



Agenda

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DATE 7/23/07 TIME 4:08pm

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AMENDED

PLANNING COMMISSION

August 02, 2007 – 6:00 P.M.

CITY COUNCIL CHAMBERS

A. ROLL CALL

B. PLEDGE OF ALLEGIANCE

C. APPROVAL OF AGENDA

D. APPROVAL OF MINUTES

June 21, 2007

E. OLD BUSINESS

1. An ordinance amending Section 14-6.2(A)(6)(a) SFCC 1987; creating a new Section 14-6.2(C)(12); amending Section 14-6.3(C)(1); amending Table 14-8.6-1 SFCC 1987; and making such other changes as are necessary; regarding the Short Term Rental of dwelling units in residential districts. (Councilor Wurzburger) (Jeanne Price, case manager)
2. An ordinance amending Section 14-6.2(A)(6)(a) SFCC 1987; creating a new Section 14-6.2(C)(12); amending Table 14-8.6-1 SFCC 1987; and making such other changes as are necessary; regarding the Short Term Rental of dwelling units in residential districts. (Councilor Heldmeyer) (Jeanne Price, case manger)

F. NEW BUSINESS

1. An ordinance amending Section 14-9.2(F)(1) SFCC 1987 regarding the general requirements for sidewalks. (Councilor Heldmeyer) (Jeanne Price, case manager) **(POSTPONED FROM JULY 19, 2007)**
2. *An ordinance amending Sections 6-4.3; various sections of Chapter 14; renaming Chapter XXVI; creating a new Article 26-2 SFCC 1987 all related to affordable housing, the Santa Fe Homes Program and low priced dwelling units. (Ron Pacheco and Kathy McCormick, case managers) **(POSTPONED FROM JULY 19, 2007)***
3. ***Case #M 2007-19. 1003 Governor Dempsey Drive Escarpment Regulations Variance. Karl Sommer, agent for Susan Peck Massey requests a variance to the escarpment regulations to allow the construction of a new residence within the Ridgetop Subdistrict at the same location as the existing residence. The property consists of 2.408± acres and is zoned R-1 (Residential, 1 dwelling unit per acre). (Lou Baker , case manager) **(POSTPONED FROM JULY 19, 2007)*****

4. **Case #M 2007-20. 500 Hillcrest Drive Escarpment Regulations Variance.** Karl Sommer, agent for John Scanlan requests a variance to the escarpment regulations to allow the construction of a new residence within the Ridgetop Subdistrict at the same location as the previous residence. The property consists of ~~7.848±~~ 5.405± acres and is zoned R-1 (Residential, 1 dwelling unit per acre). (Lou Baker, case manager) **(POSTPONED FROM JULY 19, 2007)**
5. **Case #M 2007-22. 750 Canada Ancha Escarpment and Terrain Management Regulations Variance.** Karl Sommer, agent for Steven and Margo Pike requests a variance to the escarpment overlay district to allow construction on the ridgetop and terrain management regulations to allow for more than half of the building footprint to be constructed on slopes between twenty and thirty percent. The property consists of 2.163± acres and is zoned R-1 (Residential, 1 dwelling unit per acre). (Lou Baker, case manager) **(POSTPONED FROM JULY 19, 2007)**
6. **Case #M 2007-24. Weston Studio Gallery General Plan Amendment.** Dell Weston, property owner requests approval of a General Plan Future Land Use map amendment to change the designation of 3.708± acres of land from Office to Transitional Mixed Use. The area is located at the southeast corner of Airport Road and Buffalo Grass Road. (Lou Baker, case manager)
7. **Case #M 2007-25. Weston Studio Gallery Annexation.** Dell Weston, property owner requests annexation of 3.708± acres of land, located at the southeast corner of Airport Road and Buffalo Grass Road. (Lou Baker, case manager)
8. **Case #ZA 2007-06. Weston Studio Gallery Rezoning from R-1 to MU.** Dell Weston, property owner requests rezoning of 3.708± acres of land from R-1 (Residential – 1 dwelling unit per acre) to MU (Mixed Use). The property is located at the southeast corner of Airport Road and Buffalo Grass Road. (Lou Baker, case manager)

G. BUSINESS FROM THE FLOOR**H. STAFF COMMUNICATIONS****I. MATTERS FROM THE COMMISSION****J. ADJOURNMENT****NOTES:**

- 1) Procedures in front of the Planning Commission are governed by Roberts Rules of Order. Postponed cases are postponed 1) to a specific date, or 2) indefinitely until specific conditions have been resolved, or 3) to a specific date with the provisions that specific conditions be resolved prior to that date. Postponed cases can be removed from the postpone by a motion and vote of the Planning Commission
- 2) Due to time constraints not all issues may be heard and may be rescheduled to the next scheduled Planning Commission meeting. This agenda is subject to change at the discretion of the Planning Commission.
- 3) New Mexico law requires the following administrative procedures to be followed by zoning boards conducting “quasi-judicial” hearings. By law, any contact of Planning Commission members by applicants, interested parties or the general public concerning any development review application pending before the Commission, except by public testimony at Planning Commission meetings, is generally prohibited. In “quasi-judicial” hearings before zoning boards, all witnesses must be sworn in, under oath, prior to testimony and be subject to cross examination. Witnesses have the right to have an attorney present at the hearing. The zoning board will, in its discretion, grant or deny requests to postpone hearings.
***An interpreter for the hearing impaired is available through City Clerk’s Office upon 5 days notice. Please call 955-6521**

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CITY OF SANTA FE
PLANNING COMMISSION

August 2, 2007

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E. OLD BUSINESS		
1. An ordinance amending Section 14-6.2(A)(6)(a) SFCC 1987; creating a new Section 14-6.2(C)(12); amending Section 14-6.3(C)(1); amending Table 14-8.6-1 SFCC 1987; and making such other changes as are necessary; regarding the Short Term Rental of dwelling units in residential districts.	Approved	2-11
2. An ordinance amending Section 14-6.2(A)(6)(a) SFCC 1987; creating a new Section 14-6.2(C)(12); amending Table 14-8.6-1 SFCC 1987; and making such other changes as are necessary; regarding the Short Term Rental of dwelling units in residential districts.	Approved	11
F. NEW BUSINESS		
1. An ordinance amending Section 14-9.2(F)(1) SFCC 1987 regarding the general requirements for sidewalks.	Approved	11-14
2. <i>An ordinance amending Sections 6-4.3; various sections of Chapter 14; renaming Chapter XXVI; creating a new Article 26-2 SFCC 1987 all related to affordable housing, the Santa Fe Homes Program and low priced dwelling units.</i>	Approved	14-16
3. <u>Case #M 2007-19. 1003 Governor Dempsey Drive Escarpment Regulations Variance.</u> Karl Sommer, agent for Susan Peck Massey requests a variance to the escarpment regulations to allow the construction of a new residence within the Ridgetop Subdistrict at the same location as the existing residence. The property consists of 2.408± acres and is zoned R-1 (Residential, 1 dwelling unit per acre).	Approved as amended	16-23

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4.	<u>Case #M 2007-20. 500 Hillcrest Drive Escarpment Regulations Variance.</u> Karl Sommer, agent for John Scanlan requests a variance to the escarpment regulations to allow the construction of a new residence within the Ridgetop Subdistrict at the same location as the previous residence. The property consists of 7.848± <u>5.405±</u> acres and is zoned R-1 (Residential, 1 dwelling unit per acre).	
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MINUTES OF
CITY OF SANTA FE
PLANNING COMMISSION MEETING

August 2, 2007

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

A. ROLL CALL

Roll call indicated the presence of a quorum as follows:

MEMBERS PRESENT:

Harriet Heltman
Ken Hughes
Matthew O'Reilly
John Romero
John Salazar
Angela Schackel Bordegaray (late)
Bonifacio Armijo, Secretary
Signe Lindell, Vice Chair
Estevan Gonzales, Chair

MEMBERS ABSENT:

None

STAFF PRESENT:

Dan Esquibel, Senior Planner
Anne Lovely, Assistant City Attorney
Wendy Blackwell, Engineering Development Review Division Director
Ron Pacheco, Office of Affordable Housing
Lou Baker, Senior Planner
Denise Cox, Stenographer

B. PLEDGE OF ALLEGIANCE

Chair Gonzales asked Commissioner Romero to lead the pledge of allegiance.

C. APPROVAL OF AGENDA

Mr. Esquibel reported that the items 6, 7 and 8 – Weston Studio Gallery Plan Amendment Case #M-2007-24, Weston Studio Gallery Annexation Case #M-2007-25 and Weston Studio Gallery Rezoning from R-1 to MU Case #ZA-2007-06 are postponed indefinitely.

Commissioner Lindell moved approval of the agenda as amended, Commissioner Heltman seconded the motion which passed by unanimous voice vote. [Commissioner Bordegaray was not present for this vote].

D. APPROVAL OF MINUTES
June 21, 2007

Commissioner Heltman made the following correction:
Page 13, sixth line there should be an s at the end of think.

Commissioner Heltman moved to approve the minutes of June 21, 2007 as amended, Commissioner Salazar seconded the motion which passed by unanimous voice vote. [Commissioner Bordegaray was not present for this vote].

E. OLD BUSINESS

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Items 1 and 2 were combined for purposes of staff report, public hearing and Commission comment and action, but were voted on separately.

Memorandum from Jeanne Price prepared July 23, 2007 for August 2nd Planning Commission meeting is incorporated herewith to these minutes as Exhibit "1."

Proposed amendments attached to Councilor Wurzburger's bill are incorporated herewith to these minutes as Exhibit "1(A).

Letter from Bill Jones dated August 2, 2007 is incorporated herewith to these minutes as Exhibit "1(B)."

Letter from Richard Ellenberg dated July 20, 2007 is incorporated herewith to these minutes as Exhibit "1(C)."

Ms. Jeanne Price presented the staff report included in Exhibit "1" and proposed amendments included in Exhibit "1(A)." She noted that the amendments are mainly to clarify the bill and clean up language.

Ms. Price read the letter included in Exhibit "1(B)" into the record.

Chair Gonzales clarified that all the Commissioners had a copy of Mr. Ellenberg's letter.

Commissioner Schackel Bordegaray arrived at this time.

Staff recommends the Commission make a recommendation on the bills

Public Hearing

Councilor Wurzburger thanked the subcommittee for all the hard work. She believes every time they have worked on this they have attempted to balance the contradictory needs of neighbors and those that have been involved in this business for over 25 years as well as homeowners that need this as a source of income. She commented that this

is not an ideal resolution, but she has never worked as hard on an issue. She thought it was important to address the sweeping under the rug of what has been going on. She said the City has been accepting gross receipts tax for years and the change to the law four years ago that nobody showed up to discuss yet the public hearings on this have attracted up to 100 people. She feels it is important that this move forward.

Chair Gonzales thanked Councilor Wurzburger for the work she has done on this.

Councilor Heldmeyer thanked the subcommittee although she wishes the public was included more than sporadically. She said it was the intent of at least some members of the subcommittee to take into account the affect of short term rentals on neighborhoods. This does not do it because it does not really spell out what the criteria are that a hearing officer would use especially in terms of reviewing a permit application. It has been changed in the newest version, but it does not spell out what kinds of things the hearing officer should consider. She said the other omission is notice to neighborhood or homeowner's associations. She said if they are renting out already nobody else may hear about it. The only person that can object is someone getting notice which shuts the homeowner's association out. She has always wanted enforcement at least on a complaint basis. Her alternative says people can rent their homes out a couple times a year legally. She said that she receives many emails from people in other cities that bought property not zoned for short term rental and they are very upset that they may be prevented from doing what they want to do. She said every single city she has received an email from does not allow short term rentals in residential neighborhoods. She does not like that they want to come do it here because they cannot do it where they live. She understands there are many local people that do short term rentals. The one thing she likes about Councilor Wurzburger's proposal is the ability to rent out a guesthouse if you live on the ground. She said most neighborhoods are okay with this. This does not address the increasing home prices and changing the livability of neighborhoods. Most people could live with a little change, but not this. She said unless the mechanism by which short term rentals can be turned down is significantly strengthened the change will be enormous.

Chair Gonzales invited the public to speak after consultation with the legal department. He said the public hearing was closed at the last meeting, but due to the new Commissioners they will hear from the public. He gave everyone two minutes to speak.

Jay Russell, 703 Paseo de la Loma, President of the near north group neighborhood association spoke for 200 residents in the association. He said the existing ordinance clearly forbids residential rentals of less than 30 days. This has been ignored and not enforced by City staff or the Governing Body. There are a large number of owners and management companies that have blatantly taken advantage of this situation driven by making money all in violation of the ordinance. Those objecting have been ignored by everyone connected to the City by election or employment. This has resulted in legalizing this illegal activity. There has been little consideration of the rest of the residents of the City of Santa Fe. He urged them to consider enforcement of the present ordinance. He requested the Commission slow down this process.

Mary Russell, 703 Paseo de la Loma, said she is here with great sadness regarding the destruction of the residential neighborhood. She laments the days when people bought homes and lived in them. They knew the neighbors and cared about them and watched after their children and vice versa. They made life long friends. She grew up in

Casa Solana. Now she sees a time that they will have neighbors that are not neighbors. Those that rent their homes will not care about the neighbors or know the norms. The renters do not consider the leash laws when walking their dogs. She said Santa Fe is known as a City that preserves its history, so she asked them to preserve the neighborhoods.

Ray Mann, said his problem with the ordinance is that it seems like a burdensome thing to enforce. The City giving quasi approval to private homes and then having the house burn down brings up liability issues to him. This seems like an infringement on property ownership. He owns a short term rental and knows his neighbors and gets along with them. He said they hear a lot about the numerous emails Councilor Heldmeyer receives regarding the heinousness of these people doing short term rentals, but there are less than 3 complaints on the books regarding short term rentals. He would like to see the complaints rather than just hear about them as it seems to be exaggerated. He supports short term rentals. It seems the City does not want to take a hard stance because the realtors have to notify clients that it would be illegal.

Bruce Kueghnle, 209 Chappelle Street, stated that he has been operating a legal vacation rental business for eight years. Every vacation rental is legally zoned as he has made conscious choices to only operate in legal zones. There are hundreds of legal vacation rentals zoned BCD and they are getting killed. He is down \$100,000 over his best year. He assumes the City wants to minimize the impact of vacation rentals on residential neighborhoods and make them available when the demand cannot be met by legal vacation rentals. He proposes to do that through a website that checks the availability of legal vacation rentals which would be funded by the legal vacation rentals. He said the technology is there, so he would like the opportunity to have more than two minutes to talk about this.

Chair Gonzales invited him to call Jeanne Price with his suggestions.

Janet Rousselot, owner of The Management Group, thanked them for the work done on this ordinance. She was on a task force appointed by Mayor Delgado and they worked for six months coming up with a recommendation for the City. She spoke on behalf of her own firm. She started in 1979 and on the advice of several attorneys there was nothing that precluded the renting of houses, so she did not think they were doing anything incorrectly. In the fall of 2000 the City sent Chapter 14 to a firm in Colorado to clean up and revise the document which changed the wording so short term rentals under 30 days were illegal. She referred to notices sent out by the City that only said it is a cleanup issue of Chapter 14. She said a year later, her attorney found this wording. She noted that nobody was in attendance of these meetings where they changed the wording. She questions if this is the way to make a 30 year old company illegal. For almost 30 years they have been bringing the best element of tourism to Santa Fe. She said in an effort to make this work, they worked out a viable solution after meeting with neighbors. She reminded the Commission that the rental agency is collecting and paying lodger's tax and gross receipts tax with the money taken even though they have been called illegal. Her company alone paid \$200,000 in 2006. There has been one complaint since 2005.

Brad Biller, spoke on behalf of the Santa Fe Tourist Homes Group, stated that his group feels the proposals are an exercise in over regulation. He said they can all empathize with homeowners who have noisy or sloppy neighbors. Responsible Santa

Feans cannot ban tourists in their neighborhoods. He said this is unenforceable and possibly unconstitutional. He said short term rentals are part of the Santa Fe charm with homeowners making a much needed portion of their income by renting to tourists. All benefit from the tourist dollars this brings in. Many tourists love to get to know a place by living among the residents. The renters have a fantastic time and go home and tell everyone they know all about it. His group has consistently seen that a provision of an acknowledged set of terms to renters detailing noise, etc. along with the collection of a refundable security deposit does away with almost all problems that might arrive with renters. He agrees that neighbors should know who the owner of the property is for complaints. There is no reason to treat this matter any differently than with long term rental problems. He urged the Commission to legalize short term rentals. They are fine with a one week minimum stay to avoid conflict with the hotel industry.

Linda Buchser, 606 Alto Street, has short term rentals half a block away that she did not even know about. Her home is a large building that goes around the corner, so they had hoped to use this as some short term rentals for retirement income. Until this started, she did not even know this was illegal. She can live with Councilor Wurzburger's proposal, although she is a little scared about the \$1000 if this does not work out for her. She would like to see that if they have laws that they are enforced. Her short term rental neighbors have not been a problem and she would not think her short term renters would be either as she intends to keep living in her home.

Honey Ward, 1236 Vallecita Drive, stated that she lives next door to a short term rental which was constructed specifically for this purpose although she was not told that when it was happening. She has the situation where the person that owns this home only comes rarely so they rent the home. The renters come to town with dogs and leave to go to dinner and the dogs bark more than normal because they are in a strange place. She noted that she has made two complaints herself and the City staff called the rental agency for the home who said they do not handle the home, so City staff said there was not much they could do. She wished the law they have is enforced. The idea that there are only a few complaints is odd when she has made two. Her desire is to not have short term rentals and if they had to do it in a guesthouse that would be okay.

Mary Hirsute, 636 Garcia Street, said she does reservations for about 20 of her neighbors. It seems to work. The people that she books into these places are people in the art community that are coming to spend money. She received a frantic phone call from one of the people that rents who said she cannot leave her business as she cannot go stay in a hotel as she has art that is so valuable she is afraid of anyone seeing what she has. This client prefers to come to town anonymously. Ms. Hirsute did not know if they realize what the fiscal impact of closing this down could be. She added that family vacations are becoming three to four days.

Rick Martinez, urged the Commission to discourage short term rentals for the following reasons. What is happening is they are losing affordable rents for workers to live and walk to town. He feels they are Aspenizing the downtown area. He wants to start bringing residents to live in the rentals and make it more affordable to live in town.

Jane Terry, 237 Camino de la Sierra, has been participating in the discussion regarding short term rentals for the last two years. She cannot think of anything that has not been said before. The neighborhoods have voiced their concerns. They have talked about the coding and disconnect from the investors. She said they have brought up the

concerns over and over again and she continues to not see their recommendations in the amendments. She said there are areas in town where short term rentals are viable and work. She does not think short term rentals should be brought in when neighbors do not want them. She also thinks the 30 day ordinance works.

Dina Aquelina, noticed that all those speaking in favor of the short term rentals are those that have financial interests in this illegal industry. She has not ever heard one neighbor at a hearing say this is good for their neighborhood. She has two short term rentals on her block and the City asked the neighbors to monitor the homes for one year. The City asked the woman who was the manager to come in and chat and the enforcement person was not there. She said the complaining does not do anything which may be why there are not more complaints. She feels that when you buy property and homes you have a right to know who is living next to you. Allowing intense commercial use in residential zones is wrong. Having this level of turnover is awful as it is like living in a motel parking lot. She informed the Commission that 1/3 of some of the streets in the historic district are short term rentals. She asked where the tipping point is for being a viable place for those that live here. She urged enforcement of the existing law for one year as an experiment.

Wade Thompson, 503 Johnson, stated that he had not intended to speak, but he lives in the heart of short term rental country. He thought they might be interested in hearing from a few that live in this area. He has lived here for 30 years; times have changed on the lane. Thirty years ago, the lane was rich, poor and everything in between and it was Anglo and Hispanic with everyone getting along. Currently, out of 20 homes 8 are short term rentals with the majority of the owners living out of town. He understands that people may want to live here eventually and this is a way to help cover mortgages due to the escalating prices. He said most of the people have been fine. As time goes on it will get worse between the neighbors. He believes ordinances should promote tranquility not festering problems between neighbors.

Marilyn Bane, 622 ½ B Canyon Road, explained that they have been doing this for months and months and months. She said for those that they have appeared before previously they know how difficult this is. She stated that she has worked with Councilor Wurzbarger and the management companies to bring some sort of perspective to what they could do to recognize the true damage being done by having unregulated short term rentals. The issue is not really noise or garbage or traffic. The real issue is not knowing who is there. People feel they do not have neighbors anymore. She does not think the answer is only short term rentals because a lot of it is second and third homes not occupied. This is a serious problem and it is disruptive to the fabric of the community. She thinks it is patently clear that the City has not been fair in enforcing the ordinance on the books and it was unfair the way this evolved. They now have a situation where neighborhoods are invaded and an industry has been passively accepted and encouraged by the City. She believes that no one is in this alone. The plan has been to come up with a way to not put a business that they have aided and abetted out of business the next morning.

Diane McEvelly, 232 Anita Place, has lived here since 1971 and as a single mom she rented out her garage turned into a guesthouse to a teacher for \$200 per month. Then in 1980, she had a conversation and decided to rent for \$25 a night which scared her. She does not have an inheritance. She spoke for the people scared to be at this meeting. They feel criminalized for doing an honest job at one of the oldest professions

of giving shelter. She has had no problems with any renters except when she was out of town for one year. She has many returnees that are a gift to the City and the neighborhood. She does have one neighbor that complains at the first of every month. She is protecting her home not her investment. Santa Fe is a goldmine and they are attracting gold diggers, but she is not in that category.

Marilyn Proctor, 2839 Don Quixote, stated that she has been doing this for 27 years. She has three children. The proposal by Councilor Wurzburger is a great reduction from what they are doing now, but they can live with this. They abide by the rules of the homeowner's associations. She had a pleasant conversation with Mr. Thompson as they just started managing the property next to him. They do have a 24-hour answering service that is there for problems. The people that come spend lots of money. She said they need to think about the whole city and the people employed by these short term rentals. She urged support of Councilor Wurzburger's proposal.

Julia Nathanson, 2340 Botolph Road, said she is opposed to short term rentals in zoned residential neighbors. She said when people buy property in a zoned residential neighborhood they expect to live next to someone. When people buy homes for short term rentals it is unfair to expect to change the law for their convenience. She said no matter how nice the people are they are transients. She would like to see the current ordinance maintained and enforced. She believes Councilor Heldmeyer's proposal is more reasonable if they want to see a change. Enforcement is the key.

Amado Gutierrez, 624 East Alameda, said his complaint is that he bought a condo with a covenant that said no less than 6 months. Others were sold properties under the assumption that they could do short term rentals. He wants it enforced as they are not following the covenant or the ordinance. He believes the management companies and realtors should lose their license if they are not following the rules.

Juan Valdez, West San Francisco Street, does not see anybody representing people like him so he wanted to speak. He grew up on the west side of San Francisco when nobody wanted to live there and now everybody wants to live there. He has a large home and he helps others that are homeless alcoholics to change their life. He said these people cannot pay anything and eventually they make a contribution. He thinks the proposal will not be beneficial for those that are in recovery. He understands they might not want him in their neighborhood, but he is from here and has nowhere to go.

The public testimony portion of the public hearing was closed.

Questions and comments from the Commission

Chair Gonzales asked what the date for City Council is.

Ms. Price said they are tentatively scheduled for Finance and Public Works and then it will go to Council for request to publish and then public hearing. She anticipates it will probably be the last meeting in September.

Chair Gonzales informed the audience that the Planning Commission will make a recommendation and the final decision is up to the Council.

Commissioner Hughes asked if it is accurate that the cleanup on Chapter 14 made this illegal.

Frank Katz, City Attorney, stated that the law always has not allowed a commercial use in a residential neighborhood, but there was no explicit provision of the City Code that said you cannot do short term rentals. It has always been against the rules. It is true that this was explicitly put in the ordinance as part of the cleanup, but he does not think it was changing what the law was.

Commissioner Hughes asked why the current law has not been enforced.

Mr. Katz said it has never been enforced to his embarrassment. When he came on board a year ago, the question came up. The Task Force had been meeting and issued their report with the expectation that there would be ordinances introduced. He made the decision that it would be unwise to change what was going on for 20 years and suddenly begin enforcing this. He has been awaiting these bills. He noted that if there is no resolution through these bills he will have to enforce the law as it is.

Commissioner Heltman said it states that licenses or permits may be issued to the owner only, yet often short term rentals are handled by another party. She is unclear on this. She asked where it says they have to meet certain qualifications to be on the list and allowed to have a short term rental. She questioned if they have a house paying for the permit, if they have to pay an additional amount for the accessory unit such as a guesthouse.

Ms. Price explained that the permit would be issued to the property owner, but if the owner contracted out the management of the property that would be an anticipated activity. She said regarding who qualifies, under the proposal from Councilor Wurzbarger; if you have a dwelling unit in a residential area you could apply for a permit and operate it according to the rules. She said regarding the fees, if you have a dwelling unit and you want to rent it out that would be \$1000 per year. If the dwelling unit is a residential resort type of property where they have amenities and security, then the fee would be \$500 due to having their own controls built in as the City would anticipate a lesser expenditure in monitoring.

Commissioner Heltman asked who would enforce not allowing recreational vehicle parking.

Ms. Price said this will be handled by the Land Use Department enforcement staff. They are adding two staff people full time to monitor and process the short term rentals. The intent of this provision was that they did not want it rented out to someone and then on top of that more visitors coming to town camping in the driveway.

Commissioner O'Reilly asked how the hearing officer would review the case.

Ms. Price said it is written similarly for the criteria other boards use to evaluate special exceptions. The testimony would be taken and evaluated according to the criteria.

Commissioner O'Reilly had a hard time with the hearing officer making a decision that a short term rental is harmonious with the neighborhood.

Ms. Price explained that the hearing officer would listen to the testimony, zoning maps and surrounding uses would be reviewed.

Commissioner O'Reilly thought this could be drafted in a way that a property not be allowed to have short term rentals in the first place if it is not deemed harmonious. He asked if the current law could be modified so higher fines are assessed when there is a problem and it is determined it is a short term rental unit. He understands the problem seems to be the absentee owners. He suggested they modify the existing code so the owners are penalized more heavily.

Ms. Price explained that all of Chapter 14 is under the general penalties section which means they can cite into Municipal Court. The judge can fine the person up to \$500 per day or 90 days in jail for each citation the City brings and the person is found guilty.

Commissioner O'Reilly asked how they derived at the 17 rentals.

Councilor Wurzbarger said it was based on looking at when they have the most rentals and recognizing a compromise. It was tied to the primary time for rentals in the summer and responding to the notion of restriction. Typically the managed units are rented 25-35 times per year. The neighborhood would be back more than less. This will reduce the rentals by 50%, not as some state that this is an intense commercialization. The requirement for realtors to disclose the law will affect some to not to do this. Over time the numbers of rental units have remained constant, so in the last 10 years it has not suddenly gone up.

Commissioner O'Reilly noticed that the figures assume 50% compliance.

Councilor Wurzbarger explained that was to start with for the first year. She did not assume the first year would have 100% compliance. She wants to set up an enforcement system so they get to 100% so they know how many rentals they really have. She wants the City to have a 24-hour person to respond. She said compared to what they have right now this is more restrictive. She understands the opposition to the hefty fees, but they need the money to monitor the problem. There is a one year re-evaluation built into the ordinance at which time she thinks they will know how many rentals they really have and the real gross receipts impact.

Commissioner Lindell pointed out that she sat on the subcommittee with Commissioner Armijo and former Commissioner Trujillo. She thinks they have come up with something that is good due to the fact that nobody likes it. She thinks they have found middle ground. Businesses have the opportunity to continue, although they say they cannot thrive. Neighbors will still have short term rentals that they do not want, but they will have input. She feels comfortable that this will be reviewed in one year. She noted that if this were a simple problem this would have solved a long time ago. A tremendous amount of work has been put into this and they are not under the illusion that it is perfect. She does not think either side is driving the train. She asked her fellow Commissioners to support this. There are two sides that are so opposed that the middle ground is the best they can hope for.

Commissioner Armijo thanked Councilor Wurzbarger, Commissioner Lindell, former Commissioner Trujillo, and Jeanne Price. He said currently there is zero enforcement and this is a big step in the right direction. There are plenty of things built in, so

neighbors can come in and go through the appeal process. There are some ideas as far as if people are not participating properly and if so many infractions are issued then the permit will be revoked. He knows there are things that still need to be fine tuned. He also asked the Commissioners to vote in favor of Councilor Wurzburger's proposal.

Commissioner Romero thanked the Councilors. He said as a lifelong resident, Santa Fe is in a struggle between hometown USA and Disneyland USA. He asked as a fully sanctioned commercial venture, what assures them that folks with disabilities can enjoy some of these properties at the same level as others can.

Ms. Price referred to page 2, paragraph 4, all of the building, fire, life and safety codes shall be met.

Commissioner Romero questioned if that includes wheelchair ramps and accessible bathrooms.

Ms. Price believes it does, but said she would double check.

Commissioner Salazar asked if someone wanted to file a complaint in a neighborhood, how the hearing takes place and at what time. He would not want people to have to take off of work.

Ms. Price said they have anticipated if the ordinance is adopted that they will need to come up with policies and procedures with staff and the Attorney's Office. Some of that detail will have to be outlined in the policies and it will be specified in the contract with the hearing officer.

Commissioner Salazar asked if one complaint is enough to take it through the process.

Ms. Price said the applicant makes application and gives notice within 200 feet and if any of those objected then a hearing would be held.

Commissioner Salazar asked if the Commission recommends approval if the neighborhood associations could be notified as well.

Ms. Price explained that the Commissioner could make that amendment.

Chair Gonzales thought they might need yearly correspondence to inform neighbors to encompass those that move in and out of neighborhoods.

Ms. Price said the permit is for two years for that reason.

Chair Gonzales thanked everyone for the great amount of time it took sitting on this subcommittee.

Commissioner Lindell moved to recommend to City Council acceptance of the 7/27/07 draft ordinance with amendments introduced by Councilor Wurzburger, Commissioner Armijo seconded the motion.

Commissioner Heltman asked if both bills will be discussed.

Chair Gonzales explained that both bills were discussed at this and previous hearings.

Commissioner Heltman did not hear any discussion.

Chair Gonzales explained that the subcommittee took both bills into account and tonight was the final hearing with a motion to move forward with a particular bill.

Commissioner Salazar made a friendly amendment to include the neighborhood associations and homeowners associations in the notice, Commissioner Hughes seconded the motion which passed by unanimous voice vote.

The motion passed by majority voice vote of 7 to 1 with Commissioner Romero voting against the motion.

- 2. An ordinance amending Section 14-6.2(A)(6)(a) SFCC 1987; creating a new Section 14-6.2(C)(12); amending Table 14-8.6-1 SFCC 1987; and making such other changes as are necessary; regarding the Short Term Rental of dwelling units in residential districts. (Councilor Heldmeyer) (Jeanne Price, case manger)**

Items 1 and 2 were combined for purposes of staff report, public hearing and Commission comment and action, but were voted on separately.

Commissioner Heltman moved to add Councilor Heldmeyer's ordinance to be considered by the City Council. The motion died for lack of a second.

Commissioner Lindell moved to recommend City Council not pass Councilor Heldmeyer's bill, Commissioner Armijo seconded the motion which passed by majority voice vote of 7 to 1 with Commissioner Heltman voting against the motion.

F. NEW BUSINESS

- 1. An ordinance amending Section 14-9.2(F)(1) SFCC 1987 regarding the general requirements for sidewalks. (Councilor Heldmeyer) (Jeanne Price, case manager) (POSTPONED FROM JULY 19, 2007)**

Memorandum from Jeanne Price prepared July 23, 2007 for August 2nd Planning Commission meeting is incorporated herewith to these minutes as Exhibit "2."

Ms. Jeanne Price presented the staff report included in Exhibit "2."

Public Hearing

Councilor Heldmeyer stated that this follows several resolutions passed by Council to make the City more walk-able and accessible. She said sometimes this was not enforced, so at times very large additions are put in without sidewalks. The current code was unclear, so it was enforced when staff felt like it. She added that she usually gets in trouble when staff says will you sponsor other changes, but she agrees they need to cleanup that part of the code. The sidewalks need to be barrier free from the beginning.

There is an escape clause if it is impossible or extremely cost prohibitive in relation to the development changes proposed.

Dave McQuarie stated support of the bill because of the ADA aspect. He is in agreement with most of it, but he is not in agreement with the bill on page 2, lines 18 and 19 that refers to a qualifier of 500 feet. According to the alteration definition of ADA, there is no qualifier because if you make any alteration ADA comes into effect. He wonders about the legality.

Ms. Price thought the confusing issue is paragraph b as they are describing what kind of work somebody is doing that will require the sidewalk. She said renovations over 500 square feet require the sidewalk. Alterations to streets do require accessibility, but this is for alteration of a non-governmental building.

The public testimony portion of the public hearing was closed.

Questions and comments from the Commission

Commissioner Hughes asked if this covers existing conditions where no improvements are taking place.

Ms. Price said if the sidewalk is in poor condition you can be required to repair the sidewalk according to Chapter 23.

Commissioner Hughes said there are plenty of sidewalks that need that enforcement.

Ms. Price said that is part of different measures to become more pedestrian friendly. She said there is a resolution to initiate a pilot project to determine how much it would cost to get sidewalks repaired.

Councilor Heldmeyer explained that they have the small sidewalk program which neighborhoods can apply for if there is a mix of sidewalks or they are in ill repair. In that case the homeowners are not responsible for the work done. She said they send out enforcement officers on sidewalk issues on a complaint basis. She said one of the resolutions is to get a survey of the City sidewalks for accessibility and curb cuts.

Commissioner Hughes asked if the light poles, stop signs, fire hydrants, curb cuts and mailboxes would be addressed in this ordinance.

Ms. Price said they would all be included.

Commissioner Hughes noted that he would like to see the materials be permeable. He asked how much extra that would cost.

Ms. Blackwell said they have been discussing permeable paving in certain locations. She said the maintenance of permeable paving is the issue. Base coarse access areas can be eroded with moisture, tires can create a rut and if it is not filled constantly it gets worse. She said for now they are encouraging concrete. They are holding off on recommending permeable pavement for public uses until the pilot projects come back.

Councilor Heldmeyer said there was a project 4-5 years ago with permeable paving that did not make it through the first winter. The feeling is that there needs to be some testing before they recommend it across the board. If this is not done right they will have another inaccessible sidewalk.

Commissioner O'Reilly expressed concern with the reference to NMDOT PAD details. He explained that the problem is that some are good and others are terrible where you cannot build what they are intending to build from the detail. He used the drive pads as an example as none of the driveways in Santa Fe are built this way. The City has been using a 6 inch lay down pad with a flare on each side and recently the flare has been widened to comply with ADA, but the PAD details do not call for that flare. He explained some of the problems with this. He wanted to incorporate the NMDOT PAD details onto their own detail sheet rather than incorporating the details that do not work.

Ms. Blackwell reviewed what staff came up with and according to staff they should use the NMDOT PAD. She said in some areas it is more stringent than what the City is requiring, although not everything is covered in this. She suggested having a meeting with those that are interested to come up with a modified version including street details.

Commissioner O'Reilly expressed interest and asked how to incorporate that tonight.

Ms. Lovely said they could postpone or say that they approve Commissioner O'Reilly and staff to come up with details for the drive pad.

Commissioner Romero said this is an important issue. He asked under what circumstances no curb or gutter would be included so an alternative pedestrian route would be approved.

Ms. Price stated private streets where no curb and gutter are required by street standards could be an example. There might be drainage and an unpaved street. She said they might want a gravel route outside the street rather than an actual paved sidewalk with curb and gutter.

Commissioner Armijo asked how they will address moving a PNM transformer. He said moving the transformer could cost more than the remodel. He understands the sidewalk improvements, but asked who would be responsible for other items.

Ms. Price said the developer is responsible, but the Planning and Land Use Director can waive this. An alternative route might be suggested. In some instances it may require an easement for the movement.

Councilor Heldmeyer said in the past there were enforcement issues. The Land Use Director decides when it is feasible or practical as it is not the case that they expect someone to spend as much as they did on the addition. There is always an escape clause for discretion and staff decisions always have appeals. They did take out the case where small additions to residences would not have to do this as they know in some situations the cost of changes are more than the cost of construction. She said including a proportionality index is fine if the Commission wants to.

Commissioner Armijo pointed out that there are tons of sidewalks that need to be improved in every area of the town. He asked why it takes four years to determine what needs improvement. He feels it would take four days of walking around the City.

Ms. Price said that was a resolution passed by Council a while back. She said staff did find anywhere you go the ill repair would be the case. She said they wanted to study the issue so staff knew how to prioritize and find out how much it would cost.

Commissioner Armijo suggested they start within the core of the plaza area. He said many of the businesses could pay for the improvements.

Commissioner Lindell moved to recommend approval of the ordinance amending Section 14-9.2(F)(1) and recommending Commissioner O'Reilly work with staff to come up with the definition and design of the driveway pad, Commissioner Hughes seconded the motion which passed by unanimous voice vote.

- 2. An ordinance amending Sections 6-4.3; various sections of Chapter 14; renaming Chapter XXVI; creating a new Article 26-2 SFCC 1987 all related to affordable housing, the Santa Fe Homes Program and low priced dwelling units. (Ron Pacheco and Kathy McCormick, case managers) (POSTPONED FROM JULY 19, 2007)**

Memorandum from Ron Pacheco prepared July 22, 2007 for August 2nd Planning Commission meeting is incorporated herewith to these minutes as Exhibit "3."

Mr. Ron Pacheco presented the staff report included in Exhibit "3." The changes will allow staff to administer both programs under the Santa Fe Homes procedures. He reviewed the changes included in Exhibit "3."

Public Hearing

There was no public testimony on this issue.

The public testimony portion of the public hearing was closed.

Questions and comments from the Commission

Commissioner Hughes asked if the changes grandfather in anybody.

Mr. Pacheco explained that any project if previously signed will be administered under the terms they were signed on. This will not change what the developer agreed to although it will change how the projects are administered.

Commissioner Hughes asked if this will affect Santa Fe Estates.

Mr. Pacheco explained that the agreements will be honored.

Commissioner Armijo understands that some of affordable homeowners are being hit up on tax value vs. purchase value. He asked how they can help this scenario.

Mr. Pacheco said people who bought affordable homes were not taxed for the full value of the home because the former County Assessor interpreted it as the buyers were taxed for the value of the home they own. Under the new County Assessor it has been interpreted that State Law does not allow that to happen. Many people are being taxed for the higher amount. Staff's proposed fix is to go to the State legislature with a bill by Representative Lujan proposing to change the law. Santa Fe has the most aggressive ordinance in the State, but when other cities follow their buyers will be affected as well. The governing body approved a \$20,000 appropriation that will be administered by one of the City's non-profit housing partners and people can go to the fund and prove necessity for reimbursement in the meantime.

Commissioner Arnijo said another issue is the developer is stuck with the condo fees on closing. He said he lost \$12,000 on a project due to this.

Mr. Pacheco said he is referring to the association fees being included in the price the affordable family pays. Under the changes to the ordinance, the fix proposed is the first \$75 is included in the price, the remaining is paid by the homeowner and any increments in the future are absorbed. The rationale is that the homeowner will get repairs done as needed due to the association fees so they should feel part of the community by sharing in the cost. He said high fees can make it virtually unaffordable.

Commissioner O'Reilly said in the old ordinance the for profit developer could get impact fees reimbursed and it appears to be eliminated now.

Mr. Pacheco said in the past when a for profit developer was able to prove that an affordable buyer went in the unit the fees were reimbursed. He said now they ask the developer to prove that an affordable buyer will go in the unit and they waive the fees up front. It is the same benefit but it is waived up front. The process for reimbursement is quite onerous, so this will be a better system. He is still in the process of having to go back and document affordable units to reimburse developers.

Commissioner O'Reilly referred to page 20 where the cost of capital improvements are deducted, but the owner does not share in appreciation of improvements. He asked if that is correct.

Mr. Pacheco asserted that if a homeowner invests in upgrading the home it will increase the price of the home. At the time of sale, the resulting price will be higher as the result of the improvement. The homeowner will not receive the full benefit, but he is sharing in the added value.

Commissioner O'Reilly feels that when a homeowner pays 100% for the capital improvements the homeowner should be allowed to have the appreciation of that improvement and then have his pro rata share of the general appreciation of the home.

Mr. Pacheco agreed with the logic, but asked how he can figure that added countertop and the exact appreciation. He feels that would be a difficult number to come up with. The same homebuyer is getting consideration as they have fee waivers in all the permits that they will never be charged for. He said they may lose a little in Commissioner O'Reilly's interpretation, but they have received other benefits so it balances out.

Commissioner O'Reilly commented that some improvements would be easier to assess than others. He asked if they are now going to require 40% affordable housing for annexation into the City.

Mr. Pacheco explained that in the past two years for annexations, the Governing Body has interpreted that to mean the project is requiring additional city services that a developer in the City will not be getting. They are now required to extend fire and police and water services outside the City boundary. He said the belief seems to be that the Governing Body should ask for a little more which ended up being 40%. The additional 10% is allowed to be priced at an income up to 120% of AMI which will capture more police, nurse and teacher affordable buyers. This is the reason that has been included in this proposal.

Commissioner Armijo moved to recommend City Council approval of ordinance amending section 6-4.3 and renaming Chapter 26, Commissioner Lindell seconded the motion which passed by unanimous voice vote.

- 3. Case #M 2007-19. 1003 Governor Dempsey Drive Escarpment Regulations Variance. Karl Sommer, agent for Susan Peck Massey requests a variance to the escarpment regulations to allow the construction of a new residence within the Ridgetop Subdistrict at the same location as the existing residence. The property consists of 2.408± acres and is zoned R-1 (Residential, 1 dwelling unit per acre). (Lou Baker, case manager) (POSTPONED FROM JULY 19, 2007)**

Karl Sommer asked if they wanted to handle the next three cases as a group as they are similar.

The Commission wanted to do the cases separately.

Memorandum from Lou Baker prepared July 24, 2007 for August 2nd Planning Commission meeting is incorporated herewith to these minutes as Exhibit "4."

Purpose and intent of the Escarpment Overlay District distributed by Karl Sommer is incorporated herewith to these minutes as Exhibit "4(A)."

Photos and drawings of the site and proposed placement if outside the escarpment are incorporated herewith to these minutes as Exhibit "4(B)."

Letter from Edwin and Melanie Thorne dated August 2, 2007 is incorporated herewith to these minutes as Exhibit "4(C)."

Letter from Dorothy Gilbert dated August 2, 2007 is incorporated herewith to these minutes as Exhibit "4(D)."

Letter from Michele DeLacey-Heldman dated August 2, 2007 is incorporated herewith to these minutes as Exhibit "4(E)."

Ms. Lou Baker presented the staff report included in Exhibit "4."

Staff cannot support the application request for a variance in order to be consistent with the purpose and intent of the Escarpment Overlay District Ordinance. If the Commission determines the merits of variance application warrants approval staff recommends the following conditions:

1. The applicant shall comply with the Water Allocation and/or Water Offset Retrofit provisions of Ordinance No. 2002-29 and Resolution 2002-55 at the time of permit application or water hookup request. Compliance shall be achieved by use of either retrofit credits or water transfer; and
2. Comply with comments from the Fire Department (Exhibit F) – J.T. Bolleter, Assistant Chief.

Ms. Blackwell explained Charlie Gonzales's memo a little further. She said if an alternative siting is requested they do not have the authority to conduct the visual analysis process if it is outside the escarpment overlay district as there is no code regulating the visual impact. There is no opportunity for staff to compare. The memo describes strict compliance with the code which requires building outside the escarpment because there is reasonable use outside the escarpment. There is common sense in deliberating about the case. Mr. Gonzales did not do a visual analysis, but did drive to the location of the properties and looked at it from the public roads.

Public Hearing

Karl Sommer, PO Box 2476, Santa Fe, 87504, was sworn. He gave some explanation of the existing ordinance included in Exhibit "4(A)." He said the reason they are here is because the code was changed in September of last year. The ordinance came about as a result of Canada Ancha when there was a cry about the roads getting bladed for houses along the top of the ridge which was the genesis for the escarpment overlay district. This had the effect of regulating existing lots that did not have houses on them and regulated subdivisions that had not been created. One of the regulations was that if you had a lot in the escarpment overlay district and had a buildable site inside the ridge top and you did not have one outside the ridge top you could build at 14 feet. If you had a site outside the ridge top, but in the foothills you were forced to build in the foothills unless your home did not fit. From the time the ordinance was adopted, staff had been interpreting it that if you had a lot in the ridge top that had ridge top and foothill subdistricts and you had a site in the foothills if somebody designed a house that did not fit on the site in the foothills staff interpreted the ordinance to allow them to build in the ridge top away from the view line. That interpretation gave rise to the change in the ordinance. You can no longer ever build in the ridge top subdistrict if you have a site outside the ridge top. If there is a site outside the ridge top you must build there. The change applies to cases where somebody's home was built before the ridge top ordinance was in place. The affects are demonstrated by these three cases tonight. He believes this is an unintended consequence. There is good reason for these applications to be approved from a planning and legal standpoint.

Mr. Sommer explained that the Massey lot is subject to not being able to build in the ridge top because the single story home was a pre-1992 lot and the home was built before the escarpment ordinance. There was a lot line adjustment to allow the neighbors a bigger driveway. If they had not done the lot line adjustment, the ordinance would not apply to them. The issue becomes what makes sense as they would like to build the home in the same place. The intent of the escarpment ordinance is to limit visibility, preserve the natural environment and build homes that are less obtrusive. In this case, if this house is torn down, the only other place to build outside the escarpment district is a location that from almost every public roadway is the most visible place on

the lot. The home would also have to be two stories if it were built in this location. This renders the entire lot unusable which is not the intent of the ordinance. There is a drainage course that runs right through the area and it is filled with trees that would have to be removed if the site were moved. The purpose is to preserve the natural terrain and another building site would mean trying to replace the natural terrain where the home is torn down which can be very difficult. He reviewed the mockups included in Exhibit "4(B)." The house cannot be modified under the new changes to the ordinance. He does not believe that was well considered or discussed when the changes were made to the ordinance. Anybody along the ridge top area could not add a bathroom or garage to their property as it is now drafted because it would be a legally nonconforming use. The result is a punitive effect on landowners in areas not intended to be affected. The purpose behind the ordinance is to protect ridge top areas from development that would be more intrusive. This property would be used in the exact same way in the exact same location with the house in the most suitable place for a house and the least disturbance. They will fulfill the intention of the ordinance. He referred to the letters from the neighbors. He said they did not consider this type of situation when the changes were made to the ordinance. The reason the ordinance was amended was due to developers doing lot line adjustments so there was no place outside the ridge top district to build and the amendment prohibited resubdivision of lots where that was going on. This is not that case. He said generally these cases are controversial and the Massey's have worked with their neighbors which is a testament to the fact that there is not opposition to this case.

Mr. Esquibel explained that nonconformity of a structure is a structure that was created prior to the effective date of the code or an ordinance. The ordinance does not encourage the survival of nonconformities, but encourages them to come into compliance once they cease to exist. In the case of a demolition it would no longer be nonconforming and any structure built would have to conform to the code today. The only way a nonconforming structure can not be considered demolition is should the structure be destroyed by any means to an extent more than 66 2/3% of its floor area at the time of destruction shall not be reconstructed except in conformity within the provisions of this chapter. He said due to the age of the house, the structure has some nonconformity.

Ms. Blackwell pointed out that staff spent a lot of time talking about the issues when they did revise the ordinance. The intent talks about the visual impact and the zoning overlay map was created by looking from 19 particular points. The map is what staff is required to regulate to and so there is a line and anything inside has to follow the rules and anything outside does not. She disagrees that these types of cases were not discussed as when the changes were made they discussed this type of condition where existing structures are and if they would be willing to comply with the restrictions. The discussion was the intent of the original ordinance was to not allow development in the ridge top, but it was years of legal discussions. The law did not say you have to build when you prove you have reasonable use of the lot. In her discussions with Councilor Heldmeyer, she says the main point was that there would be no development in the ridge top. She said they did consider this situation and the outcome was let them come in if they feel they have a good argument.

Mr. Sommer said he has worked with it since it was adopted and it was not the intention to disallow development in the ridge top. The intent was to prohibit subdivisions in the ridge top where there were lots without buildable areas outside the ridge top. He used

Los Vecinos as an example. Los Vecinos developed the subdivision so that every lot had a buildable site outside the ridge top in the foothills. He has worked on numerous cases similar to this.

Melody Peters Thorne, 1005 Mansion Ridge Road, was sworn. She agreed with Mr. Sommer as along with Karen Walker, she worked on the escarpment ordinance. She said when they bought their property, they wanted to fence their property, but did not have enough room to drive down the driveway to get to the garage, so the previous owners, the Kessler's allowed them to purchase enough land to get down to the driveway. The Dempsey Subdivision works well together as they all have lovely views and they cannot really see each other. If the Massey's are forced to rebuild their home in the proposed site, it will be a two story house in front of her kitchen and she will no longer have views. This would also put them in a drainage area that she will have to deal with as well. In addition, there will be a huge scarred area that will have to be replanted and restoration is expensive and a great deal does not come up even with the recent rain. She believes it would be impossible to get the area to look native and natural. Mansion Ridge Road is a difficult road to drive in the sense that there are curves and if the Massey's have to build a home in the new site they will have to do a new driveway which will make Mansion Ridge more difficult and dangerous to drive. She pleaded to the Commission's common sense that it makes sense to do this where it is. It will create more problems if they have to build some place else.

Stephen Samuelson, 101 West Marcy, was sworn. He pointed out that the floor elevation of the house at the existing location would be about 72'10' and if they build on the alternate site the floor elevation will be about 72'4'. If they build 14 feet at the current site, the two story home would be taller in relationship than the house built on the ridge top.

Mr. Sommer pointed out that the lines on the map were drawn with a thick black marker. There is no logical distinction as the elevations are essentially the same so the map was not done with the kind of precision they are trying to apply.

The public testimony portion of the public hearing was closed.

Questions and comments from the Commission

Commissioner Armijo felt these cases call more for site visits than anything else so they can review where the existing sites and proposed sites are. He would like to see story poles. He could make a better judgment if he saw the site. He suggested postponing each of the three cases so they can physically review the sites.

Mr. Sommer asked the Commission to take the testimony so it is in record as they have been waiting quite awhile. He agreed a site visit would help as the Commission could see the proof.

Ms. Lovely said it would be better not to open up for testimony until this case is decided.

Commissioner O'Reilly asked when the home was built.

Mr. Sommer said it was started in 1981 and completed in 1984 with several additions over the years.

Commissioner O'Reilly asked if it is beyond repair already.

Mr. Sommer explained that there are structural problems as a result of leaks and when it was remodeled it was not done well which added to the problems. He said a remodel would require a reconfiguration that is not allowed under the ordinance.

Chair Gonzales asked Commissioner O'Reilly to comment on whether the Commission should proceed or not.

Commissioner O'Reilly said he can look at the plans and render a decision, but it is helpful to look at them on site when they are on steep terrain.

Commissioner Lindell said her preference is to proceed.

Commissioner Armijo moved to postpone Case M-2007-19 to allow for a site visit with the condition the property owners would provide story poles for heights and proposed square footages, he suggested they conduct the visit on August 16th with the hearing August 30th, Commissioner Hughes seconded the motion.

Mr. Esquibel suggested coming up with a starting point and then they could drive to all the sites at 5:30 p.m.

The motion failed on a 3 to 4 roll call vote.

Those voting for the motion: Commissioners Hughes, Armijo and Salazar.

Those voting against the motion: Commissioners Romero, Bordegaray, Heltman and Lindell.

Commissioner Salazar asked what the difference is in the size of the homes.

Mr. Sommer replied 2500 square feet.

Commissioner Lindell asked for clarification as it says under roof of 9195 square feet.

Mr. Sommer explained that the comparison was to heated area and the total roofed area includes the existing portals. The 3400 square feet is the heated square footage of the existing home.

Commissioner Lindell asked how the site is used in exactly the same way when you have almost 6000 square feet on an existing 3500 square foot site.

Mr. Sommer explained it is a single family residence still.

Commissioner Lindell referred to the variance criteria. She said 2/3 of the property is in the overlay district and much of the balance is slope greater than 30% which she does not see.

Mr. Sommer pointed out the area.

Commissioner Lindell thought it appeared that the vast majority is 20%.

Mr. Sommer said there are significant 30% slopes and the picture tells what is out there. Commissioner Lindell referred to criteria 2; she asked for clarification that the staff says the lot acreage and zoning permit the development of a structure outside the overlay district.

Ms. Blackwell said in order to determine a buildable area, they take out the 30% slopes and City mandated setbacks. After doing so, they have to come up with at least 2000 square feet where no more than 1000 square feet of that is in 20-30% slopes. There is really nothing that would fit the criteria of at least 2000 square feet. The only place they could find was in the corner according to terrain management rules.

Commissioner Lindell understands that structures must be designed and built as far away from the view line as possible. She referred to the fourth criteria stating the variance is allowed to achieve a reasonable use of the land. She asked if the current house is inhabitable and if it is a primary residence.

Mr. Sommer said they can live in the house. The Massey's have a home in Houston, but are moving to Santa Fe to make this their primary residence.

Commissioner Hughes asked for Commissioner O'Reilly's analysis.

Commissioner O'Reilly stated that in his experience escarpment issues often comes down to the visibility of the proposed construction and it is correct that the lines really were put on old maps and are not that accurate. He believes it comes down to is this building constructed in the alternative site more of a visual imposition than a building being rebuilt where the existing building is. He said they have heard from the neighbors who feel building where the old building stands is preferable. He asked if they want to make a situation worse. He agrees it would be impossible to bring that scar back to make it look like natural terrain. If the variance is granted because it is better for the environment should the variance be granted to build a home the same size or twice as big? He agrees on one hand that the escarpment ordinance was not intended to discourage building in the ridge top, but the new ordinance does just that. He said if the building cannot be renovated he does not think they can force someone to stay in the home. He added that the other two cases are more difficult and he agrees a site visit is needed on those. He thinks it would be fair to require the home be in a comparable size as this will limit the variance to the minimum amount needed which is one of the requirements.

Chair Gonzales asked how they know a larger home will be more obtrusive without a site visit.

Commissioner O'Reilly does not know that a site visit is required to know that a home 100% bigger is going to be more visually imposing than a smaller home.

Mr. Sommer said the Commission could see a design so they could make a better assessment. If the size of the house is the issue they may want to see how it will be located and how it compares.

Commissioner Bordegaray understands they have more latitude to do what Mr. Sommer suggested than what she was used to with historic design as they were not allowed to redesign the project. She has a hard time not having visuals. She feels the size does

sound like it matters and the footprint will be larger. She is not concerned with the visibility as she is familiar with the neighborhood. She feels based on how the escarpment overlay ordinance was drafted the intentions and methods used have room for error and require a case by case analysis. She feels this one is obvious, but variances should not be overly granted in a way that increases the footprint.

Commissioner Lindell reminded the Commission that they are trying to look at a variance that grants the minimum variance that makes reasonable use of the land. She shudders at going from 3500 square feet to almost 6000 square feet with 9195 under roof. This seems way past the minimum variance to grant reasonable use of the property. She believes this is way too much in terms of the criteria.

Mr. Sommer clarified that there is a swimming pool on the site in the back of the house and house is being moved into that location with the pool being obliterated, so the area is already disturbed.

Commissioner Romero echoed Commissioner Lindell's concern.

Mr. Esquibel said the Commission has the ability to mitigate some of the issues related to their concerns.

Commissioner Lindell moved to deny case M-2007-19, Commissioner Heltman seconded the motion.

Chair Gonzales asked if Commissioner Lindell wants to deny this case completely or wants to require replacing the home with the same size home.

Commissioner Lindell stated that the case as presented to the Commission for the variance is not acceptable, so her motion is to deny the variance.

Commissioner O'Reilly asked if they could approve the variance with the added condition that it has to be a smaller square footage.

Ms. Lovely replied yes.

Commissioner Lindell withdrew her motion.

Commissioner Lindell moved to allow the variance in Case M-2007-19, but not to exceed the square footage of the existing home, Commissioner Heltman seconded the motion.

Commissioner Armijo said he cannot see how they can make the decision without having a structural report explaining if this house needs to be knocked down or not. They also do not know the buildable area. He said all the factors are not taken into consideration. He said after building in this town for 30 plus years, he cannot make a decision and will have to pass on any motion without seeing the elevations pertaining to the landscape.

The motion passed on a majority roll call vote of 6 to 1 with 1 abstention. Those voting for the motion: Commissioners O'Reilly, Heltman, Lindell, Hughes, Bordegaray and Romero.

Those voting against the motion: Commissioners Salazar,
Those abstaining from voting: Commissioner Armijo.

Chair Gonzales apologized to the public still in attendance, but recommended postponing the two remaining cases due to the hour and complexity of the cases.

3. **Case #M 2007-20. 500 Hillcrest Drive Escarpment Regulations Variance.** Karl Sommer, agent for John Scanlan requests a variance to the escarpment regulations to allow the construction of a new residence within the Ridgetop Subdistrict at the same location as the previous residence. The property consists of 7.848± 5.405± acres and is zoned R-1 (Residential, 1 dwelling unit per acre). (Lou Baker, case manager) (POSTPONED FROM JULY 19, 2007)

Commissioner Hughes moved to postpone the following cases M-2007-20 and M-2007-22 to August 30th for a hearing with a site visit on August 16th.

Commissioner O'Reilly seconded the motion which passed by unanimous voice vote.

Mr. Sommer informed the Commission that they will supply story poles at parapet height for the proposed location and existing location.

5. **Case #M 2007-22. 750 Canada Ancha Escarpment and Terrain Management Regulations Variance.** Karl Sommer, agent for Steven and Margo Pike requests a variance to the escarpment overlay district to allow construction on the ridgetop and terrain management regulations to allow for more than half of the building footprint to be constructed on slopes between twenty and thirty percent. The property consists of 2.163± acres and is zoned R-1 (Residential, 1 dwelling unit per acre). (Lou Baker, case manager) (POSTPONED FROM JULY 19, 2007)

Commissioner Hughes moved to postpone the following cases M-2007-20 and M-2007-22 to August 30th for a hearing with a site visit on August 16th.

Commissioner O'Reilly seconded the motion which passed by unanimous voice vote.

6. **Case #M 2007-24. Weston Studio Gallery General Plan Amendment.** Dell Weston, property owner requests approval of a General Plan Future Land Use map amendment to change the designation of 3.708± acres of land from Office to Transitional Mixed Use. The area is located at the southeast corner of Airport Road and Buffalo Grass Road. (Lou Baker, case manager)

This item was postponed per approval of the agenda.

7. **Case #M 2007-25. Weston Studio Gallery Annexation.** Dell Weston, property owner requests annexation of 3.708± acres of land, located at the southeast corner of Airport Road and Buffalo Grass Road. (Lou Baker, case manager)

This item was postponed per approval of the agenda.

8. **Case #ZA 2007-06. Weston Studio Gallery Rezoning from R-1 to MU. Dell Weston, property owner requests rezoning of 3.708± acres of land from R-1 (Residential – 1 dwelling unit per acre) to MU (Mixed Use). The property is located at the southeast corner of Airport Road and Buffalo Grass Road. (Lou Baker, case manager)**

This item was postponed per approval of the agenda.

- G. **BUSINESS FROM THE FLOOR – None**
- H. **STAFF COMMUNICATIONS – None**
- I. **MATTERS FROM THE COMMISSION – None**
- J. **ADJOURNMENT**

There being no further matters to come before the Commission, and the Commission having completed its agenda, Commissioner O'Reilly moved, seconded by Commissioner Heltman to adjourn the meeting. The motion passed unanimously on a voice vote and the meeting was adjourned at 10:20 p.m.

Approved by:


Chair Estevan Gonzales

Submitted by:


Denise Cox, Stenographer