



# Agenda

CITY CLERK'S OFFICE

DATE 4/27/10 TIME 11:05am

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## AMENDED

### **PLANNING COMMISSION**

**May 6, 2010 – 6:00 P.M.**

### **CITY COUNCIL CHAMBERS**

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

**MINUTES: April 1, 2010**

**FINDINGS/CONCLUSIONS**

**Case #2010-25. San Isidro Village Phase II, Sunflower Farmers Market Sign Variance.**

**Case #2010-28. Callejon Tisnado Final Subdivision Plat.**

**Case #2010-24. 528 Abeyta Street Rezoning.**

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

1. An ordinance amending Section 7-1.6 SFCC and creating a new Section 14-2.2(A)(4) SFCC 1987 regarding the governing body's authority to temporarily suspend the enforcement of those sections of Chapter 7 and Chapter 14 regarding the expiration of building permits and development approvals. (Councilor Wurzbarger) (Matthew O'Reilly, case manager)
2. A resolution suspending the enforcement of those sections of Chapter 7 and Chapter 14 SFCC 1987 setting forth the expiration of building permits and development approvals due to severe economic conditions. (Councilor Wurzbarger) (Matthew O'Reilly, case manager)
3. An ordinance creating a new Section 14-8.6(B)(11) SFCC 1987 allowing the reduction of required off street parking spaces when a transit facility is provided. (Councilor Calvert) (Jeanne Price, case manager)
4. **Case #2010-23. Ernest Pacheco General Plan Amendment.** James W. Siebert, agent for Ernest Pacheco, requests approval of a General Plan Future Land Use map amendment to change the designation of 3.57± acres of land from Low Density Residential (1-3 dwellings per acre) to Mixed Use. The property is located at the southwest corner of Rufina Street and Lopez Lane. (Donna Wynant, case manager) **(POSTPONED FROM APRIL 1, 2010) (TO BE POSTPONED TO JUNE 3, 2010)**

5. **Case# 2010-15. 781 Stagecoach Circle Appeal.** Frederick M. Rowe and Philip W. Murray appeal the issuance of Building Permit #09-1775 for a 735 square foot addition with a 273 square foot portal to an existing single-family residence located at 781 Stagecoach Circle, zoned R-1 (Residential, one dwelling unit per acre) and located in the Ridgeway Subdistrict of the Escarpment Overlay. (Kelley Brennan, case manager)

**G. BUSINESS FROM THE FLOOR**

**H. STAFF COMMUNICATIONS**

**I. MATTERS FROM THE COMMISSION**

**J. 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.**

**Index Summary of Minutes  
Santa Fe Planning Commission  
May 6, 2010**

<b>INDEX</b>	<b>ACTION TAKEN</b>	<b>PAGE(S)</b>
<b>Call to Order</b>	John Salazar, Chair called meeting to order at 6pm, City Council Chambers, Santa Fe, NM	1
<b>Roll Call</b>	A quorum was declared by roll call, 2 excused absences.	1
<b>Pledge of Allegiance</b>	Pledge of Allegiance was led by Commissioner Vigil	1-2
<b>Approval of Agenda</b>  <b>No changes from Staff or from the Commission.</b>	Commissioner Vigil moved to approve the agenda as presented, second by Commissioner Mier, motion carried by unanimous voice vote.	2
<b>Approval of Minutes</b> <b>Minutes: April 1, 2010</b> <b>No changes from the Commission or from Staff.</b>	Commissioner Armijo moved to approve the minutes of April 1, 2010 as presented, second by Commissioner Lindell, motion carried by unanimous voice vote.	2
<b>Finding and Conclusions</b>	<p><u>Case #2010-25.</u> San Isidro Village Phase II, Sunflower Farmers Market Sign Variance.</p> <p><i>Commissioner Lindell moved to approve Case #2010-25, second by Commissioner Mier, motion carried by unanimous voice vote.</i></p> <p><u>Case #2010-28.</u> Callejon Tisnado Final Subdivision Plat.</p> <p><i>Commissioner Lindell moved to approve Case #2010-28, second by Commissioner Hughes, motion carried by unanimous voice vote.</i></p> <p><u>Case #2010-24.</u> 528 Abeyta Street Rezoning.</p>	2

**Index Summary of Minutes  
Santa Fe Planning Commission  
May 6, 2010**

	<i>Commissioner Lindell moved to approve Case #2010-24, second by Commissioner Armijo, motion carried by unanimous voice vote.</i>	
<b>Old Business</b>	None	2
<b>New Business</b> <b>An ordinance amending Section 7-1-6.SFCC and creating a new Section 14-2.2(A) (4) SFCC 1987 regarding the governing body's authority to temporarily suspend the enforcement of those sections of Chapter 7 and Chapter 14 regarding the expiration of building permits and development approvals. (Councilor Wurzburger) (Matthew O'Reilly, Case Manager)</b>  <b>A resolution suspending the enforcement of those sections of Chapter 7 and Chapter 14 SFCC 1987 setting forth the expiration of building permits and development approvals due to severe economic conditions. (Councilor Wurzburger) (Matthew O'Reilly, Case Manager)</b>  <b>An ordinance creating a new Section 14-8.6 (B) (11) SFCC 1987 allowing the reduction of required off street parking spaces when a transit facility is provided. (Councilor Calvert) (Jeanne Price, Case Manager)</b>  <b><u>Case #2010-23. Ernest Pacheco General Plan Amendment. James W. Siebert, agent for Ernest</u></b>	<i>Commissioner Mier moved to approve Item 1, Second by Commissioner Vigil, motion carried by unanimous voice vote.</i>  <i>Commission Hughes move to approve item 2, second by Commissioner Armijo, motion carried by unanimous voice vote.</i>  <i>Commissioner Hughes moved for approval of this ordinance, Second by Commissioner Lindell, motion carried by unanimous voice vote.</i>  <i>Postponed to June 3, 2010</i>	2-24

**Index Summary of Minutes  
Santa Fe Planning Commission  
May 6, 2010**

<p><b>Pacheco, requests approval of a General Plan Future Land Use map amendment to change the designation of 3.57± acres of land from Low Density Residential (1-3 dwellings per acre) to Mixed Use. The property is located at the southwest corner of Rufina Street and Lopez Lane. (Donna Wynant, Case Manager) (POSTPONED FORM APRIL 1, 2010) (TO BE POSTPONED TO JUNE 3, 2010)</b></p> <p><b><u>Case #2010-15. 781 Stagecoach Circle Appeal. Frederick M. Rower and Phillip W. Murray appeal the issuance of Building Permit #09-1775 for a 735 square foot addition with a 273 square foot portal to an existing single-family residence located at 781 Stagecoach Circle, zoned R-1 (residential, one dwelling unit per acre) and located in the Ridgetop Sub district of the Escarpment Overlay. (Kelley Brennan, Case Manager)</u></b></p>	<p><i>Commissioner Lindell made the motion to uphold the appeal, second by Mr. Hughes, 2-3, motion fails.</i></p> <p><i>Commissioner Mier made the motion to deny the appeal, second by Commissioner Vigil, motion carried by a 3-2 vote.</i></p>	
<b>Business From the Floor</b>	None	25
<b>Staff Communications</b>	Informational	25
<b>Matters from the Commission</b>	Informational	25
<b>Adjournment and Signature Page</b>	<p><i>There being no further business to come before the Planning Commission, Commissioner Mier moved to adjourn at 8:11 pm, second by Commissioner Hughes, motion carried by unanimous voice vote.</i></p>	26

## **PLANNING COMMISSION**

**May 6, 2010**

**6:00 pm – 8:11 pm**

**City Council Chambers**

### **MINUTES**

The meeting was called to order by Mr. John Salazar, Chair for the Planning Commission at 6:00 pm on May 6, 2010 in the City Council Chambers, Santa Fe, New Mexico. A quorum was declared by roll call vote.

#### **A. Roll Call**

##### **In Attendance:**

John Salazar, Chair  
Signe Lindell, Vice Chair  
Bonifacio Armijo  
Ken Hughes  
Mike Mier  
Dolores Vigil  
Ruben Montes

##### **Excused:**

Angela Schackel Bordegaray  
Estevan Gonzales

##### **Staff Present:**

Tamara Baer  
Kelley Brennan, City Attorney  
Wendy Blackwell  
Jeanne Price, Legislative Liaison  
Mike Kelley, Transit Division

##### **Others Present:**

Fran Lucero, Stenographer

#### **B. Pledge of Allegiance**

Commissioner Vigil led the Pledge of Allegiance.

#### **C. Approval of Agenda**

**No changes from Staff or from the Commission.**

*Commissioner Vigil moved to approve the agenda as presented, second by Commissioner Mier, motion carried by unanimous voice vote.*

**D. Approval of Minutes and Findings/Conclusions**

Minutes: April 1, 2010

No changes from the Commission or from Staff.

*Commissioner Armijo moved to approve the minutes of April 1, 2010 as presented, second by Commissioner Lindell, motion carried by unanimous voice vote.*

**Case #2010-25. San Isidro Village Phase II, Sunflower Farmers Market Sign Variance.**

*Commissioner Lindell moved to approve Case #2010-25, second by Commissioner Mier, motion carried by unanimous voice vote.*

**Case #2010-28. Callejon Tisnado Final Subdivision Plat.**

*Commissioner Lindell moved to approve Case #2010-28, second by Commissioner Hughes, motion carried by unanimous voice vote.*

**Case #2010-24. 528 Abeyta Street Rezoning.**

*Commissioner Lindell moved to approve Case #2010-24, second by Commissioner Armijo, motion carried by unanimous voice vote.*

**E. Old Business**

None

**F. New Business**

- 1.** An ordinance amending Section 7-1-6.SFCC and creating a new Section 14-2.2(A) (4) SFCC 1987 regarding the governing body's authority to temporarily suspend the enforcement of those sections of Chapter 7 and Chapter 14 regarding the expiration of building permits and development approvals. (Councilor Wurzburger) (Matthew O'Reilly, Case Manager)

Jeanne Price: This item is in response to the economic downturn, Councilor Wurzburger introduced the above items that would suspend the enforcement of the city's code regarding the expiration of development approvals. Expiration of building permits would also be suspended if construction has not been initiated. Suspension is for a period of two years as of January 1, 2010 hopefully the construction industry can recover. The first item is the ordinance that will set up the provision in code that will allow the governing body to add the resolution to act on the temporary

suspension and the second is the actual resolution that the Governing Body would adopt to set in motion this current 2 year suspension. As indicated in the report, there are a total of 29 development review cases that would be affected.

**Public Hearing:**

**Nancy Long, 2200 Road, Santa Fe, New Mexico**

She was here to speak in support of this resolution and the ordinance from some projects that she has represented clients on and they are stalled out due to the economic downturn, it is difficult to get commercial financing right now. In terms of their planning for the future if the approvals expire they go off of their ability to budget for those in the future. If they can hold on to those approvals or entitlements than it is something that they can plan for and continue to work towards attaining financing and get those projects going in Santa Fe. I have heard out in the community that there are many in support of this resolution and ordinance. She raised the question to Ms. Brennan and Ms. Price understands the period of time that would be tacked on to these approvals. She understands that is 2 years from the time that it would expire.

**Ms. Brennan, City Attorney:** Offered clarification in re-reading the ordinance on this date and discussing with Ms. Price, there is a little lack of clarity. She believes that the clock stops on July 1, 2009 and resumes 2 years later. So if you had 6 months left on your permit on July 1 would have 6 months after the clock starts again.

**Monica Montoya**

Spoke in support of the resolution and ordinance. She has a couple of clients who are in the same situation of not being able to obtain financing and also the fear if they were constructed being able to sell in the market, a little bit of extra time would be helpful in hopes that the economy would jump up. She asked on a case that she had expired in February and she was getting ready to apply for an extension, her question is would this qualify for the extension. She complimented staff for always being helpful.

**Tamara Baer** said that the answer would depend on what kind of case it is, she believes she knew which case Ms. Montoya was referring to being a development Plan. Anything expiring after January 1<sup>st</sup> of this year would automatically have the 2-year extension. It would be 2 years from the date it would expire.

**Karen Walker, 205 Delgado Street, Santa Fe, New Mexico**

She certainly agrees that the economy is less desirable and today was really a disaster in relation to the stock market. She stated that she is not for or against the resolution or ordinance. She asked if this would put the city in a position to allow a non-conforming permit to proceed with construction. Since you put changes in the code, since these were first permitted, than to allow them to be built next year and next year knowing that they are already non-conforming, would that pose a problem? She did not expect a response; she wanted to bring this to the attention of



the Commission and Staff. She asked if this would be discriminatory for new applicants, they would have to come in under the new code and the old applicants would not.

### **Public Hearing Closed**

Commissioner Armijo asked Ms. Price if there is any burden of proof; can anybody come in and say they fall under this category. Ms. Price said there are no qualifications besides when you come in with an issuance that has expired. Commissioner Armijo asked if it was based on economics. Ms. Brennan responded that in fact it specifically states that it is not about individual economical difficulties but the economical down turn so it is an automatic extension for everyone. Commissioner Armijo asked if there is going to be a review process once they are ready to take on the project. How is the city going to track the expirations or are they officially notified that they are asking for the extensions so they can be put on the docket, how will you know that those projects are getting done. Ms. Baer said that it is up to the applicant to be aware of the time extension and to follow through with the permit. Ms. Baer spoke to the first question, there is no re-review and the project has been reviewed and approved under certain conditions of the code at the time it was approved. Again, this is across the board, it is an automatic extension. If you were approved a year and a half ago you can come in with those same approvals and you are good to go in 2 years.

Commissioner Mier asked why 2 years? Ms. Baer said that the 2 years was a reflection at least to begin with for most of the approval times so for development review of a subdivision the approval is 24 months, for a development plan the approval is 24 months. There is no magic solution to the correct amount of time is and this seemed generous but not overly generous in terms of giving the economy enough time to recover but not over extending. There is a provision in the ordinance that says that the council can do again so 2 years seems like a reasonable amount of time to give the economy time to recover. If it does not, the council has the option of passing another resolution.

Commissioner Mier asked how will the developers be notified and how will it be tracked. Ms. Baer said that most developers are well aware and as far as tracking the building permits the HTE system tracks the building permit. Again the burden is on the applicant to come in and reinstate the permit or continue with the permit or call in the inspections so the approval will be tracked through the HTE system. Again for development plans or some of the larger projects they have created a list and they are aware of the projects that are subject to the extension.

***Commissioner Mier moved to approve Item 1, Second by Commissioner Vigil, motion carried by unanimous voice vote.***

- 2. A resolution suspending the enforcement of those sections of Chapter 7 and Chapter 14 SFCC 1987 setting forth the expiration of building permits and development approvals due to severe economic conditions. (Councilor Wurzburger) (Matthew O'Reilly, Case Manager)**

***Commission Hughes move to approve item 2, second by Commissioner Armijo, motion carried by unanimous voice vote.***

- 3. An ordinance creating a new Section 14-8.6 (B) (11) SFCC 1987 allowing the reduction of required off street parking spaces when a transit facility is provided. (Councilor Calvert) (Jeanne Price, Case Manager)**

This item is a joint effort across city departments and the memo in the packet from Jon Bulthuis, Transit Division Director and Mike Kelley from the Transit Division was in attendance at this meeting. The city has been in negotiations on improving the transit facility at the Santa Fe Place mall. It needs to be approved to meet ADA standards; it is undersized, inadequately lit and has several safety problems. What they are trying to accommodate in the code is an option for property owners to be able to have a transit facility included in their property. If a property owner was willing to give that space for the facility that the city wants the property owner would be excused for the parking that they might lose. A new section of the ordinance would allow the off-street parking requirements set forth to be reduced up to five percent if the property owner enters into an agreement with the City wherein the property owner grants the City the right to use a portion of the property for a City transit facility. It is up to the city to decide if this is the site they want. The amount of reduction and the terms of the agreement shall be subject to review and recommendation by the Land Use Department, the Transit Division and the City Attorney's Office and shall be based upon the city's specific transit needs at the site, the anticipated reduction in parking demand due to the facility and specific characteristics and considerations of the site. The agreement may be in the form of an easement, dedication or long term lease approved by the Governing Body.

The goal is to accomplish some alternate transportation goals and hopefully people do continue to ride the bus and as the ridership increases the need for facilities will be needed to accommodate the riders.

## **PUBLIC HEARING**

***No participation. Public Hearing closed.***

Commissioner Armijo asked about the five percent reduction and then referred to item (b) where it refers to the reduction and terms of the agreement being more specific. Ms. Price said that depending on the layout you could get up to 5% or they might only need 3%, it isn't a definite 5%.

***Commissioner Hughes moved for approval of this ordinance, Second by Commissioner Lindell, motion carried by unanimous voice vote.***

4. **Case #2010-23. Ernest Pacheco General Plan Amendment.** James W. Siebert, agent for Ernest Pacheco, requests approval of a General Plan Future Land Use map amendment to change the designation of 3.57± acres of land from Low Density Residential (1-3 dwellings per acre) to Mixed Use. The property is located at the southwest corner of Rufina Street and Lopez Lane. (Donna Wynant, Case Manager) **(POSTPONED FORM APRIL 1, 2010) (TO BE POSTPONED TO JUNE 3, 2010)**
5. **Case #2010-15. 781 Stagecoach Circle Appeal.** Frederick M. Rower and Phillip W. Murray appeal the issuance of Building Permit #09-1775 for a 735 square foot addition with a 273 square foot portal to an existing single-family residence located at 781 Stagecoach Circle, zoned R-1 (residential, one dwelling unit per acre) and located in the Ridgetop Sub district of the Escarpment Overlay. (Kelley Brennan, Case Manager)

Ms. Brennan addressed the commission stating that this case is an appeal of a building permit issued after an alternate siting decision by staff under the escarpment ordinance. The appellant claims that it is improper and unlawful and the appellee says it is legal.

Each party is here to present their case, first the appellant and they each have 30 minutes which they can divide however they want; 20 minutes to make their presentation and 10 minutes to rebut some time to examine witnesses as they choose, and after they present their case there will be time for public comment and the commission deliberate.

The chair called for the appellant:

**Fred Rowe, 787 Stagecoach Trail, Santa Fe, NM**

[Sworn in]

Mr. Rowe: I am here this evening as Counsel for the appellants in this appeal as well as a neighbor. I am pleased to yield to Karen Walker to speak; as you probably know Karen has served as Chair of the City Planning Policy Commission, she was an Architect for the escarpment ordinance and for over 20 years she has been one of the most respected analyst on the city building code.

**Karen Walker, 205 Delgado Street, Santa Fe, New Mexico 87501**

[Sworn in]

Commissioners, once again and Chair Salazar, a couple brief words that might clarify a couple of issues that the City Attorney's office has brought up to be considered and I will

answer at the end of my brief discussion. The first point I have to make is that before the application for the ordinance is unilaterally reinterpreted after 20 years of practice, it might behoove us all to examine the intent of the ordinance and the intent of what was the purpose to prohibit development in the Ridgetop. The Ridgeline has a visual rim of a Ridgetop which is the property point of the escarpment ordinance. The Ridgeline is facing the community and it is that line which we don't want interrupted because the community under the purpose of this ordinance wants to continue to enjoy their view of the Foothills and the mountains and the sky. It is within staff discretion to site a structure on a vacant site in the Ridgetop if it was planned before 1992 and if there is a legally buildable site outside of the Ridgetop. In this case the structure shown by staff must be placed as far back from the Ridgeline as possible. Any additional or later added construction on this site on the Ridgetop can only be accomplished by variance to the ordinance requirements. This variance allows for a public hearing and is granted by the Planning Commission. It is not within the staff discretion to deal with issues or later added construction. If you have granted a variance and I believe you have granted one, if the applicant withdrew or voided your variance then a building permit cannot follow. This Planning Commission, thanks to Commissioner Armijo, has established a sub-committee to work with Chapter 14 and the Council has established an escarpment working group, especially addressing the escarpment ordinance. I suggest we see the recommendations of these two groups before any changes to long established policies. In a District Court Case of July, 2008, Judge Hall cautioned us that "the city must follow its own rules and policies." Our policy for any additions to the Ridgetop must be followed until any of it is changed by elected officials.

So the two questions to have asked are whether staff had the authority to approve alternate siting for additions and second whether a building permit was properly issued, and it seems it was not because your variance was rejected by the applicant, the owner of the property.

**Mr. Rowe:**

Mr. Chair, Members of the Commission, we respectfully reserve 10 minutes of rebuttal time. Needless to say, we fully agree with Karen Walker's analysis and her view of what the overriding issue in this case is this evening. Namely, whether variances based on hardship are needed for additional construction to an existing residence on the Ridgetop as we submitted is required or whether variances based on hardship will be replaced by administrative staff, so called resitings with no neighbors ENN participation, with no Planning Commission public variance proceeding, in other words inside a staff solely without no public participation and no Planning Commission review. Let me suggest this same issue naming variances required or not are before this commission for the third time, not just the second time. As you all know the City Council amended the escarpment ordinance in September 2006 along with adopting a procedural resolution which deals with the sited view of the Ridgetop building and says nothing whatsoever about resiting building additions. Hopefully a year later at a Planning Commission

meeting on December 6 2007, Councilor Calvert and staff proposed a few other changes including clarification of Ridgetop construction. At this Commission meeting, then Commissioner Salazar asked Wendy Blackwell point blank where the variances were needed for Ridgetop building additions. Wendy flatly answered yes, on page 10 of those minutes. Also this Commission approved Commissioner Armijo's suggestion to appoint a Planning Commission sub committee to consider this and other "items that needed tweaking." We fully agreed that as Karen Walker stated, policy changes like replacing Ridgetop variances with staff resiting properly belong to the on-going subcommittee process for ordinance improvements. This subcommittee which meets regularly includes Chair Salazar, Vice Chair Lindell, Commissioner's Armijo and Hughes and former Chair, Matt O'Reilly. As Karen Walker emphasized, everybody has agreed for over 20 years that variances were needed for Ridgetop building additions. This position was shared by number one, respected lawyers like Mr. Summer who two years ago applied for a Ridgetop variance in this very case. It was shared by experienced planning staff; Tamara Baer, Donna Wynant and Charlie Gonzales whose detailed memo to this Commission last year recommended against granting the requested variance. This planning commission itself, last year twice ruled to grant a variance which was later withdrawn from the applicant and appealed to the City Council. Please note that at the February meeting last year this planning commission rejected the Assistant City Attorney's request to rescind the earlier approval of the variance. Then as again now she claimed that no variance is needed for resiting the Ridgetop building addition. Commissioner Armijo stated, "this would open a can of worms" by making policy changes for this one case. The City Attorney's latest memo to the Planning Commission clearly admits and I quote, "until recently city staff required owners that wanted to add or modify existing structures to pre-1992 lots to obtain a variance for this work." So what has happened to change everybody's position for 20 years that variances were required for Ridgetop building additions? According to the Attorney that this long history that variances were required was based on a "misreading" of the ordinance. She told the commission over a year ago that she "was quite surprised" about this. Bottom line, this new fangled policy for resiting instead of variances for Ridgetop building additions opens a large loop hole to avoid the Ridgetop ordinance protections because of the allowed Ridgetop additions with no ENN participation by neighbors and with no public variance review by this Commission. Instead the Ridgetop building additions will be approved by staff internal administrative resiting. To emphasize, to submit policy changes belong with the ongoing Planning Commission subcommittee review process for amendment of the ordinance by the City Council after public hearing. As Karen Hall stated, Judge Hall recently warned me an employed ruling against the city, "the City may not ignore or revise a stated policy and procedure for a single decision no matter how well intentioned the code may be."

Thank you for your consideration, I stand for questions.

**Phillip Murray, 783 Stagecoach Circle, Santa Fe, New Mexico**  
[Sworn In]

I am Phil Murray and I live with my wife and 3 children who attend the Santa Fe Public Schools, and am the immediate neighbor of the applicant and one of the appellants in the case and I might add that this appeal was filed by several neighbors including the adjacent property owners on Valley Drive, not just by me and Fred Rowe. As an owner of a house located within the Ridgetop I understand the restrictions placed on me and others. Since it impacted my family I closely followed the City Council's decision in 2006 to strengthen the escarpment ordinance by requiring "extraordinary hardship shall not be repealed or stand on the Ridgetop." This is a pretty high standard to demonstrate and it is suppose to be hard to build houses or large additions on the Ridgetop. In fact the Planning Commission was sharply advised when this project came before you a year ago for a request for a variance to allow expansion of the 3200 sq. ft. home into a 4000 sq. ft. home. The Planning Commission's Findings and Facts from that reference to hardship was based on the applicants desire to build an area of the house related to minimum care for an unspecified illness that would give the owner, who currently lives by herself in the house. [Reference to Story Pole, which was erected for the Planning Commission last year.] The addition looks like it would be taller than the structure is now. It shows that her house is currently visible along Valley Drive and certainly the addition would be also. This variance request was withdrawn at the neighbors appeal to the City Council, like due cause they were concerned that the hardship was not sufficient to stand by the City Council; there was a lot of heated interest to protect the Ridgetops. It certainly appears that there is sufficient in the council to accommodate a minimum care if likely needed in the future. Indeed planning staff have recommended against the variance due to lack of showing a hardship. Now we are back again with the issuance of a building permit that does not require to show any hardship or any other requirements for a variance to build on the Ridgetop. As an owner of a Ridgetop home I believe this sets a very dangerous precedence for future building in the escarpment, submerge city laws that govern Ridgetop construction and fire variances galore for 20 years. I strongly urge you to uphold our appeal and void this unlawful building. Thank you.

**Karl Sommer, Attorney at Law**

I have a couple of questions for Mr. Murray under my right to ask him questions in the public hearing.

The Chair asked for the questions to be asked at the end of the public hearing.

**Richard Folks, 119 Valley Drive, Santa Fe, New Mexico**  
[Sworn In]

Members of the Planning Commission, I live right beneath the proposed building at 119 Valley Drive; I have lived there since 1958. I have seen numerous buildings go up around me since that time. I think what I understand tonight is that this is a legal argument about the language in the

Escarpment ordinance; the argument is whether resiting can be substituted from this public process which we are familiar with. It is this process that not only involves the affected neighbors but the planning commission itself and we had a process in place to address the Ridgetop construction for the last twenty years. That process includes some hard thought issues like the ENN and the intent of the existing process is to include the affected neighbors and the community at large and it has always been a public transparent process. In this particular case if the applicants attorney had thought of this closed door resiting issue instead of filing for the recorded variance none of us would have known or had an idea of what was about to take place on the Ridgetops. Keep in mind that the legal argument of the resiting; if that decision is going to be made by staff it not only excludes the neighbors but it excludes the Planning Commission. We have already had two ENN meetings about this case and we have appeared before the Planning Commission and that process has given everyone the time and information they need to make an informed open decision as to what would physically affect the community. With this new policy interpretation we as the neighbors and you as our representatives have been shut out of the process. The impact of Ridgetop construction, it is clearly not the intent of Ridgetop owners to exclude members of the community. This new policy interpretation would mean that for the past two years we have been meeting for no reason; is this the precedence you want and does this uphold the intent of the Ridgetop ordinance. I urge you tonight to look at the larger scope as to what is going on here and keep the decision making process above

***The Chair advised that there was 1 minute left and asked if they wanted to reserve 10 minutes.***

Karl Sommer requested if he could proceed to ask Mr. Philip Murray a couple of questions to verify a couple of facts.

**Karl Sommer, P.O. Box 2476, Santa Fe, New Mexico 87504  
[Sworn In]**

Members of the Commission, I am here on behalf of Ms. Paulk, she is the owner of the property to who the permit was issued. She is out of town and she has had a long standing commitment and she could not be here. I am here to represent her and to explain why staff's decision in this case is correct and why the interpretation urged upon you by the appellants is incorrect and leads to an absolutely absurd result under the ordinance we are talking about. First of all, this permit that was issued in compliance with the plain language of the code. The alternative siting that was approved by Mr. Gonzales after a great deal of investigation; a great deal of analysis holds visual analysis, siting in the light meets every bit of the criteria that the code allows for alternative siting and upholds the basic purpose of the escarpment ordinance and I will get into that. The appeal would have you read that there is no authority for staff to do anything on this ordinance on the plain face of the ordinance it occurs it does and it implies in this particular instance the way staff has applied. Let me start with a long standing twenty years of variance applications, which is simply not true. I have been practicing for twenty years and it has not been a long standing twenty year application of the law that we needed to get a variance to build on the Ridgetop. The section of the code that we are dealing with was amended in 2006, not



twenty years ago. The original ordinance reads very, very different from the current ordinance. The current ordinance is the one that introduced the language that staff has now interpreted and applied, and that is the section beginning with location of structures. That language was altered significantly in 2006. It dealt with alternative siting based on certain criteria. So, let's go to that language and see whether or not lets test the argument being made that staff has no authority to do anything.

If you look at **Section (D) Location of Structures: Buildable Site (Ord. No. 2006-55 § 6)**, one of the things that is very important about these ordinances it defines the terms that is used in this section. It is called the viewline and the viewline is defined as follows: "as used in Section 14-5.6 the viewline is either the boundary between the Ridgetop sub-district or the Foothill sub-district or will be the delineated portion of boundary of the Ridgetop sub-district if there is no contiguous foothill sub-district." So what is the viewline under the ordinance? The viewline is the place where the Ridgetop changes to Foothills or the Ridgetop changes outside the escarpment district. So the viewline incorporates the idea that it is going to regulate structures outside the district because this section says so; and I will go to it specifically, that structures will be sited as far away from the viewline as possible. There is an exception to that and it is the one that is here, and it says, going back to Section (D), it says; "For all lots subdivided or re-subdivided on or before February 26, 1992, all structures shall be located within the foothills sub district unless the only buildable site is located within the ridgetop sub district." That is the first rule that it shall be located in the foothill sub district if there is a buildable site it will be built in the foothills sub district not the ridgetop. The second rule, which is a consequence here, is that the structure shall be located in an approved buildable site so that it meets the buildable site criteria. The third and crucial rule provides the exception that applies in this case, "Structures shall be sited as far from the viewline as possible." So, it doesn't say on what kind of lot, it says as far from the viewline as possible. Viewline incorporates areas inside the district as well as areas outside the district because the definition says so. It says, ""unless staff approves and alternate siting meeting the following criteria." So, on the face of this ordinance that was adopted in 2006 it says, "staff can approve alternative siting." That is what it says, it is clear, we don't have to argue about that, "that meets the following criteria." So, you go to the provision that meets this criteria and that is an analysis by staff, and staff is not to say is the visual impact in some, is the visual impact in the areas outside of the Ridgetop sub district greater than would be if it was built inside the ridgetop sub district. Staff makes a determination, and that determination is based on findings. Those findings are applied pursuant to an administrative procedure that the City Council adopted. This with what I have said already about the question on whether or not this is a long standing issue, the Resolution that we are talking about that submits this criteria was adopted in 2006 and that Resolution talks about considerations for alternate siting. So we are not talking about a long standing interpretation of the ordinance; a long standing application of the ordinance, this is a newly adopted application of the ordinance. And what it says here, "staff does an analysis," and in this particular case, staff does an analysis to say whether or not the siting is going to be in accordance with the policy there. Mr. Gonzales' analysis is clear, which is in the packet, says that the visibility is less in a location that is proposed than it would be elsewhere. If there is another location for this site it is more visible



from every point that is relevant in the ordinance than it would be where it is. Mr. Gonzales' findings make that absolutely clear. I submit to you here, they are not challenging that finding, they are not saying that Mr. Gonzales made a mistake in saying it would be less visible. They are saying that he has misapplied the ordinance. It is important that they are not challenging the findings, that this is the least visible area for the addition. Because the ordinance itself talks about its purposes, and if you look at the purpose and intent of the ordinance on your 14-5.6 (a)3 is very specific, Intent: "Preservation of the City's aesthetic beauty and natural environment is essential to protect the general welfare of the people of the city, to promote tourism and the economic welfare of the City, and to protect the cultural and historic setting of the City; (b) development is highly visible on or about the ridgetop areas of the foothills for great distances and detracts from the overall beauty... So we are talking about aesthetics and visibility. (e) The interest and welfare of the people of the City is to restrict development in the Escarpment Overlay District to preserve the aesthetic beauty and natural environment of the ridgetop areas of the foothills and to protect the mountain views and scenic vistas from the City to the extent possible. It is absolutely clear that the purpose of this ordinance is to mitigate the effects of building in and about ridgetops; in and about foothills and the environment around them. That is the purpose of the ordinance. To say that Ms. Paulk' addition should be placed in an area that violates the very purpose of this ordinance on a reading that leads to a certain result is wrong, and staff knows it is wrong. Staff applied the ordinance correctly, they applied the alternative siting provisions and it is being said again, time and time again, this is a back door, closed door, nobody has notice; that is simply not true. These gentlemen know that when an applicant files for an application in the escarpment district and there is going to be a siting determination, signs go up. Big yellow signs go up giving notice to the neighbors that somebody has filed an application under the ordinance. The signs that went up in this case that Mr. Murray saw, Mr. Rhodes saw, others saw; it is clear that this isn't a closed door determination. This is clearly a public process; it is a process that is allowed by the ordinance itself.

If you move to the criteria in that section, (B) (3) you will find that the provision states that for lots 3(c) that staff upon request of an applicant approve an alternative siting in the foothills sub district if siting of the structure will decrease the visual impact beyond that which exists if the structure will be decided in the foothills sub district as far away from the viewline as possible. Right there on the face of the ordinance staff had the authority to make the determination that Mr. Gonzales made. These findings are not challenged in front of you and withhold the principle purpose behind this ordinance which is to minimize the effect of development in these areas.

I am certain that you have looked through your packets and you will find that we made a challenge to the number of appellants that show up here; there are two legitimate appellants, Mr. Rowe and Mr. Murray because they are the ones that verified the petition which is required by the ordinance. All the other people listed as the appellants including Mr. Folks did not verify the petition. Mr. Rowe has glossed over this issue and he said that it is OK for him to verify. There is a case in New Mexico that says it is not OK for a lawyer to verify. The statute says that it must be verified by the complainant means the complainant, not their attorney. There is a purpose behind that because you are swearing to facts, the truth of facts, not the lawyer. There is

also a case in New Mexico that requires this body to look at the entirety of the ordinance, all the sections read together. "All the sections read together" mean to uphold the purpose, intent and the way it is written. And you are to avoid a reading that leads to an absurd result. The case I am referring to in New Mexico is a case dealing with Statutory interpretation by a city, it is the case of the City of Rio Rancho vs. Logan and the court referred to this particular rule of construction; it says "that a statute will be construed to avoid an absurd result" and the court quotes, "in a peculiarity in the literal language of statute leads to an absurd result the court may construe the statute in accordance to its purpose to avoid the absurdity." When the language of the legislative act is doubtful or adherence to the literal use of the words will lead to the injustice, absurdity or contradiction, the statute will be construed according to its obvious spirit or reason even though it requires a projection or words of substitution are published. Principally what is being argued here is that the section we are dealing with deals with lots that have ridgetops and foothills, and because this lot doesn't have a foothill it doesn't apply. That is an absurd reading of the ordinance and it is not what is intended by the ordinance. The ordinance makes it clear that when you are dealing with a viewline you are incorporating areas outside the escarpment district itself because the definition for the viewline incorporates that and that staff has properly applied the law and have arrived at the just clear and good result under the ordinance because it upholds the very purpose of the ordinance to minimize the development in these areas. I will stand for any questions you might have.

***The Chair opened discussion for rebuttal or cross examination.***

**Mr. Rowe was acknowledged and allowed 10 minutes.**

Thank you Mr. Chairman. I respect Mr. Sommer's eloquence in this matter but I think he is plainly wrong on the law. With regards to his statement that we are somehow trying to keep the staff out of all this and that staff has no role, I will remind the commission that In January of 2009; the staff Tamara Baer, Donna Wynant and Charlie Gonzales filed a lengthy report with this commission recommending against granting a variance. As that report says and I quote, "since the current regulations prohibit further development in the ridgetop, any extension to the existing house requires approval of a variance." Now if no variance was required, why did Mr. Sommer's apply for a variance 2 years ago? Because that was the understanding for 20 years? As Karen Walker was the Architect of the ordinance and she is the current analyst for it, she had graciously testified. Mr. Sommer refers to the council resolution that supposedly recognizes resiting for ridgetop additions. That resolution has nothing to do with ridgetop additions; that resolution has to do with new building construction on the ridgetop. That is what it was designed to do, that was in 2006. In 2007, Wendy Blackwell appeared before this Planning Commission and she was asked flat out by Commissioner Salazar, "do you need a variance for ridgetop additions?" and Wendy Blackwell flatly answered yes. Why did she answer yes? Because for 20 years everybody has agreed you need a variance in order to have building additions on the ridgetop.

The ordinance, by the way, that has been extensively quoted has a key phrase in there which has been omitted by the staff report and which has also been omitted by Mr. Sommer. That phrase is; the ordinance seeks to restrict building on the ridgetop not only to minimize the view disturbance but “as allowed by law.” Now why has the phrase allowed by law been dropped out of the ordinance as described by Mr. Sommer? Because they do not wish to comply with the law. Sure, it is fine to say minimize the visual impact. Everyone agrees that you should minimize the visual impact but to say you can have a ridgetop addition because it is less visible next to the house than it is downhill without a variance we respectfully submit. The record contradicts the established interpretation and policy view of this ordinance for 20 years and I will ask Karen Walker to come for a moment to state her understanding of it. With regards to the standing, me as a neighbor as An accountant, I think the Council agrees that we have standing that is throwing sand over what the real issues are, namely as for the past 20 years as recognized by Mr. Sommer’s variance application 2 years ago. Why did he file for it if it wasn’t needed? It was needed and any policy change like is being urged now is the providence of the subcommittee of this Planning Commission which is studying the Chapter 14 amendment and is not the providence to be done in a single case without the regard to the precedence of what will happen in other cases and let’s not open a can of worms, it is going to open many cans of many worms if this gets by. Thank you very much and I will ask Karen Walker to add what she wishes.

**Karen Walker**

I think what Fred wanted is for me repeat how it has been since 1989 and it was amended in 1991 and 1992. If there was a site, meaning there is something on it, in the ridgetop area than staff absolutely had the jurisdiction to work with the applicant to site it as far away from the ridgeline or viewlines as called sometimes, as possible with no question. Additions weren’t even allowed on an existing house on ridgetop when the ordinance went through, additions weren’t allowed at all. Shortly thereafter they became allowed but only with the variance process. Not with staff options, but only with the variance process.

**Phil Murray**

Why did Karl Sommer ask for a resiting now after 2 years ago we had an ENN meeting and there were three applications for three separate variances on the table 2 years ago? There was an application for a variance for a fence that had been constructed and there was an application for a variance for this addition on this property. Story poles were put up very briefly around the applicant’s residence and they were there for 24 hrs at the most. They were highly visible from Bishops Lodge and the other siting they are talking about and they were still visible from Valley Drive. Point of clarification, there wasn’t, I believe a big yellow sign in front of her house but that was not visible anywhere underneath her residence, there was not a sign on Bishops Lodge or a visible sign on Valley Drive for the neighbors to view on this addition.

***The Chair advised Mr. Sommer that he had 15 minutes for rebuttal or cross examination.***

Mr. Sommer had a couple of questions for Mr. Murray.

*Commissioner Mier asked Ms. Brennan, City Attorney if the rules require the chair to ask the questions. Ms. Brennan responded that it is up to the presiding Officer.*

*Mr. Sommer: Mr. Chair, I submit that the law in New Mexico is that a person who is a party to a proceeding has a right to cross examination.*

*The Chair will allow cross examination.*

**Mr. Sommer:**

Mr. Murray, you live right next door, correct?

**Mr. Murray:**

Correct.

**Mr. Sommer:**

And you agree with Ms. Walker's statement that for the last 20 years you could not make an addition in the ridgetop?

**Mr. Murray:**

I don't have the history that Ms. Walker has.

**Mr. Sommer:**

Is your house on the ridgetop?

**Mr. Murray:**

Yes it is.

**Mr. Sommer:**

And you made an addition to your house in the form of a fireplace on the patio, correct?

**Mr. Murray:**

Is this about my house or about your client's house?

**Mr. Sommer:**

I am asking you, did you make an addition next door in the ridgetop of an addition in your patio of a fireplace on your property?

**Commissioner Lindell:**

Chair, is this pertinent questioning, Kelley?

**Kelley Brennan:**

I would suggest that it is not relevant.

**Mr. Sommer:**

If I may, this witness has testified or on his behalf presented testimony that additions were not allowed in the ridgetop and his house is in the ridgetop, he made such an addition and he got no variance and no permit for it. So if it was not allowed and he did not have a permit for it, my question is that is it clearly relevant to this case. This witness has testified and provided evidence on that point. So I think I am entitled to ask the question and get the answer because it is clearly relevant to what Mr. Murray has said in this case.

**Kelley Brennan:**

I would say, you can ask the question.

***The Chair allowed the question.***

**Mr. Murray:**

It is interesting that the city is currently investigating an outdoor fireplace at my house based on an anonymous complaint which was made, so I guess I know what the source is now. There is an outdoor fireplace at my house, and it was constructed more than 10 years ago, this complaint is in Ms. Brennan's office, making a good faith effort to resolve it at this moment. If it is not resolved, Ms. Brennan can testify too and I have three children, I can barely remember what I did last week much less more than 10 years ago. I believe that all the proper permitting was secure at the time or it may or may not have been.

**Mr. Sommer:**

Did you obtain a variance?

**Mr. Murray:**

I am not finished. I definitely did not obtain a variance. I don't know if the code requires a variance for a small outdoor fireplace but however we resolve it with Mr. Brennan, I will comply with that.

**Chair Salazar: Thank you Mr. Murray.**

**Mr. Sommer:**

It has been raised, time and time again, why did Mr. Sommer come in and file for a variance? If truth be known, we came in and pointed out that there were alternatives to a variance and that the variance criteria, we did this with staff. The variance criteria were difficult, if not impossible to meet because of the hardship, the same argument that Mr. Rowe made during the variance ordinance. Staff told us that it was their position; this was not long standing 20 years. I have been in front of staff for the last 20 years and it wasn't until Ms. Blackwell was hired and this new ordinance was being applied, because previously the ordinance read very differently and you didn't have to come in and get a variance, because staff had the ability to do the following, let me read to you what the ordinance used to say.

Here is what the ordinance use to say: "City staff may approve siting of a structure in a manner which deviates from a strict compliance with the siting criteria of this section only upon finding that the proposed deviation results in a decrease in the visual impact of the structure, beyond that visual impact which would exempt if the structure were strictly sited as required by this section." That is as broad a hole in the ordinance that you could drive a truck through and they changed it. You didn't have to come in and get a variance. And to have people stand up here and say, for 20 years this Planning Commission has been considering variance for siting is not true and it is not correct. That is how siting use to be done, it is done differently today. When they adopted the new ordinance what they did was they said, "no ridgetop construction at all in lots approved under 1992." That is new, that wasn't in the ordinance back then. So why did we ask for a variance in the cases that we asked for variance; because staff was interpreting the ordinance that was adopted in 2006 that way. It was not long and standing and we urged them to adopt this long before this. Now staff has looked at it and taken several cases for variances forward. This Commission has adopted some and denied others. Staff has looked closely at the staff's ability to grant alternative siting; that is why we came in for a variance and why we are here today and started to apply it the way it is written.

I submit to you that Mr. Murray's fireplace addition was probably built in accordance with the ordinance at the time. It didn't require a variance. I didn't call him up here to embarrass him or to point out that he was doing something that he is now accusing someone else of doing. I brought him up here to point out that the ordinance as applied back then to his fireplace variance was probably in accordance to the way staff was adopting, finding and siting additions. He didn't come in here for a variance, I can tell you he didn't, because staff didn't make him, and why did staff not make him, because the ordinance read something different. It is not 20 years of standing where people had to come in. There is one last issue that this ordinance amendment applies to new buildings only; it doesn't apply to additions. That is an interpretation that isn't found anywhere. If you look at the ordinance itself, the section of the ordinance we are dealing with says "structures", it doesn't say houses it says structures. An addition is a structure under the ordinance. A structure is a building, this is a building. This interpretation that it doesn't apply, you won't find that anywhere in the ordinance; that an addition to a building is not a structure. Look at the ordinance you are deliberating tonight, I submit to you to ask your own Counsel about this, about whether or not she believes an addition is a structure. The section we are dealing with, Section (14-5.6d) says "structures shall be cited as far from the viewline as possible unless staff approves an alternative siting." It doesn't say "new buildings" it doesn't say "whole houses" it says "structures". I submit to you that staff has done their job and the ordinance has worked well. It has upheld the basic policy which is to limit the impact of development in these areas. Thank you very much.

***Chair Salazar: Thank you Karl. The chair will open up for public comment.***

**Wendy Blackwell:**

Chair Salazar, if possible I would like to make a few comments about my experiences since January before administering this ordinance, if this is appropriate.

***Chair Salazar: Proceed.***

**Wendy Blackwell:**

In January, 2005 is when I started to enforce the escarpment ordinance for the Land Use department. At that time, as Karl Sommer explained, the ordinance read differently; we changed the ordinance in September, 2006. Prior to that ordinance changing in September, 2006, staff was approving, administratively, siting in the ridgetop if it met certain criteria and you were able to do a visual analysis and make a determination administratively. That is true and that is how we did that work from the time I started doing it in January of 2005 up until September 2006. I just wanted to verify that as staff administering that it is my recall of how it occurred. At that time when the ordinance did change, we had legal counsel who gave the advice at the time, that instead of having individual staff make a determination on very contentious or potentially debatable subject matter, because the ordinance wasn't black and white; it was actually safer to take these types of decisions on pre-1992 lots to the Planning Commission at a public hearing make a determination as opposed to having an individual staff person doing it in the office. That really was the interpretation and the advice of legal counsel at that time and that is how staff moved forward. There were several of you on the commission at that time and you heard various cases that were pre 1992 lots where people wanted to build on the ridgetop and it was letter of the law actually could be allowed, however we did bring it to the commission instead of having an individual staff person make the determination. The ordinance hasn't changed since September, 2006. We have new legal counsel, we have new Department Directors and we got different advice and therefore we have been interpreting the current language of the code differently. That is how it has worked over the past few years. I hope that this might be helpful information as you are considering this. The other thing I wanted to mention was, I didn't see this in your packet, I think Mr. Rowe referred to Exhibit A, and there was a resolution that was passed in September of 2006. This ordinance was passed to change the language of the code but there was also a resolution that was passed where the Council actually wanted the staff to draft up in writing what this alternate is siting process that we follow, get it on paper instead of having it in the heads of the staff. So in this one page document, Exhibit A, we use this currently and started using it in September 2006, we currently use this for any alternative siting. If it is an addition, a remodel, a new structure, it doesn't say in here anywhere that it is limited to only new structures, we use it for everything. Thank you.

***Chair Salazar: This being a public hearing, is there anyone who would like to speak for or against this application, please come forward and be sworn in.***

**John Scanlon, 789 Stagecoach Circle, Santa Fe, New Mexico**

Applicant's house is at the end of cul-de-sac. He stated that he was here to support Mrs. Paulk's application. He has practiced law for 20 years and wanted an ordinance to be clear enough for the citizens to understand. He urged the commission to make it easier to help them get through the process. One last thing, he stated that he recently put photovoltaic cells on his roof. He read the statute of State of New Mexico and it was his view that the city had no jurisdiction over this. He put the yellow sign and Mr. Rowe questioned this. The city waited 3 weeks before they issued the permit that they had no jurisdiction over and Valley View residents came to view the site.

**Bishea Green, 777 Bishops Lodge Rd., Santa Fe, New Mexico**

Ms. Green shares the property line with Ms. Paulk and is in support of her application.

**Owen Nelson, 610 Galisteo Santa Fe, NM**

Designer of the project and as a citizen of Santa Fe and a designer, both Ms. Paulk and he designed the 6000 sq. ft. They designed it so it would have little siting to the neighbors. Escarpment lines fall half way in and half way out and he pointed out that the demarcation lines.

Private citizen she has been in limbo for about 2 years, attorney's present, interject common sense, there are legal issues, but I believe Ms. Walker stated correctly this is about the intent of the ordinance, ....I am appalled that something like this could go on for years which the issues is very clear to me. I would urge you to stick to the original decision

**Sherry Trust-White, 816 Stagecoach Dr., Santa Fe, New Mexico**

She stated that this is a very open house; not a home for a caregiver. She said that Mrs. Paulk isn't intending to rent it out, she isn't building it up to block their view, she showed another site and the site that was the alternative site was very obvious. Her plan is tucked to the side of the house; she has been in limbo for 2 years. It isn't fair that she has been paying lawyer fees.

***Close Public Hearing***

Commissioner Hughes asked staff why a variance is not needed.

**Ms. Brennan:**

There was a point when staff was directed not to make siting decisions and always to go for a variance. At the same time they were required to use Sec. 316 and in 2006 the escarpment criteria and they were advised always to recommend against the variance. When we looked at the case, we concluded that this was permissible under the ordinance and no variance was required.



**Wendy Blackwell:**

When Jeanne and I wrote the text for this ordinance and we had the public hearings and they had the committee working on it, we of course thought that we had tied every loose end possible. We thought we had closed all the loop holes. As soon as we closed the ordinance the specific sentence related to the foothills part came back to us because it is in here several places. Really the intent was outside the ridgetop it didn't matter if it was in the foothills or out of the escarpment all together. As Karen Walker had said earlier, primary was to not build in the ridgetop. However, ordinance intent says less than the visual impacted development. So common sense, even though the wording says in the foothills, common sense was and what we have been doing for a year and a half or since September, 2006 is applying it as ridgetop. We only approve something in the ridgetop if it is going to be less visible. I am going through several of these right now, we are doing alternate siting; sometimes we are comparing a foothills site to a ridgetop site, sometimes we are comparing non escarpment site to a ridgetop site. What the staff is looking at is that Exhibit A listing of what is going to be the visual impact if we have to take out x-number of mature trees in order to have a siting. Or what about getting to the location, do you have to cut a roadway that disturbs these slopes. That alternate siting criteria listed in Exhibit A gives the staff the ability to weigh those things. Does that help?

**Mr. Hughes:**

Do you also compare a no build alternative?

**Wendy Blackwell:**

No, we do not. What we do is we take the design that they give us, the footprint and we apply that same footprint and elevations. You have to give us the exact same footprint with the exact same elevations, etc. You can't ask us to compare a 2-story stair step design outside the ridgetop to a 1-story one finished floor 14' design on the ridgetop. Common sense will tell you of course they will be able to build on the ridgetop. That is one of the reasons that in Exhibit A it specifies and will tell you about the same elevations. But we do not compare it to a no build alternative.

**Commissioner Lindell:**

Sometimes it is not easy to live here but it is worth it. This is the 3<sup>rd</sup> time we've seen this, let me apologize by saying that I have been absent from a Planning Commission meeting one time in the last 3 years and it was the first time we heard this and maybe than we wouldn't be here tonight. But, we have seen this three times, we looked at a variance and we granted a variance, that is what we were asked to do. Than it came back to us and it was presented to this body asking us that rather than granting that variance we were presented the alternative of rescinding that vote in favor of our staff to do an alternative siting. We declined to do that. Now we are back again, the variance that we granted was withdrawn, for what reason I do not know and it just seems that this body has acted in good faith with everything that has been put in front of it. I am not particularly comfortable with overtime, the burden on staff of issuing building permits based on administrative re-siting. I think that is a tremendous burden on staff over a course of time that people come back and say that wasn't right and we didn't have a public hearing. Public hearings are good things. And that is what variance hearings are about, they are public hearings.

I don't think that it is for this body, I don't think it is for staff to make substantive changes in the ordinance or really to change how we are applying the ordinance. I really do think that is the burden and the task of the governing body and that happens with a public hearing. The specifics of this case are mind boggling, the packet was somewhat confusing but I think that on principle with what has been presented to this commission and how we have handled this case in the past, I am satisfied on how we acted on it, and it will be my vote tonight that we continue on that course. Thank you Chair, I yield the floor.

**Commissioner Armijo:**

I am on the same lines as Commissioner Lindell, we are based on getting staff to give us directions on those things we need help with and what I don't understand is why we are asked to grant a variance and then weeks later, months later we are asked to rescind it and now we are asking to approve through staff what maybe should not have been brought up as a variance, and those questions weren't asked by the Commission should this variance even be in front of. It makes it tough on us and I know it makes it tough on you. The escarpment is a tough scenario, I feel to me that at some point you have a board for the Historical, I don't understand why we couldn't have a board for Escarpment. The escarpment is left to watch interpretation, a lot of that interpretation that is a part of the ordinance that needs to be cleaned up so that staff is not with one attorney recommending that staff can go ahead and proceed with giving permission for a permit and then another attorney comes in and gives his interpretation, no, only a variance and then we get another attorney and we are back to not allowing it.

**Kelley Brennan:**

I would like to respond to clarify that this is an appeal from the issuance of a building permit that followed an alternate siting decision. As one of the Attorney's that discussed the escarpment ordinance and its main intent after hearing the variance request and the variance criteria were applied and being disturbed by that and Frank Katz being another we did go back and read the variance and there is a system and procedure for alternate siting that had been disregarded for several years. There is a possibility that people were forced to come before the commission and make variance requests and seek findings that were virtually impossible to meet in the context when there was a code provision that allows them to see alternative siting. And that was the basis for the change and you heard from Wendy what proceeded for a couple of years where no matter what the situation, people were told get a variance. I think the Council expressed a degree of trust in staff but only a degree by adopting in 2006 the administrative procedures that defined what they meant. When Frank and I looked at the ordinance as a whole and looked at these kinds of situations we did believe that siting something outside the ridgetop where there were no foothills in this kind of case, in a buildable site where the structure was more visible than if it were located in the ridge shaft where it would be more visible.

**Commissioner Armijo:**

The one thing to me that as a builder in the Escarpment overlay district have relied on is to encourage the most appropriate use of land. Another question for Karl, why did you drop the

variance? If you had approval from us to proceed for a building what was the purpose of dropping the variance.

**Karl Sommer:**

Being as frank as I can possibly be, I agree with Kelley and I would agree with what Mr. Rowe said that night, it is virtually impossible in some cases to get the criteria met for a variance because it is so strict that going forward to the Council on Mr. Rowe's appeal presented Mrs. Paulk with a very serious risk and it was her determination to go back and withdraw the variance rather than go to Council and then go in to District Court to withdraw the variance and start over. If what we heard when we first came in that there was another method and we did it in other cases but as I think has been clarified, staff position was loaded, this is the way we are going to handle it. So when we got faced with staff's position saying that we have to ask for a variance in order to go forward if you disagree with that you have to appeal that determination as to whether a variance was needed or not. That was just another layer, so people ask for variances; what is the shorter distance between two points its go forward. So we withdrew for that reason and because there wasn't an alternative under the ordinance what was thought there was and variance criteria created a serious hazard to Ms. Paulk.

The Chair would like to ask the commission; "would you like to go in to executive session or to deliberate or would you like to make a motion?" The commission agreed to make a motion.

**Commissioner Lindell made the motion to uphold this appeal, second by Mr. Hughes, 2-3, motion fails.**

**Discussion:**

**Commissioner Armijo:**

By upholding the appeal are we saying that staff is making these calls? I personally feel that it is pretty well written in the planning areas and staff should be able to make these judgment calls. Also the first case that ever came in front of us, I recommended since then first to make site visits, but in this case we would be setting a precedence by not allowing staff to make these calls.

**Commissioner Lindell:**

That is not my intent, this is specific to this. I think that over the course of time and in the very near future I would hope that we would have, or do we have a committee on the escarpment right now?

**Chair Salazar:**

We have a committee on the entire Chapter 14.

**Wendy Blackwell:**

Actually Commissioners, there is a separate escarpment working group that was assembled, separate from the Chapter 14 re-write and the group has been meeting for over a year and a half.

So initially the group came up with a set of recommendations for a change to the purpose and intent and got the OK from the Council's Land Use Sub-committee to move forward on remapping the escarpment overlay. In that re-mapping effort if text on the ordinance needed to be revised to reflect the new methodology that it should be entertained. This group has been analyzing and rolling their sleeves up on it. We are approaching a draft, on Monday we will be meeting with the Land Use Committee at 2:00 pm to do a report out and we expect to get some guidance from them. We don't have a deadline right now, although generally we are anticipating a draft that could go to the public for meetings maybe in the Fall. Hopefully by the end of the calendar year the series of public hearings will be held and then up to Council. Again, general broad information until we meet with the Land Use Sub-committee for direction on Monday. Hopefully that helps you see how soon we may have a revision to this ordinance.

**Commissioner Armijo:**

If we approve this on a variance than we are saying we are not in favor of it and if we approve the variance why would we be denying it now and why would we have rescinded it or not rescinded. It came before us to be able to rescind it and we said no, it is not up to the applicant to uphold the variance and not go through the appeal process with the City Council, I guess that was just their choice. As far as this Commission it was our choice to approve it and it was our choice not to rescind that decision and now we are voting to a certain degree to disapprove it and rescind that decision. Those are my thoughts, thank you.

**Commissioner Mier:**

I tend to agree with Commissioner Armijo, I understand the frustrations and concerns that this may be prolonged for another year and a half. I fail to see the logic, personally I am sorry we are all here tonight, I didn't have the pleasure of hearing it the first two times. Be that as it may, the Commission acted in good faith at the two previous meetings. There have already been decisions made to support this, if we are acting simply because we are frustrated with the process or the lack of clarity that is one thing, but secondly our staff has been asked to do something and they have done a good job, and I won't second guess them. I may not agree with them, but I won't second guess them.

**Chair Salazar** said he concurs with Commissioners Mier and Armijo, at Santa Fe County interpretations change every time you get a new attorney. Our consultant with our code re-write has said you have a bad code when the interpretation can change every other year and I think that is the case with this ordinance. So hopefully we can accomplish a better ordinance for the escarpment overlay district.

**Commissioner Lindell:**

I also want to say that the first thing that Commissioner Hughes asked about is there a consideration of no build, maybe there are times when something should not be built and they don't get permitted. I am really not comfortable at all with turning this process over to staff and I think that over time it is a tremendous burden on staff to make these decisions on alternate sitings and to have that on them. This should come to us with variances the way that this one did.

We are concerned about setting a precedence one way and I am concerned about setting a precedence the other way. We approved this variance and voted very clearly that we wanted it to stay as a variance. We did not want to go the direction of alternate siting. It is not out of frustration, I do not mind doing this work but I do feel strongly that there should be variances and burden should not be on staff. These are huge decisions and also I think that ENN's are important to this process. I know that signs go up in front of places but that is not the same as a public hearing or having an ENN. Also signs go up and in this particular road I think only neighbors could probably see it. If there was an ENN I think that letters need to go to people within 200ft of the site. I have a motion on the floor and a second, so I would call for the question, Chairman.

**Wendy Blackwell:**

Thank you Chair Salazar, there are two things I think might be helpful when considering Commissioner Hughes and Lindell talking about the idea of a no build alternative. In the current language of the code the Ridgetop is a no build zone for any lot that was created or modified after February 26, 1992. That is very clear. In addition there is no density limitation with the escarpment overlay zone. Whatever underlying zoning allows for density and lot coverage, it is the way lot coverage is referenced in the escarpment. That is the only limitation to how much additional square footage you can add in the 40% lot coverage of the escarpment and it is not just roof area, it is graded land and there is more detail in the code about it. That is why staff has interpreted it and we do not have the ability to reject someone's request to do an addition in the ridgetop on a pre-1992 lot unless we had the 40% rule to limit that. Hopefully that helps.

***Commissioner Lindell made the motion to uphold this appeal, second by Mr. Hughes, 2-3, motion fails.***

***Commissioner Mier made the motion regarding Case#2010-15 to deny the appeal, second by Commissioner Vigil, motion carried by a 3-2 vote.***

**G. Business From the Floor**  
**None**

**H. Staff Communications**

Pavilion project went to City Council on April 28<sup>th</sup> and all the cases were unanimously approved.

There will be a Field trip on May 20<sup>th</sup> to Tierra Contenta. Options are to be taken in a city vehicle meeting and departing from City Hall at 5:00 p.m., or meeting at the site if you choose to drive your own vehicle. We will meet at the Tierra Contenta offices and leave at 5:30 pm in a group. (It is where the coffee shop is.) It will be considered a

public hearing so there are some rules to follow. There is no case involved, it is considered a public meeting and the public is welcomed to attend.

## **I. Matters from the Commission**

### **Commissioner Armijo:**

Kelley, in summary we had a lot split with a non conforming building we are asked to do a lot split on. I thought I had heard from staff that if we had a non conforming scenario we couldn't approve it.

### **Kelley Brennan:**

I would need to look at the cases.

### **Commissioner Armijo:**

The Commissioner asked Tamara to set regulations that when we have good regulations, to have infrastructure in place for septic systems problem in the city.

### **Tamara Baer:**

If city services are not within 200 ft., the water and sewer division look at this and that won't make the application correct.

### **Kelley Brennan:**

Cases are coming in more and more and there is no money for infrastructure.

### **Commissioner Hughes:**

Informed the commission members as a reminder that there are two sub committee meetings; Chapter 14 Tuesday at 5:30 pm and Wednesday at noon for the Water sub Redeveloping St. Francis Drive.

## **J. Adjournment**

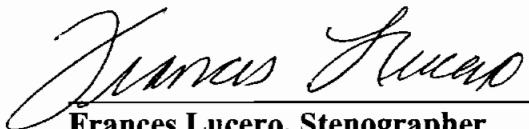
*There being no further business to come before the Planning Commission, Commissioner Mier moved to adjourn at 8:11 pm, second by Commissioner Hughes, motion carried by unanimous voice vote.*

**Planning Commission Meeting  
May 6, 2010**

**Signature Page**

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**John Salazar, Chair**



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**Frances Lucero, Stenographer**