



# Agenda

CITY CLERK'S OFFICE

DATE 4-18-11 TIME 4:15 pm

SERVED BY [Signature]

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## AMENDED

### **PLANNING COMMISSION**

*April 21, 2011 – 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 7, 2011

**FINDINGS/CONCLUSIONS:**

**Case# 2011-01. Purple Horizon Mobile Home Park General Plan Amendments.**

**Case #2011-02. Purple Horizon Mobile Home Park Rezoning and Development Plan.**

**Case #2011-22. Las Soleras Tract 4A Preliminary Subdivision Plat.**

**Case #2011-24. Las Soleras Tract 1 Preliminary Subdivision Plat.**

**Case #2011-34. Las Soleras Annexation Phasing Plan Amendment.**

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

1. An ordinance repealing Section 16-6.2(E) SFCC 1987 and creating a new Section 14-6.25(E) SFCC 1987 regarding telecommunications facilities outside public right-of-way and making such other necessary changes. (Councilor Calvert) (Matthew S. O'Reilly, Case Manager)
2. *A resolution adopting application fees for the review of telecommunications facilities in accordance with Chapter 14 SFCC 1987. (Councilor Calvert) (Matthew S. O'Reilly, Case Manager)*
3. **Case #2011-17. 444 Camino De Las Animas Building Permit Appeal.** Cecilia and Charles Tafoya appeal the issuance of Building Permit #10-1988 for construction of two portals of 80 and 180 square feet at a height of 10 feet and installation of a window, a door, and shutters on a free-standing garage, reconfiguration and mechanization of an existing vehicular gate, and construction of a 6 foot high coyote fence. The property is located at 444 Camino de las Animas and is within the Downtown & Eastside Historic District. (Tamara Baer, Case Manager)

4. **Chapter 14 Rewrite Amendments.** Consideration of amendments to three sections of Chapter 14 SFCC 1987 Land Development as recommended by the Planning Commission Chapter 14 Rewrite Subcommittee and by staff: 1) 14-6 Permitted Uses and Use Regulations; 2) 14-3.6 Special Exceptions; and 3) 14-3.8 Development Plans (Greg Smith, 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.**



# Agenda

CITY CLERK'S OFFICE

DATE 3/31/11 TIME 10:05a

SERVED BY Geraldine Gurt

RECEIVED BY [Signature]

## PLANNING COMMISSION

April 21, 2011 – 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 7, 2011

FINDINGS/CONCLUSIONS:

Case# 2011-01. Purple Horizon Mobile Home Park General Plan Amendments.

Case #2011-02. Purple Horizon Mobile Home Park Rezoning and Development Plan.

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## E. OLD BUSINESS

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2. Case #2011-17. 444 Camino De Las Animas Building Permit Appeal. Cecilia and Charles Tafoya appeal the issuance of Building Permit #10-1988 for construction of two portals of 80 and 180 square feet at a height of 10 feet and installation of a window, a door, and shutters on a free-standing garage, reconfiguration and mechanization of an existing vehicular gate, and construction of a 6 foot high coyote fence. The property is located at 444 Camino de las Animas and is within the Downtown & Eastside Historic District. (Tamara Baer, Case Manager)
3. Chapter 14 Rewrite Amendments. Consideration of amendments to three sections of Chapter 14 SFCC 1987 Land Development as recommended by the Planning Commission Chapter 14 Rewrite Subcommittee and by staff: 1) 14-6 Permitted Uses and Use Regulations; 2) 14-3.6 Special Exceptions; and 3) 14-3.8 Development Plans (Greg Smith, Case Manager)

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**Index Summary of Minutes  
Santa Fe Planning Commission  
April 21, 2011**

INDEX	ACTION TAKEN	PAGE(S)
Cover Sheet		1
Call to Order	Chair Lindell called the meeting to order at 6:00 pm	2
Roll Call	A quorum was declared by roll call.	2
Pledge of Allegiance	Pledge of Allegiance was led by Commissioner Spray	2
Approval of Agenda	<u>No Staff or Commission Changes</u>	3
<p>Approval Minutes, April 7, 2011</p> <p>Findings/Conclusions</p> <p><u>Case# 2011-01.</u> Purple Horizon Mobile Home Park General Plan Amendments.</p> <p><u>Case #2011-02.</u> Purple Horizon Mobile Home Park Rezoning and Development Plan.</p> <p><u>Case #2011-22.</u> Las Soleras Tract 4A Preliminary Subdivision Plat.</p> <p><u>Case #2011-24.</u> Las Soleras Tract 1 Preliminary Subdivision Plat.</p> <p><u>Case #2011-34.</u> Las Soleras Annexation Phasing Plan Amendment.</p>	<p><u>Corrections</u></p> <p>Commissioner Ortiz and Commissioner Montes were shown as being present at the April 7<sup>th</sup> meeting, both were absent.</p> <p>Page 4, 6<sup>th</sup> line from the bottom: There is still another problem with the proposal currently and that is while the roads have been changed to all public there are still two separate rights of way, <i>one of which is</i> wider and that is simply because the lot is narrow.</p> <p>Page 15: 4<sup>TH</sup> paragraph: <del>LEAD</del> to read: LEED</p> <p>Page 25: 3<sup>rd</sup> to last paragraph starts: Chair Lindell requested clarification from Mr. Chavez.</p> <p><i>Commissioner Spray moved to approve the minutes as corrected, second by Commissioner Villarreal, motion carried by unanimous voice vote.</i></p> <p>Facts and Findings not in packet</p>	

**Index Summary of Minutes  
Santa Fe Planning Commission  
April 21, 2011**

<b>OLD BUSINESS</b> None	None	
<b><u>NEW BUSINESS</u></b> <ol style="list-style-type: none"> <li>1. An ordinance repealing Section 16-6.2(E) SFCC 1987 and creating a new Section 14-6.25(E) SFCC 1987 regarding telecommunications facilities outside public right-of-way and making such other necessary changes. (Councilor Calvert) (Matthew S. O'Reilly, Case Manager)</li> <li>2. A resolution adopting application fees for the review of telecommunications facilities in accordance with Chapter 14 SFCC 1987. (Councilor Calvert) (Matthew S. O'Reilly, Case Manager)</li> <li>3. <b><u>Case #2011-17. 444 Camino De Las Animas Building Permit Appeal.</u></b> Cecilia and Charles Tafoya appeal the issuance of Building Permit #10-1988 for construction of two portals of 80 and 180 square feet at a height of 10 feet and installation of a window, a door, and shutters on a free-standing garage, reconfiguration and mechanization of an existing vehicular gate, and construction of a 6 foot high coyote fence. The property is located at 444 Camino de las Animas and is within the Downtown &amp; Eastside Historic District. (Tamara Baer, Case Manager)</li> <li>4. <b><u>Chapter 14 Rewrite Amendments.</u></b> Consideration of amendments to three sections of Chapter 14 SFCC 1987 Land Development as recommended by the Planning Commission Chapter 14 Rewrite Subcommittee and by staff: 1) 14-6 Permitted Uses and Use Regulations; 2) 14-3.6 Special Exceptions; and 3) 14-3.8 Development Plans (Greg Smith, Case Manager)</li> </ol>	<p>#1-2 <i>Commissioner Mier moved to approve the resolution as presented, second by Commissioner Montez, motion carried by unanimous voice vote.</i></p> <p><i>Commissioner Mier moved to recommend to the governing body approval of the ordinance, second by Commissioner Hughes, motion carried by unanimous voice vote.</i></p> <p>#3 <i>Commissioner Hughes moved to deny the appeal, second by Commissioner Villarreal. Motion carried by a 3 to 2 to deny the appeal</i></p> <p><b>Roll Call Vote:</b> Commissioner Hughes – Aye Commissioner Spray - Aye Commissioner Villarreal - Aye Commissioner Ortiz – Approve the appeal Commissioner Montes- Approve the appeal</p> <p><b>3 to 2 to deny the appeal</b></p> <p>Ms. Tafoya asked for copies of the tape and the transcription because this is going to go in to litigation at District Court.</p> <p>Ms. Brennan stated that this request will go through the</p>	3-29

**Index Summary of Minutes  
Santa Fe Planning Commission  
April 21, 2011**

	<p>City Clerk's Office.</p> <p>#4 - Chapter 14 Rewrite <i>Commissioner Mier moved to approve 14-6, second by Commissioner Spray, motion carried by unanimous voice vote.</i></p> <p>Mr. O'Reilly: The proposed changes would be to revise the table to reflect that dwelling units would be allowed in SC districts and at the same time prohibit sexually oriented business in those same districts. Second, to add a note to the table as to what the acronyms stand for in the table.</p> <p><i>Commissioner Mier moved to approve Section 14-3.8, second by Commissioner Spray, motion carried by unanimous voice vote</i></p> <p><i>Commissioner Hughes moved that no changes be made on 14-3.6 at this time, Commissioner Spray second the motion, Motion carried by unanimous voice vote.</i></p>	
<b>Business from the Floor</b>	None	
<b>Communications from Staff</b>	Informational	
<b>Matters from the Commission</b>	Informational	
<b>A. ADJOURNMENT AND SIGNATURE PAGE</b>	The Planning Commission meeting was adjourned at 9:30 pm.	

## MINUTES

### **PLANNING COMMISSION April 21, 2011 – 6:00 P.M. – 9:30 pm CITY COUNCIL CHAMBERS**

- A. CALL TO ORDER:** The Planning Commission meeting of April 21, 2011 was called to order by Chair Lindell at 6:00 pm in the City Council Chambers, Santa Fe, New Mexico. The stenographer called the roll and a quorum was declared.

**Present:**

Signe Lindell, Chair  
Ken Hughes, Vice Chair  
Tom Spray  
Renee Villarreal  
Lawrence Ortiz  
Mike Mier  
Ruben Montes

**Absent:**

Angela Schackel Bordegaray

**Staff Present:**

Kelley Brennan, Assistant City Attorney  
Tamara Baer, Manager, Current Planning Division  
Matthew O'Reilly, Land Use Department Director  
Greg Smith, Current Planning Division Director

**Others Present:**

Christopher Graeser, Attorney  
Fran Lucero, Stenographer

**B. PLEDGE OF ALLEGIANCE**

*Commissioner Spray led the Pledge of Allegiance.*

**C. APPROVAL OF AGENDA**

**Staff Changes:** No findings or conclusions in the packet, they will be presented at the next meeting.

*Commissioner Spray moved to approve the agenda as amended, second by Commissioner Villarreal, motion carried by unanimous voice vote.*

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

**MINUTES:** April 7, 2011

**FINDINGS/CONCLUSIONS:** Not in Packet.



### Corrections

Commissioner Ortiz and Commissioner Montes were shown as being present at the April 7<sup>th</sup> meeting, both were absent.

Page 4, 6<sup>th</sup> line from the bottom: There is still another problem with the proposal currently and that is while the roads have been changed to all public there are still two separate rights of way, *one of which is* wider and that is simply because the lot is narrow.

Page 15: 4<sup>TH</sup> paragraph: ~~LEAD~~ to read: LEED

Page 25: 3<sup>rd</sup> to last paragraph starts: Chair Lindell requested clarification from Mr. Chavez.

*Commissioner Spray moved to approve the minutes as corrected, second by Commissioner Villarreal, motion carried by unanimous voice vote.*

### **E. OLD BUSINESS**

None

### **F. NEW BUSINESS**

1. An ordinance repealing section 14-6.2(E) SFCC 1987 and creating a new section 14-6.2(E) SFCC 1987 regarding telecommunications facilities outside public rights-of-way and making such other necessary changes. (Matthew O'Reilly)

Mr. O'Reilly stated that those commissioners who are participating in the Chapter 14 Rewrite subcommittee will note that the telecommunications section of Chapter 14 is one of those sections that has not been discussed at the rewrite subcommittee. This is an ordinance that is being sponsored by Councilor Calvert who has worked diligently with the legal department on this.

Ms. Brennan provided a brief summary of the changes. The goal in revising this was to conform it to Article 27.2 which was adopted last year, the franchise ordinance governing telecommunications Facilities in public rights of way also to conform to federal law as there were many sections that were in conflict with federal law and also to streamline it and make it more comprehensible because it was really difficult to follow. In this revision the Planning Commission is assigned the power to hear cases reviewing and approving telecommunications facilities. That is different from the current system in which a special exception is now required from the Board of Adjustment for telecommunication facilities that aren't administratively approved. The logic of the revision is that applicants must show and boards must find first that there is a gap in coverage, second is that the proposed facility is the least intrusive method of covering the gap in coverage and third is that the proposed facility is the least intrusive design. That is something that is recognized by the federal government as within the jurisdiction of a locality. Basically the federal rule is that municipalities cannot regulate the placement, construction or modifications of telecommunication facilities based on radio frequency emissions to the extent that they don't comply with federal law. That is one restriction on local authority and another restriction is that local regulations cannot prohibit or effectively prohibit the provision of telecommunication services in the municipality. Between those two the city has to steer and protect the aesthetics [inaudible], and property interests of its citizens and city itself. A matrix is included in the packet that adheres to the old ordinance and the proposed ordinance and it is fairly explanatory. The three major revisions besides those mentioned above were giving the Planning Commission authority. The reason this happened is because under the Franchise Ordinance the Planning Commission was given authority to make decisions on telecommunication facilities in the rights-of-way because it seemed that in that context it was

more like a development plan than anything.

The other three material changes, we specifically now permit repair maintenance, replacement in kind of existing facilities, those are modifications to telecommunication facilities that under the federal act we can't regulate, we also allow for modifications of existing facilities and the third is the current ordinance has a provision that prohibits telecommunication facilities on any building with status in the historic district whereas in the Historic District Ordinance you can make additions based on design rules. What would be permitted under the Historic District rules is absolutely prohibited in the telecommunication ordinance and that seems unusual and perhaps effectively prohibited. In fact, most of the Historic District is in the northeast which is the area where there are gaps in coverage.

**PUBLIC HEARING OPENED**

***No comments from the public, Public Hearing is Closed.***

Ms. Brennan stated that there is also a resolution establishing fees for these applications which are tied to existing fees.

Commissioner Hughes asked is this is another way where the Telecommunications Act requires the city to respond.

Ms. Brennan responded to this question, yes. There are also time limits for the city to respond and make a decision. There is a federal policy to encourage development of telecommunications in the United States. We are significantly behind other countries in the world and New Mexico is behind other states and the policy is to enhance education, access education, access medical services and access to national emergency networks and other thoughts and considerations. It has been made a goal since the Telecommunications Act of 1996 is outdated because technology is changing so rapidly. This ordinance does not attempt to address technology. As technology changes it is most likely that we will get less intrusive antennas but we don't try to address technology as it is changing so rapidly.

Commissioner Spray asked if a separate vote was needed for the resolution on the fees. Ms. Brennan instructed that there should be.

Commissioner Spray referred to page 5, (2)(b)(ii) of the proposed ordinance and asked the Land Use Director since there is a lot of federal land in the Historic District, is there anything that can be done?

Ms. Brennan, Assistant City Attorney responded that we have cooperative relationships with the state. The state and federal government are sovereign and our authority over them is limited.

Mr. O'Reilly stated that about 2 years ago the City Council passed an ordinance that required anyone who was requesting a new water connection to comply with all the land development codes in the city. The attempt there was to address the kind of things addressed like the state or someone else might build a building where they might not comply with our land development code. That has been a challenge by people from those entities on whether we can do that type of thing. A telecommunication tower antenna obviously does not have any water or land use therefore that particular ordinance would not apply in that case and we would revert to what Assistant City Attorney Brennan said; "this is sovereign land and they can pretty much do what they want."

Commissioner Spray referred to page 7, (3) Administrative Approval, Subsection (ii), reference to relocation of an existing tower to within 50 feet of the original tower site; is there a reason why it is 50 feet?

Mr. O'Reilly deferred to the Assistant City Attorney for response. Ms. Brennan stated that in revising this ordinance they did not stray in certain places too far from what was in the existing ordinance. As you may have noticed this is a hotly contested issue and where this is already an approved limit they tended to stick to it unless there was a reason not to and this was one of those.

Commissioner Spray asked if he was correct that there was no administrative approval of any tower in the historic district or escarpment area.

Ms. Brennan said that is a matter of some dispute, there are ambiguities within the ordinance that the city has attempted to resolve. There are some cases where there are specific kinds of antennas that are permitted in any district but the question was whether there must be a hearing in any case in every residential district and that was not clear. If I can clarify that consistent with the way it has been interpreted which is to say if it is an exempt antenna it is an exempt antenna.

Commissioner Spray expressed his thanks for the clarification.

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

***Commissioner Mier moved to recommend to the governing body approval of the ordinance, second by Commissioner Hughes, motion carried by unanimous voice vote.***

2. **Case #2011-17. 444 Camino de las Animas Building Permit Appeal.** Cecilia and Charles Tafoya appeal the issuance of Building Permit #10-1988 for construction of two portals of 80 and 180 square feet at a height of 10 feet and installation of a window, a door, and shutters on a free-standing garage, reconfiguration and mechanization of an existing vehicular gate, and construction of a 6 foot high coyote fence. The property is located at 444 Camino de las Animas and is within the Downtown & Eastside Historic District. (Tamara Baer, Case Manager)

**Commissioner Mier recused himself from this case.**

The Chair explained the rules for an appeal hearing which are somewhat different than the usual rules that we operate under. The first thing that we will do is to ask for City Staff to provide a summary of the staff report to be included in the record.

Ms. Baer stated that Ms. Brennan will present the staff report. Ms. Baer brought to the attention of the Commission two items that were presented to the Commission at tonight's meeting simply for the purpose of discussion which show the designated lot 1 and Tract A which is the subject of the building permit appeal. They are owned by the same person and lot 2 is the property of the appellants. There is in your packet a plat which is highlighted on the screen above which show the same information but in greater detail. The plat is older and it doesn't show the construction that has happened since that you can see in the aerial photograph.

Chair: Thank you for providing that photo, it is helpful.

Ms. Brennan: Chair Lindell and Commissioners, you also have on your desk an e-mail addressed to the City Manager asking that I be removed from this case and I wanted to let you know that Ms. Tafoya has filed a complaint with the Disciplinary Board and I wanted to reassure you that I am your Attorney and I advise you as your attorney and that the current rules on appeals require staff report and a recommendation. However, if you feel that I have been biased in any way you should disregard any information that you believe is biased.

Chair Lindell asked Ms. Brennan to proceed.

Ms. Brennan: I actually feel that I have written an exhaustive staff report, there were many allegations. In summary I would say, upon analysis most of these issues were decided far ago in the past and were not appealed by the appellant in that circumstance and are not subject to appeal. Really what are subject to appeal are matters pertaining to this specific building permit. Nevertheless, I wanted to give you, because I think when you hear these kinds of statements you always want to know what happened and so I have attempted to explain and interpret that for you by code.

Chair: Anyone who intends to testify in this case, please stand and be sworn in.

Ms. Brennan: Madam Chair, in the administrative rules of appeal the staff is sworn and as an Attorney I am also sworn as to the facts that I testify to as a witness.

Stenographer: Swore in staff and those who came forward to testify. All sworn in and asked to submit their name and address for the record.

**Public Hearing:**

**Cecilia Tafoya, 446 Camino de las Animas, Santa Fe, New Mexico.**

Chair Lindell asked Ms. Tafoya how much time she would need to present her opening statement and introduce her evidence.

Ms. Tafoya said 10-15 minutes at the most.

Chair Lindell honored a 15 minute time limit for the appellant and the applicant.

Ms. Tafoya: First of all I would like to let the Commission know that the reason we asked to have Attorney Brennan removed was because of our being violated, we did not have freedom of speech or due process rights by the Historic Design Review Board meaning that we were not allowed to present anything because they said that they had no authority to hear my concerns with the adjoining property owner and that I could only discuss design. But there were a lot of other issues and we provided a document to Ms. Brennan through staff prior to the hearing and we did not have our rights or allowed to be heard. I did file a complaint to the Supreme Court Disciplinary Board in regards to her and Geno's actions and behavior toward and against me for that Historic Design Review Board meeting. Prior to it and after because of the documents we had submitted and that is why when I got a letter with notification that they were going to be reviewing the application and conducting the investigation I felt it would be biased for her to continue to be involved with this case the way she was because of her previous involvement and the disciplinary action of reviewing the case and investigating it. I also wanted to say that I did send in a letter also today, or I sent it on Monday and we got her memorandum that she submitted to you for April 12<sup>th</sup>. We put in a letter asking that if you postponed or put this to the Council or whatever because we did feel that there are some ex parte communication because although we realize that she is your city attorney or whatever and she does have the right to give each one of you her feelings through the legal division I was kind of surprised that at the end of her conclusion she asked the Planning Commission that she states that we had no burden of proof with all the information we put out and to dismiss the appeal and we were kind of upset with that because we had hoped to come in here and to hopefully that you will be unbiased and non-prejudicial towards us because of what Ms. Brennan submitted to you so I would like to go on now and give our case to you and hopefully you can hear our side of it because none of it was addressed in her report or her memorandum.

Ms. Tafoya: Let me start from the beginning, because I think I would like to give you a picture of everything that has transpired as to why I am here today and what are my concerns. In 1993 my

father had property on Camino de las Animas we have had since 1960, I have lived there since I was 3 years old and he bought the property that is there in the 1960's, I didn't add it up but I have lived on that street since then and we bought the property that is there now. My father had decided that this would be the inheritance that I got because I took care of him and everything else, I took care of my mom because they were ill that he wanted to transfer me some property so that I could have a home in front of his property, something of my own when I got this inheritance. In 1993 by father gave me my property and I complied with everything, my contractor and I and my father, we tried to comply with everything that was asked from us by the city of Santa Fe, the Zoning department, Planning and Land Use and any city code, anything that was required of us, in 1993-1994 so I could get my permit. One of those things that was required for my property, they mandated that I had to have a second off street parking area because we live on a little dead end street and they don't allow parking out there. They would not consider the front of the property to have a circle drive and the Drainage department told us and also Albert Trujillo who worked for the city told us we could not have that because of the slope of my property and my home they had to have a drainage area, so that ruled that out. We talked to Monica Montoya here and everything and we asked if we could place the put the second off street parking in order to comply with that building regulation behind the home because we had the driveway as one of them and they said we could only use that as one, there was no room to make two parking areas so we asked if we could reconfigure the home a little bit and we would make sure to have the off street parking behind the house. In order to access as you can see by the way that the property is configured the only access to the back of my property was through the driveway. At that time, since 1960 it has been a 15 foot private driveway access. When we talked to Monica Montoya in order to comply with that my father decided that was going to give me a notarized copy and final transfer of the property and gave me easement access to my property; for maintenance purposes, for emergency access, delivery access, being at the slope there is about 17% grade driveway but the slope is very steep. So when I moved in to my home all my furniture had to go through the back of my home through the sliding doors there to get my furniture in there. Anyway, my father conveyed me the easement to the back of my property and when we came before the Historic Design Review Board and I think the commission too, my contractor stated that we did comply with the 2<sup>nd</sup> mandated parking and I think you have that in your exhibit and he said that we had the easement. So when we came before the board they approved it so we thought that we complied with everything, I got my Certificate of Occupancy and now for 17 years, since 1994 that I have lived there I have had full access to my property through that driveway for anything that I needed it for. Especially for fire protection because that was another thing, I worked at the New Mexico Public Regulation Commission (NMPRC) and I had the State Fire Marshal come by my property to give me some advice and he also stated that it was very important not to put my walls too high or anything. They said that for fire access we wanted to make sure we had complied and they had access through the other property. For 17 years like I said, I haven't had any problems to access the back of my property for maintenance or for anything. The only problems that we have with maintenance right now is that the applicants has put what they call Satan bushes, is what they told me at the nursery; they are 6 foot bushes directly behind my wall because there is no setback with 6 thorn bushes there that even the State Fire Marshall's office told me that if a fire was started in the evening and the fire personnel couldn't see that, they would not be able to fight a fire back because of the bushes there. So we haven't been able to maintain our wall because the City has not provided us with the setback requirements that they require on the standards. What I am here today is that when they first applied and we decided to change the plat, this is another thing that happened, ok. When my father passed away in 1997 we had some issues on the property, both properties, ok. In my property the city mandated a 20' easement and there was only a 15' easement. So they wanted that easement there and the surveyor had told him about the transfer. My father talked to the Mayor and he said that they grant variances all the time and they told my father to apply for a variance. So we went ahead and we had the 20 foot there and so when Ms. Morrison bought the property it became an issue. When we came to speak to the City Manager, Jim Romero, he had a big meeting with the Mayor, the Fire Chief, Frank Diluzio, the Director of Planning and Greg

Smith was there. We decided because the property itself, in the back property where my father had bought the property in three pieces and somehow the middle piece was never recorded so the city said it was an illegal parcel of property so we needed to get that in compliance also. Then we also found out, the former Fire Chief George Quintana went there and said that he didn't know why there were giving us so much problems with our property because my property is 5 feet of that 20 foot easement, my property owns 15' and then into my property is 5 feet of that 20 foot easement and my house backs up 8 inches into that easement so we left the construction as it was since it was on my property anyway. So what happened is that we had the property and the city got together and they said that we both had issues, you dad made the extension of the porch that 5 feet that his property is on, the 20 foot easement and you want to move it in to your house, why don't you compromise and they assigned Assistant City Attorney, Linda Garza Morales to oversee the revisions, we went a whole year in 2001, actually 1999, 2000 and 2001 we had several meetings here with staff and Ms. Morales to try to get that settled. So what happened is that they decided in order for both properties to compromise that we would revise a new plat. So we all agreed to revise the plat, there would be a reduction in the easement, there would be a 15 foot easement there like it has been since 1960 and it would be an ingress/egress.

*The Chair informed Ms. Tafoya that she had one minute to complete her presentation.*

What has happened here is that when they revised the plat and we reviewed it and we were to put the revisions and put in the easement provisions to my backyard parking space to show what I had prior to this reduction and I was not going to lose my property rights nor the estate. So what happened here is that Greg Smith and the applicants' realtor, they whited out my name and you will see on the plat that Bernie Alarid has submitted to you, the plat dated December 1, 2001, and that the two plats are there. The first one that he submitted for me and my attorney to review and was the preliminary plat that says a first review and has our revisions on there and you will see that my name is on this plat, Cecilia Redman Tafoya, which it is suppose to be because for the reduction of the easement it was both our properties. I owned 5 feet and 15 feet of the estate. So by law Attorney Morales told them we both had to sign off because it encumbered both of our properties.

Greg Smith and the realtor said to facilitate the sale of the property to the Morrison's, the applicants that they decided to white my name off so they took my property rights with them. It started a whole different scenario because they went before the Planning Commission because Linda Morales told me that after the reconsideration hearing that we could show that this action was wrong. Peter Dwyer of the City Attorney was livid about this, both of them were and I think the City Planning Commission and the attorney started to threaten the Planning Commissioners, and the only one that took a vote was Carmichael Dominguez who said that he voted that we be given a reconsideration to review this plat and everyone else was so nervous because my brother's attorney had threatened all of the commissioners with individual law suits and they just sat there. Then we saw them walk out and they signed the plat on one of the vending machines out here and he handed it to them. The applicants have known about this since the very beginning that my name was removed from there even though it is on the realtor's disclosure that there is a 10' easement on my property too. She told me when I met with her and we walked through the whole property and everything, that she was aware of it. The owner told me when I met with her that she was aware of it and the realtor told her about it. My attorney at that time was Mr. Joseph Joiner told me to talk to her and see if we could get the plat corrected and done correctly.

*The Chair asked the applicant to wrap up her presentation and informed her that she would have another opportunity.*

OK, I just wanted to let you know that all of the details of what has happened here and what my rights were and that I have had now for 17 years is that if you read Lydia Morales' sworn

affidavit that she submitted to you, if you read what was on the plat in 2001 until the altering, you will know that I did have these rights, they were rights that I had and because of the omitting of my name and the altering of that plat all of a sudden I lost my rights. Let me back up; let me tell you that the City Zoning and Land Use and the international fire code and everything that the city has documented and they go by, these are what I have now. With all the stuff that has happened or not, what is going on right now is that there are city rules and regulations and zoning rules that protect me as a property owner and there is state law that protects my rights for access to my property. There are setback requirements to the side, to the rear, there is also a letter from Greg Smith to Roman Maes who was one of the Realtors that they consolidate it and they make tract 1 and tract A on their property that goes out the Santa Fe Trail. Lydia Morales mentions in her affidavit about the 17% grade and that the footings of my property are so close to the driveway that I could start having structural problems and that could cause problems since I have my gas meter, my water heater inside the house, so we have to be careful. Everything is in your packets ladies and gentlemen and I am just asking that you read all the exhibits that are in your packet especially Lydia Morales affidavit. We would like to ask you please to not compromise after 17 years any access that I would have to my back yard with the coyote fence and why close out the alleyway or cause any structural damage to my house. It is cutting off my access to my property after 17 years. Thank you.

The Chair asked if the applicant was present. The Chair allowed 20 minutes for the applicant to present.

**Richard Horcasitas, 228 S. St. Francis Drive, Santa Fe, New Mexico**

Good evening Chair Lindell and Planning Commission members, my name is Richard Horcasitas, I represent Leon and Pamela Morrison and Pamela is here this evening. I reviewed the staff report and feel comfortable with the recommendations. We feel that the appellants have not proved that any land use codes, city ordinances, resolutions, rules or any other laws of the City of Santa Fe have been violated and we would appreciate your consideration of this case and a dismissal of this appeal.

We are sworn in when we come up here to testify and one of the things that struck me at the beginning of the testimony is the assertion that the Tafoya's are being cutoff, that they need 2 parking spaces. *(Showed picture for 2 parking spaces at the front, they don't need access to the back through the property that is owned by the Morrison's)*. Another thing that struck me is that whenever there is a lot split application, there is a requirement to have access to the property that is being created. Of course it sounds like this was one entire property and there was a lot split at one particular time. You have Camino de las Animas and the Tafoya home on lot 2 and then there is the access to lot 1 with the home being owned by the Morrison. The requirement that I see regularly is the 20 foot requirement to be able to get to the new lot that is being created. Along the way somewhere that has been whittled down to 15 feet and this access easement is solely for the use of lot 2 and the Morrison property. I think it has been understood by Ms. Tafoya that this access easement is theirs but it is not; it is an access for lot 2. Those are the main points of this, I don't have very much else to say. I am here to answer any question that you may have, that is my testimony for the moment.

The Chair expressed her thanks to Mr. Horcasitas.

The Chair stated if Ms. Tafoya had any questions that she would like to ask Mr. Horcasitas she could come forward. Ms. Tafoya was asked to direct her questions to the Chair and the Chair will direct those questions to Mr. Horcasitas. A maximum of 10 minutes was allowed for this process.

**Ms. Tafoya:**

I would like to ask Mr. Horcasitas that in other city meetings or commission hearings and all that, he has had to ask for variances for certain things, especially if you are going to build on a property lot line or if there is a reduction on the easement that there has to be committees from the city that work with them and I want to ask Mr. Horcasitas if he has done that in the past and all of a sudden for us we don't have those rights to have our setback requirements and all that addressed in front of a board or commission, we didn't get a chance to do that, and yet I have seen that in past agendas for other commissions.

Mr. Horcasitas has represented other clients with easements and variances.

Ms. Tafoya said that Mr. Horcasitas has said that I don't have an easement to the back of my property or whatever, that it is off of lot 1 and the Morrison's property and she has been provided from the city, because I have been told that they have provided him copies and it was conveyed to the Morrison's that I had a conveyed easement from my father in conjunction with the family transfer that he conveyed me an easement through his driveway here, and I understand and I have two letters in here from my attorney who was Joseph Joiner at the time to the Morrison's addressing my rights and I was just wondering if you could ask Mr. Horcasitas if he saw that in the packet provided to Ms. Morrison, that I did have the easement and I can have access to the back of my property by law, as Mr. Joiner put it in there at the time of the transfer of property. I need an access to the back of my property. You can ask him that; is he aware that he had that information prior.

Chair: Did you receive that information.

Mr. Horcasitas: I saw that.

Ms. Tafoya: Also I would like to ask him, he is saying that what he is showing in the picture of the driveway in front of our house; what it shows there it is whitened out at it looks like it is enormous and I would like to have that property. But if you would drive by there you will see that only one standard car would fit there. Also we had thought of first when we met with Monica Montoya we thought we had met the requirement with the garage and the parking area there. She said no, you cannot fit two cars there, if you drive by there you will see you can only fit one car. The city in 1993 did not allow us to have one of those as off street parking. I am just asking if Mr. Horcasitas, how he thinks he can fit two cars there? Like I said, the picture he showed, the way it is so whited, it shows like it is a wide area, I wish it could be that wide.

Mr. Horcasitas: However, if I can address the Chair and the Commissioners, there is a driveway and a garage, they are both parking spaces. The garage space is a parking space.

Ms. Tafoya: But the City of Santa Fe in 1993, we were told it could not serve as a parking space. Like they told us in 1993, we were told here in front of Planning and Land Use, both myself and David Pike who was my contractor, we were told that no, because we would have to be moving one car all the time and that they don't allow for that. They said that it had to be somewhere else on the property and that is why when we were approved and we did it, this is why we did it behind the house because my father gave me the easement. It is written in the realtor disclosure, it wasn't a surprise to Ms. Morrison and Mr. Joiner noted that there was a 20' easement there. Mr. Joiner was my attorney at that time and he explained this to Ms. Morrison in numerous letters at that time. I explained it to her and she gave no objection whatsoever, she was fine and I don't understand why this is happening now. I have used this for 17 years and I can't understand why I can't use it now, I can't believe I can't use it now, my father conveyed me that easement, and if you look at the letters that are there, I would appreciate it. Mr. Horcasitas, you got the letters from Mr. Joiner, there were several letters there.



The Chair asked that Ms. Tafoya direct her questions through the Chair.

Ms. Tafoya: I am sorry, can you ask Mr. Horcasitas if he has those letters in his packet that I can refer to.

Chair: Did you receive the letters?

Mr. Horcasitas: I did receive them but I do not have them with me.

Ms. Tafoya: There are several letters in the packet that I am referring to as Exhibits, commissioners to show you that my attorney had been in contact numerous times to get this thing corrected and that the estate would pay for it and it would not cost them a penny. It was frustrating because all they would do is say, "have your attorneys contact my attorney." She states in this letter that Mr. Chernock who aided and abetted Greg Smith in taking off my name kept calling him and harassing him and my other attorney, Mr. Ronald Van Amberg, he gave me a cassette tape of threats to him and his office that if I didn't sign the plat immediately that they were going to threaten me and Mr. Van Amberg with law suits, he provided me a copy so I could have if I needed to use it for any reasons.

Chair: Certainly those letters are in our packet, do you have any other specific questions that you would like for me to ask Mr. Horcasitas.

Ms. Tafoya asked if she could speak to her husband to see if there is everything I am forgetting as I am kind of nervous.

The Chair approved this request.

Mr. Tafoya asked if they would have a chance to speak, I know we have taken a long time.

Ms. Tafoya said that there were people who wanted to speak on their behalf and asked if they would get their time.

Chair: We are not going to hear from every person, if you would like to speak in part of the time frame, you would be more than welcome to do that. You were sworn in and you are a party to this and you would be welcome to speak. We are in the section of the hearing where we are asking questions of the applicant.

Mr. Tafoya said that he thought they would each get a chance to speak.

Ms. Tafoya: I can't think of any other questions except for Mr. Horcasitas having this packet of everything he showed up here and what he is saying is not true because he wasn't there for those meetings in 1993 with us and he wasn't there in 2001 and they weren't the people who bought the property at that time because all the provisions that were made in 2001 with city staff with Linda Morales as she states there to the applicants were not involved in that. [Inaudible] and the applicants were not involved only the estate and potential purchasers. We had no idea that this was going to happen in Land Use. My attorney, Mr. Van Amberg called me and asked me who their realtor was because he had all these threatening messages. He gave me the tape because he had received several threatening messages. The next day my attorney called me and my name was taken off the plat. We went to Santa Fe Abstract to file our names and my name was off.

Thank you Ms. Tafoya.

Mr. Tafoya: Chair, not to be rude, so we don't get time to speak? We did not know we would not be able to speak we thought there was a time for all of us to give input, we assumed we would have a chance to speak.

Chair: There will be another opportunity for you to address questions to staff; there will be another opportunity for you to make a closing statement.

Mr. Tafoya: Ok, thank you, I can do that.

Ms. Brennan: Point of order, Madam Chair, also during the public hearing portion they can speak.

Chair: During public hearing you can speak.

Mr. Tafoya: Ok, thank you.

Chair: Mr. Horcasitas, if you have any questions that you would like to direct to the appellant you could come to the podium and direct those to me.

Mr. Horcasitas: Chair Lindell and Commissioners, there has been some discussion regarding the letters that are in your packet from 1994 I believe that speak to this easement. In my possession is a copy of a 1<sup>st</sup> Judicial District Court endorsed on March 29, 2004 where this was decided in the matter of the Estate of Alex Armijo with Cecilia Tafoya. Number 4 on this was decided, Tafoya does not have any interest in any off street parking space or easement over the real property known as 444 Camino de las Animas. I think that was clear many years ago and that was not put in the packet.

The Chair stated that this information is in the packet. Mr. Horcasitas are there any questions you would like to ask.

Mr. Horcasitas, No.

Chair: The next part of the hearing, Ms. Tafoya or one of those in your party; if you have questions that you would like to ask of staff, you can direct those questions to me and we will limit that to 10 minutes.

Ms. Tafoya: Ok thank you. My questions are basically going to be addressed to Kelley Brennan. Prior to the hearing on July 13<sup>th</sup> before the Historic Design Review Board, I had submitted to the case manager who was Dominic Gonzales at that time here in the city, Mr. Rash & Associates [inaudible]. In the past they had not allowed any of this to happen to me. I would like for you to ask Ms. Brennan when she took over the case suddenly from Mr. Gonzales, he assured me that he was going to give her the statement from Ms. Morales, the letters, the affidavits, the easement access that I have, he was going to give her a copy of everything that I submitted in the packet, I showed him the zoning information and I want to know if she received all of that documentation. If you could ask that.

Chair Lindell: Ms. Brennan can you answer that.

Ms. Brennan: Madam Chair and Commissioners, I have received voluminous information on this case. The problem before the Historic Design Review Board was that they had very limited jurisdiction and these matters of easements and other property rights are outside that jurisdiction. They do however require Preliminary Zoning Report (PZR) just because they don't want to act on cases where it later turns out that there is a zoning problem and they have to either re-hear the case or deny it. So although I have received a significant amount of information and

correspondence, it was not within the jurisdiction of the Historic Design Review Board to consider.

Ms. Tafoya: Madam Chairman, I would like to ask her now as I asked her at the Historic Design Review Board meeting when she mentioned that it wasn't in their jurisdiction. In the past legal staff, Mr. Frank Katz and other members of the Planning and Land Use Division have handled this administratively because of the issues, ok. They didn't put it before the Historic Design Review Board because they didn't evidently have the authority to address my concerns of the adjoining property owner. I would like for you to ask Ms. Brennan, why with all the affidavits that she received from a former Assistant City Attorney, all the affidavits that she received with regards to this issue, knowing that the Board had no jurisdiction to deal with my property concerns and the adjoining property owner, why she still put it before the Historic Design Review Board and could not deal with my issues and forced me into an appeal that I had to pay \$100 to come here today to try to see if I could get this corrected. Can you ask her why she did that when she knew they had no authority to act, when she had all of this information to send up red flags, so to speak, there is something wrong here? She could have called Ms. Morales, she could have talked to staff here that had been involved, and I would like to ask her why she put me through that.

Chair Lindell: Ms. Brennan, would you comment on that or answer please?

Ms. Brennan: Madam Chair, Commissioners, I do not know how Mr. Katz handled this matter, but the Legal Department does not make these kinds of decisions, we do not review every permit, cases proceed according to common practice and this was one of those. There was an application to make improvement to a building in the historic district and it was heard by the Historic Design Review Board after the PZR was prepared and the board approved the application with conditions. As for the affidavits from Ms. Morales, it was prepared I believe in 2002 and was offered to the court which did decide on the matter. The District Court decided in 2004, it was appealed and it was decided on the appeal by the Court of Appeals and they ruled essentially, the Court of Appeals ruled and overturned the court below on only one issue and the other findings in the District Court were upheld.

Ms. Tafoya: Madam Chairman, we got a reversal from the Court of Appeals in Albuquerque on December 5, 2005. They not only reversed the lower court decision to disinherit me because my brother was so upset with me for getting this piece of property but they also wrote because of the importance of the issue, they wrote a 17 page case law that you can bring up on the computer if you have it here, it states on the easement that the lower court did not justify, I don't know the exact wording right now, why he was saying that I had never or didn't want the easement rights and they didn't give reason. They said in their case law that they interpreted that to mean that lot 2, which is my lot, was subject to an easement. So according to my attorney who did the appeal for me, he did say to me when I asked him exactly what that meant, he said, he interpreted that if we went back to court that in other words my property was subject to an easement and that was the case law stipulated to because the lower court did not provide reason as to that justification and you have to give reason and they didn't do it. If I have to go back to court to establish my easement rights, which I do have and my father gave me and I have used for 17 years, then I will have to do so, but I am hoping to avoid it of course. For Ms. Brennan to say to you that the staff put this through and everything; staff did not put this through because when I spoke to Dominic Gonzales in Planning and Land Use, I spoke to him upon recommendation of Mr. Rash who asked me why they were putting up this fence again and blocking off my access again. He said, you better go back and talk to Dominic Gonzales, Case Manager and tell him that you have your access there and I came down and spoke to Dominic Gonzales and before I knew it and I brought all this stuff from Ms. Morales and all this legal stuff that I have that was giving me my rights and all of a sudden when I came back to bring some more stuff to Mr. Gonzales, he said, "Ms. Tafoya, I can't help you anymore because it has been taken over by Ms. Kelley Brennan." He

said, "I have no say anymore." I asked him what about the hearing. He told me to contact Mr. Horcasitas and that it has been postponed until staff could look at all this stuff that she had submitted to the city. Mr. Gonzales said this case has been taken out of my hands; Kelley Brennan is in charge of it now. I asked him if he had given her all of the information and I hoped that she would contact me or Ms. Morales or contact one of the three attorneys that are named in here, contact someone to see what is the red flag, something is questionable here. Nothing happened so I would like for you to ask Ms. Brennan, why, it was her decision according to Mr. Gonzales that it go forward here and that none of these issues, or that questions would be asked, instead I was thrown into the Historic Design Board and you can ask her why she did that to me which forced me into an appeal now. This is stuff that the disciplinary board is looking at too.

Ms. Brennan: I can only repeat my prior answer which is we do not control how cases proceed; I did not take over the case from Mr. Gonzales. I did talk to Mr. Gonzales and asked him if he was comfortable with the material he had been supplied with, that they qualified for [inaudible].

Madam Chair, can you ask Mr. Brennan if she didn't take over the case from Mr. Gonzales, the Case Manager how come she was listed when we came before the Historic Design Review Board as the Case Manager. Kelley Brennan, she was the one that spoke up, she called the vote and I couldn't even talk, and she called for them to vote and they voted to approve this with all the other questionable documents that needed to be reviewed and looked at. They are violating my property rights that I have had for 17 years.

Chair Lindell: Ms. Brennan.

Ms. Brennan: Madam Chair, Commissioners, I responded to an inquiry from the Chair of the Board about their jurisdiction and the extent to which they could hear matters that had been raised by the appellant and I responded as the Board's lawyer.

Ms. Tafoya: What I don't understand is why she was listed at the Case Manger instead of Mr. Gonzales, he wasn't even at the hearing, she took over totally at the hearing and I would like to know why she did that with all of this evidence. For a person who has taken an oath as an officer of the court, how could she not look at the evidence that is here or call the assistant attorney, a former colleague and ask here, I have an affidavit, what is going on here? Or at least try to do something instead of putting me before the board that is my question why did she force me before a board that had no jurisdiction to hear my property issues.

Chair Lindell: Before I ask Ms. Brennan that question Ms. Tafoya, your time is up in this section of the hearing but I will ask Ms. Brennan that question.

Ms. Brennan: Madam Chair, Commissioners, I do not know if or why my name was listed as Case Manager, this has happened before. Dominic Gonzales never was listed as the Case Manager because in fact he is a zoning person who only completes the PZR. David Rash handled that matter and other matters before the Historic Design Review Board.

Chair Lindell: Mr. Horcasitas, as the applicant, do you have questions you would like to direct to staff.

Mr. Horcasitas: No

### **Public Hearing**

We have now come to the part of this hearing where if you are a member of the public and you would like to speak or comment now is your opportunity to do that. The Chair allowed any member of the Public that would like to speak, 3 minutes to speak. Is there anyone who would like to come forward to speak, please come down, you both have been sworn in.

**Linda Esquibel, 517 Don Canuto Street, Santa Fe, New Mexico**

All I can say is that I have known Ms. Tafoya and her husband for many years and I have seen what they have been through for the last 10 years and it has been terrible. A huge injustice has been done and I don't know how to correct it and I don't think they know how to correct it. When you are faced with this injustice in the city and you are fighting the bureaucracy it is very bad. I know that she has the rights, I knew her father and her family and because of something that I feel was done illegal; I'm not an attorney but my it is my feeling is that if a name is removed from a plat without permission; that is illegal. If that can be done and everyone turns their eyes from it, then there is something really wrong. That is all I have to say.

**Charles Tafoya, 444 Camino de las Animas, Santa Fe, New Mexico**

To address Ms. Brennan's first comment, that some of our concerns were dealt with in the past and we failed to appeal. One thing that has been very frustrating for us and I am sure is frustrating for a lot of people in the community. This whole system is too cumbersome, but we never did get a chance once and it was stated on the appeal that we submitted that our concerns were never addressed. We could care less what they build on their property; all we wanted is to live in peace. We wanted the city to enforce their code, the 15 foot front setback that Carlos Silva, the City Fire Inspector at that time told me, no problem it is there; you have a 15 feet setback to have space there for emergency personnel. It is true, when the house was first built, the fence that is there and has been there has been there for 49 years. It has never changed physically, it has never changed and it has always been acceptable to the city. When they drew up the plans for my wife's home, the new standards were automatically for a 20 foot easement because of the circumference that the fire truck needs to make the turn. But they described to me at that time that the national fire code at that time had 10% grade so it made the 20 foot wide driveway move because they couldn't have used it anyway. They could not have taken any apparatus up there except hoses and personnel. Subsequently the city has adopted and the state has adopted the international fire codes and they have a mandate of 10% grade. There was never an issue that it had to be 20 feet and it was agreed that it was on the plat that it is 15 feet and I am pretty sure that there is a requirement that if it is on the plat it required some action either by the city or the property owners to change that. The second off street parking, regardless of what anybody thinks, I don't care who said it; if they feel that there are 2 places to park here in the front driveway I am assuming that one of the reasons they wanted off street parking is because they wanted the city to look nice. They don't want a lot of cars on the street and that was the reason to give off street parking. I am sure someone did not want off street parking; the city mandated that my wife have that 2<sup>nd</sup> off street parking and that second option parking was acceptable to the city at the time that she built her house and required. It goes without saying if you have the parking you have to have the access to get to the parking. They can argue in time that we don't use it or whatever, but the older we get, there are 11 steps from our driveway to our home. We are getting old, we are all getting old. That is going to become more important as the years go by. More than likely we are all going to end up with electric cars, that is where our space will be to access our house. If it isn't important for us now that we are able to use the steps, we certainly will become more dependent on that space as a charging station for an electric vehicle and for other uses that it was intended for.

Chair Lindell informed Mr. Tafoya that his time was expired.

The Chair explained that we were at a point in the hearing where if members of the Commission have questions for the applicant or the appellant, staff or other people that testified, now is the opportunity to ask those questions.

Commissioner Spray: A couple of questions first for staff. Is it within the scope of the authority for this commission to resolve the issue of access to an easement?

Ms. Brennan: Chair Lindell, Commissioners, it is not.

Commissioner Spray: So all we can do in this hearing is be able to rule on the merits of the building permit, is that correct?

Ms. Brennan: That is correct; you are deciding on an appeal from the building permit. The commission approved this plat 10 years ago and that represents the action of this commission at the time.

Commissioner Spray: Thank you. Staff, when reviewing the status of this permit, were you aware of the 2004 district court action that said that she was not interested in off street parking space or an easement on the property.

Ms. Brennan: There has been a lot of information provided by Ms. Tafoya to various members of city staff and I think everyone is well aware of the history of this case and there are people in the current Planning Department, I was not here at the time, I am a newcomer to the city.

Commissioner Spray: Does it suffice to say that when this permit was granted, and from the city's perspective, I am trying to get the city perspective in granting that, the city felt that and should have said there is no issue here but it has been adjudicated and done, we have to go by what the map says that it was approved and upheld by the courts regardless of what another attorney might say. There may be other issues behind it; I did read the voluminous 16 page document. But even with all that the city has to struggle with what has been decided, is that correct

Ms. Brennan: Chair Lindell and Commissioners, that is correct. The building permit would not have been issued if this department did not feel it was a valid issuance.

Commissioner Spray: I have some questions for Mr. Horcasitas about the permit; perhaps Mr. Horcasitas can show us on one of the map some of the issues or components we are trying to decide and one is the the addition of 2 portals, can you point out to us where that is?

Mr. Horcasitas: The addition of 2 portals, there is an old garage on Tract A, the Tafoya home is on lot 2, the Morrison home is on lot 1, over here there is a car port, garage and studio garage, and there will be portals on the south and the east, and it is all in Tract A quite a distance from lot 2. I have photos of that garage.

Commissioner Spray: I have questions on where is the relocation of the gate.

Mr. Horcasitas: The Morrison home faces north and there is an existing gate along the driveway and currently this is looking south. What is going to happen is that this gate will have a fixed portion next to the house and, there will be a mechanical part that will open and close the gate. Currently the gate goes all the way to the house, and this is at the top of the driveway.

Commissioner Spray asked if there was more remodeling being done to the house.

Mr. Horcasitas: Most of the remodeling is done on that garage area/studio back in Tract A. As I said, there will be a portal on the east elevation, south that will turn in to doors and doors will turn in to windows.

Commissioner Spray: Show us what the exact location of construction of the fence is.

Mr. Horcasitas: There is an existing gate across the driveway and there is a rod iron gate that is always open and a rolling gate. From the existing gate up the driveway there is a stucco wall on

lot 2, the wall is probably 5 feet there will be a 3 foot coyote fence to the south of the stucco wall. The stucco wall will go east and west. The purpose of the stucco fence is to keep the dog within the property. There is an opening in the Tafoya property, looking south; the coyote fence will run up along the driveway.

Commissioner Spray: Mr. Horcasitas, will you talk about the vegetation issue?

Mr. Horcasitas: Looking from toward the north (photo), there is vegetation in the front yard of the Morrison's. The Tafoya's have a wood lattice fence on their property. The 3' coyote fence will go east and west and will be 6' and will be no higher than what is there.

Commissioner Spray: Could the vegetation be trimmed down?

Mr. Horcasitas: It can be trimmed down.

Commissioner Spray: Does the wall sit on your client's property?

Mr. Horcasitas: That is a good question; the wall is on the property line. Just like any neighborhood, you have homes next to each other and homes behind each other and streets on the other side and with walls that delineate the property lines.

Mr. Tafoya asked if he could answer that question.

The Chair said, no, discussion is for the Commissioners at this time.

Ms. Tafoya said that it is her wall.

Commissioner Spray: Is this wall on the plat and can we prove who owns this wall? Can we clear the vegetation on the Morrison side?

Commissioner Villarreal: Can you explain the administrative process?

Ms. Brennan: The procedure is if someone applies and if the project is located in the historic district, it goes to the Historic Design Review Board for design approval which is granted by the board as described. And then once the Historic Design Review Board approves it the applicant can apply for a building permit. A building permit is issued when whatever zoning review is required to be made before the issuance of the building permit, that is when that occurs. The department evaluates that and assures that there are no issues on the record from their view point and they issue the building permit. So that is the end of the administrative process in terms of the permit issuance.

Commissioner Villarreal: Thank you for that information. This question is for Mr. Horcasitas, I am still uncertain if you understood the purpose of the coyote fence, if there is any other information you could provide us that you described other than for a pet.

Mr. Horcasitas: Just for privacy and for the pet?

Commissioner Villarreal: I am trying to understand privacy because the coyote fence faces out to the driveway and I am trying to figure out whose privacy are you referring to.

Mr. Horcasitas: For the privacy of both the applicant and to keep their pet in the yard and for the privacy of the Tafoya's.

Commissioner Villarreal: Is the driveway considered part of the yard?

Mr. Horcasitas: Yes, it is considered the property of the Morrison's.

Commissioner Villarreal: I wait for any further questions, thank you.

Mr. Ortiz: I have a question for staff, this case 2011-17 is an all inclusive where we need to make these decisions and there are all of these pieces, shutters, gates and they are all under one application and at some point it turned in to an individual permit, I am confused.

Ms. Brennan: At issue here is whether the building permit was properly issued; you are not considering individual aspects of the design except as you believe that the permit was improperly issued in relation to that particular item.

Chair Lindell: Mr. Tafoya, previously you wanted to comment on that fence, would you care to do so now?

Mr. Tafoya: Is this our conclusion?

Chair Lindell: No.

Mr. Tafoya: There is a property marker that is south and to the west of the corner where a post is, the wall was built clearly on my wife's property. There is no question of ownership.

Chair Lindell: Thank you very much.

Chair Lindell: Does any member of staff have anything they would like to respond to in terms of the appellant or the applicant's evidence.

Staff: No.

Chair Lindell: Ms. Tafoya, I would like for you, without asking questions, we do have closing statements to make, if you would like to make a closing statement, I am going to put a time limit for both parties of 5 minutes.

Ms. Tafoya: I wanted to address Commissioner Villarreal's statement regarding the district court ruling. I totally feel that an appellate court when you appeal they took it upon themselves not only to reverse the decision but they wrote a case law and I understand that case law can be used up to the supreme court, ok. They addressed that easement and they did state in there and I don't know if you didn't read it or if you have a copy or you can pull it up on the computer, that my property, because the lower court did not give their reasons which they have to give that they felt in the lower court that my property lot 2 was subject to an easement. If you look at all the other paper work that has been submitted since the transfer of the property to me by law, a court will tell you by law, I have a conveyed easement in the back of my property through the transfer of property. I have an easement that was granted there, I have a notarized easement from my Father. He was very thorough as a former Land Commissioner as the State Land Commissioner he was very thorough on a lot of these property issues. When he gave me that easement he was very thorough. I think that the court of appeals, they ran case law on it and that is why we have an appeal. Also my property, Mr. Horcasitas, is against that fence, my property does not end at the chain link fence, and it is a foot longer, and then stops at the 15 foot easement. There are going to put the coyote fence I understand on their own property within the 15 foot easement but they are not going to use any of my property. I understand in talking to staff for many, many years that accessory structures means just that; that if you are going to build anything of an accessory structure on an adjoining property at the property line that you have to have the adjoining property owners notarized statement that they agree with that. They are not going to use my 15'



easement; if you narrow it down to 12' you will not be able to get safety equipment in there. If you narrow it they are going to damage my property, they would not be able to get an ambulance there with a coyote fence. The Historic Design Board when they made their vote said they could have the coyote fence at the same height of what is already there. The fences are very low that are already there, you already have a wall there that is 3 feet or less, that isn't privacy. They are going to reduce a 15' easement for fire safety and cut me off from any access to the back of my property. They did not provide anything for my off street parking and my access. In the back of the property what I saw they are putting it right along the wall. That vegetation is not vegetation it is called Satan's bush. We had a person from Payne's Nursery who was at our house look at it and it has thorns that are an inch long and you can't even get fire personnel back there to fight a fire and you are compromising fire safety because the bushes have thorns on them, I think you need to take a look at them. My husband can take over at this time.

Mr. Tafoya: Calm down.

Chair Lindell: Mr. Tafoya, I am going to ask that you limit your time to 2 minutes.

Mr. Tafoya: They have issues of privacy and you can see on this picture, right along here there is a post and we erected a lattice when my father in law was still alive for our privacy. That this permit is tied all in one and you can't separate the elements and say vote for one or vote for the other. So if you vote for them you are going to cut us off and it probably will end up in litigation. It will not provide access for police or any emergency service provider. It makes absolutely no sense, if you vote for us you have to squash the whole thing about their shutters, we believe, they can build whatever they want, we believe we have an inherent 15' easement to access for off street parking and emergency service provisions. When the metal gate is in its open position it is 11' 6" wide, that is very narrow and you can't get the emergency vehicles in. So I am asking you to please, even though it encumbers them and it stops their project, we will be damaged far and a lot greater if you allow that fence to block off our second off street parking access it will cause bitter hardship, it is too bad it was designed that way, I don't know. If you approve this you are essentially granting them a zero lot line agreement which they have not applied for. Mr. Horcasitas as an agent for another client had to apply for a zero lot line of the 15 foot rear setback, so he knows that he has to do that. If they want to put a coyote fence for the dog run why can't they put that at 15 feet and have it there and have that space there to help everyone. Now we ask them to have access for the emergency service providers, they are not going to gain anything on privacy by blocking our second off street parking. Their dog is friendly, we are friendlier with their dog than them that we would like their dog to run and get his exercise. My father in law had dogs on the property all their life but it makes absolutely no sense to vote for this even it causes them to not have their shutter or their gates and all that. They can apply in a different way minus the gate and give you the opportunity to vote appropriately. The gas meter which is within 9 feet of our house, our wall, was moved very laboriously to that location. They passed the passage of the existing gas line, ran it around the gas meter, through the driveway and back to the house. The reason they moved it is because we talked to the NMPRC and they felt that it was right across from our second off street parking, so they have already conceded that it is our second off street parking space because they moved it to clear that space. There was no reason to have to go through all that trouble to put that gas meter there with the easement, where do you cut the line. That is not in your purview, if you are voting to deny our appeal you are essentially creating problems for safety vehicles, our access to our property and the harm to us will be greater than to providing more room for their dog. Currently they have the dog in a collar that shocks it, so up at the top where they have the existing gate the dog cannot come down because it gets to the fence it get electrocuted. If they could move that down farther the dog could run down without the gate. I am asking you to vote to uphold the appeal because it makes more common sense than if you vote to deny it.

Chair Lindell: Thank you Mr. Tafoya. Mr. Horcasitas, do you have any closing comments you would like to make, I would ask you to limit them to 5 minutes.

Mr. Horcasitas: Chairman Lindell and Planning Commission members, it takes a lot to work with the city of Santa Fe and submit an application especially in the historic district. There are specific processes that were put in place by the City Council and are upheld by each of these department, Planning Commission, Zoning Committee, Historic Review Board and all those processes have been met diligently along the way. The project went to the Historic Review Board and it was approved at that level, there was no appeal from Historic Review Board. The application went to building permit for review and there were reviews at many different levels. The permit has been issued, it is in good shape, and the appellants have no violations of any laws and I ask that you dismiss this appeal. I ask that you uphold the permit process.

## **PUBLIC HEARING CLOSED**

Commissioner Montes: When was the building permit issued?

Ms. Brennan: In my memorandum I say, the permit was issued on November 24, 2010 and posted in the interior of the property on November 25, 2010. On January 5, 2011 the permit was relocated so as to be visible from Camino de Las Animas and this appeal was filed within 30 days of that.

Commissioner Villarreal: I guess at this point, given the fact that the biggest issue of what has happened is that we have no control over past court cases, past staff that use to be here, agreements that were made. Now we are at this point where we are making a decision based on a very funky lot that was poorly drawn. I feel like this is more like a neighborly issue, we are looking at ways to agree and get along with each other, so I am trying to understand or maybe reach out to both parties and Mr. Horcasitas to see if there is a way outside our decision, because we have to base our decision on the permit and the fact that it is legal and it follows all the requirements based on the code. So we are looking at, and whatever happened in the past is the way the lot was agreed to, we cannot vote on that tonight but we are looking at, I feel, that it is more of an agreement between neighborly issues and I feel that being here on this Holy Thursday, I don't understand how people can't figure out how to get along so that you decide; there is a back access that someone may need, why don't we not build the coyote fence in the back for that portion. I can't answer that tonight, I am really disappointed that we have vote on something like this when it ends up being neighbor issues on how people get along and how you decide what is important for your property and what is not. I don't know all the details about the personal relationships in this neighborhood but I am voting on the fact that we have to vote on a legal permit that has already been approved and I am just asking if anyone has any clarity on how you could possibly resolve this amongst yourselves without having to go to court. I am going to pose that question to you and I have no further questions.

Commissioner Spray: Staff, would you address some of the issues on safety? Also there was an issue requiring a sprinkler at the end of that street.

Ms. Baer: There was a consideration of this case when it came before the Planning Commission approximately 10 years ago. At that time the planning commission looked at the issue and there were conditions put on the plat at that time that still pertain today. The fire Marshall made it a condition and it was agreed to that the number of dwelling units that could be built on Lot 1 and Tract A would be limited because of the access question. They were limited to one principle unit on each of those lots, lot 1 and tract A and any accessory units that would be allowed by code. That is not an issue and it has not been violated. It was also a condition that any further construction would have to be sprinklered and that was agreed to as well. At the time that this

building permit was looked at, not only did the fire department look at it, but all the building code personnel looked at it and it was approved by all of those departments.

Commissioner Spray: Thank you. So each of the department checked out the public safety before it was approved and checked out every element before it was approved through the regular process?

Ms. Baer: Yes, per the regular process.

Commissioner Spray: One other legal question; Ms. Brennan, your comment on the Court of Appeals you say addressed only one issue regarding the actual contest of the will and that was the only portion that was reversed at the lower courts, is that correct?

Ms. Brennan: Chair Lindell, Commissioner Spray, I quoted directly from the court decision.

Commissioner Spray: That was in 2006 and that was all an issue from that perspective. Just a last piece of a court action that was available.

Ms. Brennan: I believe so.

Commissioner Spray: Thank you.

Chair Lindell: I am going to call for a roll call vote on this. We need to make a decision whether to uphold or deny this appeal.

Ms. Brennan: I think that the motion would be either to deny the appeal or approve the appeal.

Chair Lindell: I will ask for a roll call vote for all those in favor of approving.

Ms. Brennan: Point of order, it should be a motion by a member of the commission.

***Commissioner Hughes moved to deny the appeal, second by Commissioner Villarreal. Motion carried by a 3 to 2 to deny the appeal***

**Roll Call Vote:**

Commissioner Hughes – Aye

Commissioner Spray - Aye

Commissioner Villarreal - Aye

Commissioner Ortiz – Approve the appeal

Commissioner Montes-Approve the appeal

**3 to 2 to deny the appeal**

Ms. Tafoya asked for copies of the tape and the transcription because this is going to go in to litigation at District Court.

Ms. Brennan stated that this request will go through the City Clerk's Office.

***5 minute break***

Commissioner Mier rejoined the meeting.

Chapter 14 Rewrite Amendments. Consideration of amendments to three sections of Chapter 14 SFCC 1987 Land Development as recommended by the Planning Commission Chapter Rewrite

subcommittee and by staff: 1) 14-6 permitted uses and use regulations, 2) 14-3.6 special exceptions; and 3) 14-3.8 development plans (Greg Smith, Case manager)

Christopher Grasier, Attorney

The Chair asked when they started working on Chapter 14.

Mr. O'Reilly stated they had been working on this since 1994 and in early 2009 and at that time the Commission decided that the best way to handle it was to form a sub-committee. At that time I was the Chairman of the Planning Commission and they appointed me and three others to that subcommittee. That subcommittee has continued to work since that time and had its last meeting on this issue last week. This represents the culmination of over 2 years of work by the Planning Commission subcommittee.

The Chair expressed her thanks; there have been some nights that have been easier than others. Thank you Greg, Chris and all, we have accomplished an amazing accomplishment. I am very pleased with how quickly we have gone through it.

Mr. O'Reilly stated that he had not counted all of the meetings but he believed it was over 30 meetings. There was also public participation and they showed their interest and those people were given a seat at the table with the Planning Commissioners as their input was invaluable.

Section 14-6 lists the types of uses allowed in the various districts, and includes specific use regulations for certain types of uses, including mobile home parks, home occupations, accessory dwelling units and other accessory uses. Use regulations for telecommunication facilities are also included in 14-6, but those regulations are being amended separately from this rewrite project. Recommended amendments include consolidating some categories of uses; adding requirements for review by the Board of Adjustment for most types of nonresidential uses located in residential districts, and adding new subcategories to the "eating and drinking establishments" category.

The most significant changes of 14-6 is the addition of a symbol (P\*) that designates uses that are permitted in most locations within a zoning district, but that would require approval of a special use permit by the board of Adjustment if the use is located within 200 feet of a residential district (drive-through restaurants, for example). Also, nearly all non-residential uses that are allowed in residential districts have been placed in categories that require special use permit reviews. Previously, many of those uses did not require a public hearing as long as the new construction involved less than 10,000 square feet of floor area.

Staff continues to work on residential care and extended care and Ms. Brennan and Mr. Graeser are helping with that as we are running in to federal regulations in the protected classes.

Eating and drinking establishments is currently one catch all category and we have broken that in to 5 categories to distinguish between those that have outdoor facilities, those that have alcohol, and those that have drive-through facilities.

**14-6.3 Accessory Uses or Structures**, this is not a major change but the commission may be interested to know that the square footage limits for accessory dwelling units to be based on lot coverage rather than on "footprint." Allows more flexibility for porches, etc.

**14-6.4 Temporary Uses or Structures**, we recommend that the structures remain in place for 90 days, (ninety days in residential districts) and will be treated as permanent structures, whether or not they are attached permanently to the ground or constructed of lightweight or non-durable materials. This change addresses problems with regulating "temporary" structures such as storage sheds and carports in residential districts, "tent" structures in commercial district, that

often remain in place indefinitely. This includes food carts, holiday sales outdoors, consensus is this deserves more attention than we can give, we will bring those as a separate amendment.

**14-8.6 Parking Ratios** - We tend to come back with parking ratios, we will bring back as a separate amendment at a later date.

Mr. Smith: Advised the commission that in their packets they had a Table that would reference special use permit uses. That concludes my presentation.

**14-6.1 Land Use Categories – no comments**

**14-6.2 Use-Specific Standards**

Commissioner Spray: 14-6.2 Use-Specific Standards, page 3 comments says to the side, “these requirements are non-specific and will be addressed by the Land use Director.” What does that mean exactly?

Mr. O'Reilly stated that this was a comment made by Mr. Graeser and asked that he respond to the question.

Mr. Graeser: Throughout the code and the session, there were a lot of requirements on items that you would include on an application, it didn't apply to a zoning use or application and we limited it to where it would appear on code.

Commissioner Spray: All application language is removed instead of restating it.

Mr. Graeser: It is restated at times so the language tends to be slightly different at times and becomes confusing.

Commissioner Spray: One of the questions, same section, page 5 the note says, “should Clarion access provision be included? What is the clarion access provision and should it be included?

Mr. Smith: I am not sure, Chris says that this is based on a discussion I had with his associate about 2 years ago. I have lost track of it since then.

Commissioner Hughes: Clarion refers to a consulting firm hired to do the work on the code.

Commissioner Spray: Do we have a record of the work done.

Mr. Graeser: Yes, we certainly have a record and all documents that Clarion delivered. I think what happened through years is that because the mobile home provisions were so rarely used we selected not to go in and make major changes. So that comment is probably more of an artifact vs. a current discussion.

Commissioner Spray: Page 10 – (a) Short Term Dwelling Units  
*Shall* taken out and used the word *may*; why did it change?

Mr. Graeser: It is a concern specified by my proofer that it is false imperative, *shall* is only used when code directs someone to do something.

Commissioner Spray: In (A) below does the same apply?

Mr. Graeser: Same issue, those are all grammatical. The intention was not to change any meaning.

Commissioner Spray – Page 12 (J). The owner/operator shall report to the Land Use Director on a monthly basis in a format provided by the Land Use Director? What will we the owner/operator be collecting?

Mr. O'Reilly: As you all may know the short term rental ordinance is fairly new and there was great debate. The language here indicates a process that is not currently followed, currently the city does a lot of regulation of short term rental units but to my knowledge no one submits any reports to the city on a monthly basis. In the first half of the paragraph we have required short term rental owners to show us their records when there have been reports or violations or complaints. But to my knowledge the owners do not report to us on a monthly basis. I don't know why this is in here and I believe it could be deleted. I would recommend perhaps that we do delete it in our recommendation that goes forward to City Council because there may be members of the Council that were involved in this at the time who may see that and have a good reason for why it is there. Currently we are not getting monthly reports to my knowledge. What those short term rentals do is they do pay lodgers tax, they pay taxes and they renew their licenses on an annual basis and have to maintain their zoning and fire inspections and all that kind of stuff. They are basically treated as if they were a commercial operations but they do not, to my knowledge, report to us on a monthly basis.

Chair Lindell: Having sat on that committee, I think that the purpose of that was to make sure that lodgers tax and gross receipts tax was being paid and that the limit of 17 times rented per year was adhered to.

Greg Smith: Point of clarification, the reference here was taken from the old section a-6, technical reference to a-7 topic from the original ordinance. It is compliance with the basic, is the individual complying with the provisions of the code.

Commissioner Spray: That makes perfect sense and would that information come back to the land use department?

Mr. O'Reilly – Reporting of lodgers tax and other taxes does not come through the Land Use Department, a business license issue goes through the Business License office. What the Land Use Department does is it verifies that we are not allowing more than 350 short term rentals in the city and we verify that all the inspections are in place and that their fees have been paid for their permits.

Chair Lindell: It does serve a purpose, whether the city collects this report or not, it allows this ordinance to work and comply with the 17 times rented and it gives real protection to what the ordinance was set for.

Mr. O'Reilly – The first sentence allows us to force the request for the report, the issues that we have in the city with short term rentals are less than no permits, and our issue are those operating without permits. Many of the short term rental units are rented through web sites and they can click calendars when they can rent. Our staff spends 1 to 2 hours scouring these sites and we contact the short term rental, and we tell them they are in violation. If they continue we send them a notice of violation. Falsifying calendar records of when they rent and report us.

Commissioner Villarreal: Page 30 - When it talks about markets and flea markets, does it refer to farmers market? Where does that fall in there?

Mr. Smith: It depends on the parameters that are in this section. Flea markets have rules that they have to comply with. Flea markets with 50 or more vendors require development parameters. Flea markets without 50 or more vendors have rules that they are required to comply with but they are not required to come to the planning commission for development permits.

Mr. Graeser – 15-12 defines a flea market as “an outdoor market conducted by an operator as a business where spaces are rented, leased, or are otherwise available to individual vendors who offer goods for sale to the public. Fewer than five (5) individual vendors located on a property do not constitute a flea market. Flea markets do not include carnivals or similar functions primarily offering services or recreation for sale. (Ord. No. 2004-21 § 4).

Commissioner Villarreal, Clarification on page 67 – a. is that commercial green houses? I was just curious about commercial greenhouses. Do we have to clarify what that is. Is that understood?

Mr. Smith: The category says accessory uses in residential districts and so non-commercial greenhouses is just one of the things that they addressed as this is an accessory and so it is specified – the general definition of accessory is it says any structure that is reasonably and customarily associated with the principal use located on the same premises as the principle use. Under the general rule people would say that someone who has a greenhouse in their backyard that must be reasonable and customary. The code does not go out of its way specifically to say that in terms of residential use non-commercial greenhouses are definitely in the category of accessories.

Commissioner Villarreal: If it doesn't say guesthouses would that be any different in the future?

Mr. Smith: I think greenhouses is covered. There is also other language in another place in the code that says that temporary types of covered things like tennis courts, greenhouses and other temporary types, of structures are limited.

Commissioner Hughes – note on page 73. The federal regulation may apply to this.

In staff's evaluation of that there may have been a tiny sub category of home occupation uses, in federal regulation that .....first instance staff does not remember, if the regulation is out there you don't have to say what it is, federal status, in the absence of the specificity

The first instance is no longer to recall what that specific subcategory regulation was. The subcommittee said that if the regulation says that it is just confusing to have a generic regulation. We need a specific regulation in its absence.

Commissioner Hughes: In other words it goes without saying.

Chair Lindell - Page 77 – C. Temporary Structures Treated as Permanent Structures. Are we going to address sheds and such?

Mr. Smith. It talks about temporary type structures, sheds, carports, poles that are not embedded in the ground, patio covers made with canvas, flea markets structures in a commercial district, those types of temporary structures. The difference in regulation is definition of a permanent structure.

Chair Lindell – Okay, now over to the table. Questions on the table section?

Commissioner Villarreal: Just have a clarification question. Vendors; will mobile vendors be addressed later? If it is not in the food and beverage section will we be seeing something on it later on?

Mr. Smith – Yes. If I may draw your attention to Page T1 if you look at the dwelling, multiple-family and go to the SC districts, staff has actually recommended the type of dwelling and use which is allowed. If you go to page T15 you will find a note that I wrote in the margin there regarding sexually oriented business. There are various versions of the table and section regarding sexually oriented businesses on T15 should be corrected. I am not sure if you have strong feeling about that. The rationale is that sexually oriented business is not to be located in any district where dwelling units are the principal use. Under the current regulations when they are codified the districts where dwelling units are not allowed, if the commission wants to change the regulations of apartments or condos, we should make that change in both places.

Mr. Smith: We would add P's in those columns on T1 where we address those specific districts.

Commissioner Hughes: The way it is stated it would be struck from T15?

Mr. Smith – That's correct. Page T1 would change the category under household and SC1, SC2 and SC3. The first question should be a basic policy question and the answer to that is yes, we should allow apartments and condos to be included in shopping center districts and we need to make corresponding changes.

Chair Lindell: Any questions on that?

Commissioner Mier: I have a question on T15, just a clarification. Can staff define telecommunication facilities for me? Are we talking towers?

Commissioner Smith – What you see here will be over ridden by the council.

Mr. Smith – The categories under telecommunication facilities includes towers, tower alternatives and the various equipment that supports them – transformers, ground equipment and things like this. Again, the regulations you see here are going to be overwritten by the new regulations that are going before the council.

Mr. O'Reilly – Tonight, previously, your first item on the agenda was recommendation to approve the telecommunication ordinance. That ordinance overrides this, assuming the City Council approves the ordinance.

Commissioner Mier: Are we premature in approving this table with those changes coming?

Mr. O'Reilly - Not at all. That is something we knew all along. For instance we knew those changes were coming – as Greg mentioned, the parking standards are not approved yet. When those changes come as well as the telecommunication changes, they will revise the table at that point.

Commissioner Villarreal – Can you direct me, when we look at the table and they have the categories for each specific piece, where in the code will it explain R1 through 7 and C1, etc. where will it be explained?

Mr. Smith – The description of the purposes and intent will be in 14-4.

Commissioner Villarreal: Would it help to have a reminder of what those codes mean in this section?

Mr. Smith – That's a good suggestion.



Mr. O'Reilly: One of the issues with the codes is that the current code has a legend to the certain codes throughout it. Whenever changes have been made to a certain section you miss making it to other sections and end up with a conflict. If we want to go that route we have to figure out a way that the code stays coherent and we really only describe these things once.

Mr. Smith: Staff is looking at a key or note that cross references you.

Chair Lindell – In section 3.8 – Mr. O'Reilly can you address that. It seems like it is eliminating some of the hearings. I guess there were a lot of times that I would remember that someone on the commission was saying are we going to hear this again. Sometimes getting a preliminary is a very reasonable thing and then the applicant comes back with a final. It says that the preliminary development plans will be made optional. What applicant is going to come to us with a preliminary development plan if it is not required?

Mr. O'Reilly: There was a time, when a preliminary plan truly was preliminary. Someone would bring that forward and not all the plans had been worked out. It was very preliminary. That was a good thing sometimes because you could introduce the project to people and see what they thought of it. That was before there were any early notification requirements at all. Those preliminary plans began to be attacked for lack of detail - people forgot that those were preliminary. Applicants then spent a lot more time and effort and money and time meeting with neighbors to make their preliminary plans pretty close to final. Then the early notification plans came in which required that people meet with neighbors on these types of things. So, while it is true that preliminary plans are somewhat less detailed than final plans, they are closer to final plans today than they ever were. Greg may want to add why we that was an option. Your question is why you would want to do this. Back when you could submit a very preliminary plan it was a way for people to test the waters to see how the project was received. If it was not well received and everyone was against it they would redesign. I think that happens less these days. Most times the preliminary plans are relatively final.

Mr. Smith: Staff's experience has been that it is rare that the preliminary hearing has added anything to the process. Especially since the EDD. In addition, staff's experience is that the neighborhood review is a more detailed review and that process requires more detail. The City Council also is involved and so more detail is given during this process.

Chair Lindell: It seems to me when we see preliminary that it allows us a chance to approve that preliminary and give some guidance as to how we would like to see it come back as a final. I think if we only see it once – I don't like to turn down development plans. I welcome the chance to help make them work. To see the preliminary, it gives us the chance to comment on it and then when it comes back it can be approved or disapproved. When it only comes once it takes away some of the possibilities that the commission has to guide a project to be a better project.

Mr. O'Reilly: The commission will continue to see preliminary and final plats. I think the point here is that I don't think there is anything in the code that requires a preliminary development plan that is different from a plat and a final development plan be submitted. The intent here is that to codify it that would allow someone to submit a preliminary plan if they want to.

Mr. Smith: The vast majority of the cases the commission sees that is the case. There are a handful of districts including PUD district, PRC district, etc. where because we specifically talk about a preliminary development plan as conditions of approval of the final development plan. I think, specifically, the commission still retains the ability to be satisfied with the project and it is under the commission's purview to postpone a project and ask the applicant to come back with a different plan. This will add efficiency to the process.

Mr. O'Reilly: I agree. We have the right to table until we are satisfied. We do have flushing out of the project.

Chair Lindell: I don't think we are inclined to ask people to postpone or to come back. It has not been my experience.

Commissioner Hughes: We can ask them to come back in 2 weeks.

Mr. O'Reilly: The vast majority of some districts in the city do not have, nor have they ever required the submittal of a preliminary and final development plan. They just required a simple one shot development plan. Again, with a few exceptions like the PRC districts where you do specifically have to have a preliminary and final. We are not talking about removing anything. We are talking about adding if we want to make it a requirement that every district has to submit a preliminary and final development plan as one option. The other is that if you want to do a preliminary plan you can. Right now the code doesn't say that. The only option is to submit a final development plan that is very good and it either gets denied or postponed.

Chair Lindell: The sheet here says multiple periods for the same project are eliminated (page 4 of staff report under 14-3.8)

Mr. Smith: That would be a situation – recent situation is similar to St. John's College, which came before the commission for a development plan hearing because it was over 10,000 sq. ft in a residential district.

Chair Lindell: You are saying all multiple hearings don't have to go to the review board and planning commission?

Mr. Smith: Yes.

Chair Lindell: I misunderstood that.

Mr. O'Reilly: I think this third bullet point in staff report could have been worded better. It probably should have said preliminary development plans are not required now in most districts. The code intent will add something that makes them optional. The way it reads it looks like we are taking away something that is already there. That is not the intent.

Chair Lindell: Thank you. Anybody else on 14.3.8? Okay let's go through and add any changes that we specifically want and vote on it.

Mr. O'Reilly: I do have two changes and will wait for a motion and can read those changes into the motion.

Chair Lindell: Do we have a motion on 14-6?

***Commissioner Mier moved to approve 14-6, second by Commissioner Spray, motion carried by unanimous voice vote.***

Mr. O'Reilly: The proposed changes would be to revise the table to reflect that dwelling units would be allowed in SC districts and at the same time prohibit sexually oriented business in those same districts. Second, to add a note to the table as to what the acronyms stand for in the table.

***Commissioner Mier moved to approve Section 14-3.8, second by Commissioner Spray, motion carried by unanimous voice vote***

Chair Lindell: Section 3.6.

Commissioner Hughes: We have not done any recommended changes to 3.6. There is a lot of movement on parking standards and we should find out what is appropriate for Santa Fe and we should hold off at this time. Like other things that will come up in the future, I think it deserves the time and effort that we don't have right now.

Chair Lindell: I think we are done with Chapter 14 for tonight.

Mr. O'Reilly: Are you suggesting that the commission does take action on 14.3.6 if only to say that no changes be made at this time?

***Commissioner Hughes moved that no changes be made on 14-3.6 at this time, Commissioner Spray second the motion, Motion carried by unanimous voice vote.***

## **G. BUSINESS FROM THE FLOOR**

None

## **H. STAFF COMMUNICATIONS**

Mr. O'Reilly expressed his thanks to this Planning Commission for working through chapter 14. I would thank other commissioners who are not on the commission any longer (Salazar, Gonzales). It is unfortunate there are no members of the public tonight. I don't think people understand how hard this is and how it affects our residents lives. I want to thank this commission for doing this on a volunteer basis for working so hard to get this done.

Commissioner Hughes: It has been an interesting 2 years. The process was long. We have had a lot of people sit in. If we had hired consultants that would have never have happened. You run a great risk. You might get a great report but where is the buy in? Where are the stakeholders? Hopefully it will go before the city council. I will volunteer to go to the council.

Commissioner Spray: What is the next process?

Mr. O'Reilly: Over the next 6 – 8 weeks is that staff will work with the consultant to tie up all the loose ends (technical amendments) and put together a final version of chapter 14 ready for consumption by the city council. It is unclear how the council wants to tackle chapter 14 at this time. Perhaps study sessions before sending out to full council for review. The goal of staff and some members of the council is to have this done by the fall.

## **I. MATTERS FROM THE COMMISSION**


## **J. ADJOURNMENT**

There being no further business to come before the Planning Commission, the Chair called for adjournment at 9:30 pm

**Signature Sheet:**

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Chair Signe Lindell



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Fran Lucero, Stenographer