



# Agenda

## AMENDED

### **PLANNING COMMISSION**

**June 07, 2007 – 6:00 P.M.**

### **CITY COUNCIL CHAMBERS**

#### **A. ROLL CALL**

#### **B. PLEDGE OF ALLEGIANCE**

#### **C. APPROVAL OF AGENDA**

#### **D. APPROVAL OF MINUTES**

**May 03, 2007**

#### **E. OLD BUSINESS**

1. *Preliminary report from Short Term Rental Committee* (**POSTPONED FROM MAY 17, 2007**)
2. An ordinance amending Section 14-6.3(C)(2) SFCC 1987 regarding home occupations. (David Tapia, case manager) (**POSTPONED FROM APRIL 19, 2007**)
3. An ordinance amending Section 14-6.2(A)(6)(a) SFCC 1987; creating a new Section 14-6.2(C)(12); amending Table 14-8.6-1 SFCC 1987; and making such other changes as are necessary; regarding the short term rental of dwelling units in residential districts. (17 rental periods per year) (Councilor Wurzbarger) (Jeanne Price, case manager) (**POSTPONED FROM APRIL 19, 2007**)
4. An ordinance amending Section 14-6.2(A)(6)(a) SFCC 1987; creating a new Section 14-6.2(C)(12); amending Table 14-8.6-1 SFCC 1987; and making such other changes as are necessary; regarding the short term rental of dwelling units in residential districts. (2 rental periods per year) (Councilor Heldmeyer) (Jeanne Price, case manager) (**POSTPONED FROM APRIL 19, 2007**)

#### **F. NEW BUSINESS**

1. **Case #M 2006-46. Galisteo Commons Development Plan.** C.R. Walbridge & Associates, LLC, agent for Galco, LLC request development plan approval to create 41 condominium dwelling units on 6.6414 acres. This property is located in the 2000 block of Galisteo Road, south of the intersection of St. Michael's Drive and Galisteo Road and is zoned R-6 (Single Family Residential, 6 dwellings per acre). (Greg Smith, case manager) (**POSTPONED FROM APRIL 05, 2007 AND APRIL 19, 2007**)

2. **Case #M 2007-09. Sunset View Senior Apartments.** Tishman Group agent and owner requests a development plan amendment including a variance from 14-8.6 Off Street Parking and Loading, to allow one space per apartment i.e.136 spaces. The site consists of 3.31± acres and is located at the northwest corner of St. Francis Drive and St. Michael's Drive. The property is zoned C-2. (Dan Esquibel, case manager). **(POSTPONED FROM MAY 03, 2007 AND MAY 17, 2007)**
3. **Case #M 2007-12. Elder Grace Final Development Plan.** James W. Siebert, agent for Santa Fe Community Housing Trust, Inc. requests final development plan approval for 28 dwelling units and a community building on 3.53± acres. The project is zoned RM-LD-PUD (Multi-family Low Density, 12 dwelling units per acre, Planned Unit Development Overlay District) and is located south of Cerrillos Road south of the Homeward Bound residential development. (Lou Baker, case manager)
4. **Case #M 2007-08. 1104 Arroyo Piedra Terrain Management Variance.** Hugh MacPherson Driscoll requests a variance to terrain management regulation for waterway setback. The property is located at the southwest corner of Arroyo Piedra and Sierra del Norte and is zoned R-1 (Residential, one dwelling unit per acre). (Lou Baker, case manager) **(POSTPONED FROM MAY 17, 2007)**
5. **Case #M 2006-27. San Isidro Phase II Final Development Plan.** Greg Gonzales, agent for Branch Design & Development requests final development plan approval for San Isidro Village mixed use development on +/- 6.81 acres east of Zafarano Drive between Cerrillos Road and Rufina Street. The application includes a variance to the 15' landscape buffer requirement to allow for zero side yard construction along the east property line and waivers to "Big Box" standards for architecture and massing, screening, and required public entrance to the building. The property is zoned C-2-PUD (General Commercial, Planned Unit Development). (Dan Esquibel, case manager) **(POSTPONED FROM AUGUST 3, 2006, AUGUST 31, 2006, SEPTEMBER 28, 2006, JANUARY 18, 2007, MARCH 15, 2007, APRIL 05, 2007, MAY 3, 2007 AND MAY 17, 2007)**
6. **Case #M 2007-07. 538 Del Norte Lane Terrain Management Variance.** Derrick Archuleta, agent for JJ Norte Corporation, requests a variance to terrain management regulations for waterway setback. The property is located north of Del Norte Lane and is zoned RM-1 (Residential Multi-Family, 21 dwelling units per acre). (Lou Baker, case manager) **(POSTPONED FROM MAY 17, 2007)**
7. **Case #S 2007-06. Kaushal Business Park Preliminary Subdivision Plat.** Linda Tigges, agent for A.K. Kaushal requests preliminary subdivision plat approval for 11 lots on 1.998± acres located north of Rodeo Road between Sawmill Road and SFRR right-of-way. The application includes a variance from Section 14-9.2 (E) regarding standards for private streets to clarify the use of driveways from the entrance to a commercial subdivision. The property is zoned I-1 (Light Industrial). (Donna Wynant, 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**

June 7, 2007

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D. APPROVAL OF MINUTES May 03, 2007	Approved	1-2
E. OLD BUSINESS		
1. <i>Preliminary report from Short Term Rental Committee</i>		2-9
3. An ordinance amending Section 14-6.2(A)(6)(a) SFCC 1987; creating a new Section 14-6.2(C)(12); amending Table 14-8.6-1 SFCC 1987; and making such other changes as are necessary; regarding the short term rental of dwelling units in residential districts. (17 rental periods per year)		
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2. An ordinance amending Section 14-6.3(C)(2) SFCC 1987 regarding home occupations.	Approved	9-10
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	Approved	10-17
2. <u>Case #M 2007-09.</u> Sunset View Senior Apartments. Tishman Group agent and owner requests a development plan amendment including a variance from 14-8.6 Off Street Parking and Loading, to allow one space per apartment i.e.136 spaces. The site consists of 3.31± acres and is located at the northwest corner of St. Francis Drive and St. Michael's Drive. The property is zoned C-2.	Approved	17-21

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3. <b><u>Case #M 2007-12.</u></b> Elder Grace Final Development Plan. James W. Siebert, agent for Santa Fe Community Housing Trust, Inc. requests final development plan approval for 28 dwelling units and a community building on 3.53± acres. The project is zoned RM-LD-PUD (Multi-family Low Density, 12 dwelling units per acre, Planned Unit Development Overlay District) and is located south of Cerrillos Road south of the Homeward Bound residential development.	Approved	21-23
4. <b><u>Case #M 2007-08.</u></b> 1104 Arroyo Piedra Terrain Management Variance. Hugh MacPherson Driscoll requests a variance to terrain management regulation for waterway setback. The property is located at the southwest corner of Arroyo Piedra and Sierra del Norte and is zoned R-1 (Residential, one dwelling unit per acre).	Approved	23-25
5. <b><u>Case #M 2006-27.</u></b> San Isidro Phase II Final Development Plan. Greg Gonzales, agent for Branch Design & Development requests final development plan approval for San Isidro Village mixed use development on +/- 6.81 acres east of Zafarano Drive between Cerrillos Road and Rufina Street. The application includes a variance to the 15' landscape buffer requirement to allow for zero side yard construction along the east property line and waivers to "Big Box" standards for architecture and massing, screening, and required public entrance to the building. The property is zoned C-2-PUD (General Commercial, Planned Unit Development).	Postponed	25-35
6. <b><u>Case #M 2007-07.</u></b> 538 Del Norte Lane Terrain Management Variance.	Postponed	35
7. <b><u>Case #S 2007-06.</u></b> Kaushal Business Park Preliminary Subdivision Plat.	Postponed	35
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**MINUTES OF**  
**CITY OF SANTA FE**  
**PLANNING COMMISSION MEETING**

**June 7, 2007**

A regular meeting of the City of Santa Fe Planning Commission was called to order by Chair Robert Werner 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:**

Estevan Gonzales, Vice Chair  
Bonifacio Armijo  
Eric Lujan  
Michael Trujillo  
Harriet Heltman  
Ken Hughes  
Signe Lindell  
Robert Werner, Chair

**MEMBERS ABSENT:**

Vacancy

**STAFF PRESENT:**

Greg Smith, Development Review Division Director  
Jeanne Price, Legislative Liaison  
Lou Baker, Senior Planner  
John Romero, Traffic Engineer  
Ron Pacheco, Office of Affordable Housing

**B. PLEDGE OF ALLEGIANCE**

Chair Werner asked Commissioner Lujan to lead the pledge of allegiance.

**C. APPROVAL OF AGENDA**

Mr. Smith suggested changing the agenda to hear all the short term rental cases together which would be items 1, 3 and 4 under Old Business.

**Commissioner Trujillo moved to approve the agenda as amended hearing cases 1, 3 and 4 under Old Business together, Commissioner Heltman seconded the motion which passed by unanimous voice vote.**

**D. APPROVAL OF MINUTES**

**May 03, 2007**

Commissioner Heltman moved to approve the minutes of May 3, 2007 as presented, Commissioner Trujillo seconded the motion which passed by unanimous voice vote.

#### **E. OLD BUSINESS**

1. ***Preliminary report from Short Term Rental Committee (POSTPONED FROM MAY 17, 2007)***
3. **An ordinance amending Section 14-6.2(A)(6)(a) SFCC 1987; creating a new Section 14-6.2(C)(12); amending Table 14-8.6-1 SFCC 1987; and making such other changes as are necessary; regarding the short term rental of dwelling units in residential districts. (17 rental periods per year) (Councilor Wurzburger) (Jeanne Price, case manager) (POSTPONED FROM APRIL 19, 2007)**
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*Items 1, 3 and 4 were heard together per approval of the agenda.*

Commissioner Trujillo feels the subcommittee came up with a nice compromise. He said they tried to be fair to everybody.

Memorandum from Jeanne Price prepared May 24, 2007 for June 7<sup>th</sup> Planning Commission meeting is incorporated herewith to these minutes as Exhibit "1."

Draft Ordinance dated June 6, 2007 is incorporated herewith to these minutes as Exhibit "1(A)."

Letter from Gwen Wardwell dated May 20, 2007 is incorporated herewith to these minutes as Exhibit "1(B)."

Changes for the draft of the subcommittee submitted by Jeanne Price are incorporated herewith to these minutes as Exhibit "1(C)."

Jeanne Price presented the staff report included in Exhibit "1." She said the subcommittee talked about a lot of issues the public had raised as well as the two bills. They concluded the work with a proposed bill distributed by email dated June 7, 2007 included in Exhibit "1(A)." They took the concept of the 17 rental periods and developed a different approach that is similar to a conditional use permit allowing short term rentals in residential districts. The applicant for existing rentals would apply for the permit and if they meet the criteria they would be issued a permit for one year. If there were complaints they would go to a hearing officer. The hearing officer could set a fine of up to \$500 on the first two violations and on the third violation the permit could be revoked. New short term rentals would be allowed provided they obtained a permit. The new permits would require an application to initiate notification to the neighbors as well as the

first permit given for existing rentals. They were trying to make sure the immediate neighbors know about the rentals and have the opportunity to contact the owner/operator and state if there is objection. Any issues would go to a hearing officer who would decide about the permit.

Ms. Price reported that there were other issues addressed regarding criteria. There is a provision for accessory dwelling units that they not be limited by the 17 rental periods as the owner is on the property. There is a provision regarding existing resort developments that have resort type amenities. These would require a permit, but would not be restricted by the 17 rentals per year. All rentals have to comply with building and fire life safety codes and must meet the standards for water conservation. They cannot park recreational vehicles at the properties. They changed the number of occupants by limiting the number of occupants to number of bedrooms times two for the total number of adults allowed to rent. There will be a curfew which was controversial. They have required the owner or operator to report monthly and keep their records open to the City. There is a sizable permit fee, but there was agreement that it does need to be sizable in order to enforce the ordinance with inspectors and equipment as well as mailings. She explained that depending on the nature of the violation the city could cite violators in municipal court and district court. The subcommittee felt these restrictions would help in keeping the character of the neighborhood by making the requirements more specific.

Commissioner Trujillo said there were things they liked about both of the ordinances. He commented that they do not want people running loose although it is awfully hard to govern common sense on some of the issues. He feels they have to try to control this for safety reasons. He agreed when you have responsible short term rental companies they do talk to the neighbors. Another provision is that if 75% of the neighborhood does not like the rental they could request a hearing. He noted that areas such as Quail Run still have to pay the fees and taxes, but they are not bound by the 17 rentals as their covenants are stricter. He understands this will create an illegal market, but if people are caught they will lose the right to have a rental for five years. He added that this does not mean that if you sell property you can do short term rentals, the stipulation stays with the property. He said the intent of the curfew is not stopping people from enjoying themselves, but they must be respectful. When you come to file a complaint, the independent hearing officer could make recommendations and dismiss a frivolous complaint. If someone continues to make frivolous complaints, they will pay for the hearing. The subcommittee did not want to stop the industry as they want people to come for Indian Market and to enjoy the city, but they must do it responsibly. He added that the owner has to apply for a certificate of occupancy to ensure that all safety measures have been met.

Councilor Wurzbarger expressed gratitude for the work done. She said this has been a learning process and she has relearned the value of trust the process and trust the group. She feels her bill was greatly strengthened although she has not read it completely due to the timing of the draft. She is concerned with defining the curfew. Her intention for the beginning was to provide some clarity on what the community is trying to do as well as respecting fairness.

Councilor Heldmeyer believes this addresses level 1 of the impact of short rentals on a neighborhood, but it is the other two levels that this does not touch. She said having a large number of short term rentals in your neighborhood at some point makes it stop being a neighborhood even if there are not people running amuck. She said this has



increasingly become a problem as it is no longer someone renting out their home once or twice a year. Increasingly people are buying residential property for commercial ventures and want to rent it out most of the time. The intent may truly be to one day move to Santa Fe, but in the meantime they want to run a commercial venture out of the property. She hears that due to the high property costs people need to make back their money. She agreed they want people to come and enjoy Santa Fe, but they also want people who live here be able to live here which is what they are trying to balance. She feels getting rid of the bad apples is appreciated, but even the good apples are having major effects on this town and this bill does not address that. It is not clear what the hearing officer will do because it does not say if 75% object then it will not be a short term rental.

Commissioner Trujillo said it was supposed to say that and they wanted to empower the neighborhoods.

Councilor Heldmeyer said this needs to be changed because that is not what it says. She added that having a loud party is not a violation according to this draft. She feels her ordinance differs from Councilor Wurzbarger's in regards to reporting after the fact. She said 17 times a year is a tremendous number of short term rentals. Many feel it will be difficult to keep track of the rentals, but in her ordinance the person has to register every time they rent out. She thinks reporting after the fact will mean a lot of bookkeeping and spying on neighbors. The neighbors want the City to be able to enforce their own ordinances. She noted that the law says that if you have a home and a guesthouse you can only rent out one. She said there will need to be a much better job with enforcement on this. There are units that have been built and permitted as accessory units, but then the property is condo-ized and each unit is sold to a different person which will need to be addressed. This draft still allows a tremendous amount of impact on neighborhoods. She has gotten many comments that the more complicated this gets the harder it will be to enforce, a clear yes or no is better. Many do not want to put the short term rental business out of business, but do want to limit them to certain zones.

Commissioner Armijo referred to page 5, lines 14-15; he requested that if 75% of the property owners objected a permit would not be granted. He said this was the intent. He then referred to page 7, lines 13-14, pointing out this is another way the permit could be revoked. He asked Ms. Price to correct page 8, lines 3-5 as it should include anyone that is providing short term rentals.

Commissioner Trujillo wanted to clarify that they wanted to take care of the neighborhoods and were concerned with them, not just the businesses.

### **Public Hearing**

Chair Werner reminded everyone that they have had two hours of testimony on the philosophy and details of short term rentals, so he would ask that the public testimony be limited to the proposal if the Commission agrees. The Commission agreed.

**Gwen Wardwell, 945 Camino De Chelle, Pueblo Alegre**, felt the new proposal was a definite improvement, but it still makes the assumption that allowing short term rentals is a good thing. She does not think that is the case as they have enough problems with long term rentals. She disagreed with the justification for the economy as this is

something to be considered, but it is not the justification. She was uncomfortable with the expanded version as it is more complex and enforcement is not happening now. Her letter is included in Exhibit "1(B)."

**Julia Nathanson, 2340 Botulph Road**, said this is the third time she has spoken so she will shorten her comments. She is a little astounded and confused as she thought there was zoning in neighborhoods and some that do not allow for short term rentals at all. She did not believe a segment of the community could move in and change that. This proposal is changing what has existed, so she understands that the rentals were illegal and this will make them legal. This does not seem right. She is against short term leasing in residentially zoned neighborhoods. It seems that if they have not been able to enforce them now that they will not be able to enforce them later.

**Tim Curry, 608 Ridgepoint Lane**, does not understand the ordinance. It appears that the licensing fee is too high at \$1000 and if this money is used for enforcement it is excessive. He feels this will create problems from the get go as many people that have short term rentals do not have this amount of money to cough up for the license. In addition this is unfair and it is only fair to say real estate agents should be charged for the right to sell properties. He thinks this is a heavy handed approach. He said typically in Santa Fe it is \$35 for a business license. He objects to the fee for short term rentals.

**Pamela Maes, 1817 Cerros Colorados**, member of the Short Term Rental Task Force, asked them to look at the gated resort community section as Fort Marcy is a resort community, but is not gated. They are more than happy to report on a monthly basis. She questions the 75% of the property owners complaining and thought the owners and operators should get a copy of the complaint so the owner and operator can review them prior to the hearing. This would give them a chance to rectify the issue. She would like this to be added. She said the properties would have a certificate of occupancy if they were occupied.

**Jane Gaziano, 657 Garcia**, was happy with the 75% of the people objecting, but questions at what point and how the notice is provided to the neighbors. She asked if her home were surrounded by rentals does it hurt the chances of selling her property as it will be public record that these are rentals. She asked which owners the 75% are. She asked them to look at these two items. She stated that she is against having short term rentals at all, but this is better than what they had before.

**Kala Thompson, 136 West Booth**, stated that he and his wife are raising children in south Capital and would like to do so in a stable neighborhood. Seventeen rentals seems too many. He said a number of the units on Booth street are long term rental properties and second homes. He said those not living in the homes are impacted less by short term rentals. He asked in canvassing the neighborhoods if they would canvass those that are long term renters and whether those that are permanent residents would take precedent over part time residents.

**Dina Aquelina, 327 Sanchez Street**, feels that the entire ordinance effectively changes the zoning in the residential neighborhoods which is unfair to those that bought homes wanting to live with others full time. She thinks the 75% is an undue burden as they cannot elect public officials on that percentage. She said the short term rentals are not vital to the economy as it hurts the hotel and motel industry. There are properly zoned

areas like the BCD for short term rentals. The City Council banned fractional ownership in residential neighborhoods a few years ago and she does not see how this is different.

**Jay Russell, 703 Paseo de la Loma**, stated that he is totally opposed to short term rentals. He referred to page 5 which in his opinion is way too vague and they do not have the actual language in the draft. He thinks any notification should be by certified mail. He said otherwise they will get into litigation. He said every time this comes up they can do it over and over and over. He thinks it should be binding on a piece of property if 75% of the people have stated they do not want a property to be a rental.

**Janet Reed Rousselot, 444 Galisteo**, owns the Management Group, wanted to hear more clarification of the proposed ordinance. She asked if the gross receipts tax is on the entire rental amount like hotels or if it is on the services.

Councilor Wurzbarger stated that it is on the services.

Ms. Rousselot is strongly opposed to the sense that there can be no outside activity after 10 p.m. She understands obnoxious noise and feels everyone should conform to that. She said the permitting process does not have time limits on inspections and permits so this needs to be addressed.

**Marilyn Bane, 622 ½ Canyon Road**, thanked the subcommittee and said she was invited to those meetings. She feels there was a thoroughness exhibited that she is grateful for. She asked the Planning Commission to seriously consider the recommendations made by the subcommittee. She commended Ms. Price as she did an excellent job. She suggested they might want to have further conversation about some of the wording brought up tonight, these are minor but should be clarified. The curfew might be one of those. After 10 p.m. there should not be raucous behavior. This is an excellent attempt and she recommends they proceed with the version presented.

Ms. Oralynn Guerrero Ortiz, knows there are short term rentals in her neighborhood and she has never had a problem with them. When she travels with her four children she prefers to stay in short term rentals. She wants to keep the community open to traveling families.

**The public testimony portion of the public hearing was closed.**

#### **Questions and comments from the Commission**

Chair Werner said there are a number of details or issues that could use some more redrafting and asked if they have time to work on these.

Councilor Wurzbarger hopes they move this forward in some way and the subcommittee can advise them of the changes. She said they have revised the process many times and they have a schedule to take this to Council in August. She hopes to move this along or proceed with some form of this.

Chair Werner asked when the next meeting on this is.

Councilor Wurzbarger suggested forwarding this with additional input to the next Committee as an addendum.

Ms. Price confirmed that it goes to Finance and then Public Works on July 9<sup>th</sup>. The request to publish is intended for July 11<sup>th</sup> for the August 8<sup>th</sup> City Council meeting.

Chair Werner thought they could send a more meaningful document if they make the corrections discussed and clarify some of the issues further.

Councilor Heldmeyer appreciates the work of the subcommittee, but this has not been a slam dunk. This is what should have happened at the task force and did not. She said the same resolution that set up the task force also said in the absence of a new law the city will enforce the current law which is what is missing. She hears about that piece all the time.

Councilor Wurzbarger explained that Business and Quality of Life forwarded this with their recommendations. She said it does not have to perfect coming out of each committee.

Chair Werner said the Planning Commission would like to put their best foot forward.

Commissioner Trujillo said this was a starting point and there is no question that there are still issues. There was major confusion about the 75%. He noted that if the closest neighbor is 500 feet away you still need to get 75% of the neighborhood. He said they were trying to make it fair so it does not put undue burden on the neighborhood. He is certainly not opposed to moving this forward and the subcommittee can continue to meet to address the rough edges.

**Commissioner Trujillo moved to recommend approval of this ordinance with the subcommittee recommendations and the fact that the subcommittee will continue to meet to clear up some language and put recommendations in to help it along, Commissioner Heltman seconded the motion.**

Commissioner Heltman asked what the time frame will be for final completion and how many times will this be discussed and re-cussed before a decision is made to make this an enforceable, realistic viewpoint.

Chair Werner said August is the earliest date that City Council takes final action.

Commissioner Gonzales asked for clarification of the motion.

Commissioner Trujillo said the subcommittee will continue to meet to work out the kinks. He believes this is a good ordinance for the businesses and the neighborhoods. He asked Ms. Price to cc the other commissioners on the changes as she incorporates them.

Chair Werner said they have noted a number of suggestions or problems pointed out by the public. He wanted to let each commissioner give their comments to the subcommittee for final recommendations.

Commissioner Lujan passed.

Commissioner Hughes commended the subcommittee for the hard work and feels this is a good compromise.

Commissioner Armijo would like to look at the final draft before this moves on and he wants it to come to the Commission one more time.

Commissioner Lindell said her concerns were well addressed. She commented that Ms. Price does a magnificent job of coming up with a document from six people talking and incorporating what everyone said. She thanked Councilor Wurzbarger for listening to them and being willing, cheerful and open to the changes. She is confident that this is more tidying up rather than major issues.

Commissioner Heltman would like to see a copy that is completely clean before they present it to another group. She said there is the understanding that these changes will occur, but feels "will and doing" are two different things.

Chair Werner said he favors this approach as well.

Commissioner Gonzales asked the subcommittee to look at two issues. The wordsmithing on line 20 on page 5, changing the word may to shall. He heard a good recommendation that any correspondence be considered as certified mailing which he agrees with.

Chair Werner expressed concern with the nuisance factor, he would like to limit the outside activity, but feels they should add some further detail as to outside activity because he can see that as a bone of contention. He suggested inserting including but not limited to decks, porches, portals, balconies or patios. He thinks if it is difficult it will be too difficult to enforce, so he thinks they need to think a little harder about the 75% concept and how it will work. He commented that it is difficult to get 51% of a neighborhood to agree to anything. He said a typical neighborhood may have some neighbors on one street and half on an alley that may not care because it is not really affecting them. He said if they get their one year license the long term neighbors have no way of effectively blocking it.

Commissioner Lindell referred to the sheet that Ms. Price handed out with some changes included in Exhibit "1(C)." She asked Councilor Wurzbarger if those are acceptable to her.

Councilor Wurzbarger replied yes, but said they need to spend some time on the operational definitions although in concept they are fine. She wanted to make it clear that this is the substitute for her original bill and she will not be going forward with her original bill.

Commissioner Lindell feels that this does allow the hearing officer to have some discretion.

Commissioner Trujillo said he would accept any requests and understands the issues raised as they are trying to protect the neighborhoods and be fair to these people. He agreed to continue to do the hard work on this.

**There being no abstaining or dissenting votes, the motion passed by unanimous voice vote.**

- 2. An ordinance amending Section 14-6.3(C)(2) SFCC 1987 regarding home occupations. (David Tapia, case manager) (POSTPONED FROM APRIL 19, 2007)**

Memorandum from David Tapia, Business Licensing and Gergia Urioste, Zoning, prepared May 23, 2007 for June 7, 2007 Planning Commission meeting is incorporated herewith to these minutes as Exhibit "2."

David Tapia reviewed the memo included in Exhibit "2." The original intention was to get a smaller business licensed quickly and effectively without having to go through the lengthy process in getting licensed. It now clearly states which businesses would need to get inspections and which would not. He said the concerns were addressed.

Georgia Urioste, Zoning Inspection Supervisor, reviewed the changes made since the last meeting. Page 6, line 25; they are leaving in the portion dealing with the applicant notifying the neighborhood association. Page 8, line 15; the portion regarding the legally binding covenants is now excluded as shown. She explained that they do not govern covenants.

Chair Werner questioned that the cover memo states that the necessity of informing a future business of private covenants may apply and will also remain in Chapter 14.

Ms. Urioste said that is correct. She said they are leaving it up to the applicant.

#### **Public Hearing**

*There was no public testimony.*

**The public testimony portion of the public hearing was closed.**

#### **Questions and comments from the Commission**

Commissioner Lindell questioned the exclusion of the covenants.

Ms. Urioste said the City does not enforce restrictive covenants, but they left in the portion informing the applicants that they would be responsible for not violating the covenants if they are in place.

Commissioner Lindell asked what happens if they are in violation and do not care so they proceed and are issued a permit.

Ms. Urioste said it would be up to the Neighborhood Association at that point.

Chair Werner said it is up to whoever is entitled to the benefit of the covenants and they have to take their own private action to enforce covenants. He said normally this would mean litigation.

Commissioner Gonzales moved to recommend the City Council approve this ordinance, Commissioner Trujillo seconded the motion which passed by majority voice vote of 6 to 1. Commissioner Lindell voted against the motion.

**F. NEW BUSINESS**

1. **Case #M 2006-46. Galisteo Commons Development Plan.** C.R. Walbridge & Associates, LLC, agent for Galco, LLC request development plan approval to create 41 condominium dwelling units on 6.6414 acres. This property is located in the 2000 block of Galisteo Road, south of the intersection of St. Michael's Drive and Galisteo Road and is zoned R-6 (Single Family Residential, 6 dwellings per acre). (Greg Smith, case manager) (POSTPONED FROM APRIL 05, 2007 AND APRIL 19, 2007)

Memorandum from Greg Smith prepared May 29, 2007 for June 7<sup>th</sup> Planning Commission meeting is incorporated herewith to these minutes as Exhibit "3."

Memorandum from John Romero, Traffic Impacts Section of Public Works Department, dated April 13, 2007 is incorporated herewith to these minutes as Exhibit "3(A)." It was noted that the issue section of this memo refers to another case and the correct caption is the one on the agenda.

Photograph looking north on Galisteo Street dated April 4, 2007 is incorporated herewith to these minutes as Exhibit "3(B)."

Developed conditions at St. Michael's Drive and Galisteo Street aerial photograph is incorporated to these minutes as Exhibit "3(C)."

Greg Smith presented the staff report included in Exhibit "3." He noted that this is a development plan only, there is no preliminary required in this case.

Recommend approval based on the following conditions:

1. Engineering Development Review Division (Exhibit A)
2. Landscape Review (Exhibit B)
3. Wastewater Division (Exhibit C)
4. Engineering Division, Traffic Section (Exhibit D)
5. Water Division (Exhibit E)
6. Solid Waste Division (Exhibit G)

**Public Hearing**

**Bruce Geiss, applicant, was sworn.** This is a 41 unit residential project with all the units for sale; they will not be renting any of the units. This is a middle class product for those that do not qualify for housing assistance programs and need housing near their employment. There are 4 HOP units and 37 market rate units hopefully priced under \$300,000 and then the higher end product over \$500,000. This infill project is designed in concert with three other projects; a school, church and 13 unit residential project. This project provides pedestrian access to an abundant amount of employment in the area; it is a classic infill project. This project reduces the carbon footprint and provides affordable housing. This land is a former City operated incinerated landfill spreading over five acres with approximately one acre of that on this property. Playschool for the Arts is improving their acreage of the landfill and reclaiming the land and the rest of the former landfill will be reclaimed by this project. There is nothing toxic it is just of poor

structural quality and littered with glass. This project will provide emergency access joining Galisteo and Brunn School Road. They have provided access easements to each other for emergencies and this project will complete the connection. He said they have spent money improving the water system and power. They are providing some housing for visiting ministers by providing access to land that was landlocked.

Mr. Geiss said the neighbors have had a great deal of input with dozens of meetings. The project is tailored to the neighbors input. They dropped the rental component in response to the neighbors. This will be a compound design to provide more interest. They went into the Romero's kitchen to decide which units should be single and two stories to preserve their views of the Ortiz Mountains. They made a private agreement with them. There was a sewer that was moved off of Ann Young's property onto the subject property. They will also be building a fence to cut down on the intrusion to her property. The builder will have to meet the conditions agreed upon with the neighbors and all the private agreements as well. This is an infill project so it is not perfect. He said the neighbors recognize the existing traffic problem and he will try to be a solution. He said they contribute about 5% to the traffic congestion during peak hours, but with or without this project there is a problem with magistrate courts, small schools, the offices and bank in the area. He said the traffic problem should not exist as the right of way is twice the width of the existing road. He said when other projects were approved they should have anticipated the traffic movements. He has worked with City to try to come up with something for the City to undertake to improve these conditions and they would be happy to provide their fair share as was agreed to during the rezoning.

**Todd Williams, 2071 Galisteo, was sworn.** He has lived here for 14 years and watched all the development happen. He said for a dead-end short road there is an incredible amount of business going on with lots of congestion during peak hours. There is a great deal of backup having to wait three traffic lights to get through the intersection at times. He commented that he cannot imagine a way to alleviate the traffic with only one ingress and egress on such a short stretch of road. He feels adding any more units does not seem doable. He does not think it is responsible to add any more traffic here.

**Rob Schwader, owner of Playschool for the Arts and lives below the school, was sworn.** He said they are reclaiming the landfill area as a park for extra area for the children to go play. He reported that he was at the Planning Commission almost three years ago when the applicant was encouraged to link Galisteo to Brunn School Road. He still believes this should be a connection. He said his preschool is across from the land where the entrance and exit comes out. There is an easement through the 14 units and he does not understand why the residents cannot exit the Brunn School Road. He feels the traffic at the top is a problem in itself. He referred to the previous Planning Commission minutes where the applicant was urged to make a link by various commissioners. He said to have one staging area to build 41 units will be a mess unless there is another way in besides just an emergency access. He said if there is no other access besides just for emergencies he is not for this project. He feels the vision is admirable but it might be too late now. He knows there have been letters sent about the concerns. He does not see the pedestrian walkway as a benefit as there is no guarantee that the people who live there will work there.

**Ann Young, 470 Brunn School Road, was sworn.** She lives on the other side of the arroyo from where this compound will be built. She is very opposed to the access through Brunn School Road. It was unanimous that nobody in the neighborhood wanted



a connection from Galisteo to Brunn School Road. She explained that it would exit onto Botulph too close to the St. Michael's intersection. She said at certain times of the day they cannot make from Brunn School Road a turn north up to Botulph and get onto St. Michaels. She said any additional traffic will hit the same intersection where it is too close to make this feasible.

**The public testimony portion of the public hearing was closed.**

**Questions and comments from the Commission**

Commissioner Gonzales asked what the zoning for the other areas around this parcel of property are.

Mr. Smith explained that the west side of Galisteo is office use and the remaining tracts of land to the east are zoned R-1, 2 and 3 for the most part.

Commissioner Gonzales commented that the density is a concern, so asked if the applicant was ever advised to develop a live/work situation to reduce the traffic.

Mr. Smith does not recall.

Mr. Geiss is not sure if they comply with the current zoning.

Mr. Smith said only home occupations would be allowed under the current use.

Commissioner Gonzales commented that live/work units reduce the number of cars. He asked if the applicant would be interested in this.

Mr. Geiss said in his experience the live/work concept is great, but the traffic patterns compared to a project positioned in the center of the employment area might not be a significant difference.

Commissioner Gonzales thought it would be a transition zone.

Mr. Geiss said one of the things appreciated about this project when they went through the rezoning was the fact they were creating an appropriate buffer from the very intense commercial use. He feels it is a balancing act.

Commissioner Gonzales asked what the number of parking spaces will be.

Mr. Geiss said it is adequately parked and they could cut some spaces out. They have single car garages for the 1100 square units and two car garages for the other units.

Commissioner Gonzales asked if staff analyzed if there is sufficient parking to support the development and how many parking spaces are required.

Mr. Smith reported that there are 143 spaces shown.

Commissioner Gonzales stated that he is not quite sure if he agrees with the residential concept for this property, but he noticed they only have four HOP homes out of 41. He asked how they fall under the old ordinance.

Mr. Smith explained that they signed a HOP agreement at the time of rezoning by the Council.

Commissioner Gonzales asked if the HOP agreement is good forever.

Mr. Pacheco pointed out that the project signed a HOP proposal in 2004 and now three years later, it is binding because the original agreement was signed. He said this agreement was predicated on a proposal that there was an 11% contribution which is four homes.

Commissioner Gonzales said everyone else is abiding by the current affordable housing ordinance to provide 30%. He asked the applicant if he would agree to abide by the current affordable housing ordinance.

Mr. Geiss said the economics do not allow it as he is carrying a huge burden by partnering up with the neighboring developments to bring in infrastructure and participate in offsite improvements. He said in no way this project supports that. He added that they are trying to provide the segment of homebuyers that do not qualify for affordable housing.

Commissioner Gonzales asked what the price will be

Mr. Geiss said depending on the conditions placed on them they will start under \$300,000.

Commissioner Gonzales commented that they often hear affordable housing kills projects, but it appears that it has not. He agrees this is a really great location for some condos, but he disagrees with not requiring the developer to produce the affordable housing. He asked if this development were to move forward at what point the construction will begin for the intersection.

Mr. Romero explained that any offsite improvements required are part of the development plan and so it becomes part of the building permit. They cannot get their certificate of occupancy until this is completed.

Commissioner Gonzales stated disagreement with the staff report as he does not agree with the density and the fact that the developer is unwilling to provide affordable housing.

Commissioner Hughes feels they need to look at the home economics in a different way as you either do infill or sprawl in Santa Fe. He thinks they need to make it easier to do infill not harder. This project is a transition zone between the residential and office use in the area. He asked if they have talked to any potential employers of the homeowners in the area.

Mr. Geiss said they discussed this with the hospital, but it was frustrating. He noted there has been a change in leadership which should help. He said when this was first discussed there was apparent enthusiasm, but nothing tangible came out of it. It is his understanding that the current administration is more supportive and focused on the issues. He wants to have a project that he knows he has before he goes back to the hospital.

Commissioner Hughes asked what it costs to build a garage.

Mr. Geiss replied \$25,000-40,000.

Commissioner Hughes was trying to figure out a way to help people get into a home by reducing the price with a different way of looking at things. He said they need some agreement with the employers in the area so the homebuyers could walk to work.

Mr. Geiss said the enthusiasm was at the entry level, but he needed to get to the executive level. He said the message he kept getting was that there were plenty of people struggling to get a house, but most of the qualified employees did not qualify for the HOP program. He feels this will do so by providing some other kind of unit at some other kind of price range as retention is a problem for the hospital.

Commissioner Lujan said his mother is the President of the Nurses Union and he sat in on a meeting looking at the proposal to set up a fund to get closing costs. He noted that 35% of the nurses are traveling nurses. He knows this is something that the hospital wants to do and it has to go through the Board of Directors. He respectfully disagreed with Commissioner Gonzales and feels they should not have to interfere with something signed already.

Commissioner Armijo asked if Brunn School Road is an option for relieving traffic.

Mr. Geiss replied no. He said Commissioner Shanahan had urged them to look at the connection but before they got to City Council with the plan they had several sessions with City staff. They walked the arroyos and the easement runs across the arroyo and private properties. Also the neighbors are completely against this. He said the commercial traffic would use this connection not the residents. He said they made an emergency access so there is a way to get emergency personnel to either side.

Commissioner Armijo asked if the private agreement with the neighbors is part of the approval.

Mr. Geiss said they can make it part of approval if they want. He reviewed the private agreements.

Commissioner Armijo asked what they would do to prepare the area since this used to be a landfill.

Mr. Geiss explained that over one acre, it is 0-6 feet deep. They will take it out and screen it mixing it in with other soils as this is primarily cinders. They have an engineer working on the problem.

Commissioner Armijo asked if condos 4, 6, 15 and 16 are on 30% slopes.

Mr. Geiss said there are no 30% slopes except in the corner.

Mr. Smith is not sure what the exact rule is for 20-30% slopes, but this is in compliance with the terrain management regulations.

Commissioner Armijo agreed that once there is a signed an agreement that should be stood by, but he wants affordable units just as everyone does. He agrees there is also a need for the mid range affordability.

Commissioner Lindell asked how many units are under \$300,000.

Mr. Geiss said they are trying for 12 units, but he is not sure what will happen between this approval with conditions and getting recorded. He said 1/3 will be in the \$400,000 range and then 1/3 in the \$500,000 range.

Commissioner Lindell sees numerous places with second stories, approximately 20 units.

Mr. Geiss began reading into the record the two story units; unit 6, 7, 12, 13, 19, 20 and then did not finish. He said 10 units are two story and 8 units have one element as two stories such as a bedroom over a garage.

Commissioner Lindell asked when this project went from half for sale and half leased units to all for sale.

Mr. Geiss clarified that this was prior to the rezoning. He said the reason this was proposed as partial rentals was for the traveling nurses, but the neighbors did not want this. He said by the time they went for rezoning they fixed the connection and got rid of the rental component.

Commissioner Lindell stated that she is disappointed with only four affordable units. She understands the agreement, but it does not seem right to her. She feels with the project broken down the way it is that there could not be more than 4 affordable units. She expressed concern with the traffic even though they are not causing the problem. She asked about the trips they will be generating.

**Mike Gomez, Santa Fe Engineering, was sworn.** He said the trip generation analysis was based on ITE. It shows 4 cars entering in the morning and 21 cars exiting and in the evening it shows 19 cars entering and 10 cars exiting. He said they have developed a traffic plan that will solve the existing problems and absorb the additional traffic generated by this traffic. He handed out photos included in Exhibits "3(B)" and "3(C)." The big problem is the northbound turning traffic and the lanes on the right which are the through lane and the right lane has no traffic. He said the queue will stay within the left turn area and will not encroach into the turn into Los Alamos National Bank. They can clean up the traffic issues with traffic striping. He said moving traffic to Brunn School Road is not desirable as this area cannot handle any additional traffic. They would just be moving the traffic to a place where the issue cannot be solved.

Commissioner Lindell said it seems counterintuitive that with 41 units only 21 would be exiting.

Mr. Gomez said these are the traffic generation rates.

Commissioner Lindell asked for the entire daily traffic flow.

Mr. Gomez replied 301 cars including in and out. He commented that live/work units depending on the type of work usually produce more traffic than residential units. He

said in the past the City would have them model it as a residential unit and on top of that an office unit.

Commissioner Trujillo asked how long the magistrate court will be in this building.

Mr. Geiss did not know.

Commissioner Trujillo agreed it is unfortunate that this area is not providing more affordable housing, but many applicants rushed to get their projects done so they could live by the old HOP ordinance. He said they have had to keep the agreements. He feels the businesses create a great deal of traffic, but he does not see magistrate court staying there much longer. He thinks it was admirable to stand in a neighbor's kitchen to accommodate their view. He asked Mr. Romero if he agrees with the traffic findings.

Mr. Romero agreed that the proposal will fix that approach. The City is doing a traffic study and there will be other improvements as well. He said Public Works originally proposed receiving a proportionate fair share and then that was not acceptable and people wanted to see the leg improved before anything else happened. He said ideally the City would rather take the money and build it, but since they did not know when they would be able to improve it, they came up with a plan. If it is not foreseeable that the City will make improvements, the developer will construct this for their fair share and the remaining amount would be credited on their impact fees and then the applicant could submit for reimbursement.

Commissioner Trujillo asked if the road improvements would be the first thing they do.

Mr. Geiss said it might have to be built first. He noted that Fidel Gutierrez, Los Alamos National Bank was present, but could not stay any longer. He said they have taken a great deal of time to work with the neighbors to create solutions even though they are not contributing to the problem.

Commissioner Trujillo wanted the applicant to fix the intersection first with the information given as a condition of approval for this.

Mr. Geiss did not think this is much different than how it is written now.

Chair Werner said they cannot be issued a certificate of occupancy until the work is done, so the developer is at risk.

Commissioner Trujillo stated that the applicant has shown he is willing to work with the neighborhood and is willing to fix the problems. He thinks the project is good and they have addressed the traffic.

**Commissioner Trujillo moved for approval of Case M-2006-46 with staff conditions, Commissioner Heltman seconded the motion.**

Chair Werner stated that there is a letter in the packet from Marcy Haig who also had to leave. He clarified that condition 4 refers to the new letter from John Romero.

Commissioner Gonzales urged the City Council to consider the 30% affordable housing proposal.

The motion passed 5 to 2 on a majority voice vote with Commissioners Gonzales and Lindell voting against the motion.

2. **Case #M 2007-09. Sunset View Senior Apartments.** Tishman Group agent and owner requests a development plan amendment including a variance from 14-8.6 Off Street Parking and Loading, to allow one space per apartment i.e. 136 spaces. The site consists of 3.31± acres and is located at the northwest corner of St. Francis Drive and St. Michael's Drive. The property is zoned C-2. (Dan Esquibel, case manager). (POSTPONED FROM MAY 03, 2007 AND MAY 17, 2007)

Memorandum from Dan Esquibel prepared for June 7<sup>th</sup> Planning Commission meeting is incorporated herewith to these minutes as Exhibit "4."

Dan Esquibel presented staff report included in Exhibit "4." He noted that the parking spaces come out to 1.13 per unit vs. 1.5 and 1.25 calculations used in the code.

Staff recommends the following:

It is not clear that the specific findings required for variance approval are supported. Although the applicant has presented some evidence that the parking demand for senior housing is lower than for unrestricted housing, those arguments might more properly be cited as support for a code amendment to reduce the parking rate for all senior housing.

A decision by the Commission to approve the variance request requires making the findings in Section 14-3.16 (C) SFCC 2001, as discussed under "Variance Request," beginning on Page 2 of this report. If the Commission determines that the variance criterion is supported, staff recommends the following conditions for this case:

1. Applicant needs to adequately address DRT comments and concerns.
2. Applicant shall file an amended development plan to reflect variance changes.
3. Applicant shall maintain in effect the off-site parking license agreement with the NMHTD or provide other off-site parking to the approval of the City Planning and Land Use Director unless the Director determines based on actual data for the project that the parking is not required.
4. Revised development plan subject to new DRT signature sheet prior to filing refilling amendment development plan.

### **Public Hearing**

**Scott Heff, Santa Fe Planning Group, 109 St. Francis, was sworn.** He said this was approved last year for 136 units and 187 parking spaces. They submitted a request to reduce the parking ratio down as they would like to become a little less dependent on the highway parcel. He said the parking spaces were based on a standard multifamily unit ratio. Based on conversations it became clear that the 1:1 ratio was not satisfactory to Ted Bolleter for safety reasons as people might park in a way that emergency vehicles might have difficulty accessing the site. The higher ratio made sense. The staff wanted some sort of logic to demonstrate this reduction was acceptable. He explained that on average projects with seniors stated that roughly 20% of the occupants do not own automobiles which is consistent with this ratio. He also visited some different projects locally. Ventana De Vida has a parking ratio of roughly 70% owning vehicles; the parking problem here is due to the community kitchen. Casa Rufina had 85% owning automobiles and El Paseo has 80% owning automobiles. All the managers at these three sites stated that there was no problem with parking. He said the accessibility to infrastructure for this project is close by with bus systems and local amenities. He went back with the revised plan to Ted Bolleter who felt more comfortable with the change

and now supports the project. This is a senior affordable housing project that will remain for 45 years pursuant to their contract. The parking ratio originally had 69 spaces on DOT land and they relocated 18 spaces closer to the living area so now there are 16 spaces on the DOT land.

**Nancy Long, 2200 Brothers Road, was sworn.** She said they will notice a condition of approval that they agree with which provides the developer must maintain the DOT property so in her opinion this is a no risk variance. If it turns out they need more parking they have plenty of room to add more parking. They do not want use that for impervious surface to sit and bake in the sun. They would like to add something more favorable rather than parking that will not be used. It was a lender requirement to reduce the offsite parking. They believe they will be able to purchase the property at some point, but in the meantime the parcel will be at the disposal of this project.

**Carol Robertson Lopez, was sworn.** She wanted to stress that this is a transit oriented development. They are excited about all the services within walking distance and they believe they will attract those that want a more pedestrian lifestyle.

**The public testimony portion of the public hearing was closed.**

**Questions and comments from the Commission**

Commissioner Hughes asked if they will require pervious paving.

Mr. Smith explained that there is not a specific code amendment prepared or scheduled, but this is under review.

Commissioner Hughes asked if they are interested in using impervious paving material.

Mr. Heff said that is what they will be using on the DOT land.

Commissioner Lindell questioned the current activity on the property. She stated that she did not visit the site ex parte, but she happened to drive by and there is dirt being removed.

Mr. Gomez clarified that the site is currently being graded according to the previously approved development plan recorded and according to the building permit they are grading the part that is not going to change with this variance.

Commissioner Lindell thought they needed financing before moving dirt.

Ms. Long explained that they do have the financing in place, but one of the requirements was to reduce the parking on the DOT land due to the concern that the land was not owned by the developer.

Commissioner Lindell said this is a catch 22 as they want to reduce the parking on the leased land and reduce the parking to below what the code calls for by getting a variance.

Ms. Long explained that the variance has to be granted by the City and then it will be legally granted to reduce the number of parking spaces. They wanted more parking on the site and as it got designed it looked better to have the parking closer to the building.

Commissioner Lindell clarified that there is a net loss of 35 spaces, an 80 year lease on the NMDOT property and a 45 year commitment on affordability with the financing.

Mr. Heff said that is all correct, but the other requirement is that this remain senior housing.

Commissioner Lindell asked if they intend to maintain the lease so they can put more parking in if needed.

Mr. Heff said that is correct pursuant to the variance request. There is a strip of parking provided immediately with impervious surface.

Commissioner Lindell asked if they are willing to go along with staff recommendations.

Mr. Heff replied yes.

Commissioner Lindell expressed concern with losing the spaces.

Mr. Heff said they can try this as the data demonstrates it looks like it will work. He added that they are required to maintain the lease regardless so the parking will be there if it is needed. The financing authority wants them to be less dependent upon the land although they are required to maintain it.

Commissioner Lindell said this seems like an odd requirement.

Ms. Heff concurs it is an odd agreement and stated that they went round and round on it.

Commissioner Gonzales shares Commissioner Lindell's concerns, but he understands the parking will be available if needed.

Commissioner Heltman expressed concern with what they will be doing with the visitors.

Mr. Heff said the assumption means 30 spaces are leftover for visitors and staff.

Commissioner Heltman felt the statistics were based on other areas besides Santa Fe. She is not sure how they are going to convince these people not to drive as many do not retire at 65. She feels cutting down parking for that age group is a little short sighted. She asked if they will be limiting the number of cars residents can own.

Mr. Heff replied no. He said if they look at the 136 units there is a buffer worked in, but agreed it may not be 100% accurate. He added that they are in an area that has lots of services in close proximity to the site. Other similar sites have an abundance of parking with these ratios.

Commissioner Trujillo said it is true what they say about parking. He believes 70% is a high number. He likes that they are keeping a piece of land where they can put more



parking. He said the only place with parking problems is El Castillo. He is glad to hear Chief Bolleter liked the emergency access.

**Commissioner Trujillo moved to approve Case #M-2007-09 with staff recommendations, Commissioner Gonzales seconded the motion.**

Mr. Smith explained that they intended item 3 to indicate and imply they would maintain 185 spaces unless they could show definite occupancy to reduce it to 152. He said this was not written clearly, so he would appreciate clarification as to whether they want to maintain the spaces or whether they would approve further reduction.

Chair Werner agreed that this is confusing and read it that they would maintain the lease, but not necessarily build the parking spaces.

Mr. Smith said the assumption was that the applicant would build 187 spaces and that the reduction would either be to 136 or they would maintain the 187. The applicant's testimony has shown that was not the plan intended, but he believes that is how it was explained. He noted that the variance action does require specific findings and the motion should include those findings.

Chair Werner agreed to have the motion include the findings to support the variance. He said staff and the applicant need to agree what the condition means.

Ms. Long said the license agreement will be maintained if it is needed. They do not believe it makes much sense to go in and tear out the spaces if they are not needed. She said the interpretation is that they are required to keep the license agreement.

**Commissioner Trujillo amended his motion to state that they are granting the variance, so they have to keep the 80 year lease and if they find out there is not enough parking they have the land to put additional parking spaces.**

Mr. Smith explained that staff's view is the Commission intends on approving the maximum spaces of 153 and to go down to 136 spaces if it was documented by actual onsite usage. He said in effect they are approving 136 spaces if the Land Use Director approves the reduction.

Ms. Long did not understand it that way either. She said it benefits the developer to get that kind of approval. She said the developer's goal is to purchase the property so there is no issue about control. If this were the case, they would purchase less than the entire amount but enough to provide enough parking.

Commissioner Gonzales asked if it would be better to strike condition 3 and come up with new wording.

Commissioner Heltman stated that they cannot just come back because they changed their mind after approval. She does not think that is the proper procedure.

Chair Werner said the application for the variance is the proper procedure.

Ms. Long thought maybe this is a condition that should be worked on further between staff and the applicant to accommodate additional parking if needed and the prospect of

being able to purchase the property. She thought there would be a way to capture the suggestion if parking could be contained on site as well as these issues.

Chair Werner asked the Commission if they want to postpone this for two weeks as the clearest way to solve this.

Ms. Long said unless they work on this in their absence and trust it gets done.

Commissioner Trujillo said the variance is for 136 spots and they know there is available land should it be needed. He understands that Mr. Smith wants the Planning and Land Use Director to have the authority to say if you need more parking spaces it can be granted.

Mr. Smith said his concern is that the condition stated there would be 187 spaces unless a survey showed there could be less. He understands the Commission has the authority to go down from 152 spaces. He said most of the argument centered around 152 spaces being appropriate.

Commissioner Trujillo said the worst case is they need more parking and they have the land to build the spaces. He called for the question.

Commissioner Armijo asked if staff is okay with what is being proposed.

Mr. Smith believes the applicant could have done a better job of documenting first that it is appropriate to meet each of the specific variance findings. The analysis is that the applicant has reported to the commission on parking ratios and has provided anecdotal evidence, but the data does not rely on specific reports or national data.

**The motion passed on a 4 to 3 majority roll call vote.**

**Those voting for the motion: Commissioner Lujan, Commissioner Hughes, Commissioner Gonzales and Commissioner Trujillo.**

**Those voting against the motion: Commissioner Armijo, Commissioner Heltman and Commissioner Lindell.**

Commissioner Lindell thinks this is a great project and would have liked to take the offer of the applicant to work out the wording with staff.

- 3. Case #M 2007-12. Elder Grace Final Development Plan. James W. Siebert, agent for Santa Fe Community Housing Trust, Inc. requests final development plan approval for 28 dwelling units and a community building on 3.53± acres. The project is zoned RM-LD-PUD (Multi-family Low Density, 12 dwelling units per acre, Planned Unit Development Overlay District) and is located south of Cerrillos Road south of the Homeward Bound residential development. (Lou Baker, case manager)**

Memorandum prepared by Lou Baker, Senior Planner, prepared May 25, 2007 for June 7, 2007 Planning Commission meeting is incorporated herewith to these minutes as Exhibit "5."

Additional conditions of approval dated June 7, 2007 is incorporated herewith to these minutes as Exhibit "5(A)."

Lou Baker presented the staff report included in Exhibit "5." Made corrections

Approval shall include the following conditions:

1. Construction will occur in an existing neighborhood therefore applicant shall submit a construction staging plan (Exhibit D) detailing activities in a manner as to not to disrupt the harmony and safety of the neighborhood; and
2. Public sidewalks shall be in compliance with ADA requirements. Applicant shall work with the City's ADA reviewer; and
3. Development shall comply with all previous conditions of zoning, development plan, and subdivision approval; and
4. A note shall be placed on the final plat and on the final development plan that the property will be subject to the Water Allocation and/or Water Offset Retrofit provisions of Ordinance No. 2002-29 and Resolution 2002-55 at the time of permit application or water hookup request. Compliance shall be achieved by use of retrofit credits or water transfers, if applicable; and
5. A note shall be placed on the plat and included in the homeowner's association bylaws restricting ownership of the units to at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates an intent to house persons who are 55 or older; and
6. Stormwater Certification statement shall be placed on the cover sheet of the mylar drawings for all development plans and subdivisions. The Certification shall appear next to the As-Built Certification statement; and
7. The final plat shall be drawn in compliance with general formatting and plan content requirements as per Exhibit N. These requirements apply to each page; and
8. Submit documentation from the US Army Corps of Engineers and FEMA as to their approval of the crossing of the north tributary of the *Arroyo Chamisos*; and
9. Plat, development plan and improvement drawings shall be modified to comply with "redline" comments from affected divisions and departments; and
10. Final plats shall be recorded with the Santa Fe County Clerk along with any and all deeds, private reservations, easements, covenants and restrictions. Final plats shall be recorded within five (5) days after the acceptance by the City Council or the Planning Commissioner as the case may be, of the public dedications, if any, shown thereon, but not until such acceptance. The acceptance of a public dedication by the City does not necessarily imply the maintenance of such dedication; and
11. Comply with comments from the Public Works Department/Engineering Division/Traffic Impacts (Exhibit E); and
12. Comply with comments from the Wastewater Management Division (Exhibit G); and
13. Comply with comments from the Engineering Development Review Division/Landscaping (Exhibit H); and
14. Comply with comments from the Office of Affordable Housing (Exhibit I); and
15. Comply with comments from the Fire Department (Exhibit J); and
16. Comply with comments from the Solid Waste Division Engineer (Exhibit L).
17. Provide slope stabilization and arroyo restoration that is acceptable to the City Engineer. Arroyo restoration would be limited to the construction crossing currently in place.
18. The trail will be located within a 20'-wide non-motorized public trail easement centered over the location of the trail shown in his modified site plan as presented to me today. Jim will provide me with a full-size copy of the recorded plat showing the trail easement – this should occur prior to the issuance of a grading permit; (and submit as-builts of the trail following construction.) The trail will be 8'-wide of base course (for consistency with the base course driveway that it crosses over.)

### **Public Hearing**

**Jim Siebert, 915 Mercer, was sworn.** He stated that this is the same project with some minor cleanup items. He believes they have resolved all the issues. There is one clarification on the trail issue. He pointed out that the roads throughout the project are gravel base coarse to make them permeable surfaces. There is a piece that wastewater is requiring to be base coarse surface as well. He said they would like to continue to work with Ms. McLaughlin on the non-motorized aspect of the trail. He stated agreement with the staff conditions.

**The public testimony portion of the public hearing was closed.**

**Questions and comments from the Commission**

Commissioner Lujan asked who will maintain the base coarse roads.

Ms. Baker said typically it is the homeowners association as imposed as a condition by the City.

Mr. Siebert agreed and said the association formed will have part of the dues that will go towards the maintenance.

Mr. Smith said this requirement is included in Exhibit E.

**Commissioner Hughes moved to approve Case #M-2007-12 with staff conditions, Commissioner Armijo seconded the motion which passed by unanimous voice vote.**

- 4. Case #M 2007-08. 1104 Arroyo Piedra Terrain Management Variance. Hugh MacPherson Driscoll requests a variance to terrain management regulation for waterway setback. The property is located at the southwest corner of Arroyo Piedra and Sierra del Norte and is zoned R-1 (Residential, one dwelling unit per acre). (Lou Baker, case manager) (POSTPONED FROM MAY 17, 2007)**

Memorandum prepared by Lou Baker, Senior Planner, prepared May 25, 2007 for June 7, 2007 Planning Commission meeting is incorporated herewith to these minutes as Exhibit "6."

Lou Baker presented the staff report included in Exhibit "6."

Approval shall include the following conditions:

1. New construction shall observe a minimum setbacks as per page 5 of the submitted site plan; and
2. If variance is granted, applicant shall construct a barrier a minimum of one foot from the floodplain boundary, to ensure that no encroachment into the floodplain occurs during construction; and
3. Construction will occur in an existing neighborhood therefore applicant shall submit a construction staging plan (Exhibit D) detailing activities in a manner as to not to disrupt the harmony and safety of the neighborhood; and
4. A certified slope analysis is not required for minor development. Generally, the project is considered "minor development" if the lot has 1) less than 3500 square feet of impervious surface, 2) no more than 5000 square feet of total disturbance and 3) no more than 10% slope disturbance. If a slope analysis is required it must be certified and signed by a New Mexico licensed surveyor. Applicant shall work with the Engineering Development Review Division to determine if a certified slope analysis is required; and
5. A note shall be placed on the final plat and on the final development plan that the property will be subject to the Water Allocation and/or Water Offset Retrofit provisions of Ordinance No. 2002-29 and Resolution 2002-55 at the time of permit application or water hookup request. Compliance shall be achieved by use of either retrofit credits or water transfer; and
6. Storm water Certification statement shall be placed on the cover sheet of the mylar drawings. The Certification shall appear next to the As-Built Certification statement; and
7. The final plat shall be drawn in compliance with general formatting and plan content requirements as per Exhibit K. These requirements apply to each page; and
8. Plat, development plan and improvement drawings shall be modified to comply with "redline" comments from affected divisions and departments; and

9. Final plats shall be recorded with the Santa Fe County Clerk along with any and all deeds, private reservations, easements, covenants and restrictions. Final plats shall be recorded within five (5) days after the acceptance by the City Council or the Planning Commissioner as the case may be, of the public dedications, if any, shown thereon, but not until such acceptance. The acceptance of a public dedication by the City does not necessarily imply the maintenance of such dedication; and
10. Comply with comments from the Engineering Development Review Division (Exhibit E); and
11. Comply with comments from the Engineering Development Review Division/Landscaping (Exhibit F); and
12. Comply with comments from the Trails and Open Space Office (Exhibit G); and
13. Comply with comments from the Solid Waste Division Engineer and Solid Waste Facility Design Standards (Exhibit H).
14. Comply with comments from Wastewater Management Division (Exhibit I) – Nicholas Schiavo, P.E.

### **Public Hearing**

**Hugh Driscoll, 227 East Palace, Suite C, was sworn.** He said this is his own home that he is building. He explained that the regulations for this lot have changed since the lot was created. He said the strictest interpretation constrains the building envelope. He said Ms. Blackwell walked the property with him and suggested a setback from the arroyo that would need to be confirmed with engineering calculations of the actual flood plain. He pointed out the FEMA boundaries. He pointed out features of the topography to the Commission. He said it will be a difficult site to build on if he is not approved for the variance.

**The public testimony portion of the public hearing was closed.**

### **Questions and comments from the Commission**

Commissioner Armijo asked if the existing building envelope has already been cut and graded.

Ms. Blackwell said this is difficult to understand. She said the hatch marks are what is left after overlaying the various lines. The applicant is asking for a variance from the 25 foot setback. She said he will only be able to have a building envelope in the hatched area due to the preliminary FEMA maps plus the slopes and recommended setback.

Chair Werner asked if the lots when initially approved had building envelopes.

Mr. Driscoll said the plat that exists from 1997 shows a 75 foot diameter circle which is the flattest area of the lot. The existing envelope is down in a low hollow in a spot that is the last place you would want a house.

Commissioner Armijo asked where he is building and how much area he is disturbing.

Mr. Driscoll said he is asking for the constraint because it will allow him to explore the design rather than presenting a full design. He said if he has the rules to work with he can proceed with the design.

Commissioner Armijo referred to the 4<sup>th</sup> condition of approval and questioned the size of the development.

Mr. Driscoll said regardless he has done a slope analysis.

Commissioner Armijo asked if they grant any area to build in the permitting process.

Ms. Blackwell explained that item 4 puts a placeholder to determine which development criteria the project fits. She said one of the conditions is for an engineer to provide all kinds of data. She said the local and federal laws have changed since the lot was created. The setback is a more recent city code since the lot was created. The preliminary FEMA map takes away square footage as well. She said there are no FEMA appeals that would affect this property, so they expect a final letter from FEMA by July. Once they have the letter they can make legal lot changes and issue building permits.

Commissioner Armijo clarified that no variance would be required for this.

Ms. Blackwell said what is shown is what the applicant knows will be the buildable area due to the new maps. He will need a letter of map amendment from FEMA depending on what is proposed.

Commissioner Lindell commented that this looks challenging. She asked if the conditions of approval are agreeable to the applicant.

Mr. Driscoll replied yes and feels the only concerns are from engineering.

Commissioner Lindell asked if he purchased the property before the new FEMA maps.

Mr. Driscoll said yes and he has worked closely to find a solution.

**Commissioner Lindell moved to recommend approval of Case #M-2007-08 with conditions of approval and the variance, commissioner Gonzales seconded the motion which passed by majority voice vote of 5 to 2. Commissioners Trujillo and Hughes voted against the motion.**

**Commissioner Gonzales said the next case will take at least an hour and a half, so he recommended postponing items 6 and 7 to allow the applicants to leave. He asked that they be placed on the next agenda at the beginning. Commissioner Trujillo seconded the motion which passed by unanimous voice vote.**

- 5. Case #M 2006-27. San Isidro Phase II Final Development Plan. Greg Gonzales, agent for Branch Design & Development requests final development plan approval for San Isidro Village mixed use development on +/- 6.81 acres east of Zafarano Drive between Cerrillos Road and Rufina Street. The application includes a variance to the 15' landscape buffer requirement to allow for zero side yard construction along the east property line and waivers to "Big Box" standards for architecture and massing, screening, and required public entrance to the building. The property is zoned C-2-PUD (General Commercial, Planned Unit Development). (Dan Esquilbel, case manager) (POSTPONED FROM AUGUST 3, 2006, AUGUST 31, 2006, SEPTEMBER 28, 2006, JANUARY 18, 2007, MARCH 15, 2007, APRIL 05, 2007, MAY 3, 2007 AND MAY 17, 2007)**

Memorandum prepared by Dan Esquilbel, Land Use Planner Senior, dated June 1, 2007 for June 7, 2007 Planning Commission meeting is incorporated herewith to these minutes as Exhibit "7."

Photographs provided by Dan Esquibel are incorporated to these minutes as Exhibit "7(A)."

Summary of Karl Sommer's presentation is incorporated herewith to these minutes as Exhibit "7(B)."

Comments on conditions of approval from the applicant are incorporated herewith to these minutes as Exhibit "7(C)."

Commissioner Trujillo disclosed that he has a security contract with San Isidro for a different phase and he does not deal with this phase of the project.

Mr. Sommer stated that there is no parking structure in the phase they will be discussing and there is no security contract for this phase.

Commissioner Lindell disclosed that she received a call earlier in the day from the applicant and did not discuss this case at all. She asked any fellow Commissioners to disclose if they got a call as well and discussed the case.

All other Commissioners disclosed that they got phone calls as well and did not discuss the case.

Dan Esquibel presented the staff report included in Exhibit "7."

Staff cannot recommend approval of this proposal.

The requested waivers and variance support a development design which does not conform to the standards and guidelines for PUD and architectural "Big Box" development. Additionally, an unsupported variance will diminish health, safety and welfare by compromising minimum standards to underlying zoning. If the Planning Commission decides it is to approve this development, staff recommends the following conditions:

1. compliance to conditions and additional documentation required as stipulated in Article 14-3.8(A)(6) Development plan review matrix (Exhibit A)
2. compliance to conditions and additional documentation required as stipulated in (Big Box) Article 14-8.8 review matrix (Exhibit B)
3. Compliance to development plan red line comments
4. Site signage shall comply with 14-8.10 SFCC
5. Development plan shall be modified to comply with Wastewater Management comments noted below and in Exhibit D (attached)
6. Development plan shall be modified to comply with the Engineering Development Review comments noted below and in Exhibit E (attached); and
7. Development plan shall be modified to comply with the Engineering Division/Traffic Impacts Section comments noted below and in Exhibit F (attached); and
8. Development plan shall be modified to comply with the Fire Department comments noted below and in Exhibit G (attached); and
9. Development plan shall be modified to comply with the Landscaping comments noted below and in Exhibit H (attached); and
10. Modification to development plan shall be submitted to DRT for review of changes.
11. Applicant shall comply with all conditions of annexation and rezoning ordinances and annexation agreement including special water policy provisions; and
12. Except as noted above under waivers, the development plan shall be revised prior to recording to comply with applicable requirements of Chapter 14, including Section 14-8.8 SFCC 2001
13. Comply with Wastewater Management (Exhibit D)
14. Comply with Engineering Development Review (Exhibit E)

## **Public Hearing**

**Karl Sommer, PO Box 2476, Santa Fe, was sworn.** He stated for the record that he is not the person who called anybody. He said this case has had a long history and has been through the hands of four planners with this being the most thorough review this has gone through. He said there have been some misapplications and missed points which he plans to review. He said they all know the complexity of the plan. The staff report in detail shows what is not in compliance, but there are a myriad of items complied with. He feels there are confusing remarks about standards that apply. He began with the parking. The staff report states the parking does not apply, but all the parking aisles are 22'6". He said this is noted as not complying, but it is in compliance. He next reviewed the loading facilities. The staff report talks about this on retail building 1 stating it is non-compliant because it has been combined with vehicular circulation and off-street parking. He said this loading is specifically different from ones inside the circulation. It is separate from the parking and it does not require parking in the aisle, so as a matter of standard the loading area is separate and distinct. He thinks there is a legitimate beef about the depth of the loading. The intention is to have separate individual retail buildings for which small loading trucks would be necessary. He noted that if it is one building larger trucks would need to access the building. He said they are willing to make the loading zone deeper or circular with one way so the loading trucks can go in our out. He said the report points out a deficiency not in that it does not comply, but it is not deep enough for a single tenant which the intention is not to have just a single tenant. He said they are not mixing the parking with the loading and he agrees it should be modified. He understands they do not want traffic impeded or pedestrian traffic hindered.

Mr. Sommer then reviewed the entryways and architectural features review. The applicant asked for a waiver of this, but that request only became apparent when they went to the pre-application meeting. They filed for a waiver, but they do not need one. He showed how they comply with the standard and thinks that staff may have thought there were separate structures, but under the code it is one large structure. They are willing to add architectural features to more clearly articulate the entrances. He said a waiver is not a variance and it must meet at least two criteria; one is that the substitute requirement meets the intention of the requirement and two, the cure is not worse than the disease meaning it will not impose greater impact than the actual impact.

Commissioner Trujillo suggested closing the public hearing since there does not appear to be any public present to speak on this. The Commissioners could ask questions as they go if they do so.

**The public testimony portion of the public hearing was closed.**

## **Questions and comments from the Commission**

Mr. Sommer said they are willing to use architectural features to further enhance the building to meet the intention. He stated that staff indicates they have not properly screened the parking areas. He said with the exception of entryways 75% must be screened with use of buildings, architectural features or landscaping. He questioned that they can use architectural features to screen the area with a proposed wall with landscaping. He said the clear intention is to block the sea of parking, but does not feel it is a good solution to screen the parking with a building. He said the City Council and



Planning Commission approved a wall and landscaping on the first phase so you will not see any parking. He believes they can work on the architectural features of the wall and landscaping to achieve what the code requires.

Commissioner Hughes said aesthetically the best approach is to put this along the street as 75% of the property is parking. He thinks they should turn the plan around.

Mr. Esquibel commented that architecture is a very interesting animal to discuss. He said a building can be more aesthetic to look at than actual landscaping or a sea of cars. He said if the developer chooses to meet the minimum standards for the big box, some of the smaller buildings do not have to have these features. He said the developer can produce smaller buildings that will be pleasing to the eye and will draw people into the area. He does not agree that a street can be ugly and the street is destined to have square blocks up against the road. He thinks much more can be done to make this architecturally pleasing.

Mr. Smith stated that the applicant noted there was not a variance or waiver for the first phase, but there was an advertised waiver on the record. He said there was a point of contention at the hearing.

Mr. Sommer agreed they can create something that is architecturally pleasing and screens the parking with a sense of relief in the buildings seen as you do not see the parking in between. He said the problem with buildings up against the street is the criticism of creating the canyon affect along the arterials. He said this would be easier as they would not be asking for a waiver or variance of the standards. If a waiver is required, then the solution approved on the other side of the street is what they would like to do. He referred to page 6 of the staff report, he clarified that an exception is not a waiver. He said they have to substitute the requirement meeting the intention and it could be more stringent. In this case it is an equivalency. He reported that staff says the criteria is an easing of the regulations, but that is not found with respect to waivers although it is found with the variance criteria. He said staff says the proposed design is self inflicted, but easing of the regulations and self infliction are variance criteria not found in the exception requirements. He responded to the standard that said the proposed design falls short of meeting the code as a result of the requested variances by compromising health, safety and welfare stating that his is very broad. It is not founded in the exception requirements, but in criteria for variances. He submits what they are requiring does not compromise the health, safety or welfare of the community. He is not sure how this does this.

Commissioner Trujillo asked what was meant by that statement.

Mr. Esquibel explained that there are three components contributing to a development that plugs into the community that will utilize the facility. Welfare also includes the well being of each individual that has to live with this. He said when they create a design that requires variances to setbacks and waivers to standards; they have to look at two sets of standards. He said the applicant did not meet with staff, but came in with the design. He said he went through this with a fine tooth comb and it does not work. The screening of the parking lot comes under the welfare for the community and he found some areas that need to be worked on. The project falls short of a higher standard of development in the PUD and big box.

Commissioner Trujillo asked if Best Buy, Linens and Things and Old Navy would have made it through now.

Mr. Esquibel replied no.

Mr. Smith said there are certain standards that apply to variances and other standards apply under the big box. He said in both cases the test is the solution proposed is equal or better than the solution required by strict application of the code. The applicant must demonstrate significant hardship in applying the code before seeking relief.

Mr. Sommer disagreed and said the standard can be a hardship, equal to or better than or the new siting area is not possible and the cure is not worse than the disease. He noted the first three are "ors" and the last is an "and." He said there is no hardship requirement for exceptions. He agrees this is a PUD that came in as part of the zoning. He said being a superior standard is not what the code requires, but the PUD ordinance states this to guide whether or not the Planning Commission and City Council will adopt the PUD zoning. He said this is not a standard and comes out of the section of the code dealing with adoption of PUD's. It does not say you must meet higher standards throughout the code as you would not have any idea when you got there. PUD's are supposed to create a superior design as they ease some of the requirements. He thinks this misinformed staff in reviewing this project.

Mr. Smith stated that Mr. Sommer is correct in the section cited by the staff in adopting a PUD for this area including a preliminary development plan which had no specifics for phase II. He said it is intended that the design of the PUD create an environment that is superior to development and attainable under existing zoning regulations.

Mr. Sommer asked when you know if you have complied if that is the standard. He asked when it would be a superior design.

Mr. Smith explained that you do not know until exercising the judgment of the Commission.

Mr. Sommer said if you meet the underlying requirements, he is not sure when you know it is superior and he envisions continually coming back to see if it is considered superior. He said when you adopt a PUD then the guidelines allow flexibility to create a superior design. He said much of the staff report does not make much sense in how the standards are applied. He noted that there was a criticism that the design did not take into account the visual impact from the PNM facility and he is not sure it matters what the design looks like from the PNM substation. He does not anticipate people hanging out at the PNM substation. He asked how they would lessen the visual impact by placing the buildings in a different place. He thinks they have moved away from the public right of ways with a screening solution that produces an aesthetically pleasing visual affect.

Mr. Sommer reviewed the matrices. He said they will comply with the point system and they are not asking for a waiver from the point system as this states. He said the screening does comply but he does not think they will need a waiver. In regards to the lighting, they have to show the affect of the lighting and the complaint is that the plans are deficient because they do not go 200 feet out. He said the appreciable measurable affect ends at 15 feet beyond the bounds of the property so he believes this would be

meaningless and the code does not require this. He said they have submitted the photometric analysis stating that the exterior building lighting will be shielded with no spillage; he said they can certainly comply but it does not state what is missing. He again stated that they are willing to work with staff to make the circulation better for loading. He is not sure what is missing from the landscape plan; it has a legend with the areas, dimensions and types of plants. He said Exhibit B demonstrates some confusion with the staff note; he is not sure where it states in the code that you add up all the buildings and combine them so he is not sure how to comply. They do not mind providing more information on the architectural unity although they feel they have complied. He is concerned if there is some interpretation. He said they have shown links to adjoining projects, but the logical placement is uncertain due to the lack of perimeter land use information. He thinks surrounding land uses do not show proposed layouts of roadways which may be why this is listed. He said the only information they do not have is to the west of the property as there is nothing there.

Commissioner Gonzales asked for clarification on the bus stop.

Mr. Sommer explained that the discussion says they would like them to provide additional facilities with a preference for one across the street from the Zafarano stop. He said the problem is the landscape buffer and a parking lot. He said additional facilities should be required under the code although there is no particular standard. He said they are willing to work with staff on this.

Commissioner Gonzales asked if they could add striping on the road with a light if they place the stop across the street.

Mr. Smith said citizen requests and legal determination as to implementation of ADA requirements with reasonable access have to be complied with.

**Greg Gonzales, agent for Branch Design, was sworn.** He showed the location adjacent to the retail building 1.

Commissioner Gonzales asked for Mr. Sommer to summarize the conditions of approval agree that he does not agree with.

Mr. Sommer handed out Exhibit "7(C)" that addresses this.

Commissioner Trujillo asked why cannot have the bus go into San Isidro Phase I.

Mr. Smith said during the phase I review it was not clear where the demand would be or whether Transit wanted to take the extra several minutes it would take to loop in and out. He said they still do not know what will occur west or east of this project. He added that providing the stops south of the cross street seemed the best solution for the demand generated. It is possible there will be transfers between the two and it might eventually loop in and turnaround at the roundabout. He stated that they really did not know enough about what would be going on.

Commissioner Trujillo said it makes sense for the bus to make the turn and the bus stop to be there. He noted that the other side of the property seems to have more open space to do this and the opposite side of Zafarano is much more of a problem.

Mr. Sommer has no objection to providing the bus stop.

Mr. Sommer addressed the two variances. The code requires a 15 foot setback and a stepping in height from the property line as the land is in the County and zoned residential. He understands they must demonstrate that a hardship arises from a condition related to the land not to some other self inflicted problem. The condition of the land is a property that is an amalgamation of several strips of land owned by different parties. The building located along a long strip of land cannot cross the boundary line which gives inability to move the building in a way that works with the rest of the project. They are far below the allowable lot coverage. The narrow buildings come up close to the property line so to keep the continuity they end up with a hardship that would damage the project if not granted. He said they tried to mitigate the impact of the larger buildings by moving them away from the major arterials and they end up with a larger building towards the east of the project. He pointed out that even if you have the setback you still have the issue with the height of the building and stepping it in a way that architecturally makes sense. He said the developer plans to acquire the properties and incorporate them into a phase III, but this is not really relevant at this point.

Commissioner Gonzales said if they acquire the property would they be able to move the parking and place the bus stop directly across from each other.

**Jeff Branch, was sworn.** He said the tenant visibility is important and the storefronts would have parking in front of them which is very important to smaller businesses.

Mr. Sommer said they are working with the next door neighbor to see if they can get consent so the Commission would know. He understands this is a tough call, but feels it is warranted due to the condition of the parcel and they have an underlying ownership that dictates the design. He feels staff has raised a legitimate point on the setback issue, but he does not believe the same question relates to the height.

Commissioner Armijo asked what the elevation is at the 0 lot line.

**Greg Wey, Branch Design, was sworn.** He said the main structure of building is at a 12 foot height and then it steps back.

Mr. Branch gave a little history. They assimilated 35 families for this project and at some point this came to an end and some of the families were not included. He said the intention is to keep going west and continue with the master plan.

Mr. Esquibel said he does not want to go through each point as Mr. Sommer did. He said overall they look at the project from many points starting with Chapter 14. He said the applicants have to provide a certain amount of detail and various sections in the code overlap with other requirements. He noted that loading facilities are supposed to be separate from parking areas. He said this did not get the attention it should have gotten in the beginning. He believes the applicant must meet the standards and not negotiate the standards to request variances or waivers for. He said the majority of the items in the matrix were due to either plans being incomplete or the plans became piecemeal over time. He said there was a lot of incomplete documentation. He said the variance does not meet a setback standard for 50-foot buffers, but it has articulations in the big box requirements. He said staff is not just creating issues and if they go to the code there will be a different interpretation than what was articulated tonight. He placed

each deficient item with a reference to the code. He said there are some really bad architectural features because it is abutting PNM. He said the design was not created to mitigate its impact with the corner or streetscape in order to enhance a project that should have unity not just in big box standards. He understood including some waivers and variances to meet the level of performance. He said there was one paragraph requesting the variance and everyone else follows five sets of points to address the variance standards. He did not get a chance to work with the applicant. He said the applicant never came in to talk to anybody. He added that everybody has access to the code and to state they do not know what the code is does not work after they developed a huge project across the way.

Mr. Smith apologized that they are discussing whether the submittals are complete or not. It is not the intention to bring those things to the Commission. Staff did not have time to work with the applicant and some of the submittals were submitted in the last 7 days. He said the minimum standard in each case is that you must have equal standards to the minimum standards. The minimum standard in every commercial district is a 3 foot screened wall, but the plans did not show any screened wall although there were discussions that the applicant intended to provide those. The applicant represented that the screening does meet the code requirements, but there were a variety of staff errors on this phase. He regrets that there is no transit staff available to address the location for the bus stop. He would like to take the proposal to staff.

Mr. Branch complimented staff for being thorough and he knows the challenges staff has had. The intent to why the design is the design is because of the experience. He said the first phase was the first project that has implemented and followed the big box process, but the waivers are due to their experience in the first phase. He tried to take the lessons and neighborhood involvement to incorporate this plan. He said with the disconnect in staffing in Planning and Land Use, Mr. Esquibel was not part of the first phase review. He assured them that he is not trying to ram variances down their throat. He thinks it is more global in terms of the master plan for this area.

Commissioner Lindell said it does not appear that the variance meets the criteria. The idea that the land backs onto residential land is troublesome in her opinion. She is willing to support the variance if they owned the land, but thinks the way it stands now it is hard to support the variance.

Mr. Sommer said they are working with the land owner and if it was consented to in writing he would have finalized the process. If they had the consent, the party impacted would be signaling their intentions. He said in lieu of that, they could withdraw the application for the variance on the setback, but the height variance creates a different situation and has a chopping affect. He said if the Commission could support the variance with the condition that the land owner adjoining consented in writing to the 0 lot line and proposed plan that would be acceptable. He said the more important variance is the height.

Commissioner Lindell stated that she is not as troubled by the height variance.

Commissioner Trujillo agreed.

**Commissioner Trujillo moved to approve Case #M-2006-27 with staff conditions.**

Commissioner Trujillo thanked Mr. Esquibel for his incredible work on this application. He apologized to the applicant for having to work with so many planners. He agreed with Mr. Sommer's conditions of approval. He asked staff how he feels about the landscaping.

Mr. Esquibel said if the applicant is willing to work on the entire streetscape so they get a unified landscape presentation along the entire corridor then he believes they can come up with a reasonable solution.

Mr. Branch was prepared to work on the phase II side, but said the phase I is done. He said from a budget standpoint they are not in a position to do anymore on the phase I side. He noted that on the Rufina Street side they are doing additional landscaping although it was not required.

Mr. Sommer said a wall that had varying relief and trellis work on the wall that was aesthetically pleasing would be acceptable. With respect to working with staff they have no problem. He asked what the staff conditions are.

Mr. Esquibel clarified the height issue. He said the code identifies a specific standard.

Mr. Smith reiterated that 14-8.8 states that if you are within 100 feet of a residential district, then you have to take into account the height of residential buildings in determining the maximum height of 24 feet or 10% over the height of adjacent structures. You can exceed this only if you step back two horizontal feet for each vertical foot of additional height up to the maximum permitted after the first 12 feet of height. It may be in compliance, but he does not know what the relationship is at this time.

Mr. Sommer said whether or not they have the buffer creating the 15 foot buffer helps with the issue.

Mr. Smith read the case caption.

Mr. Sommer said it is clear from their drawings that they are not doing setbacks and height.

Mr. Smith believes that if they have detailed information it is within a loose interpretation of the advertisement for the hearing. He said they do not have dimensions or the heights of adjacent buildings on the residential property. He advised them to be cautious in adopting a condition of approval that delegates the authority to the control of a third party.

Mr. Sommer said there is a standard requirement in the code to get a 0 lot line affidavit. The code requires this and it is not an unauthorized delegation in his opinion.

Mr. Branch clarified that is not a 0 lot line it is actually five feet.

**Commissioner Trujillo amended his motion to keep condition 9 in requesting the applicant work with staff for landscaping on phase II.**

Commissioner Trujillo asked Mr. Esquibel if he saw Mr. Sommer's list of conditions.

Mr. Esquibel said so much of the code overlaps and it is a numbers game to get all the points. If you do not reach the points you do not get a building permit. He said neither one of them have talked about the resulting affects. He is willing to accept whatever is approved, but he cautions them in eliminating conditions. He does not mind going forward if the applicant is willing to work with him. Some of the issues might be a matter of interpretation, but he would like the flexibility to come back if they cannot resolve the items.

Mr. Sommer agreed they would like to move this along and if they cannot agree then they will come back. He said if the Commission wants to approve with the modified conditions they could continue to work with staff with clear direction. He would like to get the variances behind them so they can move forward. He hears that the setback is difficult and the height is not. He requested approval with the condition that they hash out the conditions.

Commissioner Trujillo said it sounds like they need to postpone this for two weeks so they can work out the conditions.

Mr. Sommer wanted an approval with the condition they come back in two weeks to hash out the specific changes in the conditions. He did not want to do this all again.

Chair Werner suggested they close the public hearing and no further public testimony would be taken and they would be considering approval of the agreement only.

Mr. Sommer wanted a sense on the variances as if they do not do not have direction they will not be able to make much progress.

Chair Werner asked if they will have the letter by then.

Mr. Sommer said they will try.

Commissioner Trujillo said the question is the variance. This may not be a problem if they work out the details. He said this has been postponed numerous times which is unfair to the developer, but it is also unfair if staff is not getting complete drawings. He does not want frustration between staff and the applicant. He agreed they need to give specific direction on what they want worked out. He personally has no problem with the project, but questions the variance.

Mr. Sommer did not want to have this discussion: "We do not like the variances, we are not going to talk about it anymore. You don't meet the criteria, you don't have this and you don't have that." While the applicant thinks they do have all that. This will be unproductive.

Mr. Smith suggested a motion in the form of a postponement to the meeting of June 21<sup>st</sup> with direction to provide x number of feet of setback at the east property line bearing in mind that the code requires various findings for approval of any number less than 15 feet.

Commissioner Gonzales stated that Commissioner Trujillo moved to approve with the condition that the final conditions will be approved at the next meeting.

Mr. Smith recognized that legal staff is not present, but the legal staff has advised in the past that the Commission take action to postpone or approve without putting certain issues off to a future hearing.

Chair Werner liked the wording that Mr. Smith suggested with the caveat that they work towards the assumption that the Commission will approve the variance.

Mr. Sommer's understanding is that they are more inclined to approve the height rather than the setback.

**Commissioner Hughes moved to postpone Case #M-2007-27 to the June 21<sup>st</sup> meeting with staff and the applicant negotiating on the variance for height, but not on the setback. Commissioner Lindell seconded the motion.**

Mr. Smith clarified that the applicant is directed to proceed with the 15-foot setback along the east property line.

**The motion passed on a majority roll call vote of 4 to 3.**

**Those voting for the motion: Commissioner Hughes, Commissioner Armijo, Commissioner Lindell and Commissioner Heltman.**

**Those voting against the motion: Commissioner Lujan, Commissioner Trujillo and Commissioner Gonzales.**

Chair Werner requested they notice that they are not taking further public testimony on this case at the next meeting.

- 6. Case #M 2007-07. 538 Del Norte Lane Terrain Management Variance. Derrick Archuleta, agent for JJ Norte Corporation, requests a variance to terrain management regulations for waterway setback. The property is located north of Del Norte Lane and is zoned RM-1 (Residential Multi-Family, 21 dwelling units per acre). (Lou Baker, case manager) (POSTPONED FROM MAY 17, 2007)**

*This case was postponed to the June 21<sup>st</sup> meeting due to the lengthy agenda.*

- 7. Case #S 2007-06. Kaushal Business Park Preliminary Subdivision Plat. Linda Tigges, agent for A.K. Kaushal requests preliminary subdivision plat approval for 11 lots on 1.998± acres located north of Rodeo Road between Sawmill Road and SFRR right-of-way. The application includes a variance from Section 14-9.2 (E) regarding standards for private streets to clarify the use of driveways from the entrance to a commercial subdivision. The property is zoned I-1 (Light Industrial). (Donna Wynant, case manager)**

*This case was postponed to the June 21<sup>st</sup> meeting due to the lengthy agenda.*

**G. BUSINESS FROM THE FLOOR – None**

**H. STAFF COMMUNICATIONS**



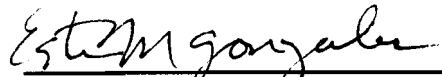
Mr. Smith stated that the Mayor has informed them he will make reappointments or new appointments at the second Council meeting in June. Staff will work on changing the regular meeting of July 5<sup>th</sup> to July 12<sup>th</sup> to accommodate this close schedule.

**I. MATTERS FROM THE COMMISSION – None**

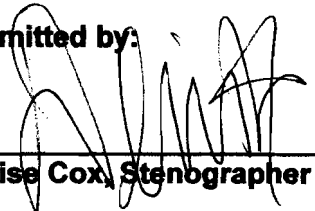
**J. ADJOURNMENT**

There being no further matters to come before the Commission, and the Commission having completed its agenda, Commissioner Hughes moved, seconded by Commissioner Armijo to adjourn the meeting. The motion passed unanimously on a voice vote and the meeting was adjourned at 12:30 a.m.

Approved by:

  
Chair Robert Werner  
Estevan Gonzales

Submitted by:

  
Denise Cox, Stenographer