as stated by several Councilors, including Council Parliamentarian Peter Ives, Esq. These include the defective ENN process in this case, the over 70 Code violations wrongly treated as "conditions" or as "technical corrections", this project's flooding and safety risks, and the lack of a Master Plan required for "serial" subdivisions and by Ordinance 1981-3, which was also contemplated by this Commission's lot split approved in 2012.

Before those legal concerns are resolved, the current request for FINAL El Mirasol approval is not ripe and must be deferred.

Instead of postponement of the final El Mirasol application, the Commission may wish to consider referring this case for mediation. Mediation may resolve many legal problems in the best interests of all concerned, and may avert years of court litigation like the notorious Los Vecinos case.

Planning Commission
January 5, 2017

EXHIBIT 2

City of Santa Fe, New Mexico

memo

DATE: January 5, 2017
TO: Planning Commission
FROM: Current Planning Division
RE: Additional Information

The attached information is not in your January 5, 2017 Planning Commission packet.
The information is in the following order:

Case #2016-106. Haciendas del Mirasol, 700 Hyde Park Road, Final Subdivision Plat.

- Declaration of Covenants, Conditions, Restrictions and Easements.

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS
FOR
HACIENDAS DEL MIRASOL SUBDIVISION**

This Declaration of Covenants, Conditions, Restrictions and Easements for Haciendas del Mirasol Subdivision (the "Declaration") is made this ___ day of _____, 20___, by 700 HPR, LLC, a New Mexico limited liability company (the "Declarant").

RECITALS

A. Declarant is the owner of certain real property in the City of Santa Fe, Santa Fe County, New Mexico, constituting the subdivision known as Haciendas del Mirasol Subdivision (the "Subdivision"), which real property is more particularly described and shown on that certain plat of survey titled *Plat of Lot Line Adjustment, and Easements for 700 HPR, LLC . . . & HPR Properties, LLC . . . & Final Subdivision Plat for Haciendas del Mirasol*, by Philip B. Wiegel, P.S. #9758, filed for record on _____, 20___, as Instrument Number _____, and recorded in Plat Book _____, at pages _____ to _____ in the real property records of Santa Fe County, New Mexico; and

B. Declarant intends to develop the Subdivision as a first-class residential neighborhood comprised of eight (8) lots, each of such lots suitable for the construction of a residential unit and appurtenances;

C. Declarant desires to provide for the preservation and maintenance of the character, quality, appearance and value of the Subdivision and the residential units constructed therein, and to this end desires to subject the real property comprising the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of Declarant and the future owners of real property in the Subdivision;

NOW, THEREFORE, Declarant hereby declares that the real property comprising the Subdivision is and shall be purchased, owned, transferred, sold, conveyed, encumbered, used, occupied and improved subject to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth, and all other terms and conditions of this Declaration. All of the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth, and all other terms and conditions of this Declaration, are equitable servitudes, which shall run with the real property comprising the Subdivision, and any portion thereof, and shall be binding upon and inure to the benefit of all parties having or acquiring any right, title, or interest in or to the Subdivision or any portion thereof, whether or not mentioned or embodied in any future instruments of conveyance.

ARTICLE 1

DEFINITIONS

- 1.1 **Architectural Control Committee and Committee** shall mean the Architectural Control Committee established pursuant to Article 6, hereof.
- 1.2 **Articles** shall mean the Articles of Incorporation of the Association filed with the New Mexico Secretary of State, as amended and restated from time to time as therein provided.
- 1.3 **Association** shall mean the Haciendas del Mirasol Owners' Association, Inc. a New Mexico nonprofit corporation, and its successors and assigns.
- 1.4 **Board of Directors and Board** shall mean the Board of Directors of the Association.
- 1.5 **Bylaws** shall mean the Bylaws of the Association, as amended and restated from time to time as therein provided.
- 1.6 **"Centralized Stormwater Facilities"** shall mean all centralized stormwater facilities located in the Subdivision, including but not necessarily limited to ponds and ponding areas, gabion ponds, gabion check dams, wire check dams, stone check dams, existing check dams (to be rehabilitated), bank protections, water gardens (including landscaping located within the water gardens), and other centralized storm water detention facilities shown on the Drainage Plan and those centralized stormwater detention structures, whether or not shown on the Drainage Plan, which serve to control and stabilize (i) erosion on channels and other drainage areas in the Subdivision out letting to a storm water detention area/pond and (ii) water released from any centralized storm water detention area, pond or structure, that are hereinafter constructed and installed, by Declarant or the Association within the Subdivision or the right-of-way for Hyde Park Road, which areas, ponds or structures are intended for the centralized detention, retention, control, or stabilization of increased storm waters resulting from development within any part or all of the Subdivision. Such term shall also include drainage related structures (e.g. curbs and gutters, bar ditches, drop inlets, culverts and flared end sections, rock rip rap splash pad, etc.) directly appurtenant to the Roads. Such term shall not include: (i) cisterns or other storm water detention areas, ponds or structures which are not centralized, but are instead constructed, installed or intended for the detention of excess storm waters resulting only from the development of a single Lot located within the Subdivision, which non-centralized cisterns or other storm water detention areas, ponds or structures shall be maintained, repaired and replaced by the Owner(s) of such single structure or Lot served thereby; and, (ii) drainage related structures (e.g. curbs and gutters, bar ditches, drop inlets, culverts and flared end sections, rock rip rap splash pad, etc.) directly appurtenant to a private driveway serving a single Lot, which drainage related structures shall be maintained, repaired and replaced as necessary by the Owner or

Owners of such Lot using the private driveway and responsible for the maintenance of such private driveway.

- 1.7** “**Centralized Sanitary Sewer Lines**” shall mean all low pressure, private sewer lines (to the point of connection to a public sanitary sewer manhole with gravity flow sewer line outlet), including but not necessarily limited to those lines which are specifically shown on the Development Plans, which provide sanitary sewer service to more than one Lot and that are hereinafter constructed and installed, by Declarant or the Association within the Subdivision. Such term shall not include: (i) any low pressure, private sewer line serving only a single Lot located within the Subdivision, which non-centralized private sewer line shall be maintained, repaired and replaced by the Owner(s) of such single Lot served thereby; (ii) any gravity flow public sanitary sewer manhole and public gravity flow sewer line; and, (iii) any and all sanitary sewer grinder pump(s) located on a Lot, which grinder pump(s) shall be maintained, repaired and replaced by the Owner or Owners of such Lot using and served by such grinder pump(s).
- 1.8** **Common Areas** shall mean the “H.O.A. Open Space” (as so designated on the Plat) located along Hyde Park Road, the Roads, the easement areas for the Trail, the easement areas for the Centralized Sanitary Sewer Lines, and the easement areas for the Centralized Stormwater Facilities and ingress and egress to the same for maintenance and repair purposes.
- 1.9** **Common Expenses** shall mean any cost, expense or expenditure made or to be made, or financial liability incurred or to be incurred, by the Association for or in connection with the exercise of the Association’s powers and duties established herein or in the Governing Documents, as the same are further described in Section 1.20.1 of this Declaration.
- 1.10** **Common Property** shall mean the Centralized Stormwater Facilities (including the improvements comprising the same and easements granted for the same), Common Areas and improvements located within the Common Areas (including but not limited to asphalt or other surfaces, curb and gutter, rockwork, landscaping, trail surface, retaining walls, benches, trash receptacles, entrance features, entrance and directional signs, lighting devices, utility boxes, pipes, wires, conduits, and other improvements, fixtures and property now or hereafter constructed upon, within, or adjacent to the Common Areas), Centralized Sanitary Sewer Lines (including the easements granted for the same and for access to the same), and other improvements and property constructed or installed by Declarant or the Association for the common benefit of the Subdivision and the Owners.
- 1.11** **Declarant** shall mean 700 HPR, LLC, a New Mexico limited liability company and its successors and assigns. Declarant may specifically assign its rights, and delegate its duties, under this Declaration to one or more Persons, by an assignment and delegation executed and acknowledged by Declarant and recorded in the real property records for Santa Fe County, New Mexico.

- 1.12 Declarant Control** shall mean that period of time during which members of the Board may be appointed by the Declarant, pursuant to Section 4.7 hereof and the Bylaws of the Association.
- 1.13 Declaration** shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for Haciendas del Mirasol Subdivision.
- 1.14 Design Guidelines** shall mean the design guidelines, if any, adopted from time to time by the Architectural Control Committee regulating the architectural and environmental aspects of the development of Lots and the construction of Improvements on Lots. The Design Guidelines may be revised from time to time by the Committee and need not be recorded in the real property records of Santa Fe County, New Mexico in order to be effective. Any Owner desiring to construct or modify an Improvement on a Lot should obtain a copy of the then current Design Guidelines, if any, from the Association.
- 1.15 Development Plans** shall mean the development submittals, submitted by Declarant to and approved by the City of Santa Fe, in connection with the approval of the Final Subdivision Plat for the Subdivision.
- 1.16 Drainage Plan** shall mean those portions and plan sheets of the Development Plans that are designated as Overall Grading and Drainage Plan, Detailed Grading and Drainage Plans, Existing Drainage Rehabilitation Plans, Gabion Pond Details, Gabion Dams, Permanent Erosion Control Plan and Stormwater Control Details, or otherwise pertain to drainage of storm waters within the Subdivision.
- 1.17 Governing Documents** shall mean the Articles and Bylaws, collectively.
- 1.18 Improvement** shall mean any building, wall, gate, or other structure; driveway, turnaround, or parking area; sign; underground utility; exterior light fixture; antenna or other communication device; solar collector; any excavation of any kind; any landscaping, other than the replacement of existing, dead or dying landscaping with landscaping of the same or similar type; and, any other exterior improvements, structures, and installations on a Lot.
- 1.19 Lot** shall mean each and all of the eight (8) numbered lots of land originally designated upon the Plat, as the same may hereafter be amended from time to time, as permitted herein.
- 1.20 Lot Assessments** shall collectively mean the following assessments and charges against Lots and their Owners:
- 1.20.1 General Assessments** shall mean the regular assessments and charges against all Lots and their Owners to meet the Common Expenses incurred by the Association in conducting its operations and activities, including, but not limited to the following:

(i) The costs of management and administration of the Association, including but not limited to, compensation paid by the Association to employees, managers, accountants, and attorneys.

(ii) The costs and expenses of maintaining, repairing and replacing, as necessary, the Common Property, including but not necessarily limited to the Roads, Trail, Centralized Stormwater Facilities, and Centralized Sanitary Sewer Lines.

(iii) The cost of insurance, if any, maintained by the Association.

(iv) Reasonable reserves for contingencies and other proper purposes, if deemed appropriate by the Board, to meet unanticipated costs, shortfalls in Assessments, etc.

(v) Costs that the Board may elect to incur to bond the members of the Board, officers of the Association, any professional managing agent or other Person handling the funds of the Association.

(vi) Taxes, if any, paid by the Association.

(vii) The costs and expenses incurred by the Architectural Control Committee or any other committees established by the Board, to the extent not paid or reimbursed by applicants who apply for approvals from the Architectural Control Committee.

(viii) Other expenses or costs of any other item or items designated to be provided or performed by the Association pursuant to this Declaration or the Governing Documents, or actually provided or performed by the Association, or in the discharge of any duties or powers of the Association, including the enforcement of this Declaration by litigation or otherwise.

1.20.2 Individual Assessment shall mean an assessment and charge made by the Association against one or more particular Lots and its or their Owners for the purpose of defraying, in whole or in part, the cost of any special services to that Lot, the cost of curing any default by the Owner of such Lot, or any other charges designated in this Declaration or the Bylaws as an Individual Assessment;

1.20.3 Special Assessment shall mean a special assessment and charge made by the Association against all Owners and Lots for capital improvements, shortfalls in General Assessments, unanticipated expenditures by the Association, etc., in accordance with the provisions of this Declaration and the Governing Documents.

- 1.21 Maintenance Guidelines** shall mean the Centralized Stormwater Facilities Maintenance Guidelines attached hereto and incorporated herein by this reference as Exhibit A, as the same may be amended by the Board, from time to time and at any time, either with the consent, or at the direction, of the Planning and Land Use Department of the City of Santa Fe, regarding the maintenance of the Centralized Stormwater Facilities.
- 1.22 Mortgagee** shall mean any institutional lender or private lender that holds a bona fide first mortgage encumbering a Lot as security for the performance of an obligation. (The term "institutional lender" specifically includes a bank, savings and loan association, a mortgage lending company, an insurance company, and the Federal National Mortgage Association or similar agency.)
- 1.23 Occupant** shall mean any Person, other than an Owner, who occupies or is in possession of a Lot, or any Improvements thereon, whether as a lessee or tenant under a lease or otherwise.
- 1.24 Owner** shall mean the record owner, whether one or more Persons, of the fee title, or an undivided interest therein, to any Lot, including real estate contract purchasers if they are not in default under the contract, but excluding those having an interest in a Lot merely as security for the performance of an obligation. Declarant shall be an Owner with respect to those Lots owned by Declarant.
- 1.25 Person** shall mean a natural person, corporation, partnership, limited liability company, trustee, governmental entity, or other legal entity.
- 1.26 Plat** shall mean that plat of survey titled *Plat of Lot Line Adjustment, and Easements for 700 HPR, LLC . . . & HPR Properties, LLC . . . & Final Subdivision Plat for Haciendas del Mirasol*, by Philip B. Wiegel, P.S. #9758, filed for record on _____, 20____, as Instrument Number _____, and recorded in Plat Book _____, at pages _____ to _____ in the real property records of Santa Fe County, New Mexico.
- 1.27 Roads** shall mean Camino Mirasol, and the 38' wide Private Driveway and hammerhead turnaround, from Camino Mirasol to the point of its terminus at the boundary line of Lot 4, all as also shown on the Plat.
- 1.28 Rules and Regulations and Rules** shall mean the rules and regulations applicable to the Lots and Common Areas adopted by the Board pursuant to the authority granted by this Declaration and from time to time in effect, which need not be recorded in the real property records of Santa Fe County, New Mexico in order to be effective.
- 1.29 Subdivision** shall mean all of the real property constituting the Haciendas del Mirasol Subdivision as the same is described and shown on the Plat.