PLANNING & ZONING BOARD
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
REGULAR MEETING

Tuesday, February 1, 2005

TIME & PLACE: The Planning & Zoning Board of the City of Truth or Consequences, New Mexico, met in Regular Session in full conformity with the law and ordinances of said Board, at the Commission Chambers of said City on Tuesday, the 1st day of February, A.D., 2005, at 5:30 P.M.

PRESIDING OFFICER: The meeting was called to order by Kerry Kent, Chairman and Hazel F. Peterson acted as secretary of the meeting.

ATTENDANCE: Upon calling the roll the following members were reported present:

Kerry Kent, Chairman
Roger Smith, Vice Chairman
Yolanda Sepulveda, Member
Bill Howell, Member

Also Present:

Chris Nobes, Building Inspector
Hazel F. Peterson, Deputy City Clerk

Absent:

Viola Bonner, Member

QUORUM: There being a quorum present the Board proceeded with the business at hand.

APPROVAL OF AGENDA: Kerry Kent, Chairman called for approval of the Agenda.

"Bill Howell made a motion to approve the Agenda as submitted."

Seconded by Roger Smith.
Motion carried unanimously.

APPROVAL OF MINUTES: Kerry Kent, Chairman called for review and approval of minutes of the Special meeting of Tuesday, January 4, 2005.

"Yolanda Sepulveda made a motion to approve the minutes of the Special meeting of Tuesday, January 4, 2005."

Seconded by Bill Howell.
Motion carried unanimously.

VACATION – SIERRA HEALTH CARE, INC: Kerry Kent, Chairman read the Memorandum from Chris Nobes, Building Inspector regarding the vacation request submitted by Sierra Health Care, Inc.

Tonya Gillespie, Administrator for Sierra Health Care Center approached the podium.

Mr. Kent asked Ms. Gillespie why the Health Care Center wanted to vacate the alley.

Ms. Gillespie stated the alley goes right through the middle of the new Assisted Living complex that the Health Care Center is in the process of building.

Mr. Kent stated he did not see any type of utilities going through this
alley and asked Mr. Nobes if he knew of any utilities in that area.

Mr. Nobes stated there were no utilities in that alley. Mr. Nobes stated this was an oversight that this was not vacated earlier, but as Ms. Gillespie described, the proposed Assisted Living Center will straddle this alley. He stated some surveys did not reflect this alley.

Further discussion ensued.

“Bill Howell made a motion to approve the vacation of the alley in Block 4, Smith Terrace Subdivision submitted by Sierra Health Care, Inc., and submit it to the City Commission for their consideration.”

Seconded by Yolanda Sepulveda. Motion carried unanimously.

Kerry Kent, Chairman read the Memorandum from Chris Nobes, Building Inspector regarding the easement request submitted by Mr. Don Hogan.

Mr. Kent stated Chris Nobes had handed each board member a letter from the New Mexico Department of Transportation stating this would not be granted.

Mr. Kent asked if there was anyone in the audience to speak to this request.

Mr. Don Hogan representing Scott and Michael Burford approached the podium.

Mr. Hogan stated he has been trying to resolve this issue for the Burford’s for almost five years. He stated that in the center of the survey is the property that is held by an investment firm in Phoenix, Arizona. The Burford’s have Tract 2 on the south side of Sunland Steel, its five acres approximately and three acres approximately on the north side of Sunland Steel. He stated there is a 30’ easement that connects the Burford’s Tract 1 and Tract 2. The City requires a 50’ easement for commercial tracts.

Mr. Hogan stated he went to the Highway Department to see if they would give the Burford’s a 20’ easement between the 30’ easement and Highway 51, and the letter reflects the fact they will not do that. He stated he again went to the Highway Department to see if they could make a 30’ easement one-way ingress to the three acres and then have a cut off the three acres directly bound to Highway 51 as one-way egress. The Highway Department wants archeological studies, engineering studies and so on which would be prohibitive in terms of cost, but also the city has a sewer line running north south along that edge so the sewer line also presents a problem, so this is not an option.

He stated he has approached Mr. Rogers twice to purchase twenty feet of the easement from him, and he refuses to sell.

Mr. Hogan stated the issue of writing to the land holders in the area, a quick study shows that there are perhaps thirty or more landholders that would have to be notified to request a variance from a 50’ easement to 30’, which they have.

Mr. Hogan stated what he would like the City to consider is that since this easement would only be ingress and egress to the three acres that the City allow a 24’ road, private road, for access in and out of this three acres as a solution to this problem. He stated if this problem can be
resolved and the three acres can be sold to somebody, developed, and put on the tax rolls for a lot more than it's worth right now.

He stated the only solution he can see at this time is to allow for a 24' private road since the road would not provide through traffic.

Mr. Kent stated that at this time, what he was asking for would be a variance and he would ask Mr. Hogan to get with Chris and the property owners will be contacted, and he will have to come back to the Board and request a variance.

Mr. Hogan asked if he would have to be writing to all the property owners in the area.

Mr. Kent stated yes he could send out a form letter to the property owners. He stated he could see Chris and he would help him with all the paperwork that needed to be done to do a variance.

No action taken.

SUMMARY

Kerry Kent, Chairman read the Memorandum from Chris Nobes, Building Inspector regarding the easement request submitted by William and Martha Hines.

Mr. Hines approached the podium and stated the lot was half of Lot 7, all of Lot 6, and the Elgin Lot. He stated they would like to divide this in such a manner that the half of Lot 7, Lot 6 and the little corner of the Elgin Lot is on a separate lot making it two separate lots by merging Lots 6 and 7 to make one being referred to Tract 1 and Tract 2.

Discussion ensued.

"Bill Howell made a motion to approve the Summary Replat of Elgin Lot and Lots 6 and 7, Grace Banks Howe Estate, 1930-1948 S. Broadway submitted by William and Martha Hines."

Seconded by Roger Smith.

Motion carried unanimously.

EASEMENT

Kerry Kent, Chairman read the Memorandum from Chris Nobes, Building Inspector regarding AppleTree Educational Center’s proposal of fencing and drainage improvements on city-owned property adjacent to Lot 38, Block 1, John E. Morgan Homestead, 1102 Platinum Street.

Mr. Kent stated that in the cover letter from AppleTree, deeded property was talked about and that could not happen at this stage. He stated he has looked through all of the maps and there is no alley running in the back.

Mr. Kent asked Chris Nobes if he found any evidence of there being an alley in this area, north, and south. He stated there is an alley behind the houses where there are dumpsters, and they pick up but it does not come up that far.

Mr. Nobes stated no it does not come up that far.

Mr. Bobby Allen stated this is not an alley. It has never been setup as an alley by the City. He stated that the city property east of the AppleTree property and west of the retaining wall is locked in. He stated it is unusable ground to the City totally. Mr. Allen stated the improvements that AppleTree has brought before this Board would be nothing but beautification on the property.
Ms. Dow stated that the city property, which is east of the lot that they purchased from a residential owner, is backed up to the Veteran’s Memorial Wall. She stated that what was believed to be an alley at the time they purchased, when they inquired with the city is actually not an alley. She stated they thought they would simply vacate an alley, but when they officially did the surveying to ask for the vacation of the alley it ended up being a dead space, it is actually peonage and there is 38’ from where their property line ends to the retaining wall, which is currently a railroad tie.

Ms. Dow stated that because they are a licensed childcare facility they have to have a fence to contain the children during their outdoor play. She stated what they are asking for is access to that dead land up to the retaining wall, but will put in a gate that is large enough for a vehicle to enter incase someone needs access.

Mr. Kent stated the AppleTree property is 38’ shy of the railroad retaining wall at the Veteran’s Wall. He stated there is 38’ of empty land there, and what AppleTree wants to do is build some concrete pads that are going to encroach on that city property and improve it.

Further discussion ensued.

Mr. Allen asked if the 38’ stretch is landlocked because of all that is happening around it, what is the difference between vacating that 38’ than vacating an alley. He stated it is still city property that is being vacated, that the city vacates thousands of alleys, which is city property.

Mr. Kent stated if this was a dedicated alley it would be a very simple matter, but because it is not a dedicated alley there is an anti-donation clause that comes into effect because it is city property. He stated they can be allowed to build encroachments on it with the understanding that if they ever close the park the property returns back to the city.

Ms. Dow asked who would become liable for the accidents or injuries that might incur on the property.

Mr. Kent stated he did not know the answer to that question. That would have to be answered by the City Attorney and City Commissioner’s. He stated that was beyond the scope of the Planning & Zoning Board.

Ms. Dow asked how she would go about making this beneficial to both parties?

Mr. Kent stated what the Planning & Zoning Board would be granting is her the right to do this as long as AppleTree owns the property. He stated this would be a stipulation. He stated the Board would allow the encroachments on city property as long as AppleTree owned the property, but if you sell the property, it would revert back to the City.

Mr. Howell asked if there was a chance the City would be willing to sell AppleTree that piece of property.

Mr. Nobes stated he had not looked into that possibility, but he could ask Jay Rubin his opinion on this liability issue.

Mr. Allen asked about leasing the property to them for one dollar for ninety-nine years.

Mr. Nobes stated these could be options everyone could live with. He stated this Board could make a recommendation if they wish and it would be forwarded to the City Commission for their consideration.
“Yolanda Sepulveda made a motion to allow for the encroachments with the stipulation that Chris Nobes through the City Managers Office contact the City Attorney for clarification on the possibility of purchasing or leasing the 38’ piece of property and get the legal issues ironed out and then take it before the City Commission for their consideration.”

Seconded by Bill Howell.
Motion carried unanimously.

ADJOURNMENT: There being no further business to come before the Board, Kerry Kent, Chairman asked for a motion to adjourn the meeting.

“Yolanda Sepulveda made a motion to adjourn.”

Seconded by Roger Smith.
Motion carried unanimously.

APPROVAL: PASSED AND APPROVED this 1st day of March, 2005, on motion duly made by Yolanda Sepulveda and seconded by Roger Smith and carried.

Kerry Kent, Chairman