



CITY CLERK'S OFFICE
Agenda DATE 6/2/17 TIME 11:35
SERVED BY Rosalinda Quintana
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SECOND AMENDED

PLANNING COMMISSION
Thursday, June 8, 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: May 18, 2017

FINDINGS/CONCLUSIONS:

Case #2017-23. 5154 Beckner Road Final Subdivision Plat.

Case #2017-26. Estancias de Las Soleras Unit 2A Final Subdivision Plat.

Case #2017-19. The Village @ 599 General Plan Amendment.

Case #2017-20. The Village @ 599 Rezoning.

Case #2017-22. 185 Brownell Howland Lot Split and Variance.

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

- 1. Case #2017-18. Mustang Village Apartments Development Plan and Annexation Agreement Amendment. San Cristobal Development, agent for Lucia Real Estate, LLC, requests approval of a development plan for 48 unit apartment complex on two lots totaling 4.26 acres. The property is located on the west side of Lucia Lane between Jaguar Drive and Airport Road, north of Jaguar Loop. The property is zoned R-12 Residential – 12 units per acre. The request also includes an amendment to the Annexation Agreement for the property to eliminate an irrevocable offer to dedicate to the City all right-of-way required for an east-west subcollector street between Lucia Lane and the east property line. (Katherine Mortimer, Case Manager)**
- 2. Case #2017-35. 3430 Cerrillos Road Development Plan. Jim Medley, Architects Agent for Santa Fe Hampton Inn, request Development Plan approval to construct a 56,000 square foot, four story 91 room hotel on 1.88+/- acres. The property is zoned C-2 (General Commercial). (Dan Esquibel, Case Manager) **(TO BE POSTPONED)****
- 3. Case #2017-41. 1308 Apache Avenue Waiver. CNSP C/O Albert Catanach agent for Infinite Interests Ent. LLC, requests a waiver pursuant to 14-6.2(E)(8) "Waivers" and to Article 14-6.2(E)(5)(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 C-2 (General Commercial). (Dan Esquibel, Case Manager)**

4. ***Case #2017-29. 527 Camino Tierra Alta Building Permit Appeal. Appeal of Elizabeth Houck from the March 27, 2017, Decision of the Land Use Department to Issue Building Permit No. 17-604 at 527 Camino Tierra Alta. (Zachary Shandler, Case Manager) (POSTPONED FROM MAY 18, 2017)***

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

CITY CLERK'S OFFICE

DATE 5/31/17 TIME 10:55

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AMENDED

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Thursday, June 8, 2017 - 6:00pm
City Council Chambers
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- A. ROLL CALL**
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Agenda

DATE 5/18/17 TIME 4:50 p

SERVED BY [Signature]

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PLANNING COMMISSION
Thursday, June 8, 2017 - 6:00pm
City Council Chambers
City Hall 1st Floor - 200 Lincoln Avenue

- A. ROLL CALL**
- B. PLEDGE OF ALLEGIANCE**
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MINUTES: **May 18, 2017**
FINDINGS/CONCLUSIONS: **None**
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SUMMARY INDEX
PLANNING COMMISSION

June 8, 2017

ITEM	ACTION TAKEN	PAGE(S)
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B. Pledge of Allegiance	Recited	1
C. Approval of Agenda	Approved as amended	2
D. Approval of Minutes & Findings and Conclusions Minutes: May 18, 2017	Approved as presented	2
Findings of Fact & Conclusions of Law	Approved as presented	2-3
E. Old Business	None	3
F. New Business		
1. <u>Case #2017-18. Mustang Village Apartments Development Plan and Annexation Agreement Amendment.</u>	Approved with conditions	3-6
2. <u>Case #2017-35. 3430 Cerrillos Road Development Plan</u>	Postponed	6
3. <u>Case #2017-41. 1308 Apache Avenue Waiver</u>	Denied	6-18
4. <u>Case #2017-29. 527 Camino Tierra Alta Building Permit Appeal.</u>	Withdrawn by the applicant	18-19
G. Staff Communications	Discussion	19
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I. Adjournment	Adjourned at 7:57 p.m.	20

PLANNING COMMISSION
Thursday, June 8, 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 Piper Kapin, Vice-Chair
Commissioner Brian Patrick Gutierrez
Commissioner Stephen Hochberg
Commissioner Mark Hogan
Commissioner Sarah Cottrell Propst

Members Absent

Commissioner John B. Hiatt, Secretary [excused]
Commissioner Roman Abeyta [excused]
Commissioner Justin Greene [excused]

Others Present:

Ms. Lisa Martínez, Land Use Department Director
Mr. Greg Smith, Current Planning Division Director and Staff Liaison
Mr. Zach Shandler, Assistant City Attorney
Mr. Dan Esquibel, Planner Senior
Ms. Katherine Mortimer, Planner Senior
Mr. Rick Word, Assistant City Attorney
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

Mr. Smith said Case #2017-29. 527 Camino Tierra Alta Building Permit Appeal has been settled and the appeal is withdrawn.

Mr. Shandler confirmed it.

MOTION: Commissioner Hogan moved to approve the agenda as amended with Case #2017-29 removed. Commissioner Kapin seconded the motion and it passed by unanimous voice vote.

D. APPROVAL OF MINUTES AND FINDINGS/CONCLUSIONS

1. MINUTES OF MAY 18, 2017

MOTION: Commissioner Propst moved to approve the minutes of May 18, 2017 as presented. Commissioner Kapin seconded the motion and it passed by unanimous voice vote.

2. FINDINGS/CONCLUSIONS:

- **Case #2017-23. 5154 Beckner Road Final Subdivision Plat.**

MOTION: Commissioner Propst moved to approve the Findings of Fact and Conclusions of Law for Case #2017-23 as presented. Commissioner Hochberg seconded the motion and it passed unanimously on a voice vote except Commissioner Hogan and Commissioner Kapin who recused themselves.

- **Case #2017-26. Estancias de Las Soleras Unit 2A Final Subdivision Plat.**

MOTION: Commissioner Propst moved to approve the Findings of Fact and Conclusions of Law for Case #2017-26 as presented. Commissioner Gutierrez seconded the motion and it passed unanimously on a voice vote except Commissioner Hogan and Commissioner Kapin who recused themselves.

- **Case #2017-19. The Village @ 599 General Plan Amendment.**
- **Case #2017-20. The Village @ 599 Rezoning.**

MOTION: Commissioner Propst moved to approve the Findings of Fact and Conclusions of Law for Case #2017-19 and Case #2017-20 as presented. Commissioner Gutierrez seconded the motion and it passed by majority voice vote with all voting in favor except Commissioner Hogan and Commissioner Kapin who were recused and Commissioner Hochberg dissenting.

- **Case #2017-22. 185 Brownell Howland Lot Split and Variance.**

MOTION: Commissioner Propst moved to approve the Findings of Fact and Conclusions of Law for Case #2017-23 as presented. Commissioner Hochberg seconded the motion and it passed unanimously on a voice vote except Commissioner Hochberg, Commissioner Hogan and Commissioner Kapin who recused themselves.

E. OLD BUSINESS

There was no Old Business.

F. NEW BUSINESS

1. **Case #2017-18. Mustang Village Apartments Development Plan and Annexation Agreement Amendment.** San Cristobal Development, agent for Lucia Real Estate, LLC, requests approval of a development plan for 48-unit apartment complex on two lots totaling 4.26 acres. The property is located on the west side of Lucia Lane between Jaguar Drive and Airport Road, north of Jaguar Loop. The property is zoned R-12 Residential – 12 units per acre. The request also includes an amendment to the Annexation Agreement for the property to eliminate an irrevocable offer to dedicate to the City all right-of-way required for an east-west sub collector street between Lucia Lane and the east property line. (Katherine Mortimer, Case Manager)

Staff Report

The Staff Report was presented by Ms. Mortimer. A copy of the Staff Report is available on the City's web site. She pointed out a typo on page 3, under ENN, that has the wrong date. February 20, 2017 is the correct date.

At the time annexation was considered, the school was amenable for accepting the land but no longer want to do it. So, Staff worked with Traffic, Engineering to make sure it would not create a problem and agreed the east-west connector was not needed at that location. That decision must be made at Council so it is advisory only.

The project is all market-rate housing and the developer will make a payment in lieu of providing affordable housing.

Staff recommended approval as this application meets the requirements and is consistent with Land Use.

Applicant's Presentation

Mr. Joseph Ortiz, 99 San Marcos Loop, was sworn and stood for questions.

Public Hearing

Ms. Elizabeth Houck was sworn and asked when the Commission takes public comment in general.

Chair Kadlubek said they have petitions from the floor at Council meetings, but not here. There it is for any reason. Here it is case-specific.

Ms. Joan Plummer, 4310 Jaguar Loop was sworn. She said she is at the corner adjacent from the property and concerned about traffic, especially with no access road from South Meadows. Those people would come right by her house. It is possible the road could be opened to Airport Road so there is more than one access point. She also wondered if speed humps could be installed.

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

Commission Questions/Discussion

Commissioner Hochberg asked why the developer is opting for payment in lieu of affordable housing for the rental development.

Mr. Ortiz related some of the history of the provision and said Santa Fe has not been successful in getting those tax credits. After time and energy has been spent, at this point, they wanted to just take it forward with a known end result which was better for the project.

Commissioner Hochberg referred to the public comment about traffic. He saw a connection with Airport Road in the packet and asked if it was not accurate.

Mr. Ortiz said it wasn't accurate. That is private land.

Chair Kadlubek asked Alexandra Ladd to speak to the Affordable Housing issue.

Ms. Ladd said the Santa Fe Homes Program has an amendment and an applicant has a right to pay in lieu of building affordable housing. For years, Santa Fe hasn't had enough market rate rentals. And rents are going up 10-12% each year. So, the alternative was an incentive for them.

Commissioner Hochberg explained that he was trying to establish a record that we are getting very few Affordable Housing units being built. This one makes sense, but we are not doing justice to Affordable

Housing by just collecting money. But he wanted to be clear that he was not blaming the applicant.

Chair Kadlubek asked what the fee goes toward and how does it affects Affordable Housing.

Ms. Ladd explained that the fee goes to the Community Housing Trust Fund that is regulated by code. The expenditures are restricted by state law and NMFA reports on how it is spent. It is a flexible way to help low income renters find a unit of their choice. It is local money and not HUD money which has great restrictions. There will be units coming on line soon. And as Mr. Ortiz mentioned, competition for tax credits is difficult.

Chair Kadlubek asked what the fee in lieu of is for this project.

Mr. Ortiz said the project has maximum of 51 units. But over 50 triggers a water rights requirement which is a huge expense. The original plan was for 48 units with a beautiful courtyard. Trying to squeeze in extra units didn't make sense. He would love to have built more units but it was a negative incentive. He asked the Planning Commission to be aware of this quirk in planning.

Commissioner Kapin noted this project was mostly two-bedroom units and a few 3-bedroom. She asked why he did not include studio or one bedroom apartments.

Mr. Ortiz said it has to do with the nearby schools. These plans were once considered very large but they are designed as upscale apartments so it was a challenge to keep it in a viable financial model but they did it.

Commissioner Kapin referred to condition #15 and pointed out that some but not all the information required was presented, including the vicinity map. She asked if he was aware of all the information he still needed to provide.

Mr. Ortiz said he was, and most had already been addressed and he assured them he would have them all finished soon.

Commissioner Propst asked if he agreed with all Staff conditions.

Mr. Ortiz said he did.

Commissioner Propst said the public mentioned traffic calming and she heard his input about Airport Road and asked when that future connection might happen.

Mr. Smith clarified that there are no major roads provided with this development. Fill in will likely happen eventually. It is a private road and outside the easements for this project.

Ms. Kassens, Traffic Engineer, said they can come in and discuss traffic calming and Staff could consider traffic calming of some type.

Commissioner Propst said it would be just on the new portion.

Ms. Kassens agreed.

Commissioner Hogan asked if there are Staff submittal requirements addressing building elevation.

Mr. Smith said no. The applicant is aware of the height limits on that property. The site plan is two-dimensional.

Action of the Commission

MOTION: Commissioner Hogan moved for approval of Case #2017-18, Mustang Village Apartments Development Plan and recommend to the Governing Body approval of the Annexation Agreement Amendment, subject to the recommended conditions of approval submitted by Staff. Commissioner Hochberg seconded the motion and it passed by unanimous roll call vote with Commissioner Hogan, Commissioner Kapin, Commissioner Propst, Commissioner Gutierrez, and Commissioner Hochberg voting in favor and none voting against.

2. **Case #2017-35, 3430 Cerrillos Road Development Plan.** Jim Medley, Architects Agent for Santa Fe Hampton Inn, request Development Plan approval to construct a 56,000-square foot, four-story, 91 room hotel on 1.88+/- acres. The property is zoned C-2 (General Commercial). (Dan Esquibel, Case Manager) (**TO BE POSTPONED**)

This case was postponed under Approval of Agenda.

3. **Case #2017-41, 1308 Apache Avenue Waiver.** CNSP C/O Albert Catanach agent for Infinite Interests Ent. LLC, requests a waiver pursuant to 14-6.2(E)(8) "Waivers" and to Article 14-6.2(E)(5)(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 C-2 (General Commercial). (Dan Esquibel, Case Manager)

[A handout of neighborhood correspondence regarding this case is attached to these minutes as Exhibit 1.]

Staff Report

The Staff Report was presented by Mr. Esquibel. A copy of the Staff Report is available on the City's web site. He said this is an application for a waiver at 1308 Apache Avenue of the tower setback requirements. Staff recommended approval of the waiver, subject to conditions. The requirements for Findings of Fact and Conclusions of Law to consider on this application are in the memo on page 5. He believed the applicant could meet those, subject to the conditions imposed. He reminded the Commission that they did a similar waiver on Rufina. This one is for broadband but the waiver is still the same.

Applicant's Presentation

Mr. Carl Hans Muller, 2600 East Zia Road, was sworn. He read his presentation. He pointed out that the Commission already allowed such setback waivers earlier for Crown Castle. NM Surf urges the Commission to approve their request. He explained that, upon approval, NM Surf would take down its existing towers that were on the rooftop of their building, condensing their equipment in their base tower. As shown in their photos, shown in their application, NM Surf feels this is in best interest of the community as a whole, and does not jeopardize the public health, safety and welfare, as the new tower is structurally superior and protected by power guides as depicted in the photograph. With the removal of all guy wires, the visual impact will also be minimized and allow NM Surf the opportunity to repair the rooftop and improve the building. As the Land Use Staff has reviewed and concurred with their responses under Section 14-6 for the standards of granting a waiver, NM Surf looks forward to the Planning Commission's review of its application. NM Surf remains committed to providing the Santa Fe community with added selection in the marketplace for enhanced wireless broadband services. Their customer base supports this approval with letters in the packet and in person here. NM Surf looks forward to providing those customers with improved signal strength and speed as soon as possible.

He pointed out that NM Surf does have reservations and concerns about the conditions of approval re stealth technology. Mr. Muller said he had emailed those concerns to Director Martinez and Mr. Esquibel earlier this week regarding the stealth technology requirement. He said there were numerous reasons for their concern. He proposed that he work out a modification of that requirement with the Land Use Department.

Chair Kadlubek thanked him for letting the Commission know. He understood that was the first condition of approval.

Mr. Muller agreed.

Commissioner Propst asked if there is a proposal to change that condition.

Mr. Esquibel explained that during the course of review, when looking at the standards, one of the Findings alludes to the requirement for negative visual impacts. In doing that, Staff looks at the area, the vegetation of the area, as described in some of the additional findings. He included pictures in the packet so the Commission could see what he saw for what the neighborhood is made up of.

When taking the visual impacts into consideration and bridge that with the purpose and intent of this article (also included in Exhibit A of the packet), also brings into the issue, the conservation and preservation of the neighborhood within 2.06 of the Charter. Taking all of that into consideration, brings the idea of addressing the issue for that stealth technology. Everyone knows that the City of Santa Fe just achieved a Sense of Place from National Geographic. So, mitigating all visual impacts and trying to make sure that all telecommunication towers blend in with the community, while still providing the same level of service to constituents is very important.

Chair Kadlubek said the Commission understands the reason for the condition of approval. Now the Commission has been told there are concerns with that condition and that there have been some communications about modifying the condition but the Commissioners don't have those communications regarding that modification and need to know how to direct the conversation for that condition of approval.

Mr. Esquibel said he did not catch that email so he was unaware of it.

Ms. Martínez didn't recall seeing that email either. The information Mr. Muller just provided was news to her. She was not sure how she missed that. So, she was not sure what this was about either.

Chair Kadlubek asked if the Applicant would like to enter the email into the public record.

Mr. Muller said yes. He handed the communication to Mr. Smith, who went to make copies for the Commission. [A copy of the email is attached to these minutes as Exhibit 2.]

Mr. Muller said their concerns deal with the public safety, which is the critical aspect of the setback waiver. He said, first and foremost, the stealth technology would actually interfere with their technology which would provide a weakened signal to their customer base. He thought the confusion here is that their tower is not a telecommunications tower or mobile cell phone tower. Mobile cell phone towers are high powered and that allows their signal to break through any stealth technology that is placed over it. NM Surf is low powered risk technology, which requires direct line of sight. It is like putting a canvas bag over Direct TV antennas. It interferes with the direct line of sight technology. So, to that extent, they cannot cover up antennas or risk branches getting in the line of sight. It is a different technology that doesn't work with stealth technology.

At the ENN meeting, they did discuss that they would be happy to plant some trees around the base of the tower to minimize the lower aspects of it to blend in with neighborhood surroundings more. But to continue a strong signal to their customers requires nothing blocking the line of sight.

The second major thing, and going to public safety, which has not been taken into consideration by the Land Use Department, is that stealth technology, especially with tree branches in high wind conditions, would add load and stress on the tower. Being next to a residential area, the last thing we want is more stress on the tower. The tower can withstand 110 mph wind with an inch of ice but not with stealth. The cost to re-engineer it for stealth would double the price of construction. So, there are two major aspects in the public safety concern. Making it look like a tree is a bad idea.

Chair Kadlubek thanked him and asked to proceed with public testimony. It would be difficult for the Commission to remove a condition of approval without having Staff discuss it further. He wanted to see how the Commission feels about it and if they get to a place where more negotiation with Staff is needed, they could postpone the case.

Mr. Esquibel added that in Chapter 14, when it deals with stealth technology, takes into consideration whether it is technically feasible or not. What Mr. Muller has advised is that he believes

the technology for the WiFi versus the mobile technology is different. And that is true. They both use different frequencies. To the extent, what fiberglass would do to that frequency, versus walls and trees and other types of barriers, to the extent that has an interference ratio that qualifies it as technically unfeasible we would have to see data they would present. But Chapter 14, does allow them to provide that information in order to achieve those goals. Since we have none of that information, Staff must make a general condition in order to address that issue.

He added that, in terms of the extent of this tower, it was put up without a permit. That means a lot of the information that would have been presented to the City and a lot of negotiations regarding stealth technology from the Applicant to the City and the City to the Applicant would have been handled prior to that tower construction. So, the Commission should take that into consideration before modifying any conditions Staff has presented.

Chair Kadlubek agreed.

Public Hearing

Ms. Andrea Cypress, 1313 Vitalia Street, was sworn. She had photos for the Commission to see. [A copy of her photos is attached to these minutes as Exhibit 3.] She said she lives directly 15-20 feet away from the structure which was put up ... denied the waiver, but put up anyway. There are three structures on the roof. The City counts two. They were all put up without permits. He is having roof problems. Maybe if he had talked about load dispersion and things like that, he wouldn't be having roof problems. She said, "I love technology. I have internet; love it, worked for a company in 86; was on the ethernet in Silicon Valley - fabulous. I have WiFi in my house; I have an I-Pad, I-Mac, cell phone. This is not to me about anything very fair. This is about my quality of life; the visual impact on my quality of life, because I was the one who called the City and had it red-tagged. It went up without anything. We were supposed to have a meeting about a waiver. I have a lack of due process and I am in the fall-down zone. And I just found out the other day that my insurance rates may go up."

"When Mr. Catanach first put his first tower up around 2003, I thought he had a permit. I had to rearrange my furniture when he started out morphing things to the towers. I built a fence and have a beautiful yard. But I don't want to go in my yard. I don't want to be in my garden. I'm afraid that thing will fall on me. I don't like looking at it. That bottom piece is extremely reflective. Did you see the extension ladder that goes from the parapet to the structure so they can walk on it? Those were all put up, even though it was red tagged. He continued. At first it was just a structure for about 4-5 days. And then he started adding the dishes or devices - whatever they are called. And then ... They are dated from the date I took the picture - not necessarily from when they were put up but from when I noticed them. And I don't like to go out there because it is hideous. I don't go in my yard. I lost my privacy. There are cameras on the 16' parapets, as you can see, and one points to my yard. Sometimes when I'm out in my yard, because I have to be - in my U-shape of my house, I'll hear someone say, 'Oh she's out there again. Wonder if she's going to take pictures.' And I look up and someone is on that cell tower. It's not during normal business hours. It's random. Sometimes it is at night as you see in one of those little pictures. I don't know where those cameras record. I don't know what they are recording - whether they are eyeballs that could record a lot. I don't know. It is very

disconcerting to see people looming and to have cameras looking, when I thought I had privacy in my house. If the cameras were lower, like a normal height - 10' at the house, they couldn't see over my walls. My house is my sanctuary. I bought the house - there was nothing there. Blank lot - mountain views were there. Now that happens. You take a risk when you have a blank lot. But I don't look it for a while. Now I keep my drapes closed back there because I don't know what's going to be seen. It's so disturbing, I can't even tell you. It makes me kind of furious that he was denied but he built it anyway.

"If you give him this waiver, how many more towers will he build and then ask for permission afterwards? When will he stop? You see those pictures. Would you like to live next to that? Would you buy a house that is next to that? Anybody want to buy my house? Because I'm sure my property values have gone down, even though I can't prove it. But it is very upsetting. My neighborhood is a great neighborhood. I love it. There are a lot of people from the neighborhood here who are just as incensed as I am but not as vocal. We put speed humps on our street because people were cutting through and speeding and people were afraid for their animals and their children. We had the car wash shut down. They were doing those dryers all night long and it was so noisy. We worked together as a group to get that taken away. And also, there was drug activity happening. We took care of that. We made the City do a no left turn onto Vitalia when they built the Smith's gas station. So, people wouldn't cut down our street. I know my neighbors. It is a sweet neighborhood. And then someone moved in and messes up my sense of personal well-being and safety - and my due process. I don't know that the tower is safe. It was never inspected. Someone just told me the other day, if that thing sheers and falls down, there will be electrical. Because there are about 15 cords hanging from the side of the building. If that pulls away, that's going to be hot. It might electrocute me. It is very scary. It is easy to look at it and say it is not so bad. But come to my house and step into my yard. I wouldn't mind having the ones they had before. They were light and feathery. They weren't so bad. And have this repulsive, hideous thing taken down."

Mr. Roque Garcia, 1316 Vitalia Street, was sworn. He said, "Ladies and gentlemen, thank you for having us here. I have been involved in the community here in Santa Fe; born and raised here. I live on Vitalia Street for 45 years. When they started building the antenna, none of these people... Mr. Catanach, I don't even know you. Most of us in this barrio know each other. You've got to ask something. You've got to go to the neighbors and ask - 'Look, I'm going to build this thing.' But, no. They built a building that we don't want there. I get up in the morning, I could see the sunset but no more. Even my dog doesn't know what is going on. If you want to build something, build it elsewhere. Put it back in your neighborhood; not in my neighborhood. Every time, we've got to build something. Santa Fe is changing so fast, especially in my neighborhood and it is bad.

It was our anniversary the other day. I found my neighbor getting so scared that she doesn't go out anymore. No more. We don't want that. How this came about - I don't know. They need to get permission. Tear it down. Thanks.

Ms. Elaine Coleman was sworn. She said she has been a Santa Fean for 50 years, and yes, we are changing. We cherish our neighborhoods. I am a very good friend of the Cypresses. I am not in that neighborhood but nearby. I'm here to read a letter on behalf of Anna Hansen, who is the Casa Alegre Neighborhood Association President and also County Commissioner, District 2.

“Dear Members of the Planning Commission, I apologize that I cannot attend tonight’s meeting as I have other commitments. As County Commissioner for District 2 and president of the Casa Alegre Neighborhood Association, I have been contacted by many neighbors who are opposed to these towers and to the waiver. The application states the Applicant will need written advice from me about the concealment if this waiver is approved. The tower needs to be located on the building. It can’t be possible for it to fall down off his property as this will cause the neighbors to have to increase their homeowner’s insurance. This is an undue burden on the property owners. Also, I am concerned about the height of the tower in a residential neighborhood. Yes, it is zoned C-2. But they are surrounded by homes and businesses that many people occupy. I do not think that a setback waiver should be allowed. Why do we have rules and regulations if they are going to be broken with no penalty imposed. It is not okay to ask forgiveness afterwards. Permits are required and laws must be followed. Put the towers on the building and use evergreen concealment for all the towers. Although I’ll not be able to speak of the possible health effects, I’m still concerned with this latest illegal 80-foot tower to close to many families and also to Salazar Elementary School. The step backs must be allowed and Mr. Catanach must comply with the law. Sincerely, Anna Hansen. [A copy of her letter is attached to these minutes as Exhibit 4.]

Mr. Smith said the materials distributed at the beginning of the meeting included ten additional letters from citizens.

Ms. Lynne Rhys, 1315 Vitalia Street, was sworn. She said, “Thank you for allowing me to appear before you this evening. I live almost behind the company at question here. I stand in opposition to the setback waiver for two reasons. And I’m really sad at the moment for this eyesore. First of all, I’m concerned about property damage if the tower falls or has any kind of structural problems. I’m not sure I’m actually within the 80 feet, but certainly, my neighbors are at risk. And the 80-foot clearance area is there for a reason and it needs to be honored. Second, Mr. Catanach has shown a pattern of complete disregard for the permitting process. If he is allowed to circumvent the process yet again, I see nothing to prevent him from adding more towers later, with or without the Commission’s approval, as his business expands, which I’m sure he hopes it will.

I haven’t mentioned the fact that it is an eyesore. It certainly is. And, for that reason, if this Commission does decide to recommend a waiver, I strongly urge you to adopt the recommended conditions for approval in the Staff Report and, the use of stealth technology, which will at least mitigate the aesthetic damage. Thank you for allowing me to appear before you.

Ms. Karen Heldmeyer, 3125 East Berger, was sworn and representing the Neighborhood Network. We only heard from the neighborhood about this a couple of days ago but done what we could in that period of time. The telecommunications ordinance in Santa Fe is very forgiving of telecommunications facilities without a whole lot of restrictions placed on them. But there are a few and one of them. One of the important restrictions is a setback from residential and commercial properties. That is a safety issue. If you look at the Code, it says that the purpose of the Code is to require both careful design and siting. And in Section 8.A.3 on waivers, waivers- can only be granted when they will not jeopardize the public health, safety and welfare to the extent the City has jurisdiction. The City has jurisdiction on setbacks. It is one of the few protections we have in the

telecommunications ordinance. Additionally, it says, factors to be considered in a waiver include the nature of the use of adjacent and nearby properties, including proximity to residentially zoned properties. This tower is so close to neighbors that, if it fell over - and you are going to hear more technical information why it might - if it fell over, it could really do damage to the existing neighbors. And another thing we would like to point you - it is not a good idea to give a waiver to someone who built without a permit and especially in a case of a tower where there is a lot of technical work that needs to be done about the stability of that structure. I know there are a couple of ongoing court cases. But the reality is that right now, this largest of the three towers was built without a permit and you should not be giving permission to people to go ahead with it when they didn't have the ability from the City to build it according to the few safety regulations we do have in the telecommunications ordinance. This is bordering on a travesty.

Ms. Elena Benton, 2325 Calle Alvorado, was sworn. She is also on the Neighborhood Network Board and the Sol y Lomas Neighborhood Association Board. She just heard about it this afternoon. I'm an engineer with a Bachelor's degree in electrical engineering and in telecommunications for 25 years, designing systems. She was the state engineer for the telecommunications and computer networks. After reviewing the documents. She would not allow this in a congested environment. Some of the points she was going over, to first address the representation of the land owner. He said the tower was designed for 110 mph wind with one inch of ice. If you go through the documents, on page 86, it is preliminary- not for construction - design. And two, it is designed for 110 mph which is required by the federal government. But it is also only designed for ¼" of ice at 30 mph. There was no physics review. She gave a scenario here in Santa Fe where our trees in an ice storm event, fall over. So, this design is preliminary and not for construction. It was signed off by a construction engineer with a civil engineering degree, but the review was done by an electrical engineer who does not review structures. As an engineer, this doesn't have guy wires so this design is not designed for Santa Fe weather. The reviewing engineer did not address the presumption that it is preliminary and needs to be followed up on.

Nothing talks about having a soil study. Because it has no guy wires, it is not as stable. So, when the wind hits it, it is totally dependent on the cement plug that it sits on. So, the four-foot design of the plug must be reviewed. There is nothing in here other than the engineer looking at some photos. No one dug down to make sure the cement was four feet deep. Nor did he do an echo test for rebars in that cement. Because it is 80' and electrified, those electrical cables will likely snap and result in hot wire falling on a house, which could set it on fire. The question she had for the lawyer was, since the City has signed off on it, is the City then liable? So, there are a lot of questions there. I'm sorry he put those up without the required permits. For that reason, she didn't think the neighborhood or the City should not be responsible for poor business ideas and even worse engineering design. The liability should be looked at and the engineering of the design taken into consideration because there is a potential for a disaster on our hands here if it falls on people's houses.

Ms. Anna Galano, 1308 Vitalia Street, was sworn. She said, "Unfortunately, I'm not as prepared as the previous speakers. I'm just part of the neighborhood and live behind where the tower is across the street. I'm new to Santa Fe and the neighborhood. I have been there less than a year. But I believe the tower was put up right after we moved here last July 1. It is an eyesore and it worries me that the City has not made them take it down because it was put up with no permit and without

following existing regulations. If waivers are passed, and keep getting passed, how many towers will be crammed on that small property? And then there are no consequences. It is great to have WiFi and all kinds of telecommunications in Santa Fe. But why in that particular area?

"No one has mentioned this but I hear humming coming from that thing. I'm right across from it. There are all sorts of things happening on that tower And I don't know what is going on. I see guys climbing the tower at all hours of the day and night, trying to fix things on it. It is bothersome. And it is disappointing to my neighbors who own their homes - I'm a renter and if I had the opportunity to buy it, I would not purchase my home with that tower there. I can't prove the values have decreased but I'm sure they have. it bothers me that my neighbors are affected. Some of them could not be here tonight. But their quality of life is diminished.

Chair Kadlubek thanked her for getting involved as a new resident of Santa Fe.

Mr. Arthur Firstenberg, 247 Barela Street, was sworn and handed out two documents. One was a newspaper article from the time Mr. Catanach first put up the tower in July 2005.

Mr. Firstenberg said, "Your Staff Report states, 'Mr. Catanach has orally informed City Staff that he did receive a City-issued building permit for tower #2.' That is not true. Mr. Catanach put up an eight-foot tower on his roof in July 2005. I remember it going up. I saved the newspaper report about it and given a page from The New Mexican from August 24, 2005. It says, "Albert Catanach's company started offering high-speed, long-distance Internet service six weeks at." that would be about the second week of July 2005. He put that tower up without zoning permission and without a building permit. Then, on June 17, 2006, a group of neighborhood resident filed a complaint with the City Manager's Office. [He provided a copy of it which is attached to these minutes as Exhibit 5.] The complainants were Robert F. Johnson, 1834 Otowi Drive, Virginia T. Cross, 2412 Rosina Street, Seely Solomon, 1231 San Felipe Avenue. The Complaint said, 'CNSP, an internet service provider, has an unpermitted telecommunications tower on the roof of the building at 1308 Apache Avenue. The tower is advertised to be 80 feet high, though the complainants do not know the exact height. This is not only a violation because there is no permit for the tower, but because it would not comply with Santa Fe's telecommunications ordinance which requires a 100-foot setback from property lines. This tower is about 35 feet from a neighboring residential lot.'

"The City did nothing about the complaint or the tower and for eleven years, Mr. Catanach added and subtracted dozens of antennas and additional towers on his roof, with impunity, with no zoning permission, no building permits, no electrical inspections by the City, no structural assessment submitted to the City to ensure his structures could support all the weight - nothing. He just did it. Finally, on July 14th, of last year, after he had built another 80' tower in his backyard, again without permission, the City sued him in state court. And in retaliation, on March 20, 2017, he countersued the City in federal court. Both lawsuits are ongoing. And now he has the nerve to come to this Planning Commission to ask for a waiver of the setback requirements, as if his twelve years of completely flouting the law never happened. The Current Planning Division recommends waiving the setback requirement on condition of concealment with a Ponderosa Pine tree. That is ridiculous. The requirement that all towers be set back at least a distance equal to their height has nothing to do with concealment or non-concealment. It is to prevent a tower from landing on a neighboring property if it

falls down. The Staff Report says, 'Tower #3 did not receive a City-issued permit.' Neither did Tower #2. The only permit this applicant has is for a single dish to be used exclusively for City emergency communications, and that dish is no longer being used for that purpose."

"The Staff Report says, "Under federal requirements, the applicant's request for approval of Tower #3 and relocation of the antennas would be handled by City Staff without a public hearing, if the waiver were not required.' That is false. That would be true only if this was a modification of an existing facility. But none of the existing towers or antennas are legal. Federal law does not come into play. This is not a modification of an existing facility, legally. This is an application for a brand-new facility. The request for a waiver is ridiculous and should be denied. Thank you."

Ms. Andrea Cypress returned to the podium to say, "I forgot to add this. When that first tower went up, I had a day off. And I could see it out of my picture window. And he had about 6-8 casual laborers. And they were there and physically tried to stand that tower up by lifting it ... and I watched for half hour in horror. They kept putting it down and trying to get it up again. It got up to about 45 degrees and that was it. Well, a couple of days later he got a crane to come in and do it. This is the level of expertise that we are talking about.

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

Action of the Commission

MOTION: Commissioner Kapin moved in Case #2017-41,1308 Apache Avenue Waiver, to deny the request because two of the findings needed #3 to not jeopardize the public health, safety and welfare and #4 - will not mitigate the adverse visual impacts ... are not met. Commissioner Propst seconded the motion.

DISCUSSION ON THE MOTION:

Mr. Esquibel clarified for the minutes that Staff did find a permit for the 39' tower currently located on the roof. It met the qualifications to be exempt from the ordinance because it did qualify for police and fire frequency use. A letter in the packet shows that. He was not sure when that stopped or how that stopped. But as Mr. Catanach continued to put antennas on that towers, it disqualified itself for that exclusive use and then became subject to review and approval. So, it is only the one permit that is for the 39' tower on the roof and one antenna for which a permit was found. Everything else on the roof, with the exception of a recent permit the applicant applied for an antenna, Staff has not found.

Chair Kadlubek asked if the 39' tower got a waiver from setback.

Mr. Esquibel said it did not get a waiver because it was exempt from Chapter 14's telecommunication ordinance because it fell under the applicability section that allowed the tower to go up because it was used for police and fire use. That's the one on the roof.