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3 **MINUTES OF A REGULAR MEETING**
4 **OF THE PLANNING & ZONING COMMISSION**
5 **OF THE TOWN OF BERNALILLO**
6 **HELD AT THE TOWN HALL**
7 **JULY 7, 2009**
8

9 The Planning & Zoning Commission of the Town of Bernalillo met in Regular Session
10 within the laws and rules of the Town on July 7, 2009 at 6:30 pm.
11

12 Commissioner Debbie Kilfoy, Chairman
13

14 **Applicants / Members of Public Signed In:**
15

16 Ted Montoya	Gary Gritsko	Orlando Lucero
17 Esther Romero	John Harris	Nan Harris
18 Helen Sandoval	Denise Silva	Chris Carpenter
19 Rose Lucero	Eric Schoen	Mary Jo Maloney
20 Mike Maloney	Margaret Geller	Joan Duffy
21 Steve Amiot	Margie Amiot	Evelyn Unale
22 James Pike	Carol Pollitt	Alfred Duran
23 Devin Romero	Mary Kwapich	Al Gabaldon
24 Anna Torres	Evangeline Madrid	Georgianna Heise
25 Teresa Young		

26
27 Mr. Moe - the Planning & Zoning Director, and Others were also present but not
28 signed in, or their signatures were not legible.
29

30
31 **1. CALL TO ORDER**
32

33 Chairman Kilfoy called the meeting to order at approx. 6:45 pm, and led those
34 attending in a recitation of the Pledge of Allegiance.
35

36
37 **2. ROLL CALL**
38

39 Commissioner Debbie Kilfoy	Present
40 Commissioner Tom Wilson	Present
41 Commissioner Georgina Chavez	Present
42 Commissioner Cipriano Montoya	Present
43 Commissioner Robert Satriana	Present
44 Commissioner Rita Last	Not Present
45 Commissioner Christopher Hyer	Present

46
47 A quorum was present.
48

1 **3. APPROVAL OF AGENDA**

2
3 The Chairman asked if all Commissioners had reviewed the Agenda, and asked if
4 there were any changes to propose. Commissioner Chavez requested that two
5 discussion items be added to the Agenda: 1) a follow-up on the status of the
6 MainStreet Demoilition Permit for the Zia property from the last meeting; and, 2)
7 a follow-up on other miscellaneous Commission approvals. No other changes
8 were proposed.
9

10 The Chairman entertained a motion to approve the Agenda as amended.
11 Commissioner Chavez so moved. Commissioner Hyer seconded the motion. All
12 voted aye. The motion was carried.
13

14
15 **4. APPROVAL OF MINUTES**

16
17 The Minutes for June 2, 2009 were submitted for approval. The Chairman called
18 for corrections. Mr. Moe requested clarification of who made and seconded the
19 initial motion to table Action Item B (an Application for approval of MainStreet
20 signage for “Grin-N-Bear It”). Chairman Kilfoy stated that Commissioner Hyer
21 made the motion, which was seconded by Commissioner Montoya. No other
22 corrections were proposed. The Chairman entertained a motion to approve the
23 minutes of June 2, 2009 as amended. Commissioner Hyer so moved.
24 Commissioner Montoya seconded the motion. All voted aye. The motion to
25 approve as amended was carried.
26

27
28 **5. REPORTS**

29
30 a) **Next Meeting**

31 Mr. Moe informed the Commission that their next regular meeting was scheduled
32 for August 4, 2009. All Commissioners voiced their assent.
33
34

35 **6. ACTION ITEMS**

36
37 a) **Zoning Review – Main Street Signage – Zócalo Complex** (Sandoval County – Tim Puzak
38 Construction, agent): Applicant requests approval of new signs for both the Old Convent and
39 the Old School at the Zócalo Complex on MainStreet at Misc. Tracts 17A & 54 within T13N
40 R4E SEC32 NMPM, a.k.a. 264 & 282 S. Camino Del Pueblo.
41

42 The Chairman introduced the item to the Commission, and asked the applicant to
43 present his/her request. Donna Wylie, Sandoval County Tourism & Economic
44 Development Director, came forward, and briefly explained the need/desire for
45 the new signage at the recently renovated old convent and school buildings at the
46 Zócalo site. Ms. Wylie explained that the buildings have been renovated to serve
47 as a Visitors & Event Center, as well as an office building. New signage is
48 required to let the public know the new purposes of these buildings and of the site
49 upon which they are located. The requested signage is designed to be consistent

1 with the requirements of the MainStreet Overlay Zone, and to be compatible with
2 recently approved signage such as that at PB&J. A brief discussion ensued during
3 which the Commission questioned the specific nature of the signs (electronic or
4 not) and expressed concerns about lighting, materials, and coloration. Ms. Wylie
5 explained that indeed the proposed signage for the Visitors & Events Center
6 contained an LED “reader-board” component, but otherwise the signage
7 contained natural materials and typical MainStreet / New Mexican colors.
8

9 The Chairman entertained a motion. Commissioner Hyer motioned to approve
10 with the conditions that the LED lettering not be flashing, and that the lettering be
11 white rather than other colors. Commissioner Chavez seconded the motion. All
12 voted aye. The motion to approve with conditions was carried.
13
14

- 15 b) **Conditional Use Permit – Business in a C-R Zone – Propane Storage & Wholesale**
16 **Distribution (Ortega’s Propane Service, Inc. - Eloy Ortega):** Applicant requests approval of a
17 Conditional Use Permit for a business in a C-R (Commercial Residential) Zone for a propane
18 storage and wholesale distribution facility at portions of Lots 1-9, Eastern Addition, and
19 Miscellaneous Tract 112A within T12N R4E SEC5 NMPM, Bernalillo, New Mexico.
20

21 The Chairman introduced the item to the Commission, and asked the applicant to
22 present his/her request. Mr. Ortega came forward and gave a brief explanation of
23 his desire to create a non-retail propane storage & distribution facility consisting
24 at the northeast corner of the intersection of Avenida Bernalillo and South Hill
25 Road. He further explained his lengthy experience and safety record in the
26 business, particularly at his business location in Albuquerque.
27

28 While acknowledging Mr. Ortega’s business expertise and safety record, the
29 Commission requested more information regarding the size of the proposed tanks
30 (two 30,000 gallon tanks) and what safety measures were proposed (a barricade
31 of steel pipes w/fencing along the roadway). The Commission expressed concerns
32 regarding various safety issues, including: the location and configuration of
33 South Hill Rd. across the site and traffic patterns & behavior thereon; the
34 location of the proposed tanks adjacent to and below the heavy and fast traffic on
35 I-25; the location of the site adjacent to residential areas and a child-care facility;
36 and the possibility of an explosion or tank rupture that would cause propane gas -
37 which is heavier than oxygen - to flow into lower residential areas and cause
38 grievous harm to residents. The Chairman entertained public comment, which
39 reflected similar concerns to those of the Commission.
40

41 The Chairman entertained a motion. Commissioner Wilson motioned to deny the
42 request. Commissioner Hyer seconded the motion. All voted aye. The motion to
43 deny was carried.
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- 1 c) **Summary Plat – Lot Consolidation – Lots 1-9, Eastern Addition, and Miscellaneous**
2 **Tract 112A** (Eric Schoen – Eloy Ortega, agent): Applicant requests approval of a
3 Consolidation of Lots 1-9, Eastern Addition, and Miscellaneous Tract 112A within T12N R4E
4 SEC5 NMPM, Bernalillo, New Mexico.
5

6 The Chairman introduced the item to the Commission, and asked the applicant to
7 present his request. Eric Schoen came forward and stated that because this Item
8 and the previous one were viewed by the applicant as linked, and since the
9 Commission had just denied the previous request, then he respectfully withdrew
10 this request for Summary Plat approval.
11

12 As the applicant had therefore withdrawn the application, no action was taken by
13 the Commission.
14
15

- 16 d) **Summary Plat – Lot Split – Tract B (proposed B-1 & B-2), Lands of Roger and Nancy**
17 **Deaver, Placitas** (Alpha Surveying, agent): Applicant requests approval of a Lot Split for
18 Tract B of the Lands of Roger and Nancy Deaver, within T13N R4E SEC27 & SEC 35
19 NMPM, Sandoval County, New Mexico.
20

21 The Chairman introduced the item to the Commission, and asked the applicant to
22 present his request. Mr. Gritsko, of Alpha Surveying, came forward and briefly
23 described the nature of the Summary Plat. The owners of the property have
24 requested – and have already been approved for - a special exemption under
25 County subdivision regulations to split the tract into two, but are required by State
26 law to obtain concurrent approval of the Town Planning & Zoning Commission.
27 A brief general discussion ensued. The Commissioners were concerned that:
28 access to the new lot might be inadequate; that the proposed lot sizes were not
29 consistent with adjacent properties; and that the size of the smaller proposed lot
30 did not meet Town minimum of one acre in similar municipal “Rural Residential”
31 zones.
32

33 The Chairman entertained a motion. Commissioner Hyer motioned to deny the
34 request, because the smaller of the two lots does not meet the required minimum
35 lot size in ‘Rural Residential’ areas. Commissioner Montoya seconded the
36 motion. All voted aye. The motion to deny was carried.
37
38

- 39 e) **Summary Plat – Lot Line Adjustments – Lots 76-A-1, 85-A, 89-A, & 90-A-1, Anasazi**
40 **Meadows, Placitas** (Alpha Surveying, agent): Applicant requests approval of a Lot Line
41 Adjustments for Lots 76-A-1, 85-A, 89-A, & 90-A-1 of Anasazi Meadows subdivision, within
42 T13N R4E SEC27 & SEC 34 NMPM, Sandoval County, New Mexico.
43

44 The Chairman introduced the item to the Commission, and asked the applicant to
45 present his request. Mr. Gritsko, of Alpha Surveying, came forward and briefly
46 described the nature of the Summary Plat. A brief general discussion ensued, and
47 the Commission had no serious concerns regarding the proposed lot line
48 adjustments.

1 The Chairman entertained a motion. Commissioner Wilson motioned to approve
2 the application. Commissioner Hyer seconded the motion. All voted aye. The
3 motion to approve was carried.
4
5

- 6 f) **Summary Plat – Lot Line Adjustments – Lots A-1 & B-1, Lands of Placitas West**
7 **Associates LLC and Tract B-1-A, Lands of Bolton, Placitas (Alpha Surveying, agent):**
8 Applicant requests approval of a Lot Line Adjustments for Lots A-1 & B-1, Lands of Placitas
9 West Associates LLC and Tract B-1-A, Lands of Bolton, within T13N R4E SEC34 NMPM,
10 Sandoval County, New Mexico.
11

12 The Chairman introduced the item to the Commission, and asked the applicant to
13 present his request. Mr. Gritsko, of Alpha Surveying, came forward and briefly
14 described the nature of the Summary Plat. A brief general discussion ensued. The
15 Commissioners were concerned that: the lot lines and configurations were
16 confusing; and that proposed Tract B-1-A seemed unbuildable due to the
17 extensive location of the “Flood Zone A” across the property. Mr. Gritsko
18 explained that although Tract B-1-A did appear almost unbuildable, it was in fact
19 the only one of the parcels involved in the proposed Re-Plat that already had a
20 dwelling built on it, and that the plat would not adversely affect the dwelling or
21 the property. He agreed that the proposed parcel configuration was somewhat
22 confusing, but stated that the purpose was to enable all lots to be 1 acre minimum,
23 and the configurations also did not adversely affect the build-ability of the lots.
24

25 The Chairman entertained a motion. Commissioner Wilson motioned to approve
26 the request. Commissioner Chavez seconded the motion. All voted aye. The
27 motion to approve was carried.
28
29

- 30 g) **Preliminary Plat – Piedra Lisa Subdivision (Olive Drab LLC - Rio Grande Engineering,**
31 **agent):** Applicant requests approval of a Preliminary Plat for a 32 lot residential subdivision
32 and several miscellaneous tracts on the current Miscellaneous Tract 11, Lands of Edward
33 C’de Baca, within T13N R4E SEC32 & SEC 35 NMPM, Town of Bernalillo, New Mexico.
34

35 The Chairman introduced the item to the Commission, and asked the applicant to
36 present his request. David Soule, of Rio Grande Engineering, came forward and
37 provided a brief, but detailed, explanation of the proposed Plat as well as a history
38 of the approvals already granted for the Piedra Lisa development, including the
39 Zone Change to SU with a Master Plan (which included the proposed plat)
40 approved by the Town Council last year, the District Court decisions related to the
41 appeal of the Council’s action, and the street/roadway access provided as part of
42 the Gross property development approvals through actions of the Commission
43 over the course of the past seven months. The applicant requested formal approval
44 of the Preliminary Plat based upon these previous approvals, and the Town’s
45 current policies and regulations.
46

47 With the Chairman’s indulgence, Commissioner Wilson pointed out that the
48 development/plat had already been approved by the Town Council. As there was
49 some public comment contradicting the Commissioner’s statement, Mr. Moe

1 explained the nature of the Zone Change and Master Plan approved by the
2 Council during the past year, an integral part of which had been the proposed plat
3 and other related drawings. He stated that the Council’s approval, therefore, had
4 provided the vested rights necessary for the development.
5

6 At this time, the Chairman entertained public comment. Initial public comments
7 and concerns included: questioning the “need” for the development; the proper
8 description of the property; and concerns that the development would adversely
9 change the Damiano/Cottonwood Village neighborhood, bringing more traffic
10 through the neighborhood and past the local school. Mr. Soule responded to each
11 comment in turn: explaining his comment as to why the development was
12 “needed” at this crucial location in conformance with the Town TOD (Transit-
13 Oriented Development) plan; explaining the property definition and location; and
14 explaining that the streets of the proposed plat did not connect to those in the
15 neighborhood of Carroll Elementary and therefore could have no impact on the
16 traffic near the school.
17

18 Commissioner Wilson requested a clarification of the specific request/action
19 before the Commission. Mr. Soule replied briefly about the nature of the request
20 for Preliminary Plat approval; and Mr. Moe expanded upon Mr. Soule’s
21 comments with a reiteration of the history of the prior applications, submittals,
22 approvals, appeals, and adjudications for the development and the current need
23 for a formal approval of the plat, which by advice of the Town’s Attorney should
24 not be handled administratively, but should come from the Commission.
25

26 Commissioner Wilson then requested to know what the Commission’s options
27 were (with respect to consideration and action on the requested plat). Mr. Moe
28 then explained that, although he wasn’t the Town’s Attorney, it was his
29 understanding - given the vested rights already granted to the development by the
30 Council’s approval – that the Commission had no other choice, indeed that it was
31 their duty, to approve the plat. This comment caused some consternation
32 amongst the public.
33

34 Commissioner Montoya inquired about the Ordinance passed by the Council, and
35 asked if the copy in the packet was the same as passed by Council. Mr. Moe
36 explained that because he could not access the final version of the Ordinance
37 when putting together the Commission packets, he had used the copy in his
38 possession that had been provided for the Council packets. He further explained
39 that this “Council packet” version did not contain a list of conditions (mostly
40 technical) imposed by the Council in the final adopted version, but as he now had
41 a copy of the final version in his possession, he could read the conditions to the
42 Commission if they desired.
43

44 Without responding at this time to Mr. Moe’s proposal, the Commissioners asked
45 several questions regarding the roadways providing access to the Piedra Lisa

1 development. Mr. Soule briefly addressed these questions, and once again
2 requested approval of the plat.
3

4 Commissioner Wilson then stated that if approval of the plat was their only
5 option, he wanted a written record of this, if indeed the Commission voted to
6 approve the plat. Addressing this comment, Mr. Moe stated that although he had
7 been asked for his opinion, he didn't have the authority to tell the Commission
8 what to do, and that hadn't been his intent. Commissioner Wilson acknowledged
9 the Director's comments, then Mr. Moe reiterated that he had been asked what the
10 Commission's responsibilities were, what its options were, and that his
11 understanding of the rule of law was that it was the Commission's duty to
12 approve the plat.
13

14 Commissioner Montoya then briefly discussed the conditions of the Council's
15 approval with Mr. Soule responding. The Commissioner then suggested that
16 since the approval of the Zone Change and Master Plan had been granted by the
17 Council, the Commission should send the Plat to Council for approval. After
18 further brief discussion, Commissioner Montoya stated that he had not been in
19 favor of the plat previously, and was still not in favor of it, and thereafter made a
20 motion to deny the plat and recommended that it be sent back to Town Council.
21 Thereupon, many members of the audience applauded.
22

23 With the Chairman's indulgence, Mr. Moe addressed the Commission, stating
24 that it was his unfortunate responsibility to inform the Commission that he was
25 under orders from the administration to remind them of their duty under the law
26 with respect to this and similar applications that had previously come before them
27 and the Council. A brief commotion in the audience ensued after which the
28 Chairman restored order, and Mr. Moe stated that he was only "the messenger",
29 the Chairman and other Commissioners voicing agreement. The Chairman then
30 asked if the Council wants the plat to pass. Mr. Moe stated that in cases like this,
31 where the Council has approved a Master Plan and provided all the vested rights
32 to a development, then to fulfill a legal formality the Commission should approve
33 the plat. He stated that this is similar to the position of Staff, when decisions are
34 made by the Commission or Council which disagree with Staff recommendations,
35 yet Staff must abide by the decisions rendered, it is not a matter of choice. He was
36 no more fully independent than they were. Mr. Moe also reminded the
37 Commission that this issue had arisen and been discussed in the past, and that –
38 for example – the Commission sometimes made decisions contrary to Staff
39 advice, just as the Council sometimes made decisions contrary to the
40 Commission's advice, which was appropriate. Furthermore, in such cases he is
41 not the one who makes the decisions, any more than the Commission is the body
42 which makes the final decisions. In conclusion, Mr. Moe stated that he did not
43 like having been placed in the position of speaking to the Commission of the issue
44 of their duty any more than he was sure they enjoyed hearing it, but he had been
45 under direct orders to so do.
46

1 Responding to the previous commotion in the audience, Commissioner Chavez
2 stated that many people in the audience who were vocalizing their dislikes, had
3 not participated previously in hearings dealing with the development, and that
4 many people were therefore responding to hearsay. At this point Mr. Maloney
5 requested that Mr. Moe's comments be placed in the minutes verbatim.
6

7 Helen Sandoval then made some brief comments to the Commission regarding...?
8

9 *(There was a brief interruption in the record at this point due to a change of*
10 *tapes).*
11

12 With the Chairman's indulgence Commissioner Montoya quoted an excerpt of a
13 "Commissioner's Handbook" related to a Commission Member job description.
14 (Staff could not verify the excerpt in documents we possess). Mr. Montoya
15 emphasized that the quoted language did not mandate obedience to the dictates of
16 the Town Council, but rather the use of independent judgment to serve the welfare
17 of the general public, etc. In response, David Soule re-iterated that the developer
18 had complied with Town procedures and requirements, and that the Council's
19 official ruling was that the project could proceed as long as it followed the
20 approved Master Plan. He stated that it therefore seemed arbitrary for the
21 Commission not to approve the conforming plat, and requested that the
22 Commission hear further testimony from one of the project's owners, who is also
23 an attorney. The Chairman assented to the request.
24

25 Mr. Bill Carpenter approached the podium and addressed the Commission. He
26 briefly described the nature of the development, discussed the conditions of the
27 Council, and the relationship of this development with the Gross property. He
28 further stated that the Council's approval was given in detail, including the sizes
29 of the lots, the drainage, the housing type, etc. The Council's approval had been
30 appealed as allowed by law, and went to District Court where many of the
31 arguments/concerns discussed tonight were also raised. The District Court denied
32 the appeal, and rejected a request for rehearing. He reiterated that the developers
33 obtained approval of the (Master) Plan, have followed the process, have waited
34 three years partly because of the TOD moratorium, and worked with the Town
35 through all of this. He stated that the developers could not submit a plat which
36 did not conform to the approved Master Plan, but have followed due process. In
37 contrast to this (attempt to follow the rule of law and due process), Mr. Carpenter
38 stated that the appellants told him that they actually liked the plan, they just didn't
39 like Mr. Moe, and wanted to teach him a lesson.
40

41 Someone interjected from the audience that this was only hearsay, to which Mr.
42 Carpenter responded that it was not hearsay as the statements had been spoken
43 directly to him. At this point Mr. Amiot (one of the appellants) stood up and
44 contradicted Mr. Carpenter. Mrs. Amiot also entered into the discussion to
45 dispute Mr. Carpenter, and after a brief back-and-forth between the parties, the

1 meeting was called back to order by the Chairman, and she further stated that Mr.
2 Moe should be left out of the debate as he was only doing his job.
3

4 Mr. Carpenter then continued, reiterating that the zoning rights have been
5 established, and again explaining the purpose of the current plat, and opining that
6 the Commission seemed to desire them to start all over. The Chairman disagreed
7 with Mr. Carpenter, stating that the Commission was being asked to sign-off on
8 something they did not agree with. While assenting to the Chair's comment, Mr.
9 Carpenter stated that the Commission also hadn't agreed with it previously, but it
10 had been through the process and had been granted (Master Plan) approval,
11 therefore the conforming plat should be approved. Commissioner Wilson then
12 stated that the difficulty for the Commission was that they felt that their approval
13 was mandated. Mr. Carpenter stated that he understood how the Commission felt
14 as the need to do as one was enjoined to do was common in a field such as the
15 law, where he had to do as the Courts decided/dictated all the time. This was an
16 aspect of the rule of law. He also stated that he had asked George Perez, the
17 Town's Attorney, to be present to address some of these issues as he had
18 anticipated certain of the concerns expressed during the meeting. Mr. Carpenter
19 emphasized that he considered the current approval before the Commission as
20 merely administrative (perfunctory).
21

22 The Chairman then opened the hearing to public comment. The first speaker was
23 Rosalie Dome, one of the appellants (to District Court) of the Council approval,
24 and who owns property directly to the south of the proposed subdivision. She
25 stated that she opposed the development because: the drainage ponds might
26 engender disease; and there were too many townhomes. She complained that the
27 proposed plat would create a road across her property (Calle Jaramillo), and that
28 landmarks and buildings were required to be placed on the plat. She further stated
29 that she wanted the Commission to follow the Town's regulations and act to
30 protect the Town's interests rather than those of outside developers with
31 grandiose ideas who would build townhouses and then leave. As a resident of the
32 Town of Bernalillo, and of another state, Mrs. Dome stated that she was familiar
33 with townhome developers in other states and the problems they create with little
34 concern for other people. She requested that the Commission consider the matter
35 before them carefully and reject the application.
36

37 Before taking her seat Mrs. Dome also complained to the Commission that she
38 had requested a full size copy of the plat from Mr. Moe and that he had refused
39 because "he didn't want to" give her such a copy. With the Chairman's
40 indulgence, Mr. Moe explained Mrs. Dome's statement was untrue. He stated
41 that she had only made the request that afternoon, that the request was not for a
42 full size copy (which the town has no means to provide) but to take the public
43 review copy out of the office for an indeterminate amount of time in order to have
44 a copy made, that taking the public review copy out of the office was not allowed
45 because it had to remain for the public to review, that Mrs. Dome had been one
46 of those who had complained in the past that a full-size review copy should be

1 available at all times at the front desk, and therefore had not been refused a copy,
2 nor had she been treated capriciously as she had claimed.
3

4 Commissioner Chavez then asked Staff what would happen if the Commission
5 did not approve the plat – would it go to court, or would the attorney(s?) come
6 into the (picture?) on the matter? Mr. Moe stated that he did not have an answer
7 to the question, it would have to be addressed to the Town Attorney. Mr. Moe
8 reiterated that he fully understood some of the concerns expressed by the
9 Commission and certain Town residents, but that it was fundamentally an issue of
10 the rule of law, and that the concerns expressed had already had their “day in
11 court” before the Town Council and before the District Court, and the former
12 application (for Zone Change and Master Plan) and approval had been upheld in
13 all respects. Because of this, the arguments against approval – however worthy
14 they might be – no longer should have a bearing on the consideration for approval
15 of the current application. He stated that the Commission would do what it chose
16 to do as was appropriate, but that its responsibility seemed clear.
17

18 Commissioner Chavez then asked what would happen if the Commission did
19 nothing. Mr. Moe stated that in such a case he would have to ask the Town’s
20 Attorney how to proceed. He wasn’t sure what the applicant’s rights, nor what
21 his own duties might be in that case. Commissioner Chavez mentioned that
22 similar situations had occurred in the past. Mr. Moe agreed, and stated that with
23 some of these issues he sometimes felt “caught between a rock and a hard spot”
24 because there was pressure not to send them to Council, but if they were sent back
25 to the Commission he felt the pressure of their position as well.
26

27 Commissioner Satriana queried that if the Council had approved the
28 development, what was the Commission doing, it should be a “get go”, i.e. what
29 was the Commission “wasting its time on”? Mr. Moe replied that it was a
30 required formality, that the Town’s Ordinance gave the Commission the authority
31 to approve plats. Further brief discussion on this matter ensued.
32

33 Next, Anna Torres, BPS (Bernalillo Public Schools) Executive Director of
34 Elementary Education, and Keith Cowan, Principal for Carroll Elementary, was
35 recognized by the Chairman and addressed the Commission. Ms. Torres began by
36 informing the Commission of the soon-to-open new early childhood education
37 facility, the “Escuelita”, adjacent to Carroll Elementary, and which will have 170
38 three-and-four-year-olds, 15 infants and toddlers, adult education for GED
39 students, and also parents studying English as a second language. Services will
40 be M-F, 9:00 am to 8:00 pm, with over 30 additional staff members. Ms. Torres
41 stated that the reason for her detailed description of the new services (in addition
42 to those already existing at Carroll Elementary) was that it addressed the traffic
43 issue already raised on Calle de la Escuela. The new facility requires parental
44 participation, and therefore higher traffic and bus drop-offs/pick-ups will occur
45 because of the new facility, and congestion problems already exist on Calle de la
46 Escuela in the early morning & late afternoon.

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Ms. Torres then stated that the opening of the new "addition" (Piedra Lisa subdivision?) along with the Escuelita, will add to the traffic flow problem and detract from the safety of the children. At this point the Chairman interjected a comment in order to clarify that Ms. Torres was speculating about the future, and that no road connection to the area of the schools was on the plat. Ms. Torres contradicted the Chairman, stating that the plat shows Calle Gabriela and Calle Jaramillo making such a connection, "allowing traffic flow to be even denser". Commissioner Chavez recalled that this discussion had already taken place at a previous meeting (last year for the Zone Change & Master Plan approval) when the Superintendent of BPS was present and spoke to the issue (to which Ms. Torres assented), and it was stated then that the road was not going through. Ms. Torres stated that the ditch road had even been proposed to go behind the school (Carroll Elementary) and that BPS said no because it would take part of the playground. Ms. Chavez agreed, but also stated that it had also been discussed that this development/plat (Piedra Lisa) would not make those roadway connections; instead, the traffic for Piedra Lisa would let out onto US550. Ms. Torres insisted that if the Commissioner(s) "would look at the pre-plat" they would see that the roads were being connected to Calle de la Escuela. Ms. Torres repeated that "it is on the pre-plat". Commissioner Chavez asked to see the plat in Ms. Torres' possession. At this point Mr. Amiot had walked up from the audience to a location between Ms. Torres and the Commission asking if the Commissioner "would like to see the real one." A brief jumble of speakers and comments ensued, until the Chairman quickly brought the meeting back to order, stating that "this is getting out of hand". Ms. Torres then concluded her comments with the statement that BPS wanted to state for the record that they would like the Commission to deny the plat due to the traffic congestion and the safety of their students. At this point the Chairman asked Mr. Amiot, who had remained at the front of the meeting chamber, to take his seat. He complied.

With the Chairman's indulgence, Mr. Moe addressed the comments made by Ms. Torres on behalf of BPS. Stating that although he understood it was sometimes difficult to understand plats if one wasn't used to dealing with them, and perhaps there was such a misunderstanding in this case, however, the proposed plat clearly showed no connection being made at this time. It was true that the roadways on the proposed plat were aligned with those to the south, and that this allowed the possibility for connections to be made in the future, but this plat did not make the connections. The Chairman then recognized Mr. Cowan, who stated that even though the connections might not be made through the proposed plat, he considered that they (BPS) would be remiss by not bringing their concerns to the Commission at this point. Student safety was their primary concern, as well as traffic flow on Calle de la Escuela, because students walk across the street to Cottonwood Village and because the school's "traffic flow is going to increase greatly" next year because of the Escuelita. He reiterated that student safety is their number one priority and they need to make sure that no accidents happen there, and that increased traffic flow does not occur. (The roadway connections)

1 may not happen tomorrow or next year, but the School District wants to make it
2 very clear that they are not in favor of making it a thoroughfare.
3

4 Again with the Chairman's permission, Mr. Moe addressed the comments of
5 District Staff. Although appreciating their comments, he reminded the
6 Commission that representatives from BPS had appeared at various meetings in
7 the past and raised the same concerns even before the possibility of a second
8 school on the site. Several Commissioners nodded in agreement. He
9 acknowledged the impacts of BPS's development, apprised the Commission that
10 BPS - unlike all private developers - did not have to comply with the Town's
11 regulations and review processes, and asked rhetorically why BPS would have
12 decided to build another school on the (Carroll Elementary) site with its
13 concomitant increases in traffic and students, if it already had concerns regarding
14 these very issues. Ms. Torres interjected with comments regarding the District
15 plans to shuffle various grades between the Roosevelt site, the Middle School site,
16 and the Carroll site – with some grades at Carroll being shifted to the Middle
17 School site, and all grades at Roosevelt being shifted to the Carroll site including
18 the Escuelita. Mr. Moe reiterated his statement that the comments of BPS staff
19 supported his point that additional students and vehicular traffic were anticipated
20 at the Carroll site due to the District plans. He also stated that these concerns had
21 been raised by Town Staff in meetings between the Town Manager and BPS,
22 related to the District's plans, and that Ms. Torres had not addressed his query as
23 to why the District proceeded with adding another school (with more students,
24 and traffic) to the site if it already had concerns regarding these issues. Ms.
25 Torres again responded, stating that their concern was the traffic being added by
26 the proposed Piedra Lisa subdivision, not that caused by the students of BPS.
27

28 Commissioner Hyer then requested to ask a question of Ms. Torres.
29 Hypothetically speaking, if the Piedra Lisa subdivision were not approved, then
30 something else would most likely be approved in future – what were the District's
31 main concerns: density of the townhome development? Ms. Torres stated that
32 their concern was the traffic flow going through Calle de la Escuela, and the
33 connections of the roadways to Calle Jaramillo and Calle Gabriela to Calle de la
34 Escuela. Commissioner Hyer repeated her comment that it was the roadway
35 connections which were of concern. Ms. Jaramillo said yes, but also mentioned
36 that as a Town of Bernalillo resident for over 37 years she didn't approve of the
37 development – she didn't believe that Bernalillo has a need for 32 townhomes.
38

39 Further brief comments regarding the possible future road connections were made
40 by various Commissioners, Ms. Torres, and Martha Reynolds (nee Tenorio).
41 Steve Amiot – claiming to speak for Ms. Dome, who had already left the meeting
42 - stated that Maria Rinaldi and Mayor Chavez had met with Ms. Dome and told
43 her that the roadway connections “were a done deal”. Ms. Reynolds also spoke
44 further regarding her concerns regarding a possible “taking” of her property and
45 the safety of her grandchildren. The Chairman stated that the (possible) roads
46 were not a (current) issue. Ms. Torres reiterated that the roads were shown on the

1 plat. Mr. Moe explained that the plat shows the roads being aligned, which might
2 allow for the connections to be made at some time in the future, but the current
3 proposed plat does not create the connections. He stated that the connections
4 might never happen, or they might happen at some point in the future, and not
5 necessarily unwillingly through a taking – there were lots of possibilities which
6 none of us are in control of, as we are all only here for a relatively short period of
7 time.

8
9 The Chairman then recognized Ted Montoya. Mr. Montoya, a member of the
10 Coronado Soil & Water Conservation District encouraged the Commissioners to
11 act independently under the authority of their own consciences rather than listen
12 to those above or below them.

13
14 The Chairman then called for any new comment which hadn't yet been expressed
15 before the Commission. The Chairman recognized Mr. Amiot. Mr. Amiot
16 claimed that the plat before the Commission was not the same as the one
17 approved by the Council regarding several issues such as drainage. Mr. Amiot
18 expanded his comments to include his usual claims that the plat should actually
19 contain the full construction documents for the subdivision. He also mentioned a
20 typo on the previous Master Plan. Mr. Amiot also provided a brief synopsis of
21 the Council approval process for the Zone Change and Master Plan,
22 parenthetically complaining that the Council hearings did not allow for full public
23 comment on the matter. Mr. Amiot then referred to the conditions imposed by the
24 Council as part of the Zone Change, and claimed that the copy of the Ordinance
25 the Commissioners received in their packets did not list the conditions. He stated
26 that he had talked earlier in the day to Ida Fierro, the Town Clerk, who had stated
27 she would get the "actual" Ordinance to the Commission. He queried whether or
28 not that was the case. The Commission responded that they had received their
29 packets in advance, and had not received anything from Ms. Fierro.

30
31 Mr. Amiot then discussed Condition #4, which required that the proposed Tract A
32 be removed from inclusion in the SU Zone Change. Why then, he questioned, was
33 Tract A shown on the proposed plat? He also pointed out that the wording of
34 Condition #4 taken from a copy of the signed ordinance he had received from Ida
35 differed from the wording of the same Condition taken from the posted minutes of
36 the related Council meeting. He intimated that there had been an intentional
37 substitution of a word ("subtract" for "extract") in order to change the meaning of
38 the Ordinance. He then reiterated that since Tract A was removed from the SU
39 Zone Change, it should not be on the proposed Preliminary Plat. He stated that
40 this was "bizarre". He briefly discussed other conditions, then questioned why
41 they had not been included in the Commission packets in order to "create a legal
42 document", and intimated a nefarious purpose. He further claimed that not
43 removing Tract A constituted a mixed-use, but if it was removed then why should
44 the remainder be zoned SU? He claimed that he quoted Mr. Moe in the following
45 words: "...there are so many variances that would be necessary for this
46 development that it would be legally problematic to pass it under the proper zone,

1 which is R-2". Believing himself misquoted, Mr. Moe interjected that he had
2 not said "proper" zone. Mr. Amiot stated: "Give me a break, it's only one word".
3 Mr. Moe replied that "It's an important word." Referring to (?), Mr. Amiot
4 stated: "Well there are a lot of important words that have been deleted".
5

6 Mr. Amiot then discussed other miscellaneous item which he believed should be
7 on the plat, but weren't (names of streets, adjacent properties, etc.).
8

9 *(There was a break in the recording at this time due to one of the microphone's*
10 *losing power, and a tape change-over.)*
11

12 Meanwhile, the Chairman had recognized Mike Maloney. Mr. Maloney
13 addressed the "density problem" with the development. Contrasting the density of
14 Cottonwood Village he stated that it had 60 homes on 13+ acres (*staff note: the*
15 *actual is 71 units on approx 10.19 acres net*). He further noted that with Piedra
16 Lisa, there are now three townhome developments in some stage of approval or
17 development creating 61 townhomes on about 5+ acres (*staff note: the actual is*
18 *60 units on approx 4.85 acres net, which is very close to Mr. Maloney's estimate*).
19 The reason he believes the density is a problem is that only 8-16 of the
20 townhomes will be constructed on lots of 4000 sqft. or more, and 45 – 50 homes
21 will be built on lots smaller than 4000 sqft. He discussed the purposes, or intent,
22 of certain P&Z Ordinances, including: the intent to avoid undue concentration
23 of population; to stabilize the value of property; and to promote the general
24 welfare of the Town of Bernalillo. He stated that he considered the meeting a
25 farce, if the Commission had no real choice in approving the plat. He thanked the
26 Commission for having recommended denial of the Zone Change, if that was their
27 desire, and he encouraged them to deny the proposed plat regardless of what
28 might happen next. He claimed that in two of the townhome developments,
29 Flying Star and Piedra Lisa, SU zoning had "simply been used to circumvent the
30 intent of the Ordinance".
31

32 Mr. Maloney then stated that he also wished also to quote the developer and Mr.
33 Moe related to the use of zoning mechanisms (such as the use of a zone change as
34 more appropriate than the granting of a variance). Mr. Maloney reiterated Mr.
35 Amiot's comment that his belief is that the Town had used SU zoning to
36 circumvent the requirements of discrete zoning designations (R-1, R-2, etc.), and
37 requested that the Commission turn down the plat and let "what happens,
38 happens". With the Chairman's permission, Mr. Moe thanked Mr. Maloney for
39 providing an accurate quote of his comments, but did disagree with Mr.
40 Maloney's belief that the intent of his former words, or of the Council's (zoning)
41 decision(s), was to circumvent the requirements of the Ordinance. Over many
42 years the Council had made allowable, legal, and consistent interpretations and
43 uses of the SU designation for various types of developments not directly
44 specified in the Ordinance. The Town's practice, interpretation of the law, and
45 decisions based on that interpretation have since been upheld in District Court.
46 Mr. Moe made the point that - in contradiction to the comments of the previous

1 gentleman – the Town has not tried to get around the requirements of the law, but
2 has tried rather to fulfill them.

3
4 Mr. Moe also addressed certain of Mr. Amiot’s comments. He explained that the
5 ordinance the Commissioner’s received in their packets was the same one which
6 appeared in the Council Packets for approval the previous year. There had been
7 no nefarious attempt to provide inaccurate information, just that it was the only
8 version available the day the Commission packets were put together the previous
9 Wednesday, the original signed version was not available in the accessible file,
10 and Ida Fierro, the Town Clerk (from whom he might have obtained the
11 document) was not in the office. He apologized for the confusion, and reiterated
12 that no attempt to deceive had been intended. Mr. Moe then stated that he was
13 now in possession of a signed copy with the conditions, and proceeded to briefly
14 explain said conditions to the Commission. He also explained that the
15 requirement to remove the area of proposed Tract A from the Zone Change to SU
16 had no bearing on the need to include the Tract as part of the subdivision. The
17 area was the remainder of what was left over from creating the residential lots and
18 streets, and by law had to be legally defined and given a legal designation. He
19 also stated that the wording problems Mr. Amiot had discussed were apparent
20 typos, which Ida Fierro was now aware of, and which would be fixed – there had
21 been no “evil intent”.

22
23 The Chairman called for any new comments. Mr. Amiot briefly re-addresses
24 items already discussed.

25
26 There being no other comments, the Chairman entertained a motion from the
27 Commission. Mr. Soule asked if he could address the Commission for final
28 comments. The Commission gently declined the request. Commissioner
29 Montoya motioned to deny the request and send it to the Town Council.
30 Commissioner Satriana seconded the motion. All voted aye, except
31 Commissioner Wilson who abstained. The motion to deny and send to Council
32 was carried.

33 34 35 **7. DISCUSSION ITEMS**

36 37 a) MainStreet demolition at Zia property:

38
39 Commissioner Chavez asked Mr. Moe about the demolition approved by the
40 Commission at its previous meeting, and appealed by María Rinaldi to
41 Council. Commissioner Chavez expressed the thought that these events
42 illustrated the Commission’s concern about the validity of its role in the
43 decision making process regarding Planning & Zoning matters (similar to
44 what had just been discussed regarding the Piedra Lisa development). Mr.
45 Moe responded that he understood the importance of this concern to the
46 Commission, but it was not an issue he could resolve, they must address the
47 issue to the Council from whom their authority is delegated.

1 Ms. Chavez then spoke briefly of her testimony before Council, and again
2 respectfully expressed the Commission's desire that Council listen to them,
3 questioning the Commission's purpose if the Council did not do so.
4

5 b) Follow-up on previous approvals:
6

7 Commissioner Chavez asked Mr. Moe if there had been any further
8 developments regarding the Jaramillo request for Variance related to a home-
9 based child care business. Mr. Moe stated that he had sent out the official
10 Notice of Action to the applicant, but had heard no response back from the
11 applicant and therefore considered the matter closed. Mr. Moe was asked if
12 they had to cease their business since the Variance request had not been
13 approved by the Commission. He stated that they could continue the business
14 under its current configuration, based upon the previous approval granted by
15 the Commission. A brief further discussion ensued regarding the timing and
16 conditions of that previous approval.
17

18 Chairman Kilfoy then asked Mr. Moe if there was a time limit on approvals
19 granted by the Commission, such as that granted for the townhomes at the
20 Flying Star. Mr. Moe stated that the only time limits that might apply related
21 to Final Plat approval and construction permitting, neither of which applied to
22 said development because: the plat had already been duly finalized within the
23 required time period, and the construction permitting time limit only comes
24 into effect at the time a building permit is pulled, which hasn't happened yet.
25
26

27 **8. ADJOURNMENT**
28

29 The Chairman entertained a motion to adjourn. All voted aye. The Motion carried
30 and the meeting adjourned at 9:30 pm.