



# Agenda

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## PLANNING COMMISSION

June 3, 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: May 6, 2010

FINDINGS/CONCLUSIONS

Case# 2010-15. 781 Stagecoach Circle Appeal.

- E. OLD BUSINESS
- F. NEW BUSINESS

1. **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 dwelling units 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 (Donna Wynant, case manager) **(POSTPONED FROM APRIL 1, 2010 AND JUNE 3, 2010; WITHDRAWN)**
2. **Case #2010-72. 501 Rio Grande, Unit J-8 Variance.** Sommer Karnes and Associates, agents for John Begeman and Valerie Vance, request a variance from Section 14-5.6(F)(5) for a structure higher than 20 feet within the Foothills Subdistrict Escarpment Overlay District in order to permit a rooftop AC unit. The property is zoned RM-1 (Multi-Family/21 dwelling units per acre). (Dan Esquibel, 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  
June 3, 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 6:15 pm, 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 Montes.	1
<b>Approval of Agenda</b>  <b>No changes from Staff.</b> <b>No changes from the Commission.</b>	Commissioner Lindell moved to approved the agenda as presented, second by Commissioner Armijo, motion carried by unanimous voice vote.	1
<b>Approval of Minutes</b> <b>Minutes: May 6, 2010</b>	Commissioner Gonzales moved to approve the minutes as amended, second by Commissioner Lindell, motion carried by unanimous voice vote.	1-2
<b>Finding and Conclusions</b> <b><u>Case#2010-15.781</u></b> <b>Stagecoach Circle Appeal.</b>	<p>The Chair asked for direction from the City Attorney as to next steps. The City Attorney advised that the Commission make a recommendation and motion to follow.</p> <p>The Chair asked for direction from the City Attorney as to next steps. The City Attorney advised that the Commission make a recommendation and motion to follow.</p> <p>Commissioner Lindell moved to approve the Findings/Conclusions, Case #2010-15 with the recommendation of eliminating #28 under findings of fact and #3 under Conclusions of Law, second by Commissioner Gonzales, motion carried by voice vote,</p>	2-3

**Index Summary of Minutes  
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	5-1.	
<b>Old Business</b>	None	3
<b>New Business</b>		
<p><b>1. Case #2010-23. Ernest Pacheco General Plan Amendment.</b> 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 dwelling units per acre) to Mixed Use. The property is located at the southwest corner of Rufina Street and Lopez Lane. (Donna Wynant, case manager)</p> <p><b>(POSTPONED FROM APRIL 1, 2010 AND JUNE 3, 2010; WITHDRAWN)</b></p>	1. Withdrawn	3-16
<p><b>2. Case #2010-72. 501 Rio Grande, Unit J-8 Variance.</b> Sommer Karnes and Associates, agents for John Begeman and Valerie Vance, request a variance from Section 14-5.6(F)(5) for a structure higher than 20 feet within the Foothills Subdistrict Escarpment Overlay District in order to permit a rooftop AC unit. The property is zoned RM-1 (Multi-</p>	<p><i>Commissioner Gonzales moved to approve case #2010-72, second by Commissioner Bordegaray.</i></p> <p><i>Commissioner Gonzales offered a friendly amendment to his motion: I would like to amend the motion to ask that they paint this unit as it meets the intent of the escarpment ordinance.</i></p>	

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Family/21 dwelling units per acre). (Dan Esquibel, case manager)	<p><b>The Chair called for the vote:</b>  Commissioner Lindell: no  Commissioner Armijo: no  Commissioner Bordegaray: yes  Commissioner Hughes: no  Commissioner Gonzales: yes  Commissioner Montes: no</p> <p><b><i>Motion fails: 4 to 2</i></b></p> <p><b>Commissioner Armijo moved to deny Case #2010-72, second by Commissioner Lindell, motion carries by a 4-2 vote.</b></p>	
<b>Business From the Floor</b>	None	16
<b>Staff Communications</b>	Informational	16
<b>Matters from the Commission</b>	Informational	16
<b>Adjournment and Signature Page</b>	There being no further business to come before the Planning Commissioner Armijo moved to adjourn at 7:45 pm, second by Commissioner Lindell, motion carried by unanimous voice vote.	16-17

**PLANNING COMMISSION**  
**June 3, 2010 – 6:00 P.M.**  
**CITY COUNCIL CHAMBERS**  
**MINUTES**

- A. John Salazar, Chair for the Santa Fe Planning Commission called the meeting to order at 6:15 pm.**

**ROLL CALL**

**In Attendance:**

**John Salazar, Chair**  
**Signe Lindell, Vice Chair**  
**Bonifacio Armijo**  
**Angela Schackel Bordegaray**  
**Ken Hughes**  
**Estevan Gonzales**  
**Reuben Montes**

**Excused Absence:**

**Dolores Vigil**  
**Mike Mier**

**Others Present:**

**Kelley Brennan, City Attorney**  
**Tamara Baer, Planning Manager**  
**Donna Wynant, Senior Planner**  
**Matthew O'Reilly, Director, Land Use Development**

**Fran Lucero, Stenographer**

**B. PLEDGE OF ALLEGIANCE**

The Pledge was led by Commissioner Montes.

**C. APPROVAL OF AGENDA**

No changes from staff.  
No changes from the Commission.

*Commissioner Lindell moved to approved the agenda as presented, second by Commissioner Armijo, motion carried by unanimous voice vote.*

**D. APPROVAL OF MINUTES AND FINDINGS/CONCLUSIONS**

**MINUTES: May 6, 2010**

Page 25: Tamara Baer, last word: ~~correct~~ should be: connect  
Commissioner Hughes: ~~Water Sub-Redeveloping~~ should be: Long Range Sub-committee

*Commissioner Gonzales moved to approve the minutes as amended, second by Commissioner Lindell, motion carried by unanimous voice vote.*

## **FINDINGS/CONCLUSIONS**

### **Case# 2010-15. 781 Stagecoach Circle Appeal.**

Commissioner Lindell stated that she was going to move that they do not approve the findings and fact because Item #28 under findings and facts, she did not think that was one of their findings and under conclusion of law in #3. As far as the case goes she knows that they did deny the appeal but it was not part of that case that the Planning Commission said that the staff has the authority to approve alternative siting which both of those items refer to.

Commissioner Lindell moved not to approve Findings/Conclusions, Case #2010-15, second by Commissioner Gonzales, motion carried by unanimous voice vote.

The Chair asked for direction from the City Attorney as to next steps. The City Attorney advised that the Commission make a recommendation and motion to follow.

Commissioner Lindell recommended that Item #28 [Staff has the authority under the Ordinance and pursuant to Exhibit A to approve an alternate siting that is not in strict compliance with the Ordinance] be eliminated under Findings of Fact and item #3 under Conclusions of Law - [City staff has the authority under the Ordinance and in accordance with the procedures established in Exhibit A to approve an alternate siting for the Project within the Ridgeway.]

Commissioner Lindell moved to approve the Findings/Conclusions, Case #2010-15 with the recommendation of eliminating #28 under findings of fact and #3 under Conclusions of Law, second by Commissioner Gonzales, motion carried by voice vote, 5-1.

## **E. OLD BUSINESS**

None

## **F. NEW BUSINESS**

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Tamara Baer: This residence is addressed at 501 Rio Grande – Unit J-8. The residence is part of the Rosario Hill Condominium development and most of the complex as you will see in the graphics in the packet is in the foothills of the escarpment. Tamara stated that the escarpment is defined strictly by mapping the escarpment district, it is not a function

of height it is strictly that somebody went out and mapped it. Where the line is drawn on the map and subsequently transferred to a digital version and that is where the escarpment district is. The escarpment district is composed of two parts, the ridgetop at the highest section which goes along the ridge and also the foothills below that which is also strictly defined by mapping. This particular location is entirely within the foothills of the escarpment. There are different height restrictions in those two districts; the ridgetop vs. the foothills. Sec. 14-5-6(K) – Variance: 1) Where the Planning Commission finds that extraordinary hardship may result from strict compliance with these regulations, it may vary the regulations so that substantial justice may be done and the public interest secured; provided that such variation shall not have the effect of nullifying the intent and purpose of these regulations. From a lay perspective the height is 14' at the highest point, in other words, at the highest point of the slope you can't go any higher than 14' above the natural grade and at any portion of the slope you can't go higher than 20' of the undisturbed natural grade. The third aspect of the way the height is defined says that the highest point of the structure includes, parapets, clear stories, anything basically other than chimneys. But the definition of height pertains to all structures, which is why in the staff report the next definition defines how structure is defined in the code. The A/C unit is the issue here, is anything that is attached to something, having a fixed location on the ground. That is included so there is no question that the actual air conditioning apparatus is a structure and the height is measured on that structure and that is the issue here. There are specific criteria for reviewing the variance in the escarpment and those are different than general variances. She asked the Commission to refer to page 2 of the Staff Recommendations: Sec. 14-5-6(K) – Variance: 1) Where the Planning Commission finds that extraordinary hardship may result from strict compliance with these regulations, it may vary the regulations so that substantial justice may be done and the public interest secured; provided that such variation shall not have the effect of nullifying the intent and purpose of these regulations. There is a second section to that; 2) In granting variances or modifications, the Planning Commission may require such conditions as will, in its judgment, assure substantially the objectives of the standards or requirements so varied or modified.

History on this development, the original builder who built this unit and the one next to it, on those two units that builder put internal ducting that went to the roof with the idea that an air conditioning unit could be placed on the roof. Subsequently there was another builder and all the other units in the complex were ducted, if they were to be installed but future owners would be ground mount. Only these two units were for roof mounts. The situation that caused a need for the variance came to the city's attention by means of a complaint; the city would probably not have known of this. If someone were to install an air conditioning unit with this internal ducting, the plumber would come to the city for the permit. The person who installed the air conditioner and it was not the owner did not come in for a mechanical permit, so the city had no knowledge of this happening. The complaint was after the fact.

The fact that it is in the escarpment district would not only have required a mechanical secondary permit, it also triggered the need for a permit to build in the escarpment district. There were two permits that were not taken out that should have been taken out and would have been caught by the mechanical permit committee at the city. The position of the city is that they cannot support the variance as it does not comply with the code.

Wendy Blackwell: She addressed the commission and added that one word actually makes a difference where they talk about the 14' height on the high side or 20' height on the parameter is measured from natural grade or finished grade not finished floor. Ms. Blackwell referred to memo of May 10<sup>th</sup> (included in the packet); at that point there was some information that had not been submitted by the applicant but actually in the memo she wrote that it was unclear what the applicant submitted to staff for review actually were elevation drawings from the permit for this particular unit. Since then, it has been verified that what they submitted was from that specific permit. They also did submit the second amended development plan also included in the packet.

Ms. Baer said that if the Planning Commission chooses to approve the variance staff would ask that three conditions be placed, two have to do with the two permits that were not secured and they would ask that the applicant come in and get the permits from the city, and as Ms. Blackwell points out in her memorandum of May 10, 2010 that the applicant would also need to submit a lot consolidation plat and the second amended development plan for the condominium development.

***Sworn In:***

**Joseph Karnes, 200 West Marcy Street, Santa Fe, New Mexico**

(Exhibit A) Documents distributed by Mr. Karnes.

Mr. Karnes appeared on behalf of the property owners of the condominium, John Begeman and Valerie Vance who are here tonight to answer any questions you might have. Information handed out has one letter received from Ms. Vance's doctor which he will touch on in a couple of photographs as he goes through the presentation. This application is before you because of a series of circumstances and errors involving the original developer of the condominium unit as Tamara explained and other errors that started about six years ago. The unit was built in about 2004 or 2005 and he realizes that there have been references to some earlier dates in material they have submitted. John and Val became involved over a year ago when they searched for an ultimately purchased the condominium unit that met their desires and their needs and one of which was central refrigerated air conditioning. Dr. Pamela A. Dowell recommended the refrigerated air due to Ms. Vance's severe allergies. Having refrigerated air conditioning was a prerequisite to their purchase of the unit. They looked at many units in this town and ultimately settled on this one. They saw that it was plumbed, as Tamara explained, for central air conditioning. Although at the point of purchase it did not have the air conditioning unit installed. It was clear that it was designed to accommodate such a unit and the way the unit was plumbed there was only one place for it to go, on the roof. They did their due diligence before purchasing, they asked the real estate agent to assure that the air conditioning could go in the designed location. The real estate agent confirmed that it could go on the roof location so long as it was a low profile unit, and it is, there is information in the packet that confirms this. After purchasing the unit, John and Val hired a contractor to install the unit in the designed location. Since then they have learned a couple of disturbing pieces of information that have led them here tonight. First, the original unit was plumbed, vented and designed and approved for roof top air conditioning unit. We have investigated how this came to be and it is our understanding that when the first developer went in to do the infrastructure of the condo unit they ran in to a sewer line which resulted in a need to raise this unit and all the other units in a row



about 4' to accommodate existing infrastructure that wasn't known of the time that the application went through the review process. In the two photographs handed out, they are taken from below, east of the unit showing the retaining wall and the finished floor height of the units all along the street that end at John and Val's unit, J-8. It appears to me that the original design would have avoided that retaining wall and been lower, but as a result of this existing infrastructure the unit had to be raised. What happened was the whole unit got raised up, and ultimately it was determined that it poked through higher than 20' maximum height. What happened, they took the easy way out, they locked off the air conditioner, simply built the building and they didn't re-design, they didn't put the venting duct work in the same way that the future units went in. So that the air conditioners have the units on the ground and they didn't do this on Unit J8, it sat there for four or five years until John and Val came around and bought the unit with the Air Conditioning on the roof top. I would point out that in granting the variance, precedence is one of the concerns that you need to address and given that the other units in the row already have air conditioning on the ground. As far as the rest of the development goes, there would not be any precedence effect, only the adjacent unit in this development, J-7 which does not have air conditioning on the roof. That is a minimal situation compared to the potential to have air conditioners on all the other units. That is a fortunate situation that the subsequent developer caught, redesigned the units properly, this one didn't get caught and resulted in the problem that we have here. As of 2005 when the unit was constructed the scenario was set and 4 years later John and Valerie became the unfortunate and un-winning victims of the situation that was caused by others, no one in this room as far as I know was involved in that.

Now, one could take the position that this is not the city's problem, but rather John and Val's, the real estate agent, the original developer perhaps. But there are compelling reasons why this variance request warrants your approval. First of all, the unit was designed, constructed and approved in a fashion that was intended to have a roof top air conditioning unit. If the unit didn't need to get raised as a result of field conditions, you would have a structure at the height that is out there with an air conditioner on the top of the roof. If you approved the variance that is exactly what you would have. The appearance of the building would not be any different, that is what was originally planned and approved. Second of all, the escarpment ordinance, the purpose is to protect public views. The city is not in the business to protect private views. In this case, Rosario Hill is substantially surrounded by existing condo's and single family residences, it is a developed area. I drove around there and there are almost no spots where the air conditioner unit can be seen from a public street. There is one small location on Rosario to the west in between two buildings where I caught a glimpse of it. So approval of the variance request would not do violence to the purpose or intent of the ridgetop ordinance to protect public views. No other buildings in the complex need A/C on the roof as they have it on the ground. Therefore, there would be no precedential effect on the other buildings. In sum, the unfortunate circumstances are not the fault of them or anyone in this room. You have the ability to resolve the predicament they are in having purchased this unit and having the need for air conditioning. Doing so will not do any harm to the purpose or intent of the escarpment ordinance. The appearance of the building would be no different than the building that was designed, approved and constructed, it is a 2-story condo with an air conditioning unit on the roof. The difference is that it is slightly higher in stakes but the building is the same as it was initially approved.

Finally, we ask for your support in granting this variance and in solving John and Valerie's predicament, we appreciate your consideration. I stand for any questions and would like to reserve time for rebuttal if there is any opposition.

### **PUBLIC HEARING:**

#### ***Sworn In:***

#### **Milton Combs, 501 Rio Grande, Unit D-4, Santa Fe, New Mexico**

I am the President of the Pueblos del Rosario HOA. We are the Condominium complex immediately west from the location seeking the variance. The unit that is seeking the variance does not directly affect us. The gentleman is correct; it is difficult to see from most places. He is partially correct in his assessment of the precedential value; there are units that are not yet built in this complex, they presumably will be once the economy improves. Right now they have not begun construction. We are very concerned that other people will adopt the cheat first and ask questions policy of coming in and putting the air conditioner on and then requesting a variance. We don't have an objection to this particular one, we are more concerned about future ones. We have two suggestions we would like to offer; one is that there would be a disclosure statement to be signed by home buyers, something could be prepared by city staff and the Santa Fe Association of Realtors saying, "I, the purchaser of this home understand I am in the escarpment overlay district or historic district and need to do some more work before I can make any modifications to the building, etc." It doesn't need to include all the details it just needs to say; "I have been told about this ahead of time", it would be nice to have that signed by the real estate agent to help insure that the home buyer knew this beforehand and wasn't just another one of those documents you sign at closing, and 2) we would like to request that all rooftop air conditioning units or anything similar to this be painted so it is not shiny, reflective glaring, could be the same color of the parapet or the roof, or the surrounding terrain. The idea is to make it blend in and reduce the glare.

#### ***Close public hearing.***

Mr. Karnes: I appreciate the comments of the previous speaker, I would just point out that as far as subsequent or future units that would go through the application process and staff and the city would have the opportunity to review those applications. The opportunity exists to insure that this circumstance does not occur. I just wanted to point that out.

Ms. Baer: Note for the record that Mr. Comb's letter was distributed to the Commission this evening. **(Exhibit B)**

Wendy Blackwell: Chair Salazar, Commissioners, the second point that Mr. Combs mentioned about the color blending in or no reflection; that is actually in the ordinance. So had they come in for a permit or when they do come in for a permit, if you grant the variance that will be required by code.

#### ***Public Hearing Closed***

**Discussion:**

Commissioner Armijo: Do we have photos of the existing unit?

Mr. Karnes: Distributed pictures that he took on this date of the unit.

1<sup>st</sup> photo was taken on the east street of Del Norte, it is a cul-de-sac or dead end street, and it was taken before you get to the end of it giving you an uphill view. I am not sure if this is a public or private street. This is the only location I could find where you can see the unit. It is kind of dead centered, right in the center of the photo. Second photo is NE of unit J8 and you can see it poking up from the parapet.

Commissioner Armijo: Has there been any verification of the datum's as far as the natural grade datum vs. the top of the parapet so we know what we are dealing with. Has it worked out so that we know what the datum is suppose be and what the parapet height should be, are they within that realm or not?

Wendy Blackwell: Staff had requested that there be verification, what we received is the elevation drawing which shows the two dimension, finished grade and what the parapet should be. We have not received verification of the field datum, there was not a surveyor who went out to shoot those elevations for concurrence.

Commissioner Armijo: I would suggest to this commission that if we don't have any datum's, we could be working with any heights. Whatever was approved by the development initially should have been a finished grade datum was required, a surveyor should be able to verify that datum and indicate the height of the parapet. Then you know where the 20' elevation is under it or above it. I am not sure whether we approve or disapprove we don't know what heights we are working with. I am surprised that they don't have the information available to us. I personally would not want to make a decision without knowing what those heights are. That is what you are dealing with in the escarpment, you are dealing with the datum's that are suppose to be provided and natural grade and there you build up to the maximum. Without having those I don't know how you can make a decision.

Commissioner Gonzales: This commission has made variances in the past before that seemed reasonable. I know what it is like to suffer from allergies. I look at this photo and see that this structure is much taller than the air conditioner. Sometimes we take these a little too far and defeat the purpose.

Commissioner Armijo: What type of heat does this unit have.

Ms. Vance: Radiant floor heat.

Commissioner Armijo: As a builder, I would recommend an air purification system if you have allergies, which would help more than an air conditioner. An air purification system will take care of pollens, an air conditioner will not do this. A swamp cooler does bring in more pollen.

Commissioner Gonzales: I went to other places to buy an air purification system and there is a disclaimer that talks about the way the purification system is made and could cause cancer. We took it back, if something happened in 20 years or so, I didn't want to take the chance that it was caused by the purification system. Commissioner Armijo, as a builder is an expert and knowledgeable in this area.

Commissioner Armijo: Has the mechanical contractor been notified about all of this and how is he addressing this concern?

**Sworn In**

**Valerie Vance, 501 Rio Grande Avenue, Unit J8, Santa Fe, NM**

When we got the first notification from Charlie Gonzales we called Matt who is the owner of Pro-Tech Air Conditioning and we asked if there was any other way to do this. He said anything can be done but he said everything was already on the roof.

**Sworn In**

**John Begeman, 501 Rio Grande Avenue, Unit J8, Santa Fe, NM**

The A/C contractor was also asked about permitting and he said he was not required to get a permit for an A/C unit. We also asked Charlie Gonzales about this and he said it was rare for an A/C unit to get permitting through the city. The point about Valerie's allergies is that she does relief from the A/C unit, we can tell the difference when we have the house shut and when we have the A/C running it relieves her condition. We are reluctant to try another method when the one that we are using is relatively simple and straight forward. The duct work cannot be used for heating and cooling, it can only be used for cooling. Not only does the duct work main pipes coming down to small pipes from the second floor roof going to the bottom floor; not only do they get smaller and smaller as they go down; all of the power – the power box that controls the thermostat controls go to a pre constructed pad on the roof. When we purchased this unit we specifically asked both the seller's realtor and our realtor if we could put an A/C unit on the roof because we saw that there wasn't an A/C unit ready. The seller's realtor told us, "well you could have an A/C unit but it doesn't get that hot in Santa Fe." We asked specifically of our realtor, "this is a requirement of this sale; we will not purchase this unit unless we can have this A/C unit here." She said she would check and get back to us. About 3 days later she got back with us and said; "you can have an A/C unit on the roof as long as it is low profile." Our assumption was that she had checked with city officials or whoever had to authorize this information. We were satisfied at that point that the realtor, our representative had found this information out for us would have found this out. The other point, we requested that the A/C unit be installed by the seller. He refused to do that and nothing in his disclosure statement indicated that there was any problem with the A/C unit on the roof. From what we found out later, last few months, there apparently was a problem. We knew nothing about these problems, we assumed that our realtor had done her due diligence which we feel she is required to do and everything was ok. A few months later, Charlie Gonzales came up and said he would not be up there if it hadn't been for the complaint, but I have to follow up on the complaint.

Commissioner Armijo: I agree with Commissioner Gonzales that sometimes this process might be overkill as to how we look into these cases especially on an A/C unit. There are plenty of options for A/C units that don't have to be roof top units. I feel like the mechanical contractor did not give you all the information available to you.

Wendy Blackwell: I wanted to add that when Charlie was working with the Vance's on this matter to come up with a resolution, they did go through the steps of finding out with the current ducting, how they could take it off the roof and put it on a porch. They did do some research and options they considered. It would be helpful to hear the options they considered.

Mr. Karnes: They looked at all the different alternatives and spoke with the A/C contractor and architect to see if could build a pad and put the A/C within the height limitation and have the air go up to the roof where the duct work goes and back down to the unit. We got to the point where it just was not feasible. Certainly you can build anything but from a cost stand point and an efficiency stand point it was not feasible. This unit was constructed with the venting and duct work in place. I don't know from that aspect what the construction cost was. But what we are talking about is turning all of that work that is visible on the inside of the unit to kind of a white elephant. (*Exhibit C – internal photographs*).

I would just point out that I appreciate your comments Commissioner Armijo. This started out with a red tag, we looked at the construction drawings which showed the parapet at the raised elevation at 20'. We accepted and we didn't take on the argument that we don't poke up into the escarpment or we wouldn't be here. I don't think that is the case and it wasn't something we were going to pursue. The red tag was issued and the city wasn't going to give the initial analysis that the air conditioning was about the height limit.

Commissioner Hughes: Questions for staff, this photo, it appears that the chimney is the same elevation as the A/C, same height, does that matter.

Ms. Baer: Chimney's are accepted and it is actually on page 2 of the staff report. Where it talks about you can build a chimney's 3 feet above the immediately adjacent roof.

Commissioner Hughes: This is for Kelley, buyers all have to know that zoning is bounded on the powers that each city is given to protect the public. Based on the public's, needs health and safety, and I don't know that I saw it to be individual health, but isn't it that we should not judge the case on individual health. This has come up three times this year. Is one's individual health something we are supposed to consider when we make the case determination.

Kelley Brennan: No

Commissioner Gonzales: Aren't we here for the health, safety and welfare of the public. We could argue this is a health issue. This commission has made variances before when we have taken into consideration someone's health.

Kelley Brennan: The Commission has granted variances based on specific health conditions certainly, we have not looked at hardships under the circumstances, generally that is not part of the criteria to support a variance.

Commissioner Gonzales: I know that allergies are not a disability but in this case that there is a disabled person with very specific health needs, for whatever structures that may need to accommodate the variance.

Commissioner Lindell: On page 1 of the variance criteria, it says that this residence was constructed in the mid 1990's, is that correct? I thought these units were being constructed in 2004-2005.

Mr. Karnes: I specifically addressed that at the beginning of my comments, and noted it way my mistake and acknowledged that it was constructed in 2004-2005 timeframe so I stand corrected and apologize for the typographical error.

Commissioner Lindell: Was the applicant provided a property disclosure by the seller?

Mr. Karnes: Yes. I don't recall specifically, my recollection is that it identified that there was an infrastructure for A/C. As Mr. Begeman explained it was a specific topic of discussion prior to the purchase of the unit.

Commissioner Lindell: Being a realtor, I am wondering if there was a property disclosure to the buyers.

Mr. Karnes: Yes it was.

Commissioner Lindell: The disclosure form that I am familiar with typically does not have a section on it of all the mechanics of the actual, i.e., does it have air conditioning does it not have air conditioning. What was the disclosure?

Mr. Karnes: I don't have it in front of me I haven't looked at it for some time. It is part of the discussion with the agent. I can't answer your question, I can't recall specifically.

Commissioner Lindell: I think that is important and was the property marketed by the seller as being air conditioned.

Mr. Karnes: Since Mr. Begeman was involved in the purchase it is probably better answered by him. But I would point out that the marketing goes on until the closing of the sale, and it was a specific as it has been explained in detail that it was a specific topic of discussion. It was apparent since the venting and the ducts were available for the A/C. My clients knew or were aware of which design to go and ask specific questions, can it go there, and the answer was yes. So this supersedes any written disclosure that was handed out, this was a pre-condition of the sale as Mr. Begeman described to you.

Mr. Begeman: There was no disclosure made regarding the air conditioner. Nothing indicated that there was a problem, that there had ever been a problem. And we directed several questions in this regard and also had a home inspector to specifically check the wiring, the thermostat control, the pad, the duct work and everything to make sure that it was sufficient for the purpose it was meant to be. At many points during our transaction with the realtors did we direct the questions on the air conditioning. At no point was it disclosed to us that there was ever a problem and we have learned since then that there

apparently was a problem and that the owner of the unit did know about the problem but he did not disclose it to us.

Commissioner Armijo: If air conditioning was so critical to you why did you make the sale without the air conditioning being installed? I have lost sales where people have wanted air conditioners and we don't provide them. It is surprising to me that if it was so critical for your health why did you not make it a condition of the sale.

Mr. Karnes: There was discussion and the request made that the sellers install the air conditioner, it was a matter of dollar and cents. Based on the representation of their agent and the other agent who said it could be installed as long as it was low profile. This matter with the city did not come up at all, maybe it was hidden from them but it didn't come up until months later after the complaint was made. There was no reason to suspect that it was only a matter of dollars and cents issue in the sale that they were willing to take on and do.

Commissioner Armijo: You mention that they had backed up from wanting to install it, wouldn't that have put up a red flag.

Mr. Begeman: The seller's realtor told us why they hadn't installed the A/C unit on the roof. They said a lot of people don't want A/C and they leave it up to the buyer to decide whether they want to put forth the money for an A/C unit. We said OK, they made that decision based on their marketing and they think they have a wider scope of potential clients without the A/C, and we trusted that this is why they didn't put it up initially.

Commissioner Lindell: Is this a primary residence?

Mr. Begeman: We just sold our residence in Tucson, so it is our primary residence. We will move here full time in 2-weeks.

Commissioner Lindell: Of the ideas that you researched and proposed for getting this air conditioning off the roof and I understand the feasibility. Often times the feasibility has to do with cost, that it just isn't feasible and doesn't make sense cost wise. Is there a way to get this air conditioner off the roof and use some new engineered way.

Mr. Karnes: The answer is yes; let me point out that this is a condominium. Any addition to the exterior will have to go through an amendment process through the condo association. We investigated that and it is very possible that the applicants could be caught in a catch 22. The Condo Association has indicated great reluctance in considering this request. As far as feasibility goes, you are absolutely right it is a mechanical issue, this unit was constructed and approved to have roof top A/C, so both mechanically and to take the air up and down would be a big cost.

Commissioner Lindell: So did you say that you have already contacted the Condo Association?

Mr. Karnes: We have had discussions with them.

Commissioner Lindell: Is this the absolute lowest profile unit that can go on this roof?

Ms. Vance: 33” is the shortest A/C unit.

Commissioner Lindell: Can there be some agreement made if you had an ENN talking about a coyote fence, talking about putting a tree up, etc.

Mr. Karnes: You will notice that the gentleman from the condo association to the west spoke about an indirect concern about precedence. You don’t have people appearing before you tonight or submitting letters, as far as I know, or objecting to the air conditioner. At the ENN meeting various mitigations were discussed and if you look at the photo that was taken of the unit from Rosario Street to the East, you can notice that the A/C unit is a little bit darker than the walls. The initial thought is that painting it so that it will blend in with the walls would be a sensible mitigation that would help it blend in. I think that is common sense so that it something that John and Val would consider.

Commissioner Lindell: I am troubled; we have been at this place so many times before. We have a lack of disclosure and I take no pleasure of this for the applicant. I am at a loss that this unit was sold without an air conditioner. An air conditioner gets attached to this unit with no permit and somebody wasn’t happy or they wouldn’t have called in. To say that it is all fine with the neighbors because no one is here or that the ordinance is only to protect public views rather than private views, I beg to differ about that. Neighbors don’t like things on other neighbor’s roofs that obstruct their view or air conditioning units that they have to look at. These are problematic things. This unit was marketed and sold without an A/C, which we are clear about. The disclosure, I am not clear about and I am also not clear about, as Commissioner Armijo has asked, the real heights are on these walls. Was this unit ever occupied or was it vacant from the time of build?

Ms. Vance: It was a model

Commissioner Bordegaray: In terms of the inspection process, it was a model built in 2004 and it wasn’t occupied. Was a final certificate of occupancy with the check list done and in that process it would have been revealed that it exceeded the height.

Ms. Blackwell: Had the final building inspection been done at a time that the unit was on the roof at that time it would have required the unit to come down for a variance to be granted. At the time that the certificate of occupancy was granted, even though the original developer still owned the unit and didn’t sell it, it still was from the view of the city of Santa Fe standpoint, it was occupied and we gave it a certificate of occupancy. They were utilizing it in attempting to sell it.

Commissioner Bordegaray: If there had been a unit there it would have been caught?

Ms. Blackwell: We do an escarpment inspection; at the time that these units were built we were doing only one final escarpment inspection at the end of the building process. You would have your grading and drainage and your escarpment final inspection just before your building final. We have since added an interim escarpment inspection for units like this one where they are so close to the maximum height, we actually go out at frame so we don’t have the 6” or 18” problem after the stucco and finish.



Commissioner Bordegaray: That point was raised in Mr. Combs letter to us. I have a hard time with this one to as a planner, but I want to comment on how something like this could have a precedence issue. I don't think it is petty because of the accumulative effect of rooftop clutter and I regret this type of situation and certainly appreciate the reason for needing the air conditioning. I do want it to remind us why we have the escarpment overlay district ordinance and the intent of it. We have struggled with it and it is worth the fight. This may be my own take; I didn't grow up with A/C in New Mexico and you were probably told that since many of us feel that way, that is your choice. However, that is the precedence in this settlement in Santa Fe, air conditioning is not a way of the past. You moved from Tucson and you know heat and you also know swamp cooling. I think that I also agree with Commissioner Armijo, if it was such an important aspect of the dwelling unit why you didn't get the assurance you needed and deserved to have. I will go back to the reasonable part which is, what is the solution in terms of the screening? I don't know if I would agree to grant a variance because of the precedence it might set but I would certainly rather be able to say that the painting it a matte tone would be better, but it doesn't take away the issue that people put A/C units on flat roof houses. It is a visual intrusion.

Commissioner Gonzales: How much did your client pay for this house?

Ms. Vance: \$390,000.

Commissioner Gonzales: You have a \$390,000 investment of which living in it is miserable without the air conditioning.

Ms. Vance: Our living room is on the 2<sup>nd</sup> floor, so today if we had the windows open it probably would be 90 degrees in there and that is what makes me uncomfortable. I like Santa Fe, it is beautiful, I respect everything, and we got like a custom color that was closest to the roof. When we moved in there, I thought being a business owner that when I came and saw all those vents in every single room, radiant floor heating and the realtor telling us it was OK, we took their word for it. We said we wanted the home inspector to tell us that it would work.

Gonzales: Did you live in Santa Fe before this? Have you had allergies before this? At the time that you bought this house did you have allergies?

Ms. Vance: I did not live in Santa Fe before this time. We purchased the unit in December, put in the A/C unit in the Spring because we didn't want to have the allergy problems. We moved up in the spring and had the A/C unit. I have had allergies from Michigan, to Tucson to Santa Fe. My father was a general contractor and I know that to put those vents in place a permit had to have been secured.

Commissioner Gonzales: My feeling is as a Planning Commissioner, if I want to put in an air conditioner, I think the last thing on my mind is that there is a sales tag that says, PS: make sure you call the Zoning Department for a permit. That is the last thing on your mind, for the record I feel that this is a health issue and I support it.

Commissioner Armijo: One last question, did you get permission from the association to mount this unit?

Mr. Begeman: No.

Ms. Vance: We thought it was all done by complying with it being a low profile unit. We have an e-mail from the realtor telling us, I know how important it is for you to have an air conditioning unit and it is OK to have an A/C as long as it is low profile.

Mr. Begeman: We discussed this with the management representative who did not indicate that there were any problems and she works with the association. We didn't think there would be any problems because those units, J7 and J8 were set to go for the roof A/C.

***Commissioner Gonzales moved to approve case #2010-72, second by Commissioner Bordegaray.***

**Discussion:**

Commissioner Bordegaray, I want to ask my fellow commissioners and staff, just to think about what we are going to do next. What is the answer to some of these things. I don't want to deny this case. I don't get any satisfaction whatsoever, and it certainly doesn't make me feel like a very hospitable Santa Fean for people who are moving here, I am struggling with this and I would like to know if anyone has some wisdom on this, how we are going to sort through these here on out. Whether that means changing the ordinance or whatever it is, let's do it. A lot of people fail in their jobs, and here we are right now; builders, realtors, and you probably aren't real proud of them right now. I am not real proud of this right now. Here we are a city of tolerance, a city of live and let live, that is what this place was. I don't like to sit on the Planning Commission and talk about this for an hour and a half.

Commissioner Armijo: Doing a parapet to wrap around so the whole structure could be disguised?

Ms. Blackwell: We had a somewhat related instance where we had duct work, although the duct work that was under the height limit for escarpment but it was going to be exposed. In that particular instance we had to paint the duct work to match the parapet height because that was 8" or 9" that rose above the parapet. That blended better and was going to be less than a visual impact from raising the parapet all the way around the house. For aesthetic reasons they were not going to want to raise the parapet just where the duct work was. I am giving you an example of what we have looked at in the past.

Commissioner Armijo: The only reason I am basing it on that is because we allow chimneys to be 2' higher. This is where the mechanical contractor should be held responsible for this and maybe working with him to do an interior air conditioner that is not roof top.

***Commissioner Gonzales offered a friendly amendment to his motion: I would like to amend the motion to ask that they paint this unit as it meets the intent of the escarpment ordinance.***

Mr. Karnes: Chair Salazar and Commissioners.

Commissioner Hughes: Mr. Karnes we have a motion on the floor, and we are not going to hear anything else from the floor.

Chair Salazar: Commissioner Gonzales has the floor.

Commissioner Bordegaray: The intent of the escarpment overlay district ordinance is visual and to protect views and it is implemented through height standards as well. It doesn't stand alone, so if something is altered to be less visually intrusive, it meets the spirit of the ordinance. I will support this motion to screen, because I believe it meets the intent of the escarpment ordinance and its impact.

Commissioner Gonzales: Is staff going to know what to do with this if we pass this tonight.

Matthew O'Reilly: I have never cringed at anything the Planning Commission has ever done; I am cringing because of my pneumonia, not because of anything you have said. In terms of whether the motion is sufficiently clear as to what staff has to do I would like to ask Wendy Blackwell to address that.

Ms. Blackwell: Commissioners, the one piece that I got a little confused on, honestly is when you say camouflaged my thoughts are if the staff works with the applicant and it seems like painting would work we would then be meeting the criteria. But when you said the word screening that to me means something different meaning a fence or a raised parapet. If you are comfortable having staff work with the applicant and making the determination as to what is appropriate within the intent of the code to reduce the visual impact that may be vaguer than you want. But that gives us, the staff to work with them on site specific impact.

Commissioner Bordegaray: I did not mean screening; I would not like to see that. I mean paint.

***Commissioner Gonzales moved to approve case #2010-72, second by Commissioner Bordegaray.***

***Commissioner Gonzales offered a friendly amendment to his motion: I would like to amend the motion to ask that they paint this unit as it meets the intent of the escarpment ordinance.***

**The Chair called for the vote:**

Commissioner Lindell: no

Commissioner Armijo: no

Commissioner Bordegaray: yes

Commissioner Hughes: no

Commissioner Gonzales: yes

Commissioner Montes: no

***Motion fails: 4 to 2***

**Commissioner Armijo moved to deny Case #2010-72, second by Commissioner Lindell, motion carries by a 4-2 vote.**

**G. BUSINESS FROM THE FLOOR**

**None**

**H. STAFF COMMUNICATIONS**

Ms. Baer stated that the time extension and resolution was approved by council at their last meeting and there are two differences from the version that you saw that I would call to your attention. Both the building permit and the development review approvals now go back to anything that would have expired July 1, 2009, and second change that I believe was added is that EZA approvals under the subdivision planning and planning ordinance are included as well.

Matthew O'Reilly: I wanted to take a brief second to address Commissioner Bordegaray's statement/question that was directed to staff. The question was, "what are we going to do next time?" You all know we saw a lot of these cases and we struggled with how to match the intent of this ordinance to how this ordinance is written. I wanted the commissioner to know that despite the outrageous and inaccurate editorial in today's paper regarding the escarpment ordinance, the goal of the escarpment working group will eventually be to bring to the commission and the city council the changes to the ordinance that address these types of things so the commission doesn't have to be in this position, time and time again and so the ordinance does meet intent as it was always meant to do.

**I. MATTERS FROM THE COMMISSION**

Commissioner Armijo: I wanted to let everyone know that I am going to step down from the planning commission. I spoke to the Mayor I am going to put my energies into youth, and I am going to be appointed to the Juvenile Justice Board. Today is my last meeting.

Chair Salazar: Thank you for everything you have done. You are like a model citizen, we lose up here but our community youth are gaining a great person. Thank you for everything you have done.

Commissioner Gonzales: Thank you Boni for all that you have done.


**J. ADJOURNMENT**

There being no further business to come before the Planning Commissioner Armijo moved to adjourn at 7:45 pm, second by Commissioner Lindell, motion carried by unanimous voice vote.

**Signature Page**

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*John Salazar, Chair*



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*Frances Lucero, Stenographer*