



# Agenda

## PLANNING COMMISSION

Thursday, November 7, 2019 - 6:00pm

City Council Chambers

City Hall 1<sup>st</sup> Floor - 200 Lincoln Avenue

**A. ROLL CALL**

**B. PLEDGE OF ALLEGIANCE**

**C. APPROVAL OF AGENDA**

**D. APPROVAL OF MINUTES AND FINDINGS/CONCLUSIONS:**

**MINUTES: October 3, 2019**

**October 17, 2019**

**FINDINGS/CONCLUSIONS: None**

**E. OLD BUSINESS**

**F. NEW BUSINESS**

1. **Case #2019-66. 2861 Agua Fria Development Plan.** Hugh Driscoll, AIA, Agent, for Dominic Vigil, Owner, requests approval of a Development Plan to allow an additional 7,161 square feet of office and commercial uses with multi-family apartments. The property is approximately 0.84 acres, is zoned C-2/PUD (General Commercial/Planned Unit Development) and is located within the West Santa Fe River Corridor Overlay District. (Noah Berke, Case Manager, [nlberke@santafenm.gov](mailto:nlberke@santafenm.gov), 955-6647) (POSTPONED FROM SEPTEMBER 5, 2019 AND OCTOBER 17, 2019) (TO BE POSTPONED TO DECEMBER 5, 2019)
2. **Case #2019-920. 1849 Arroyo Chamiso Final Subdivision.** JenkinsGavin, Inc., Agent, for John & Janet Di Janni, Owners, requests approval of a Final Subdivision Plat for four residential lots located at 1849 Arroyo Chamiso. The property is zoned R-2 (Residential-two dwelling unit per acre) and is approximately 2.0 acres. (Lee Logston, Case Manager, [llogston@santafenm.gov](mailto:llogston@santafenm.gov), 955-6136).
3. **Case #2019-975. Siler Yard Final Subdivision Plat.** AOS Architects, Agent, for New Mexico Interfaith Housing, Owner, requests approval of a Final Subdivision Plat to create an additional lot of approximately 0.60 acres. The property is located at 1218 Siler Road, and is zoned C-2 (General Commercial) (Lee Logston, Case Manager, [llogston@santafenm.gov](mailto:llogston@santafenm.gov), 955-6136)
4. **Case #2019-976. 645 East Palace Avenue Lot Split.** Jennifer Jenkins, Agent, for George and Nancy Roberts and Mary Romero, owners, request approval of a lot split to divide approximately 0.26 acres into two residential lots (+/-0.14-acres and +/-0.12-acres). The proposed lots are located at 645 East Palace, are zoned R-21 (Residential-twenty-one units per acre), and each have a single-family residence. (Carlos Gemora, Case Manager, [cegemora@santafenm.gov](mailto:cegemora@santafenm.gov), 955-6670)

5. **Case #2019-977. 645 East Palace Avenue Variance.** Jennifer Jenkins, Agent, for George and Nancy Roberts and Mary Romero, owners, request a Variance to Subsection 14-7.2(D)(2)(b) to permit a side yard of less than five feet. The property is located at 645 East Palace Avenue and is zoned R-21 (Residential- twenty-one units per acre). (Carlos Gemora, Case Manager, [cegemora@santafenm.gov](mailto:cegemora@santafenm.gov), 955-6670)
6. Information item regarding the proposed changes to Chapter 26 "Housing" of the City Code. (Alexandra Ladd)

**G. STAFF COMMUNICATIONS**

**H. MATTERS FROM THE COMMISSION**

**I. ADJOURNMENT**

**NOTES:**

- 1) Procedures in front of the Planning Commission are governed by the City of Santa Fe Rules & Procedures for City Committees, adopted by resolution of the Governing Body of the City of Santa Fe, as the same may be amended from time to time (Committee Rules), and by Roberts Rules of Order (Roberts Rules). In the event of a conflict between the Committee Rules and Roberts Rules, the Committee Rules control.
- 2) 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 will be subject to reasonable cross examination. Witnesses have the right to have an attorney present at the hearing.
- 3) The agenda is subject to change at the discretion of the Planning Commission.  
**\*Persons with disabilities in need of special accommodations or the hearing impaired needing an interpreter please contact the City Clerk's Office (955-6520) 5 days prior to the hearing date.**

<b>RECEIVED AT THE CITY CLERK'S OFFICE</b>	
<b>DATE:</b>	<b>October 18, 2019</b>
<b>TIME:</b>	<b>3:37 PM</b>

**SUMMARY INDEX  
PLANNING COMMISSION MINUTES  
NOVEMBER 7, 2019**

<b>ITEM</b>	<b>ACTION TAKEN</b>	<b>PAGE(S)</b>
A. Roll Call	Quorum Present	1
B. Pledge of Allegiance	Recited	1
C. Approval of Agenda	Approved as published	2
D. Approval of Minutes and Findings/Conclusions		
1. MINUTES:		
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October 17, 2019	Approved as Amended	3
2. Findings of Fact and Conclusions of Law:	None	3
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6) Changes to the "Housing" Code, Chapter 26	Informational Only	3-6
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**MINUTES OF THE CITY OF SANTA FE PLANNING COMMISSION**  
**Thursday, November 7, 2019 - 6:00pm**  
**City Council Chambers**  
**City Hall 1<sup>st</sup> Floor - 200 Lincoln Avenue**

**CALL TO ORDER**

A regular meeting of the City of Santa Fe Planning Commission was called to order by Chair Hiatt on the above date at approximately 6:00 p.m. in the Council Chambers at City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

**A. ROLL CALL**

Roll Call indicated the presence of a quorum for the meeting.

**Members Present**

Commissioner John B. (Jack) Hiatt, Chair  
Commissioner Janet Clow  
Commissioner Mark Hogan  
Commissioner Jessica Lawrence  
Commissioner Dominic Sategna

**Members Absent**

Commissioner Pilar Faulkner, Secretary (excused)  
Commissioner Lee Garcia (excused)  
Commissioner Brian Patrick Gutierrez (excused)  
(One Vacancy)

**Others Present:**

Mr. Noah Berke, Planner Manager and Staff Liaison  
Ms. Sally Paez, Assistant City Attorney  
Ms. Melissa D. Byers, Stenographer

**NOTE: All items in the Committee packet for all agenda items are incorporated herewith by reference. The original Committee packet is on file in the Land Use Department.**

**B. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was recited.

**C. APPROVAL OF AGENDA**

Chair Hiatt asked the Commission to amend the Agenda so that Item 6 would be heard as the first Item under New Business.

**MOTION:** Commissioner Hogan moved, seconded by Commissioner Lawrence, to approve the agenda, as amended.

**VOTE:** The motion passed by unanimous voice vote with Commissioners Clow, Hogan, Lawrence and Sategna voting in favor and none voting against.

**D. APPROVAL OF MINUTES AND FINDINGS/CONCLUSIONS**

**1. MINUTES:**

**October 3, 2019**

Chair Hiatt indicated he had given changes to the stenographer and the only substantive change was a reference to Tierra Contenta Design Review Committee. He clarified the correct name is the Architectural Review Committee.

**MOTION:** Commissioner Lawrence moved, seconded by Commissioner Hogan, to approve the minutes of October 3, 2019 as presented.

**VOTE:** The motion passed by unanimous voice vote with Commissioners Clow, Lawrence, Hogan and Sategna voting in favor and none voting against.

**MOTION:** Commissioner Hogan moved to reconsider the minutes of October 3, 2019. Commissioner Lawrence seconded the motion.

**VOTE:** The motion passed by unanimous voice vote, with Commissioners Clow, Lawrence, Hogan and Sategna voting in favor and none voting against.

Commissioner Sategna clarified a conversation on page 17, near the end of the page. He said he had asked Ms. Jenkins to consider the proposed 4-story height requirements, not that he would consider them. He asked the statement be changed to read: "He indicated [~~he would~~] she should consider that..."

**MOTION:** Commissioner Sategna moved, seconded by Commissioner Lawrence to approve the October 3, 2019 minutes, as amended.

**VOTE:** The motion passed by unanimous voice vote with Commissioners Clow, Lawrence, Hogan and Sategna voting in favor and none voting against.

**October 17, 2019**

Chair Hiatt indicated he had given changes to the stenographer

**MOTION:** Commissioner Lawrence moved, seconded by Commissioner Hogan, to approve the minutes of October 17, 2019, as amended.

**VOTE:** The motion passed by unanimous voice vote with Commissioners Clow, Lawrence, Hogan and Sategna voting in favor and none voting against.

2. **Findings of Fact and Conclusions of Law:** There were none.

**E. OLD BUSINESS:**

None.

**F. NEW BUSINESS (Revised Agenda Order)**

6. **Information item regarding the proposed changes to Chapter 26 "Housing" of the City Code. (Alexandra Ladd)**

Ms. Ladd passed out two infographics on proposed amendments to Chapter 26, Affordable Housing regulations. Chapter 26-1 is the Santa Fe Homes Program that requires a percentage of new development to be affordably priced, whether it's rental or home ownership. The program is designed to incentivize the market to provide solutions.

The rental part of the program, not home ownership, is being amended because the rental part has not worked well. One graphic, the *Comparison of Inclusionary Rental Requirements*, attached as "Exhibit 1" gives a sense of why the program is being changed. The first column explains HOP (Housing Opportunity Program) adopted in 1998. The program rewarded a developer who had a moderately priced product by not requiring the developer to adhere to the regulation.

In 2005, it was rebranded as the Santa Fe Homes Program and demanded a 15% inclusion of affordable units in every market-based project across three income tiers. Between 2005 and 2016 there were no new market rate rental housing builds. The supply and demand and lack of competition in the last several years created a vacancy rate that is less than 2% and rents increased on average, 9% a year.

In 2016, the program was amended to allow multi-family rental developments to pay a "fee in lieu of" to spur the market and add new units. The policy objective of removing that barrier is shown in orange in the handout. The result is 1100 new units are currently being built or are under construction, and 800 are in the approval process, and include all the affordable units.

Amendments for 2020 that are proposed will go before City Council on December 11, 2019. Early in the year this Commission will consider Chapter 14 amendments, which codifies the incentives. The 15% bonus, fee waivers for development, permits, water bank and utility expansion charges, will not change with the amendments. They are working with Land Use staff to expand incentives like streamlining a review process for a qualified project and some code restriction flexibility. The Commission will recommend the appropriate incentives for those items.

The other infographic, attached as Exhibit "2", breaks the proposal into three options and recreates more flexibility that best meets the product. An Option 4 could be a mix and match of options. The infographic provides a brief description and how it is applied, the incentives, and the compliance requirements, including the process.

Chair Hiatt assumed, looking at the 2016/2019 comparison of the inclusionary rental requirements, that incentives would create more units. Instead they saw a lot of money going in the Affordable Housing Trust Fund ("Fund"). He asked how the Fund was being used.

Ms. Ladd replied the policy priority for fee in lieu was to create units in the market with a goal of 2000. They have 1100 built/under construction and 800 approved, so that was achieved. Fees generated go into Fund which is codified and aligned with State law. It exempts them from the anti-donation clause and allows them to provide government resources to private entities as long as the end results are for affordable housing capital costs of building, preserving, rehabilitation, housing facilities/units; or in the form of direct financial assistance to ranchers, or home owners in the form of a home repair loan, down payment assistance, new roofs for homeless shelters, other rehabs for various housing facilities.

Chair Hiatt asked if all three options would go to the City Council.

Ms. Ladd explained all the options are laid out in the proposed Code amendment and a developer chooses an option.

Chair Hiatt asked if Ms. Ladd received developer input.

Ms. Ladd replied she had met with developers, housing providers and nonprofits. She also presented to the home builders, commercial board of realtors and had many conversations about the options. Developers were asked to run the options through their pro forma for gaps and all performed fairly equitably. And although it is still not easy to comply, the City fills the gap by providing incentives to make it work.

Chair Hiatt asked if approved by the Governing Body and moved forward if Ms. Ladd expected more affordable homes to be built.

Ms. Ladd believed this would open the door for units to be provided on site. Rents have increased 9% a year and Option 2 is a rent stabilization. The developer would bring a deal and the incentives would provide help in making the financial gap work.

Commissioner Lawrence asked for more information about the 2020 fee escalation to spur timely development and to what extent timely development was a problem.

Ms. Ladd explained the proposal currently is to double the fee over five years (20% per year). The Governing Body would include an analysis to determine if this is adversely affecting the market and could slow or stop it. They learned that from the recession and the program has been amended three times. She said timely development is not currently a huge problem, but Land Use staff could add their opinion. The idea is for people not to speculate with their entitlements.

Commissioner Hogan indicated Ms. Ladd had projected a shortfall of about 3500 residential units. He asked the current status.

Ms. Ladd stated that needs assessments looked at the most affordable units from \$625 or less. There were 22,600 number of units rented from renters in that income category able to afford \$625. Estimates are that 3,000 to 5,000 more units are in the market with renters that cannot afford those units. That doesn't mean people are not housed, they are just paying much more than 30% sustainable rental payment; the majority pay over 50 percent.

Commissioner Hogan asked if Ms. Ladd knew if the affordable and market rate housing combined the demand. He asked if the situation was still that the shortfall in market rate housing caused people to rent at higher rates, depleting the availability.

Ms. Ladd replied they have not seen the market reaction to the new units yet, because only a fraction is available and leased. They had the ribbon cutting at Soleras Station last month with 14 units at moderate market rates, but the rest are deeply subsidized down to people transitioning out of homelessness. The units were leased



before the doors opened and demand is still very strong. Most of the 1100 units listed are not leased yet but the effects of bringing them online should be seen in the next year or so.

Commissioner Hogan asked if demand seemed to be increasing or keeping pace with the new demand for housing.

Ms. Ladd commented they are not keeping pace. One positive is they have larger employers paying higher salaries that are expanding at a vigorous rate. Los Alamos National Labs will hire 1,000 new employees within 6-12 months, and many will live in Santa Fe.

Commissioner Sategna asked what Ms. Ladd had heard on economics. The market will adjust when the rates are set, and rates will continue to go up. He asked how rental rate increases would be addressed to make Option 2 viable in the future.

Ms. Ladd explained the rent stabilization rate is tied to HUD fair market rent and adjusted every year. It takes into account housing cost, cost-of-living, vacancy rates and tends to be broad-based and more stable. She explained rents increased almost 14% in the Santa Fe market between January 2019 and September 2019 and was not very stable.

Chair Hiatt suggested it would be helpful for the Commission to receive the Chapter 14 changes as soon as possible. He thanked Ms. Ladd for her time and efforts.

1. **Case #2019-66. 2861 Agua Fria Development Plan.** Hugh Driscoll, AIA, Agent, for Dominic Vigil, Owner, requests approval of a Development Plan to allow an additional 7,161 square feet of office and commercial uses with multi-family apartments. The property is approximately 0.84 acres, is zoned C-2/PUD (General Commercial/Planned Unit Development) and is located within the West Santa Fe River Corridor Overlay District. (Noah Berke, Case Manager, [nlberke@santafenm.gov](mailto:nlberke@santafenm.gov), 955-6647) (POSTPONED FROM SEPTEMBER 5, 2019 AND OCTOBER 17, 2019) (TO BE POSTPONED TO DECEMBER 5, 2019)
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**Staff Report**

Mr. Logston said this is the final subdivision plat approval for four residential lots. The property is zoned R-2. The Commission recommended approval on June 6, 2019, subject to the Governing Body approving the rezoning, which they did. The staff report is largely the same, evaluating conformity with the preliminary plat. This meets development standards and approval criteria does not create or increase nonconformities with Chapter 14.

Staff recommended approval of the final subdivision plat with the conditions of approval and technical corrections. The two motions required are: 1) to approve or deny the final subdivision plat, subject to conditions of approval and technical corrections; and 2) to adopt or deny the Findings of Fact and Conclusions of Law (Exhibit A-2 of the packet material).

**Applicant's Presentation**

Jennifer Jenkins, 130 Grant Ave #101, was sworn. She stated she was requesting for the applicant, the approval of the final subdivision plat for the project the Commission had reviewed in the Summer.

Chair Hiatt asked if there were any issues between the original approval and the final approval worked out with staff.

Ms. Jenkins said it was as presented in June.

**Public Comment**

There was none.

**Commission Discussion**

There was none.

**Action of the Commission**

**MOTION:** In Case #2019-920, 1849 Arroyo Chamiso Final Subdivision, Commissioner Sategna moved, seconded by Commissioner Lawrence, to approve the Final Subdivision Plat subject to the conditions of approval and technical corrections recommended by staff.

**VOTE:** The motion passed by roll call vote with Commissioners Clow, Hogan, Lawrence, Sategna and Chair Hiatt voting in favor and none voting against.

**MOTION:** In Case #2019-920, 1849 Arroyo Chamiso Final Subdivision, Commissioner Sategna moved, seconded by Commissioner Lawrence to approve the Findings of Fact and Conclusions of Law as contained in Exhibit A-2 of the packet.

**VOTE:** The motion passed by unanimous roll call vote with Chair Hiatt and Commissioners Clow, Hogan, Lawrence and Sategna voting in favor and none voting against.

3. **Case #2019-975. Siler Yard Final Subdivision Plat.** AOS Architects, Agent, for New Mexico Interfaith Housing, Owner, requests approval of a Final Subdivision Plat to create an additional lot of approximately 0.60 acres. The property is located at 1218 Siler Road, and is zoned C-2 (General Commercial) (Lee Logston, Case Manager, lrllogston@santafenm.gov, 955-6136)

### **Staff Report**

Mr. Logston presented the staff report stating this is being developed as a 100% affordable multifamily project. The arrangement includes a maker space that must be on its own separate legal lot and the subdivision is to split the lot for that purpose. On September 5, the Commission approved the development plan for 65 apartment units; a variance to the architectural design standards for nine buildings; a 14% reduction in the parking; and the split of .6 acres in the subdivision. The applicant has worked on corrections to bring the plat back as final. Consideration of the final plat is an evaluation of how it performs with the preliminary plat. Land Use staff and various departments feel that it does.

Mr. Logston pointed out there were several technical corrections, but as noted in the packet, the applicant has largely made most of the corrections. The proposed subdivision plat meets all development standards and approval criteria of Chapter 14 and does not create or increase nonconformities.

Staff recommends approval, subject to conditions of approval and the remaining technical corrections as outlined in the report. Two motions would be required: 1) approve or deny the final, subdivision plat subject to conditions of approval and technical corrections; and 2) adopt or deny the Findings of Fact and Conclusions of Law as found in Exhibit A-2 of the packet material.

Chair Hiatt referred to page 5 of the staff report, last sentence under the paragraph on wastewater that states, "*A shorter deceleration lane is proposed which will be*

*approved by the City traffic engineer.” He asked if the engineer had already said he would approve that.*

Mr. Logston explained he had a phone conversation with the engineer who told him a shorter decel lane would work. He explained the point was that they would not build something that would not be approved by the City Traffic Engineer.

### **Applicant’s Presentation**

Sean Evans, 1121 North Sienna Circle, was sworn. Mr. Evans indicated he did not have a presentation, however, would answer any questions.

### **Public Comment**

There was none.

### **Commission Discussion**

None.

### **Action of the Commission**

**MOTION:** In Case #2019-975, Siler Yard Final Subdivision Plat, Commissioner Hogan moved, seconded by Commissioner Clow, to approve the final subdivision subject to conditions of approval and technical corrections as recommended by staff.

**VOTE:** The motion passed by roll call vote with Chair Hiatt and Commissioners Clow, Hogan, Lawrence and Sategna voting in favor and none voting against.

**MOTION:** In Case #2019-975, Siler Yard Final Subdivision Plat, Commissioner Hogan moved, seconded by Commissioner Clow, to adopt the Findings of Fact and Conclusions of Law as contained in Exhibit A-2 of the packet.

**VOTE:** The motion passed by roll call vote with Chair Hiatt and Commissioners Clow, Hogan, Lawrence and Sategna voting in favor and none voting against.

4. **Case #2019-976. 645 East Palace Avenue Lot Split.** Jennifer Jenkins, Agent, for George and Nancy Roberts and Mary Romero, owners, request approval of a lot split to divide approximately 0.26 acres into two residential lots (+/-0.14-acres and +/-0.12acres). The proposed lots are located at 645

East Palace, are zoned R-21 (Residential- twenty-one units per acre), and each have a single-family residence. (Carlos Gemora, Case Manager, cegemora@santafenm.gov, 955-6670)

5. **Case #2019-977. 645 East Palace Avenue Variance.** Jennifer Jenkins, Agent, for George and Nancy Roberts and Mary Romero, owners, request a Variance to Subsection 14-7.2(D)(2)(b) to permit a side yard of less than five feet. The property is located at 645 East Palace Avenue and is zoned R-21 (Residential- twenty-one units per acre). (Carlos Gemora, Case Manager, cegemora@santafenm.gov, 955-6670)

### **Staff Report**

Mr. Berke presented the staff report on behalf of Carlos Gemora. The lot split is being heard before the Commission because there is a variance attached to the request. The variance request is for a side yard setback of less than five feet.

The lot split proposal is to create two lots, one of .14 acres and one of .12 acres. The property consists of multiple independent parcels. The subject parcel of 0.26 acres was illegally subdivided without approval in 1977 and has been owned by different parties. The City recognizes the parcel as one legal Lot of Record. The applicant is requesting a formal recognition of a subdivision of the original lot, into two lots. Proposed Lot 1 (0.14) has a single-family residence and Lot 2 has a single-family residence and a detached guest house. Both proposed lots conform to the minimum lot size for R-21 zoning. The guest house is set back approximately 1'7" from the deeded lot line shared with Lot 1. City recognition of the proposed lot line requires a variance to the required 5-foot setback as listed in the table of dimensional standards.

Land Use staff recommends approval of the lot split because they satisfy the development criteria. But they recommend denial of the variance request because as proposed, is self-induced and does not satisfy all variance criteria. A decision by the Commission would require that all variance criteria be satisfied fully, not just partially.

Staff believes a lot split could still be achieved and the setback requirements met, but this is what the applicant preferred as to the options proposed. An alternative would be to create two Lots of Record in compliance with Code. Although achievable, the applicant's wish is to have a variance to the setback.

Mr. Berke noted Mr. Gemora did an excellent job outlining how the criteria was not satisfied for a variance. If the Commission approved the lot split and denied the variance, staff requested their motion include satisfying Chapter 14 requirements with regard to setbacks.

Chair Hiatt said again he would complain about the vicinity map. He asked where on the map is the variance request.

Mr. Berke referred to Lot 2 guest house, located on the north property line. The guest house is closer than 5 feet for a side yard property. The applicant was asked to bring that into conformance. He invited the applicant to explain why they have requested it in that way.

### **Applicant's Presentation**

Ms. Jenkins, previously sworn, presented a slide show on behalf of the applicants. She indicated she would refer to the Romero's as the Romero family applicant for the purposes of discussion.

Slide – Vicinity Aerial: showing E. Palace with a shared driveway in one of the oldest parts of the east side. The northern part of the property with the Romero residence and the Roberts' residence and casita was shown.

Ms. Jenkins explained she received a call from a real estate attorney because the client had sold their property. The title company could not determine the property line.

Slide – Zoning map – zoned R-21; City GIS shows two separate parcels, but they are not.

Slide – Existing Conditions; in 1977 Victor Romero deeded the northeastern piece to his son and the father maintained the other piece. A surveyor was to create a legal description. This was a very common way properties would be transferred to children in the family.

Slide – Showing the actual 1977 deed and survey from 1947. The legal description as compared to the survey, is the northern piece that was deeded to the son.

Slide – Boundary survey was done in 1991 showing a property line.

Slide – Roberts Property Deed History showing significant history over 42 years.

Slide – Showing City of Santa Fe Building Permit issued in 2001 for Roberts' property. The City did not verify/confirm Legal Lot of Record in 2001.

Slide – County Assessor Map showing property has been assessed as two separate independent parcels for taxes as far back as the records show. The Romero property shows as a different ownership, different tax roll, and ID numbers.

Ms. Jenkins explained the deed was recorded and that information feeds to the assessor.

Chair Hiatt confirmed the illegality is that the owners did not go through the City process.

Slide – County Assessor Map showing Roberts and Romero family as joint tenants on the property and own it together. The applicants want to rectify that.

Slide – Lot Split Plat was shown reflective of the deed in 1977 and the boundary Mr. Romero wanted when he deeded the property to his son.

Slide – Setback Variance Request – the request is for setback of 2.2 feet.

Ms. Jenkins noted a correction to the staff report. The casita is 2.8 feet from the property line with an eave overhang of 1.6 feet. City Code allows up to 24 inches in a setback, therefore, the request for two feet allows them to honor the property boundary already assumed for 42 years.

Slide – Variance Criterion #1: Special circumstances apply: a) Existing unusual characteristics that distinguish land/structure from others in the vicinity. A deeded boundary that does not honor the requisite 5-foot setback.

Slide – Variance Criterion #2: Infeasible... to develop the property in compliance with standards of Chapter 14. Not applicable since the property is already developed. The intent of the 2-foot variance is to honor the property boundary established in a deeded action years ago. The applicant did not create the problem.

Slide - Variance Criterion #3: The development pattern is consistent and reflective of the neighborhood.

Slide – Variance Criterion #4; minimum variance making possible reasonable use of land or structure. The minimum variance is the 5-foot setback and they have 2.8 and asking the minimum for 2.2 feet. Chapter 14 is clear that the property should be a legal Lot of Record.

Slide – Variance Criterion #5: Not contrary to the public interest. The applicants are the main public impacted and it is in their interest to resolve the issue in a way that is equitable and fair.

Ms. Jenkins referred to the vicinity aerial noting that setback encroachment is very typical of the houses in the area. Many of the homes were built before the City had zoning codes.

Chair Hiatt asked if the Commission did not support the request, what would the applicants do then.

Ms. Jenkins did not know. She indicated it had taken a long time to get to this point and as the options were presented, none were acceptable. The option was not accepted to move the lot line with the Roberts purchasing 2 feet of the Romero property, and the Romero property shrinking by 2 feet. The only choice was to request the minor variance.

### **Public Comment**

There was none.

### **Commission Discussion**

Commissioner Hogan asked Ms. Jenkins what options were considered. The purpose of a setback is to maintain distance between structures. He asked if an option of the deed restriction was considered to prevent the owners of Lot 1 to build closer than 10 feet to the existing structure.

Ms. Jenkins replied there was an even better option. The City allows a set-back affidavit where two adjoining property owners can agree to make up the encroachment difference. She had suggested that solution and the Romero's were not willing because it limits their developable area.

Commissioner Hogan asked if they would rather have a lack of a deed for the property.

Ms. Jenkins replied she would not speak for the Romero's.

Commissioner Hogan noted the 10 feet is a fire issue and hard to argue with. There was nothing to stop owners of Lot 1 building closer than 10 feet and that presents a fire hazard and a problem.

Ms. Jenkins showed the location of the Romero driveway and house and why she thought the odds of building there were slim.

Commissioner Sategna asked to confirm with Mr. Berke, when the Commission approved a lot split it was approving the plat as presented. From the City perspective, the lot line on the plat does not technically exist. He asked how they could approve the lot split if they could not do that without approving a variance as drawn in the plat.

Mr. Berke explained that he had added to Condition #3 if the lots were approved, because a lot split is possible; there is the density. There are joint tenants and one tenant does not want to give 2.2 feet. The Commission could approve a subdivision contingent



on the adoption of Condition #3. If the proposed variance is denied, which staff recommended, staff recommends a condition of approval that the new lot line satisfies the setback requirement. The buildings will not change but the lot lines will, and they could create two Lots of Record that satisfy everything else. There are nonconformities on these lots in the manner and time they were built.

Mr. Berke stated this could only be approved on this plat if a variance is granted. If denied, the lot split would not work, and would be conditioned to satisfy the side yard setback of 5 feet.

Commissioner Sategna noted from the City's perspective, the applicants are sharing ownership, and whether the deeds are drawn, and the County accepts that is irrelevant. He thought that what was presented to the Commission was that the applicants were trying to find a solution. But the Commission has been presented with whether they rightfully could give a variance that meets the conditions. He couldn't see how they could do that.

Mr. Berke commented that to that point if the applicant had followed the process for subdivision instead of through a deed, they could have achieved two legal Lots of Record. He sees this often, the County uses deeds to tax, but they do not establish legal Lots of Record for subdivisions, which the City does.

Commissioner Sategna confirmed with Ms. Jenkins that the casita was built in 1977. He asked if the casita had required approval by the City.

Ms. Jenkins explained the City granted a building permit for the Roberts' parcel - the parcel that does not technically exist. A lot of different entities were involved in the "understanding and not unreasonable assumption" by the property owners that they had separate parcels.

Commissioner Clow asked if the building permit was to turn the garage into a casita.

Ms. Jenkins indicated in 2001 there was a remodel with new re-plaster of the exterior, a new roof, footing under the portal and demo and rebuild of a garden wall. It was not specifically related to the casita, but to the parcel.

Commissioner Clow asked if no title company had determined there was a problem until two years ago; and wouldn't the applicant have a cause of action against the title company.

Ms. Jenkins said that is correct and it is astonishing. She has run into the issue a lot and only recently title companies have started verifying Lots of Record.

Commissioner Sategna commented that two wrongs don't make a right. The Commission should look at what is presented and the conditions for approval for a variance.

Chair Hiatt talked about a case when he was Land Use Director in a similar situation, and he had sent them back to the title company where they were successful. He thought that may be the only option.

Chair Hiatt addressed Ms. Paez and said the Commission was focused on criteria #2 and #4. He asked if she had heard anything that would support the decision in the Findings and Conclusions if the Commission supported the variance.

Ms. Paez replied they could assume if the variance is granted that the Commission agrees with staff's analysis of criteria #1, #3 and #5. The Commission should make positive findings on those factors when drafting their Findings and Conclusions. They could adopt arguments presented from the applicant for the record or make their own findings of what persuaded them and include their reasoning in the motion.

Chair Hiatt stated fairness seemed reasonable even though not in the ordinance and the building permit is not binding on the City. He asked Mr. Berke to be sure the Commission knew when a building permit was issued, whether research was done.

Mr. Berke elaborated that density works here and the two units can share one lot. He pointed out the City had made errors in the past and because a building permit was issued does not mean it is a legal Lot of Record. Because a title company approves a title does not mean they are granting legal Lot of Record. Even title insurance does not mean legal Lot of Record was provided. He had encountered this before, but it was almost always corrected in the preliminary zoning review.

Chair Hiatt asked looking at criteria #2 and #4, if the Commission acknowledged the variance in a positive way, to provide language for Findings and Conclusions.

Ms. Jenkins stated she was confused by what was written by Mr. Gemora on Criterion #4, because it doesn't read like, "no". She was not able to reach Mr. Gemora.

Chair Hiatt asked the Commissioners to look at criteria #4 because to him, it did not seem applicable.

Commissioner Hogan asked if the issue was the loss of property for the owner of Lot 1. He was told by Ms. Jenkins that appeared to be the issue. He asked if the applicant explored changing the line and making it an equal exchange of land.

Ms. Jenkins said they had explored an equal exchange and even giving them more but could not get anywhere and the Roberts were left with no other option. They are appealing to the Commission's sense of fairness, reasonableness and compassion.

Commissioner Clow asked if a legal request for division of property was considered.

Ms. Jenkins could not speak specifically to that but knew the applicant had worked with their attorney and then turned to her to see if this could be resolved through the land use process. Ms. Jenkins wasn't sure how that dovetailed in honoring the original deeded boundary and if there was a noncompliance issue.

Commissioner Clow thought technically the deed was not legal; the deed doesn't control. The problem is the applicant has other legal recourse they had not explored.

Ms. Jenkins replied the applicant was aware of that but hoped this could be resolved in this manner.

Chair Hiatt asked the cause of action.

Ms. Paez explained that the code provides that a subdivision by court order will be recognized by the City under certain circumstances. It states, "*Court proceedings must not be used to circumvent the provisions of Chapter 14... A legal Lot of Record that is properly partitioned, partially condemned, or otherwise divided or altered by court order as provided in Chapter 42 of the statutes will be a legal Lot of Record.*" She thought a petition was the obvious answer as a potential remedy. The statute is an old process and sets forth feudal England-sounding type procedures.

Chair Hiatt stated under these circumstances, the Commission could approve the lot split and postpone the variance. He was not sure that would help.

Commissioner Clow said approve the lot split subject to the applicant complying with the lot line.

Mr. Berke suggested it would be best to see a layout. Another option was to deny both and ask the applicants to return with a lot split that complies. When the condition was created, they were trying to let the applicant know a lot split is possible. It just has to be done in compliance and without a variance.

There is not a survey showing a lot split in compliance because that was not presented by the applicant. He and Ms. Jenkins had discussed this and many other options; easements, setback affidavits. He added there is something to be said that one applicant was not present, and the applicant is representing only one property owner.

Ms. Jenkins offered that she technically represents both and it has taken 2 ½ years to get Mr. Romero's heir to authorize her as her agent and bring the application forward. The Roberts are footing the bill for the effort and the Commission is their last best hope. They had hoped to avoid expensive litigation and were asking that the Commission use their authority.

Commissioner Sategna asked Ms. Jenkins to review criterion #2 and #4 from her perspective.

Ms. Jenkins explained there are four options shown in the charts in the staff report and the applicant's put criterion #2 as "not applicable" in their application. This is not about property development or new construction; the development is there.

Commissioner Sategna asked if a variance only applies to new construction.

Ms. Paez read the definition of "development" from code: "*A man-made change in improved and unimproved real estate, including buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, with the exception of routine maintenance and repair.*"

She said the Commission has debated this before and usually, her experience was a man-made change in unimproved real estate indicates you are not improving it, you are drawing a line on a page. That is a defensible interpretation of "development" looking at other codes and definitions,

Commissioner Clow thought when dividing a property, it is developing the property.

Chair Hiatt said he heard a defensible position for taking the opposite point of view; drawing the line on the paper does not necessarily constitute a development.

Ms. Paez replied she has heard people say that, but it has no binding legal interpretation. In her opinion this is a manmade change in unimproved real estate. They have been trying to decide what the checklist should look like as they are moving from a procedure for a lot split with the Summary Committee to an administrative procedure. The word "development" *does* trigger other Code provisions and she is trying to determine what needs to be in the analyses. Staff has concluded this is development because it is changing unimproved real estate.

Ms. Jenkins pointed out it states *a manmade change to unimproved real estate*; this property is improved real estate. She thought it could not be both.

Ms. Paez clarified there is an "and". - it states improved *and* unimproved.

Ms. Jenkins said for sake of discussion, if criterion #2 is applicable, then it comes down to infeasible. She said she shares under oath that the applicants had gone to great lengths to *not* be here asking for a variance; they have tried everything. This is an infeasible place with respect to another way to achieve this.

Commissioner Sategna responded he did not want the Commission to set a precedent; his concern was that applicants who could not resolve a jointly shared property, if they waited long enough and brought it to the Commission, that would qualify as special circumstances that make it infeasible.

Chair Hiatt noted the Commission had not looked at reasons other than financial cost. Commissioner Clow had suggested there was opportunity to litigate and get the issue resolved, regardless of cost. He said he understood completely that the applicant did not want to bear that cost. He thought if the applicant could afford to, they would have taken this to court; they have been dealing with this for 2½ years. There is no guarantee of success.

Commissioner Hogan said if the variance was approved and the Romero's applied for a permit for a garage and their garage was set 5 feet off the property line, only the Fire Department would have a concern. He asked if the Fire Department would review the application and determine that the applicant failed to meet 10 feet between structures; and would they force the owners of Lot 1 to move their garage 7½ feet off the property line for compliance. That would put the burden on the City to enforce and this could happen 15 years down the road.

Mr. Berke explained it would be a zoning review for the 10-foot setback because the weight is on two sides of the property line. That was part of his review when he worked with the Fire Department years ago. But the Fire Department does not review residential building permits under 3500 square feet. He added a lot of other things are also looked at, such as the grade of the road, the closest fire hydrant, whether the house has sprinklers. But regarding the question, the City would review for 10 foot spacing because it is written as a setback in the Zoning Code.

Commissioner Hogan stated that his intent was the owner of Lot 1 could cooperate. If not, the Commission could place the burden on them to be sure they meet the setback or separation requirement.

Chair Hiatt pointed out the City will have created a cause of action if the Commission grants a variance and the owner builds a structure at 5-feet and it is not allowed because of the variance being granted.

Ms. Jenkins suggested as a condition of approval that any structure built by Lot 1 must be at least 10 feet away from the casita.

Chair Hiatt said that would be the same issue.

Commissioner Clow agreed that is doing the lot line adjustment for them and is the same problem.

Chair Hiatt said he was open to other suggestions and was now even more lost.

Commissioner Sategna asked Ms. Jenkins to address criterion #4.

Ms. Jenkins asked if she misunderstood the interpretation. She saw the "no" but in reading what was written it did not seem to comport.

Chair Hiatt noted the first sentence, "*The variance is the minimum that allows the possible, reasonable use of the land and structure.*"

Ms. Jenkins agreed; it is the minimum the applicant is requesting of 2.2 feet to address the 5'7".

Commissioner Clow suggested considering the factors b): "*Must be consistent with the purpose and intent of Chapter 14 and with the purpose and intent of the articles and sections from which the variance is granted.*" That is all-encompassing and brings in the 5 feet.

Ms. Jenkins stated because someone asked for a variance, they couldn't say they did not comply with Chapter 14. The question is, if granting of the variance meets the intent and other standards of Chapter 14 and clearly the establishment of legal Lots of Record meets the intent of Chapter 14.

Ms. Paez said criterion 4(b) is talking about the purpose and intent of things you are looking to vary, the rule you are trying to break. You are trying to break the 5-foot setback rule, intended for fire safety. The purpose and intent for ensuring the separation between buildings for life/safety reasons; if there is no life/safety concern to allow this to be right up to the property line and if they bend the rule of the code. She assumed the setback is in Code for a reason and as she reads the criterion, it is for fire safety and separation of buildings.

Commissioner Sategna asked if they granted the variance and allowed the split, given the square feet would the City allow additional construction on the Romero property.

Mr. Berke said without a full zoning analysis and looking at the questions, the applicant could not go back, and they probably could not go to the side, and if the variance is granted this would really prevent them from going further to the side. The closest they could probably go with an addition is the courtyard wall. The applicant is at 32% lot coverage and he was not sure how much more, if the variance was granted.

Commissioner Sategna explained he brought the issue up given Ms. Paez's interpretation of Part B of Criterion #4 and the possibility for the owner to come back to the City and build. He asked if the criterion was "yes," it has been met, or was it "not applicable."

Mr. Berke noted they have to satisfy every criterion in full, to grant a variance.

Commissioner Clow asked if finances were not considered, had the Roberts considered modifying their building to comply.

Ms. Jenkins explained it is the footprint and foundation of the building and in the corner of the building. They had considered shaving off the corner of the building, but that would probably require a trip to the HDRB.

Chair Hiatt advised the Commissioners if there was a point where they felt that their debate needed to end, the proper motion is for the previous question. The motion is not debatable and requires a second and if adopted by majority the Commissioners debate will stop. They have to move forward on the agenda item without further debate.

#### **Action of the Commission**

**MOTION:** Commissioner Clow moved for the previous question, seconded by Commissioner Hogan.

**VOTE:** The Motion passed by majority roll call vote with Commissioners Clow, Hogan, Lawrence and Chair Hiatt voting in favor and Commissioner Sategna voting against.

**MOTION:** In Case #2019-977, 645 East Palace Avenue Lot Split, Commissioner Clow moved to approve the lot split subject to the condition that the property owners comply with a 5-foot setback requirement and conditions of approval #1 and #2 as set forth in the staff report, with an amendment to Condition #3, as stated: *if the proposed variance is denied staff recommends a condition of approval requiring that the new outline satisfies the setback requirements; and approval of technical corrections contained in the staff report as recommended.* Commissioner Hogan seconded the motion.

#### **Comment/Discussion:**

Commissioner Clow stated she is moving to approve the lot split because it puts the owners in a better legal position and forces the

Lot 1 property owner's hand because there is approval if they could meet the conditions. She apologized that she could not agree with the variance because financial cost, although expensive, is a possibility. The Commission's hands are tied.

Ms. Paez asked to clarify that the motion is subject to conditions of approval #1 and #2 as set forth in the staff report and the Commission amended Condition #3, as stated: *if the proposed variance is denied staff recommends a condition of approval requiring that the new outline satisfies the setback requirements.* **[Note: This statement was incorporated into the motion]**

She thought the Commission was suggesting the applicant could come back with an agreement on a setback affidavit; anything that complies with the 5-foot setback requirement, not necessarily the lot line.

**VOTE:** The motion passed by majority roll call vote with Chair Hiatt and Commissioners Clow, Hogan, and Lawrence voting in favor and Commissioner Sategna voting against.

**MOTION:** In Case #2019-977, 645 East Palace Avenue Variance, Commissioner Clow moved to deny the variance. Commissioner Hogan seconded the motion.

**VOTE:** The motion passed by unanimous roll call vote with Commissioners Clow, Hogan, Lawrence, Sategna and Chair Hiatt voting in favor and none against.

Chair Hiatt wished Ms. Jenkins good luck.

#### **G. STAFF COMMUNICATIONS**

Mr. Berke stated that the appeal of Extra Space Storage sign variance, to increase height, was heard and denied by City Council on October 30, 2019. Their denial affirmed the Planning Commission's decision.

The Summary Committee has been repealed and is no longer in effect. He thanked the Commission for moving the case forward because it is unique. There are few cases such as that and the Commission may be asked by the Land Use Director to hear them.

There will be no second meeting in November but will be a meeting on December 5, 2019. He asked that Commissioners unable to attend to e-mail both he and the Chair.



Ms. Paez indicated the U-Haul Findings and Conclusions were inadvertently omitted from the packet. They will still have final action within the 30-day requirements for the December meeting.

Chair Hiatt again asked Mr. Berke why there was not a 9<sup>th</sup> commissioner appointed to the Planning Commission.

Mr. Berke explained he continues to bring it up with Director Johnson. The Mayor decided that a potential candidate was not the best fit. The Director and the Mayor are communicating about a replacement.

Chair Hiatt said he hoped they would contact the new District 2 Councilor for suggestions to fill the position.

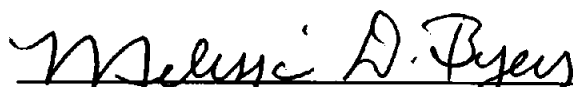
**H. MATTERS FROM THE COMMISSION**

There were no matters from the Commission.

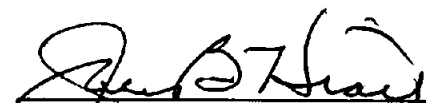
**I. ADJOURNMENT**

Having completed the agenda and with no further business to come before the Planning Commission, the meeting was adjourned at 7:55 p.m.

Submitted by:

  
\_\_\_\_\_  
Melissa D. Byers, Stenographer for  
Byers Organizational Support Services

Approved by:

  
\_\_\_\_\_  
John B. Hiatt, Chair

**COMPARISON OF INCLUSIONARY RENTAL REQUIREMENTS**



	1998 - 2005	2005 - 2016	2016 - 2019	2020 +
<b>PROGRAM</b>	HOUSING OPPORTUNITY PROGRAM (HOP) Ordinance 1998-3	SANTA FE HOMES PROGRAM (SFHP) Ordinance 2005-30	AMENDMENTS TO ALLOW FEE-IN-LIEU FOR RENTAL PROJECTS Ordinance 2016-9	AMENDMENTS TO CREATE COMPLIANCE "MENU" FOR RENTAL PROJECTS - 811 # 2019-27
<b>POLICY PRIORITY</b>	INCLUSION OF AFFORDABLE UNITS (REQUIREMENT VARIES RELATIVE TO MARKET VALUES) + INCENTIVIZE NAT'L AFFORDABILITY	15% INCLUSION OF AFFORDABLE UNITS (PRICED ACROSS 3 INCOME TIERS)	INCENTIVIZE MARKET RENTAL DEVELOPMENT + INCREASE RENTAL INVENTORY TO OFFSET LOW VACANCY + RISING RENTS	MAKE REGULATION MORE FLEXIBLE TO SUPPORT MARKET RENTAL + INCENTIVIZE AFFORDABLE DEVELOPMENT
<b>APPROACH</b>	PROVIDE INCENTIVES (DENSITY BONUS + FEE WAIVERS + STREAMLINED REVIEW)	MANDATE INCLUSION + PROVIDE INCENTIVES (DENSITY BONUS + FEE WAIVERS)	USE SUNSET DATE TO ENCOURAGE TIMELY DEVELOPMENT; PROVIDE DENSITY BONUS (IF ALLOWED)	FEE ESCALATION TO SPUR TIMELY DEVELOPMENT; PROVIDE DENSITY BONUS (IF ALLOWED); PROVIDE FEE WAIVERS RELATIVE TO AFFORDABILITY; 10YEAR COMPLIANCE; PROVIDE FRAMEWORK FOR MANAGING BELOW MARKET UNITS + LEVERAGING SUBSIDY; REVIVE STREAMLINING REVIEW/APPROVAL FOR ELIGIBLE PROJECTS.
<b>OUTCOMES</b>	*80 LIHTC BUILT 234 RENTAL UNITS BUILT AFFORDABLE TO HOUSEHOLDS <100% AMI	0 MARKET UNITS *256 LIHTC BUILT *357 AFFD RENTAL UNITS REHABBED BY HOUSING AUTHORITY	1,100 MARKET RATE UNITS BUILT/UNDER CONSTRUCTION; 800+ APPROVED; **87 LIHTC BUILT (+110 UPCOMING); *100 RENTAL UNITS REHABBED; \$725,000 COLLECTED, \$500,000 PENDING	
<b>LESSONS LEARNED</b>	COMPLEXITY OF REGULATION DIFFICULT FOR DEVELOPERS	NO WAY TO MANAGE AFFORDABLE UNITS; SUPPRESSED MARKET		

\* LIHTC (low income housing tax credit) exempted from inclusionary zoning, but city-supported  
 \*\* result of proposed alternate compliance to 12 requirement

**FRAMEWORK FOR SANTA FE HOMES PROGRAM RENTAL HOUSING COMPLIANCE**

**EXHIBIT**  
2

**DEVELOPER OF 100-UNIT APARTMENT COMMUNITY CHOOSES WHICH OPTION BEST MEETS BUSINESS MODEL AND UNIQUE PROJECT FACTORS**  
(topography, land cost, land use code restrictions, etc.)

**OPTION 1:**  
Pays fee-in-lieu-of for 100% market rate units  
Proposed: 26-1.22.B(1)

**OPTION 2:**  
Builds 100% moderately priced rental units (LPDU)  
Proposed: 26-1.22.B(2)

**OPTION 3:**  
Includes 15% affordably priced rental units (85% market rate)  
Proposed: 26-1.22.B(2)

**PAYS FEE IN-LIEU-OF:** Enters into SFHP Agreement with the City to pay fee calculated @ approx. \$1,100/unit  
= 100 X 1100 = \$110,000  
= 10% paid @ recording of entitlement  
= 90% paid @ vertical building permit  
20% increase/year starting 6/30/20 for 5 years

**STABILIZES RENT AT 100%AMI:** Enters into SFHP Agreement with the City to restrict rents @ 100% AMI and income qualify residents @ 120% AMI; must accept rental assistance vouchers.  
Allowable Rent Range:  
\$900 (studio) - \$1700 (4BR)  
Eligible Renters Max Income:  
\$61,500 (1 person) - \$95,000 (5 person)

**15% SET-ASIDE:** Enters into SFHP Agreement with the City to set aside 15 units @ restricted rents, affordable to renters earning 80% AMI and less; must accept rental assistance vouchers.  
Allowable Rent Range:  
\$833 (studio) - \$1285 (4BR)  
Eligible Renters Max Income:  
\$33,300 (1 person) - \$51,400 (5 person)  
Partner agency to provide subsidy services and tenant management for rent restricted units.

**COMPLIANCE PERIOD**

**NONE.** Fee revenues go into Affordable Housing Trust Fund (used for construction, rehab, preservation of units or direct assistance to income qualified renters, homebuyers and owners)

**10 YEARS**  
Must report annually to City that income/rent targets are met. Tenants able to maintain tenancy can stay in units at end of compliance period.

**10 YEARS**  
Must report annually to City that income/rent targets are met. At end of compliance period, must work with subsidy provider to ensure tenants are relocated.

**INCENTIVES SFCC 14-8.11(G)**

15% density bonus (if all other code restrictions are met)

15% density bonus (if all other code restrictions are met)

15% reduction in development fees, building permits, UECs, water bank

15% density bonus (if all other code restrictions are met)

30% reduction in development fees, building permits, UECs, water bank

