



Agenda

DATE 12/22/08 TIME 1:20pm
SERVED BY Caroline Quilley
RECEIVED BY [Signature]

PLANNING COMMISSION
January 15, 2009 – 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: December 4, 2008, December 18, 2008
FINDINGS/CONCLUSIONS

- E. OLD BUSINESS
- F. NEW BUSINESS

1. An ordinance establishing a Rural Residential Zoning District for that area referred to as Area 1 in the Settlement Agreement and Mutual Release of Claims entered into by the City of Santa Fe, Santa Fe County and other parties dated May 19, 2008 and generally located west of the current city limits and north of Agua Fria Street; and making such other related changes. (Councilor Wurzbarger) (Jeanne Price, case manager)
2. **Case #M 2008-35.** 1413 Agua Fria Street General Plan Amendment. Derrick Archuleta, agent for Richard MacLaurin and Kristen Lundgren, requests approval of a General Plan future land use map amendment to change the designation of 0.22± acre from Low Density Residential (3-7 dwelling units per acre) to Office. The property is located on the north side of Agua Fria Street between Avenida Cristobal Colon and Hickox Street. (Lucas Cruse, case manager) **(POSTPONED FROM NOVEMBER 6, 2008 AND DECEMBER 4, 2008)**
3. **Case #ZA 2008-14.** 1413 Agua Fria Street Rezoning. Derrick Archuleta, agent for Richard MacLaurin and Kristen Lundgren, requests rezoning of 0.22± acre from R-5 (Residential, 5 dwelling units per acre) to C-1 (Office and Related Commercial). The property is located on the north side of Agua Fria Street between Avenida Cristobal Colon and Hickox Street. (Lucas Cruse, case manager) **(POSTPONED FROM NOVEMBER 6, 2008 AND DECEMBER 4, 2008)**
4. **Case #M 2008-45.** Cielo Azul Final Subdivision Plat Time Extension. Karl Sommer, agent for EZMO, LLC, requests time extension for final subdivision plat for 223 single-family lots on 39.454± acres of land located on the south side of Agua Fria between Calle Larranaga and Calle Nueva Vista. The property is zoned R-6 (Residential – 6 dwelling units per acre). (Donna Wynant, case manager)

5. **Case #M 2008-43. 781 Stagecoach Road Escarpment Regulations Variances.** Sommer Karnes & Associates, agent for Jan Paulk requests three variances to Article 14-5.6(D)(1) of the Escarpment Overlay District Regulations to allow for: 1) construction of a 755 square foot addition and a 175 square foot portal to the existing residence; 2) to allow for retention of an approximately 120 square foot shed; and 3) retention of a relocated fence, all within the Ridgetop Subdistrict of the Escarpment Overlay District. The property is located in the Ridgetop Subdistrict of the Escarpment Overlay District and is zoned R-1 (Residential, 1 dwelling unit per acre). (Donna Wynant, case manager)
6. **Case #ZA 2008-19. St. John's College PUD Rezoning.** Linda Tigges, agent for St. John's College, requests rezoning pursuant to 14-5.7(I) and 14-3.5 to amend the Planned Unit Development (PUD) for an increase of intensity to the master development plan. The College is zoned R-1 PUD (Residential, 1 dwelling unit per acre, Planned Unit Development) and is located at 1160 Camino Cruz Blanca, within the Historic Review District, Suburban Archeological Review District, with various portions of the property in the Escarpment Overlay District. (Dan Esquibel, case manager)
7. **Case #M 2008-48. St. John's College Master Development Plan Amendment.** Linda Tigges, agent for St. John's College, requests Preliminary Development Plan approval to amend the Planned Unit Development (PUD) to allow 83,000 square feet of phased new construction for the St. John's College campus. The College is zoned R-1 PUD (Residential, 1 dwelling unit per acre, Planned Unit Development) and is located 1160 Camino Cruz Blanca, within the Historic Review District, Suburban Archeological Review District, with various portions of the property in the Escarpment Overlay District. (Dan Esquibel, case manager)

G. BUSINESS FROM THE FLOOR

H. STAFF COMMUNICATIONS

I. MATTERS FROM THE COMMISSION

J. ADJOURNMENT

NOTES:

- 1) Procedures in front of the Planning Commission are governed by Roberts Rules of Order. Postponed cases are postponed 1) to a specific date, or 2) indefinitely until specific conditions have been resolved, or 3) to a specific date with the provisions that specific conditions be resolved prior to that date. Postponed cases can be removed from the postpone by a motion and vote of the Planning Commission
- 2) Due to time constraints not all issues may be heard and may be rescheduled to the next scheduled Planning Commission meeting. This agenda is subject to change at the discretion of the Planning Commission.
- 3) 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 be subject to cross examination. Witnesses have the right to have an attorney present at the hearing. The zoning board will, in its discretion, grant or deny requests to postpone hearings.
***An interpreter for the hearing impaired is available through City Clerk's Office upon 5 days notice. Please call 955-6521**

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CITY OF SANTA FE
PLANNING COMMISSION

January 15, 2009

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1. An ordinance establishing a Rural Residential Zoning District for that area referred to as Area 1 in the Settlement Agreement and Mutual Release of Claims entered into by the City of Santa Fe, Santa Fe County and other parties dated May 19, 2008 and generally located west of the current city limits and north of Agua Fria Street; and making such other related changes.	Approved	3-4
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5. <u>Case #M 2008-43. 781 Stagecoach Road Escarpment Regulations Variances.</u> Sommer Karnes & Associates, agent for Jan Paulk requests three variances to Article 14-5.6(D)(1) of the Escarpment Overlay District Regulations to allow for: 1) construction of a 755 square foot addition and a 175 square foot portal to the existing residence; 2) to allow for retention of an approximately 120 square foot shed; and 3) retention of a relocated fence, all within the Ridgetop Subdistrict of the Escarpment Overlay District. The property is located in the Ridgetop Subdistrict of the Escarpment Overlay District and is zoned R-1 (Residential, 1 dwelling unit per acre).	1. Approved 2. Withdrawn 3. Approved	6-14

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MINUTES OF
CITY OF SANTA FE
PLANNING COMMISSION MEETING

January 15, 2009

A regular meeting of the City of Santa Fe Planning Commission was called to order by Chair O'Reilly at approximately 6:00 p.m. on this date in the City Council Chambers, City Hall, Santa Fe, New Mexico.

A. ROLL CALL

Roll call indicated the presence of a quorum as follows:

MEMBERS PRESENT:

Bonifacio Armijo
Angela Schackel Bordegaray
Ken Hughes
Gloria Lopez (late)
Ruben Montes
Matthew O'Reilly, Chair

MEMBERS ABSENT:

Estevan Gonzales (excused)
Signe Lindell (excused)
John Salazar, Vice Chair (excused)

STAFF PRESENT:

Tamara Baer, Planning Manager
Kelley Brennan, Assistant City Attorney
Jeanne Price,
Donna Wynant, Senior Planner
John Romero, Traffic Engineer
Denise Cox, Stenographer

B. PLEDGE OF ALLEGIANCE

Chair O'Reilly asked Commissioner Montes to lead the pledge of allegiance.

C. APPROVAL OF AGENDA

Ms. Baer reported that Agua Fria Case #M-2008-35 and Case #ZA-2008-14 were postponed by mutual consent to the February 5th meeting. St. John's Case #ZA-2008-19 and Case #M-200848 were postponed to the February 5th meeting as well.

Chair O'Reilly pointed out that this is the third postponement for Agua Fria and asked if there is a limit on this.

Ms. Baer said typically they allow them to postpone three times and then it is a new application with new fees. She explained that they gave the applicant the opportunity due to problems found with late submittals. She said they waived the requirement to apply and charge extra fees at this time.

Commissioner Montes moved to approve the agenda as amended.

Commissioner Armijo asked if this was due to staff or the applicant.

Ms. Baer said there was a late submittal based on a request for additional submittals and staff had no chance to review these until after the report was written. Staff found a significant problem that would kill the case, so they gave the applicant the courtesy to postpone again.

Commissioner Armijo felt they need to be strong because if the applicant cannot get their act together three times they must pay the piper.

Commissioner Hughes seconded the motion which passed by unanimous voice vote.

D. APPROVAL OF MINUTES AND FINDINGS/CONCLUSIONS

MINUTES: December 4, 2008

Commissioner Hughes made the following corrections:

Page 9, 8th paragraph from the bottom, he inserted: ***be put to use to*** after *can*.

Page 8, 4th paragraph from the bottom, he inserted at the end of the 2nd sentence: ***development and folks will have to drive much further than needed.***

Commissioner Bordegaray made the following corrections:

Page 11, 1st paragraph under Matters from the Commission at the end of the 1st sentence she inserted: ***Land Use Commission.***

Chair O'Reilly requested that the two notations of Chair be removed from the signature line at the end of the minutes.

Commissioner Armijo moved to approve the minutes of December 4, 2008 as amended, Commissioner Hughes seconded the motion which passed by unanimous voice vote.

December 18, 2008

Commissioner Bordegaray made the following corrections to the minutes:

Page 1, under staff present, and to Page 11 where Mr. Chavez spoke she added:

Fabian Chavez, Parks Division.

Page 12, 1st line, she replaced Agora with: ***the retail commercial center in El Dorado.***

Page 12, 2nd line, insert before services: ***retail commercial***

She asked that the "seven points of connection" be placed in quotes and add to the end of the sentence: ***of this plan.***

Page 12, 3rd line, she added to the end of the sentence: ***at Cerrillos Road.***

Commissioner Hughes moved to approve the minutes of December 18, 2008 as amended, Commissioner Montes seconded the motion which passed by unanimous voice vote.

FINDINGS/CONCLUSIONS

Findings of Fact and Conclusions of Law for Las Soleras Cases #M-2008-27, #M-2008-28, #M-2008-15, #ZA-2008-11 and #M-2008-44 are incorporated herewith to these minutes as Exhibit "1."

Commissioner Hughes moved to approve the findings and conclusions for Cases #M-2008-27, #M-2008-28, #M-2008-15, #ZA-2008-11 and #M-2008-44, Commissioner Armijo seconded the motion which passed by unanimous voice vote.

E. OLD BUSINESS – None

F. NEW BUSINESS

- 1. An ordinance establishing a Rural Residential Zoning District for that area referred to as Area 1 in the Settlement Agreement and Mutual Release of Claims entered into by the City of Santa Fe, Santa Fe County and other parties dated May 19, 2008 and generally located west of the current city limits and north of Agua Fria Street; and making such other related changes. (Councilor Wurzbarger) (Jeanne Price, case manager)**

Memorandum prepared January 6, 2009 for January 15, 2009 Planning Commission meeting by Jeanne Price, Legislative Liaison, is incorporated herewith to these minutes as Exhibit "2."

Ms. Price presented the staff report included in Exhibit "2."

Chair O'Reilly referred to page 3 and questioned the veterinary establishment rules.

Ms. Price explained that the code book has this language in it and veterinary establishments within the City limits have to comply with this.

Chair O'Reilly questioned the time limits and asked if it is the intent that the rural residential continue forever in these areas.

Ms. Brennan stated that the settlement agreement defines this.

Commissioner Armijo referred to page 3, line 7. He asked what would happen to existing kennels.

Ms. Price said if the kennel is in area 1 then the rules do not apply. She said within the city limits the rules do apply. She said there may be some non-conforming veterinary uses that will have to be addressed.

Commissioner Armijo referred to page 6, line 8 and questioned if the number should be identified.

Ms. Price explained that these are the existing uses about accessory uses and that is not being changed.

Commissioner Armijo understood that many of this is from existing language, but he questioned if there may be some changes to the existing codes that might need to be addressed.

Commissioner Armijo referred to page 14, lines 5-11. He said according to this you could build quite a large bit of portals and still meet the open space policies.

Ms. Price said this is all part of the multifamily section and the rules were originally pushed as far as possible and some of the rules have been revised recently.

Commissioner Armijo referred to page 15, item e. He understood the city did not deal with homeowner's associations.

Ms. Price said they do not to enforce the covenants, but they city ensures a subdivision that has commonly owned area has the mechanism to deal with those.

Public Hearing

There was no public testimony regarding this case.

The public testimony portion of the public hearing was closed.

Questions and comments from the Commission

Commissioner Montes commented that there is no mention of garbage pickup or recycling and questioned why those are not included.

Ms. Price was not sure what the settlement agreement does about that. She guessed that this is not provided until the area is annexed.

Commissioner Montes asked if accessibility is an issue in the rural areas

Ms. Price stated that much of that has been hashed out and the services are later and closer to the annexation depending on the ability to provide the services.

Ms. Baer suggested the Commission state in their motion what happens at the time the RR would become R-1 if that is part of the recommendation.

Chair O'Reilly explained that this is a recommendation to the Council or it could be to approve with wording changes.

Commissioner Bordegaray moved to recommend approval of the proposed ordinance with the language changes suggested by Chair O'Reilly. Chair O'Reilly said that is for the ordinance to address the rural residential district would expire and revert to R-1 at a date certain, Commissioner Hughes seconded the motion which passed by unanimous voice vote.

2. **Case #M 2008-35. 1413 Agua Fria Street General Plan Amendment.** Derrick Archuleta, agent for Richard MacLaurin and Kristen Lundgren, requests approval of a General Plan future land use map amendment to change the designation of 0.22± acre from Low Density Residential (3-7 dwelling units per acre) to Office. The property is located on the north side of Agua Fria Street between Avenida Cristobal Colon and Hickox Street. (Lucas Cruse, case manager) (POSTPONED FROM NOVEMBER 6, 2008 AND DECEMBER 4, 2008)

This item was postponed to the meeting of February 5th per approval of the agenda.

3. **Case #ZA 2008-14. 1413 Agua Fria Street Rezoning.** Derrick Archuleta, agent for Richard MacLaurin and Kristen Lundgren, requests rezoning of 0.22± acre from R-5 (Residential, 5 dwelling units per acre) to C-1 (Office and Related Commercial). The property is located on the north side of Agua Fria Street between Avenida Cristobal Colon and Hickox Street. (Lucas Cruse, case manager) (POSTPONED FROM NOVEMBER 6, 2008 AND DECEMBER 4, 2008)

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4. **Case #M 2008-45. Cielo Azul Final Subdivision Plat Time Extension.** Karl Sommer, agent for EZMO, LLC, requests time extension for final subdivision plat for 223 single-family lots on 39.454± acres of land located on the south side of Agua Fria between Calle Larranaga and Calle Nueva Vista. The property is zoned R-6 (Residential – 6 dwelling units per acre). (Donna Wynant, case manager)

Memorandum prepared January 7, 2009 for January 15, 2009 Planning Commission meeting by Donna Wynant, Senior Planner, is incorporated herewith to these minutes as Exhibit "3."

Donna Wynant presented the staff report included in Exhibit "3."

Staff made no recommendation.

Commissioner Lopez arrived at this time.

Public Hearing

Karl Sommer, representing the applicant, was sworn. The issue is the two year time period for the recordation of the plat has expired. The code says the Planning Commission will make a determination. This annexation included 40% affordability. The LLC was under contract with Homewise to purchase the property and they have been working hard to get the letter of approval for the infrastructure. Currently, the credit markets are difficult. The applicant has not delayed the effort. The 40% affordability has made it hard to market. There is a potential buyer in place. The intent of the code is to move people ahead so they do not sit back and speculate approvals. This developer has been working on this. The regulations have not changed in the last two years so it would be detrimental to send this back through. The Planning Commission decision has a wide latitude of discretion. The Commission has the ability to say they will not revoke the approval for this period of time. He said they believe that six months to one year would be adequate to do what they need to do.

The public testimony portion of the public hearing was closed.

Questions and comments from the Commission

Commissioner Hughes asked what normally happens when the two year period is met.

Ms. Brennan said all the conditions of the plat approval have been met, so this is quite unusual.

Ms. Baer explained that they are seeing more requests for extensions based on the economic climate. Usually they request the same period as to what was approved which would be two years. The Commission has the opportunity to rescind. This applicant has all the signatures and the only reason this is not recorded is that the City requires the letter of credit be in place which is the only thing keeping this from being recorded.

Mr. Sommer said they will take two years, but he did not want to presume that.

Commissioner Hughes asked if they could come back in two years and say they still do not have funding.

Mr. Sommer thought that would be highly unlikely. There is a huge incentive to get this done. The extension date lets lenders know that the plat is not rescinded and will hasten up the ability to obtain financing.

Commissioner Bordegaray asked if this is contiguous to Agua Fria.

Mr. Sommer stated that there is one access point to Agua Fria.

Chair O'Reilly said if they vote not to rescind plat then they should give a time limit.

Ms. Brennan agreed and said there is broad discretion.

Commissioner Armijo moved to approve Case #M-2008-45 allowing a two year extension and not to rescind, Commissioner Bordegaray seconded the motion which passed by unanimous voice vote.

- 5. Case #M 2008-43. 781 Stagecoach Road Escarpment Regulations Variances. Sommer Karnes & Associates, agent for Jan Paulk requests three variances to Article 14-5.6(D)(1) of the Escarpment Overlay District Regulations to allow for: 1) construction of a 755 square foot addition and a 175 square foot portal to the existing residence; 2) to allow for retention of an approximately 120 square foot shed; and 3) retention of a relocated fence, all within the Ridgetop Subdistrict of the Escarpment Overlay District. The property is located in the Ridgetop Subdistrict of the Escarpment Overlay District and is zoned R-1 (Residential, 1 dwelling unit per acre). (Donna Wynant, case manager)**

Memorandum prepared January 7, 2009 for January 15, 2009 Planning Commission meeting by Donna Wynant, Senior Planner, is incorporated herewith to these minutes as Exhibit "4."

Letters from neighbors, Linda R. Gore, Cheryl Trostrud-White and Philip Murray are incorporated herewith to these minutes as Exhibit "4(A)."

Notification of ENN meeting dated August 18, 2008 from Karl Sommer is incorporated herewith to these minutes as Exhibit "4(B)."

Letter from Fred Rowe with proposed findings and conclusions dated January 15, 2009 is incorporated herewith to these minutes as Exhibit "4(C)."

Donna Wynant presented the staff report included in Exhibit "4." She noted that each variance needs to be voted on separately.

Staff recommends:

The proposed variances do not meet the approval criteria set forth in Section 14-3.16(C) of Chapter 14. to be consistent with the purpose and intent of the Escarpment Overlay District Ordinance, staff recommends the Planning Commission deny the request for the three variances.

All variance applications shall be reviewed for the compliance with the following criteria:

1. Special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other lands, structures or buildings in the same district, and which do not result from the actions of the applicant;
2. Literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter;
3. Granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to owners of other lands, structures or buildings in the same district. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance;
4. The variance is the minimum variance that will make possible the reasonable use of the land, building or structure;
5. Granting the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Public Hearing

Joanne Paulk, applicant, 781 Stagecoach Circle, was sworn. She purchased this property in 1999 and planned to retire in Santa Fe after working in the US Senate for 27 years. She now works in Governor Richardson's administration. She has made Santa Fe her home being active in the community. She chose the property due to the proximity to town. The purpose of the addition is to allow her to live in this home forever. She had to have a caregiver for her mother for 7 years and she herself has the same illness. If care becomes necessary she wants to be able to live in her home. The addition would allow her to still have privacy. She understands there is opposition to the Tuff Shed that was on the property when she moved there.

Joseph Karnes, 200 West Marcy Street, was sworn. He reviewed a Power Point Presentation showing photos of the property. The proposed addition is on the east side of the house. They put up story poles to show the proposed location. He said there has been some difficulty in designating the ridgetop. There is no rational difference between the area designated as the ridgetop and the proposed site. The area on the south side of the house was designated as a buildable site. The issues are that Bishop's Lodge Road runs below the west of the property. He showed that the visibility from Bishop's Lodge Road is an issue with that site. The proposed area expands the footprint of the area and is minimally visible from Valley Drive. Separating the addition would result in greater public visibility as well as requiring a site disturbance. The buildable sites were rejected. The proposed site is flat and adjacent to the existing house.

Karl Sommer, previously sworn, commented that this lot was approved in 1980 and the house was built prior to the escarpment regulations. The restrictions would not have prohibited this addition. This case points out that the scope and changes made to the ordinance violates the intent and serves no purpose. The regulations do not allow the

same use of the home as others in an RM district would enjoy. This proposal clearly moves the addition out of the ridgetop. The buildable site is far more prominent and requires more disturbances. The house is situated on the property in a way that any addition cannot be cohesive. There is an area that is open to the living room with a patio, but there is no access or utilities. The imposition of the ordinance is not something done by the applicant's design. The ordinance as currently drafted creates a hardship. This home is nothing out of the ordinary in this district. He addressed the issue of the shed. He did not advise Ms. Paulk to move the shed, but it was moved due to the lack of response from his office. He noted that they would be asking for a variance anyway. The shed moving created a great deal of animosity. The shed was moved to an area partially in and out of the escarpment area. He said they would like the shed to stay where it is as it is less visible and it can be screened with evergreens more appropriately. There is no objection to the addition or fence that he has heard. The fence was moved six inches.

Ms. Paulk corrected this statement and said it was moved six inches to six feet.

Richard Folks, 119 Valley Drive, President of Greater Callecita Neighborhood Association, speaking as a neighbor, was sworn. He stated that he lives directly underneath the storage shed and across the street. He was present at the ENN meetings where they never got to discuss the plans for the addition because they never got beyond the shed. In his opinion, the applicant is trying to play the victim. The ordinance was in place when this property was purchased. Every person he approached was happy to sign the petition. He said she knew what they were doing and had legal counsel the whole time. This shed was never inspected and it is built on stilts in the escarpment area. He said it is nice to ask for forgiveness without permission. The code originated from public opinion in order to protect the public. He did not see how it is showing extraordinary hardship to limit the applicant to stay in a 3200 square foot house. He said there is nothing wrong with upholding the code. The property is not suitable for what she wants to do on it. He thanked staff for their professionalism and felt they presented a good report.

Phillip Murray, 783 Stagecoach Circle, was sworn. The shed was reconstructed in the current location in July. He cannot see the shed well, but everyone that can see it has signed the petition which he supports. The affront is that it has been relocated to an area the applicant cannot see, but where others can see it. He did not believe any matter of screening will cover the structure. It is prominent and visually offensive from Valley Drive. The shed was built on concrete piers on a steep slope. He believes this has not been inspected and is potentially unsafe. He agreed the staff report is excellent. He was sympathetic for the applicant's desire for in-home care. He said she lives alone so there is adequate space for care. He urged the Commission to follow the staff report.

Fred Rowe, President of the Neighborhood Law Center, Past President of the Neighborhood Network, and Counsel of the Greater Callecita Neighborhood Association, speaking solely as a neighbor, 787 Stagecoach Circle, was sworn. He reminded the Commission that any determination must be based on findings of fact and conclusions of law explaining the determination. He said no decision is supportable in fact or law. The applicant's property is located at 781 Stagecoach Circle in the Escarpment Overlay District, which was established by Ordinance "to preserve the natural environment ***as a visual asset for the benefit of the community." To obtain the requested variances, the applicant must not only meet the 5 specific criteria of the

ordinance, but must additionally satisfy the strict special requirement of extraordinary hardship, above and beyond the demonstration of "unnecessary hardship" which is required for any variances. The applicant has the burden of proof on every issue and criteria. There must not be a subversion of the purpose of the escarpment overlay ordinance. He handed out proposed findings and conclusions included in Exhibit "4(C)." Consistent with the comprehensive staff report, no evidence demonstrates that the proposed variances meet the 5 criteria for variances. Nor has the applicant demonstrated "unnecessary hardship," let alone the "extraordinary hardship" to justify a variance of the escarpment overlay regulations. To the contrary, the applicant already enjoys a reasonable use of her property located at 781 Stagecoach Circle, featuring a luxury home with a building footprint of approximately 3,200 square feet, not including a 300 square foot porch and 100 square foot portal. No need, let alone hardship, has been demonstrated to justify the requested variances by an owner who has failed to obtain building permits and now seeks to add a 126 square foot shed. The reference that this is better than building it down slope is no basis for granting the variance. The code states that no permitted use of lands, structures or building in other districts shall be considered grounds for issuance of a variance. In light of the evidence and testimony, he respectfully submitted that no finding of fact or conclusion of law other than supporting the denial of the variance is consistent with the professional staff report or is possible in this case.

Judy Johnson, 132 Valley Drive and owns 128 Valley Drive, was sworn. She said everyone has seen this illegal shed. She was shocked when she saw this happening. She did not feel they got a great deal of information and they did not discuss the addition. She explained that the neighbors specifically said they disagreed to the shed but made it clear that it had nothing to do with the addition because the addition was not discussed. There were no deals made. The neighbors feel this sets a precedent for future development in the escarpment. She did not recall the applicant stating she had a disease and said she was building it because she wanted to. She loves the views and people have the right to develop their property, but she asked everyone to follow the rules of the community. She feels this is a disregard of the laws and community. She added that they were told that the applicant could build lower on buildable sites if they did not agree. She was shocked at the height of the story poles, although she could not tell where the addition would be.

Eloy Lucero, 114 Valley Drive, was sworn. He supported the staff report and believed there was no justification for the variances. He requested the Commission decline the request.

Ann Folks, 120 Valley Drive, was sworn. She supported the recommendation of the staff. She lives directly below the shed and it is visible from every corner of her property. Aside from the visibility and safety which is an issue, she pointed out that there is a lot of runoff during the heavy summer rains. The surface has slid into her backyard for 20 years. The landscape changes every year. She thinks that could affect this structure and any construction on that side of the hill. She hopes that any activity or movement will be closely regulated.

Sheryl Trostrud-White, 816 Stagecoach Drive, was sworn. She lives a few doors down and has only been in the area for a few years. Ms. Paulk showed her the plans and location which is out of view from everyone. She thinks the addition is not a big deal. She did not know how anyone can assume there is not a hardship that they do not know

about. She said having a live-in can drive someone crazy and an extra room or area is far better. If she had not been there when her husband passed out last month he would not have made it, so she can understand why Ms. Paulk would want a caregiver. She did not think the issue should be how much area she has in her home. She has been in the home which is very open and it would be awkward for someone to be living in the same area. She has looked up from Valley Drive at the shed and the buildable area would be more visible. She agreed they could plant big trees and make sure the area was stabilized.

John Scanlon, 789 Stagecoach Circle, was sworn. He questioned the hardship evidence as the only thing in the record is that she would need care and that is a substantial hardship. He attended the meetings and the main subject consisted of objections to the shed although he did not recall anyone objecting to the addition. The shed location is the lesser of several evils. He believes the shed could be more unsightly where moved and there will still be erosion problems. He presumed if this request were approved it would be conditioned on getting the necessary approvals and standards. He did not think it is the prerogative of the Commission or the neighbors to redesign the house. His judgment is that the proposal for the addition makes more sense and would be less disruptive than doing something to the home.

Linda Gore, West Alameda Street, was sworn. She testified that Ms. Paulk's conscientiousness to the details of the plan are scrupulous and the area for the addition would not be in sight of others due to the height of the fence. She is a friend of the applicant and has spent a great deal of time at the home. She heard comments that the applicant has a large home for one person, but it is difficult to find healthcare people if you do not have the appropriate facilities. In her opinion, it is mean spirited to say that because she has this perceived this large house that she does not need anything else as that is not for them to judge. Ms. Paulk would like to put the addition on and for good reason.

Owen Nelson, 610 Galisteo, was sworn. He is the designer and spent a great deal of time analyzing the site. The addition is modest and scaled to work with the home buffered by the home and the fence on the eastern portion. The addition will have no visual impact on the neighbors. He pointed out that half of the existing home lies within the escarpment zone. The addition keeps with the spirit of the ordinance minimizing and eliminating visual impact of any future building.

Mr. Sommer said Ms. Paulk is willing to withdraw the request for the variance of the shed and will move it to an area that does not require a variance. He said in all the discussions he has not heard any opposition to the addition, so to say the impetus for the opposition was not the shed is not genuine in his opinion. He said they could never find a variance approvable under the restriction given. If the criteria are taken literally nobody in the ridgetop could ever do anything to their home that they wanted to do that was necessary to avoid an extraordinary hardship. The Commission has granted variances and looked at each case on the merits. He urged the Commission to look at the facts of this case and see the staff is saying that the intent of the ordinance is not violated by the granting of the variance.

The public testimony portion of the public hearing was closed.

Questions and comments from the Commission

Commissioner Armijo referred to the areas identified as buildable areas and asked Charlie Gonzales if the applicant were not allowed the variance where the applicant could build.

Charlie Gonzales, Escarpment, explained that there are no footnotes on the property so they could get to a height of 24 feet, however he would have to involve zoning.

Ms. Baer said guesthouses are limited to 15 feet.

Commissioner Armijo understood this applies on the lower area. He asked if there is no screening required outside the ridgetop.

Mr. Gonzales said there are no screening requirements outside of the escarpment. The ridgetop requirements for screening are 15 feet away from the house and 15 feet apart with the trees half the height of the home.

Commissioner Armijo commented that he was glad the shed was pulled out. He believes the fencing may be too tall. If it is less visible that is what has to be looked at. In his opinion, it seems less visibility is being able to allow the addition in the ridgetop.

Commissioner Bordegaray agreed with Commissioner Armijo. She asked about the ENN process and wanted to know whether the city or applicant hosts the meeting.

Ms. Baer said the city acts as a facilitator and tries to keep the meeting productive and civil. The staff person goes over the 11 points required to be addressed by the applicant. After the meeting, staff does a brief report hitting the main points that came up.

Commissioner Bordegaray wanted to ensure all voices are heard. According to this case, there were many statements that there was a lot of distaste about the meeting. She said it did not sit well that at an ENN meeting neighbors can kill good projects referring to a previous case where the neighbors vetoed access and connectivity points against professional planning principles. She believes the staff needs to be cognizant of how the meeting is run. This is not a venue for developers to intimidate neighbors or the other way around either.

Commissioner Armijo asked if the proposed addition site has already been disturbed.

Mr. Gonzales said it appears that it has been disturbed and is flat. The proposed site would result in no additional disturbance.

Commissioner Armijo asked if the possible buildable areas would have disturbance.

Mr. Gonzales stated that to get to the site they would be cutting trees and vegetation.

Chair O'Reilly asked at what point an improvement triggers a permit.

Ms. Baer said a fence is considered a structure whether it is being moved or installed. It is the construction of a structure that requires a permit.

Chair O'Reilly asked if the fence was in existence prior to the adoption of the escarpment ordinance.

Ms. Paulk said the fence was on the property when she bought it in 1999. They used the same wire as some of the posts were rotting.

Chair O'Reilly was not sure if they can verify that statement, but asked if the fence being over six feet would be a non-conforming structure.

Ms. Baer explained that any residential fence is limited to 6 feet and this is not 8 feet throughout. It would be possible to bring it down to 6 feet.

Chair O'Reilly asked if the applicant applied for a permit to move the fence if they would require them to take it down to 6 feet.

Ms. Baer said that is correct, although she is not sure they would have allowed for it to be moved. She quoted the non-conforming structure clause of the code.

Chair O'Reilly referred to the criteria for a variance. The variance is needed due to the direct result of the applicant. If the fence were left where it was and was in place it would have been an existing non-conforming. This does not seem to meet the criteria. He commented on the addition. The attorney is correct that the Commission has seen requests for variances and each one is very different. Looking at this plan, it appears there is a huge area to the west of the existing residence that is flat and outside the escarpment ordinance, although it may make the addition more visible from Bishop's Lodge Road. He noted that the applicant's plans for the addition do not really tie into the rest of the house. If the addition were placed elsewhere the neighbors might not like it. There is buildable area outside the escarpment where this could be built just as easily.

Commissioner Hughes believes the Commission has to act on whether or not they agree with the ordinance or not.

Commissioner Hughes moved to deny the variance for the proposed addition, Commissioner Montes seconded the motion which failed 2 to 3 by the following voice vote. Those voting for the motion: Commissioners Montes and Hughes. Those voting against the motion: Commissioners Armijo, Bordegaray and Lopez.

Commissioner Hughes moved to approve the variance for the fence to remain with the condition that it be lowered to six feet, Commissioner Armijo seconded the motion.

Chair O'Reilly pointed out that the fence is the direct action of the applicant.

Commissioner Armijo understood that it is a direct action, but it was only moved 6 inches.

The motion passed on the following voice vote of 3 to 2. Those voting for the motion: Commissioners Armijo, Lopez and Hughes. Those voting against the motion: Commissioners Montes and Bordegaray.

Commissioner Armijo wanted to know why they did not propose the addition to a buildable site outside the ridgetop.

Ms. Paulk said she was told that it would be a problem because the driveway slopes down at least six feet and they would have to fill in the land. She added that she would

like to have it closer to the home if she needed something. Nobody would see it where she is proposing it.

Mr. Sommer asked if the neighbor to the east was consulted.

Ms. Paulk stated that Mr. Murray did not oppose the addition.

Mr. Sommer asked if that played a role in the decision.

Ms. Paulk replied yes.

Mr. Sommer asked how this impacts the house to the west.

Ms. Paulk said it would be very close and she would have to lose a lot of trees. She was told by two designers that it would be a problem to put it there.

Mr. Sommer stated that it impacts the neighbor to the west and the east neighbor has no objection to the proposed site.

Ms. Paulk said the proposed site has had two Tuff Sheds on it. She added that she did not know she needed a permit to move a shed already on the property.

Commissioner Armijo asked how feasible it is to do the addition in the buildable area.

Mr. Gonzales recalled there is a lot of landscaping in that area that would have to be disturbed to build.

Commissioner Armijo asked if the proposed site would cause the least disturbance or impact to any surrounding areas.

Mr. Gonzales said the problem is that when they come out of the buildable area they have to comply with the slope analysis.

Commissioner Armijo understood that the area they are asking for the variance has the least disturbance and is the least visual location.

Mr. Gonzales replied yes.

Chair O'Reilly referred to the photographs and noted that it appears that the fence was moved further than six inches referenced by Mr. Gonzales standing on the old fence line.

Mr. Gonzales was not sure.

Ms. Paulk offered to clarify, but Chair O'Reilly said the city is unable to verify the information.

Ms. Paulk stated that it is more than six inches. She said it goes from 3 inches to about 4-5 feet.

Ms. Brennan pointed out that any Commissioner that was in the majority can make a motion to reconsider the variance for the fence.

Chair O'Reilly said in many of the previous escarpment variance cases they have made field trips.

Commissioner Armijo moved to approve the variance for the addition of a 755 square foot addition and a 175 square foot portal to the existing residence, Commissioner Lopez seconded the motion.

Chair O'Reilly said the code is clear and it appears there is plenty of room to build the addition outside the ridgetop.

Commissioner Bordegaray pointed out that this applicant has the right to appeal.

Chair O'Reilly said if there is a buildable spot there is no hardship.

Commissioner Lopez commented that she understood there is room to build the addition elsewhere, but there is a reason the applicant wants this so close which is why she is in favor of allowing the addition.

Commissioner Armijo added that this is the least visible area and that is part of the decision as well as the intent of the ordinance. He supports this as this area will cause the least impact and disturbance.

The motion passed by a majority 3 to 2 voice vote. Those voting for the motion: Commissioners Armijo, Bordegaray and Lopez. Those voting against the motion: Commissioners Hughes and Montes.

- 6. Case #ZA 2008-19. St. John's College PUD Rezoning. Linda Tigges, agent for St. John's College, requests rezoning pursuant to 14-5.7(I) and 14-3.5 to amend the Planned Unit Development (PUD) for an increase of intensity to the master development plan. The College is zoned R-1 PUD (Residential, 1 dwelling unit per acre, Planned Unit Development) and is located at 1160 Camino Cruz Blanca, within the Historic Review District, Suburban Archeological Review District, with various portions of the property in the Escarpment Overlay District. (Dan Esquibel, case manager)**

This item was postponed to the meeting of February 5th per approval of the agenda.

- 7. Case #M 2008-48. St. John's College Master Development Plan Amendment. Linda Tigges, agent for St. John's College, requests Preliminary Development Plan approval to amend the Planned Unit Development (PUD) to allow 83,000 square feet of phased new construction for the St. John's College campus. The College is zoned R-1 PUD (Residential, 1 dwelling unit per acre, Planned Unit Development) and is located 1160 Camino Cruz Blanca, within the Historic Review District, Suburban Archeological Review District, with various portions of the property in the Escarpment Overlay District. (Dan Esquibel, case manager)**

This item was postponed to the meeting of February 5th per approval of the agenda.

G. BUSINESS FROM THE FLOOR – None

H. STAFF COMMUNICATIONS

Ms. Baer asked the Commission if they would like the idea of a consent agenda for items that would meet certain criteria. There would still be proper notice. There would have to be no opposition from anyone. The case would have to be in full compliance with the code and there would have to be no staff concerns. The applicant would also be in agreement with staff conditions. She explained that any Commissioner could pull anything off the consent agenda. The kinds of things would be time extensions or minor changes to plats.

Commissioner Bordegaray asked how much this will lessen the time.

Ms. Baer said these are mostly time extensions.

Commissioner Hughes wished they could have a moratorium on these variances until the escarpment ordinance is cleaned up and rewritten.

Commissioner Montes asked if others have a consent agenda.

Ms. Baer replied only the Council.

Chair O'Reilly understood this would be limited to minimal cases, but wanted to still receive a full packet.

Ms. Baer explained that any one member can pull something off the consent agenda without voting to do so.

There was enough interest that Ms. Baer said she would work on a proposal.

Commissioner Armijo recommended having a time limit when people are getting up to speak.

Chair O'Reilly stated that he tries to give the neighbors the same amount of time that the applicant has had to make their presentation.

Ms. Brennan commented that the quasi judicial requirements are going to be refined as well as how the findings get embodied. She was planning to do a brief presentation on this soon.

Chair O'Reilly asked for this at the end of the next meeting.

Ms. Baer wanted to update the Commission on what is happening with the annexations. There are still private ones that are required to have contiguity with the boundaries. There are many waiting for the city annexations to happen so they do not have to pay. The city has chosen a facilitator, Jenkins Gavin, for the meetings with the public for outreach. There are three phases and first one will be done by end of the year, along I-25 and filling the donut holes. The next step is the ordinance has to be created to set up the rules for how projects will be reviewed prior to being annexed. The city will have the authority to grant authority to bodies to review applications for areas within the presumptive city limits that are not being annexed immediately.

Chair O'Reilly asked when they would have the presentation on the road networks.

Ms. Baer asked if they want the MPO staff or just Lucas Cruse.

Commissioner Bordegaray was fine with Lucas Cruse doing the presentation.

I. MATTERS FROM THE COMMISSION

Commissioner Hughes reported on the long range meeting mostly on St. Michael's Drive. Under current zoning this will take forever, so they need a form based code for zoning. He liked the idea. Next month there will be a presentation from Pat Nicholson on the neighborhood ordinance.

Chair O'Reilly said Greg Smith is working on the rewrite of Chapter 14 that does not include the escarpment stuff. He said they may roll it out to the long range planning subcommittee in pieces or all at once to the Planning Commission. He has heard that they have corrected the most egregious issues. The escarpment is not being addressed in this. The escarpment issue has had a working group that he is a part of. The main issue is what the real intent of the escarpment ordinance is. He said it was not appropriate to bring this up during the hearing, but the way the Commission voted is reflective of what the group has decided the intent should be.

Commissioner Hughes said he will be attending the Smart Growth Conference in Albuquerque next week and will report on it at the next meeting.

Commissioner Lopez hoped that when the staff realizes the client is not telling the entire truth that they would let the Commission know even when they have already voted.

Ms. Cox, stenographer, noted that the applicant corrected Mr. Sommer regarding how far the fence was moved, although the Commission might have missed it because the attorney was talking at the same time.

Commissioner Armijo asked if there have been any other decisions that have gone to the Council.

Ms. Baer reported that only La Triada was overturned. The applicant has another ENN on that case and will be coming back without the two variances; the radius was eliminated on Fifth Street as well as the bridge abutments. The applicant removed the bridge. There will be two main cul-de-sacs.

Ms. Brennan added that the code rewrite will create some flexibility in granting variances.

Chair O'Reilly thanked Commissioners Armijo, Lindell and Lopez for doing all the hard work and sitting on the Summary Committee. He thanked Commissioner Hughes for chairing the Long Range Planning Subcommittee as well as all the Commissioners serving on that as well. He invited Commissioner Montes to join in on any subcommittees he is interested in.

J. ADJOURNMENT

There being no further matters to come before the Commission, and the Commission having completed its agenda, Commissioner Armijo moved, seconded by Commissioner Hughes to adjourn the meeting. The motion passed unanimously on a voice vote and the meeting was adjourned at 9:15 p.m.

Approved by:

Chair Matthew O'Reilly

Submitted by:



Denise Cox, Stenographer