PLANNING & ZONING COMMISSION
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
PUBLIC HEARING

Tuesday, July 1, 2008

TIME & PLACE: Bill Howell, Chairman opened the Public Hearing with reading the Legal Notice as follows:

NOTICE is hereby given that the Planning & Zoning Commission will hold a Public Hearing on Tuesday, July 1, 2008 at 5:30 P.M. in the Commission Chambers, 405 W. Third, Truth or Consequences, New Mexico to receive input regarding the following:

1. Zone Change to Industrial Planned Unit Development (IPUD) for acreage south of, and north of, Municipal Airport, to wit: Section 17, T12S,R4W, SW4SW4,N2SW4,NW4, Section 8, T13S,R4W, SE4SW4,W2W2, Section 17, T13S, R4W, W2SE4, NE4, W2, Section 20, T13S, R4W – City of Truth or Consequences

2. Zone Change for 8,200 acres on, and surrounding, the municipal airport to Residential/Commercial Planned Unit Development (RCPUD) (3,532 acres), and Industrial Planned Unit Development (IPUD) (2,736 acres), 325 acres allotted to roads and highway, and 1,608 acres open space, golf, and parks – Hot Springs Land Development, LLC

Bill Howell called for Jaime Aguilera, City Manager to approach the podium and speak in regard to the Public Hearing.

Jaime Aguilera stated he needs to report that unfortunately the Public Hearing announcement was not made in the newspaper as it was supposed to. He stated the publication notice was sent to the newspaper and when checked to see if it has published it had not so this Commission can not legally holds a public hearing if it wasn’t noticed fifteen days before this meeting.

He stated that a new public notice date has been established for July 14, 2008 which will require a Special meeting of this Commission on that date. He stated that was the only way the problem could be fixed of not publishing was to re-advertise it and the closest date possible was the 14th of July.

Mr. Aguilera stated he apologizes to the people in the public who came on items numbers 4 and 5 on the agenda which are the two Zone Changes which are subject to Public Hearings.

He stated what he recommends is when this Commission gets to the approval of the Agenda that they remove items numbers 4 & 5 from the agenda since they were not legally published.

Mr. Aguilera stated that anybody from the public who wants to talk about those two items may do so if they wish during the Comments from the Public but it’s not going to be entered into the record as part of the public hearing.
The Planning & Zoning Commission of the City of Truth or Consequences, New Mexico, met in Regular Session in full conformity with the law and ordinances of said Commission, at the Commission Chambers of said City on Tuesday, the 1st day of July, A.D., 2008.

The meeting was called to order by Bill Howell, Chairman. Hazel F. Peterson acted as Secretary.

Upon calling the roll the following members were reported present:

Bill Howell, Chairman  
Lee Foerstner, Member  
Joey Perry, Member  
Raymond Ruffini, Member

Absent:

Viola Bonner, Vice Chairman

Also Present:

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

There being a quorum present the Commission proceeded with the business at hand.

Bill Howell, Chairman called for approval of the Agenda.

"Joey Perry moved approval of the Agenda with the removal of Items 4 & 5."

Seconded by Raymond Ruffini  
Motion carried unanimously.

Bill Buhler approached the podium and expressed his concerns regarding the Annexation.

Bill Rich approached the podium and expressed his concerns regarding the proposed Motorplex and Annexation projects.

Leroy Henderson approached the podium and expressed his concerns regarding the Motorplex and Annexation projects.

Ariel Dougherty approached the podium and expressed her concerns regarding the Motorplex project.

Jack Sloan approached the podium and expressed his concerns regarding the Motorplex and Annexation projects.

Sophia Peron approached the podium and expressed her concerns regarding the notification and communication part of the public records.
Bill Howell, Chairman called for review and approval of minutes of the Regular meeting held Tuesday, June 3, 2008.

Joey Perry stated there are a couple of corrections to the minutes which are, on Page 2 second full paragraph first sentence, "Mr. Rowe stated Socorro is the closes", it should read "Mr. Rowe stated Socorro is the closest", and on Page 3 fifth full paragraph first sentence, "Lee Foerstner asked Chris Nobes what the cities", it should read "Lee Foerstner asked Chris Nobes what the city's".

"Lee Foerstner moved approval of the minutes of the Regular meeting held Tuesday, June 3, 2008 as corrected."

Seconded by Joey Perry
Motion carried unanimously.

Jaime Aguilera, City Manager stated there are two different issues that were going to be heard at this meeting, one was an annexation of several sections of land and the other issue was two zone changes for the property owned by Hot Springs Land Development.

He stated the two zone changes are the ones that are not being heard tonight and there is no public hearing, that's why the public is not allowed to speak during the business session of the Commission. He stated the Public Hearing will be held on July 14th, and on July 14th testimony will be heard, people will be placed under oath, they will make their testimony known, and there will also be an expanded explanation of the project and of the zone change by the developer in which many of the questions that were heard here tonight will be answered.

Mr. Aguilera stated the other part of this meeting is a related issue but not the same issue, and that is annexation of the sections of land were recited in the presentation.

He stated the annexation adjoins property that the city annexed several years ago, about four years ago the city annexed property all the way up to the airport from the current city limits up to and including the airport and beyond. He stated that when the developer purchased property from the State in a long process that took three years, but eventually they ended up buying up fourteen sections from the State. He stated those fourteen sections, a little more than half of those were already in the city limits, the other sections which are the subject of this annexation were not in the city limits. He stated the developer now wants to add those sections that are not currently within the city limits into the city limits so that all of his holdings are within the corporate boundaries of the city.

He stated that if for any reason the city were not allow the annexation then the developer could continue to develop that property within the County or they could petition to be annexed to the City of Elephant Butte, but the question now is do we want to allow the annexation to occur.

Mr. Aguilera stated that what the State requires is that this Body have a meeting on the issue and make a recommendation to the City Commission. He stated this Body does not make a decision on this issue it makes a recommendation, then the City Commission adopts the annexation by ordinance and if there are no protestors within the annex property then the Commission can go ahead and approve the annexation.
He stated that if there are protestors within the annex property, we know that there are not because the only people wanting to annex is the one property owner, so there are no protestors to the annexation therefore this Commission does not have to take any other action other than to consider the request by the applicant to annex.

He stated this Commission heard some other testimony during Public Comments about other issues such as water and so forth, and those are issues that are germane to a Master Plan and to a zoning of the property, they are not germane to the annexation of the property. He stated the only thing that this Commission looks at in making a recommendation to the City Commission is, is this an appropriate piece of property that should be brought into the corporate limits of the city so that the city can control development and not another entity. He stated that if the city does not annex then somebody else will control development on that property, if we do annex then it comes into the fold of the municipal boundary and therefore the city can exercise its zoning requirements on the property as well as everything else, utilities and so forth.

Mr. Aguilera stated the recommendation from Staff is the city wants to be able to control what happens on this property so he is recommending approval of the annexation so the city can control the zoning, not only for a portion of the ownership of the Motorplex but for the entire 100% of ownership of the Motorplex. Discussion ensued.

“Raymond Ruffini moved to recommend to the City Commission that they continue with the annexation of the sections of land as written.”

Seconed by Joey Perry
Motion carried unanimously.

Mr. John Wheeler approached the podium and stated he is an Attorney for Dean Brock and they have filed a notice of appeal and request for a variance because that appears to be the proper procedure.

He stated this is about part of the building that was owned by Amin’s when it was a general store downtown for many, many years. He stated Dr. Brock bought the whole corner that was occupied by Amin’s in 2005 and is presently operating his Chiropractic office out of what is now known as 402 Broadway and right next to it and part of it is what’s always been known as the Amin’s Annex. He stated that looking at the outside of this structure it appears to be and he believes is an entirely separate building from the part that’s now occupied by the Little Sprout.

Further explanation and discussion ensued.

Mr. Wheeler stated that the standard for building is 60 feet wide now but this building has never been 60 feet wide. He stated that Dr. Brock’s office which just to the east of what was called Amin’s Annex is 25 feet and the annex is about 19 to 20 feet and most of them are not in compliance with the existing subdivision code, they never have been.

He stated the Amin’s bought this property in about 1960 and we’re talking about an impossibility to determine just what the history was beyond 1960 when Amin’s owned it as is, so what he is telling this Commission in his opinion is that this property as is has been grandfathered necessarily because it existed in this form prior to certainly the existing zoning code and probably any other zoning code that can be found at the present time.
Mr. Wheeler stated one other thing to look at is what else do you find in the downtown area of T or C. He stated you find a lot of non-compliant buildings and rooms. He stated in his appeal for request for variance he sited specific places, 316 Broadway which is 316 Gallery, 318 Broadway which is God’s House of Prayer, formerly Riley’s Bookkeeping, 406 Broadway which is Varuna’s, 404 Main which is Dust & Glitter, 408 Main which is St. Paul’s Thrift Shop, 410 owned by Robert & Beatrice Hansack. He stated he is not absolutely positive that these are totally separately owned and being non-compliant themselves but it’s a question of fundamental fairness in his mind and that is whether if these other non-compliant places exist why Dr. Brock’s situation should be treated any differently.

Mr. Wheeler stated his final reason is look at the downtown, right across the street the Radio Shack is moving, the building is for sale, there are other vacancies on that side of the street, there are vacancies on the other side of the street, and Cuchillo Café did not make it. He stated that what this town desperately needs to preserve, if we’re going to preserve the downtown district at all is opportunities for small business people. He stated the more narrow the frontage necessarily the cheaper the cost of the buildings going to be.

He stated Dr. Brock wants to sell the Annex, he’s done it with good intentions, legal descriptions for both sides, he’s done a deed to himself, this may not have been the proper thing to do he wasn’t involved, but Mr. Nobes felt that was not the proper way to do it because he was subdividing in effect. He stated he thinks that is probably true he would be subdividing if they assumed that a variance was not proper or if they assumed that it was not grandfathered, and to assume that it’s not good for the City of Truth or Consequences to have small business opportunities.

Mr. Wheeler stated he respectfully request that this Commission grant this appeal and permit the variance to go forward.

City Manager Aguilera stated the issue is not that the building has been grandfathered in, the building is grandfathered in, or in technical terms it is a non-conforming use, which means it does not conform, it is a legal-non-conforming use, that means that it does not conform to the current ordinance but at some point in the past it was legal to do it that way.

He stated that yes the building is less than 60 feet and it is legal and it can be occupied and it can be used in whatever means they wish as long as it meets the zoning requirements. He stated the problem isn’t that it’s a legal-non-conforming building or grandfathered, the problem is that you can’t increase the non-conformity of the building which is what has been done in this case. He stated it was 45 feet wide, now they want to make it 20 feet wide and 25 feet wide, two smaller lots than what was there before so their increasing the non-conformity. He stated that’s where the problem is, that’s why Mr. Nobes sent them the notice saying they can’t subdivide this building because it already was non-conforming and now they would be creating more of non-conformity, more of a problem.

Mr. Aguilera stated that contrary to what was said about what we need is small shops, when cities redevelop their downtowns and again he has gone through that, the problem that they have is assembling property to get larger shops in there. He stated they have to then buy two or three different owners out in order to get one shop that’s large enough to accommodate a new business. He stated that cutting up the downtown into smaller pieces is not the answer.
He stated the other problem is the this might be setting a precedent if this building is allowed to be cut in half essentially, this lot to be cut in half to increase a non-conformity down to 20 or 25 feet, now you’re saying we’ll allow any other building in downtown to be 20 feet, we will allow any other building that’s non-conforming to increase a non-conformity, they can now start cutting their buildings front and back so you have one building going out the front and one building going out the back and you can’t do anything about it because you already told one person that it was okay.

Bill Howell asked that even though in the past that was a separate building and all they did was go through a firewall and open it up to make two buildings out of it.

Chris Nobes stated that was not the scenario. He stated the store on the corner was a freestanding parcel separately assessed, separately owned and taxed, the subject building is two storefronts, two addresses with a solid masonry wall down the center of the building, but in fact ever since at least 1968 it has been assessed as a single parcel. He stated that all the history points to this subject property as being a single parcel.

Further discussion ensued.

Dr. Brock stated what he would like to say that’s not being said is that the history only goes so far and when you look at assessment verses tracks, it’s a system that doesn’t really work and a lot of times it’s meant to accommodate the tax payer. He stated that when he purchased this building and he looked in the Assessors Office it was listed as two buildings, one was what is the Little Sprout now and one is the two building, the one he is in and the one next to him. He stated that when you look at it physically that wasn’t even the case because Amin’s was allowed to tear down a wall and one business was in two buildings with a wall torn out of the middle of it and that was assessed as one building but it was actually two. He stated what he thinks what is trying to be done is put the record straight because he replaced the original wall that was there so now that the east building meets the actual assessment that was there and now that it has always been two separate buildings 402 and 404 that have separate entrance on the main street, separate exits on the alley, separate sewer taps, separate water, separate gas, separate electrical, two completely separate buildings and if you go back to the history they’ve been separate. He stated the original businesses in 404 and 402 was Busy Bee Café, and in 404 would be the John Harris Trading Post, so two separate people, two separate businesses, two separate stores, two separate buildings. He stated it was John Harris Trading Post and then Davis-Fleck Drug Store again two separate businesses.

He stated that is what he is trying to do and the only way that can be done is to assess this the way it actually physically was back 60 years ago when someone allowed them to build a building smaller than the actual tract that was there, the tracts were 25 feet. He stated he’s just trying to put it back to what it physically is and that’s the only way he can be able to sell it and bring in another business.

Further discussion ensued.

Raymond Ruffini asked Chris Nobes that what is being said is there have never been separate deeds for the two properties.

Chris Nobes stated that is correct, historically they may have been separate businesses in each side but the ownership as far as we know was a single owner.
Eddie Irwin stated they did track back and at one point all though they are unable to totally verify it, but they are showing three different property owners on the three tracts in the past. He stated this goes back to the point to where the documents just are not readable.

Mr. Irwin stated that when he was approached to verify this he said he could not stand behind this because there wasn’t the clarification on it but you would have to reason why was there a separate document created for that if there wasn’t a deed for that even though it wasn’t clear.

Bill Howell asked Mr. Irwin if these buildings would be insurable as separate buildings.

Mr. Irwin stated yes they would with the variance title insurance can insurance against the zoning.

Mr. Aguilera stated that since Mr. Irwin has indicated that there possibly was a separate ownership. He stated he thinks that does open the possibility to make a finding by this Commission that this building was a separate building at some time and this Commission would be allowing that to be formalized now. He stated that without Mr. Irwin’s information he would say the building was not conforming and this Commission should not increase a nonconformity, however if the building at one time was under separate ownership and this Commission is just simply allowing that to occur again legally under today’s standards then that’s a possibility if that’s what this Commission wanted to do.

He stated that he also wants to clarify that what this Commission is talking about is an appeal to a decision of the Building Inspector and their actions become a recommendation to the City Commission, so if this Commission takes an action to allow the splitting of the two parcels it would be to recommend to the City Commission to allow the applicant to then file for a variance, this is not a variance application now, he would then be allowed to file for a variance and subdivision under the Summary Subdivision Act.

Further discussion ensued.

“Raymond Ruffini moved to allow Dr. Dean Brock to apply for a Summary Replat with a Variance provision for a less conforming building sighting the following findings

1. That the properties are classified as legal-non-conforming due to the age of the building predating the City zoning Code.
2. That the applicant showed that the properties have had a long history of having separate utilities.
3. That testimony from a title company representative while not conclusive gives the Commission the impression that the properties had separate ownerships in the past.
4. That the separate utilities and separate ownerships allow the Commission to consider each property as being categorized as separate legal-non-conforming properties even though they are currently owned by the same person.
5. That the current owner wishes to legally separate the two properties.

and submit to the City Commission for their consideration.”

Seconded by Joey Perry
Motion carried unanimously.
ADJOURNMENT: There being no further business to come before the Commission, Bill Howell, Chairman called the meeting adjourned.

APPROVAL: PASSED AND APPROVED this 5 day of August, 2008, on motion duly made by [Signature], and seconded by [Signature] and carried.

Bill Howell, Chairman