

PLANNING & ZONING COMMISSION MEETING
6:00 P.M. DECEMBER 1, 2008
EDGEWOOD COMMUNITY CENTER
26 E. FRONTAGE ROAD
MINUTES

1. CALL TO ORDER:

Chairman Schober called the meeting to order at 6:00 P.M.

In Attendance: Commissioners Schober, Chemistruck, Fleming, Turner, and Wilhite were present. Commissioner Fulwiler was absent.

2. APPROVE AGENDA

Action: Commissioner Fleming made a motion to approve the Agenda. Commissioner Wilhite seconded the motion; the motion carried unanimously.

3. APPROVAL OF MINUTES

Action: Commissioner Fleming made a motion to approve the minutes of 11/17/08. Commissioner Wilhite seconded the motion; the motion carried unanimously.

4. Request for extension of the Campbell Ranch:

a. Phase one preliminary plat. Bulk Tract, SU-2007-11, 1288.9695 acres divided into 3 tracts, zoned master plan.

b. Village 2, 44.6587 acres divided into 92 residential single family lots.

Discussion: At this time the attorney for the Town's Campbell matters, David Henderson asked that the request for extension be handled as a quasi-judicial public hearing and all persons wishing to testify be sworn in. Mr. Henderson also requested all commissioners affirm no conflicts of interest or ex-parte communication. All commissioners affirmed no conflict or ex-parte.

David Campbell representing Campbell Corporation discussed why the preliminary plat should be extended; Campbell is requesting a 2 year extension of the plat approval. Mr. Campbell pointed out that the appeal was filed and decided by the Council in March of 2008 therefore no work could be done on the plat until that appeal had been heard and decided. Mr. Campbell stated the water company New Mexico Water Service Company which submitted a will serve was still in litigation over the water rights.

Mr. Campbell stated there were three reasons they believed they were entitled to an extension:

1. Vested rights because of the expenditures based on the improvements made since the approval.
2. Unavoidable delay-the legal battles prevented work on the plat which the council approved in the Spring. Mr. Campbell stated Campbell was continuing to work on securing on water availability, and that the Campbell Corp cannot estimate how long it will take to secure water.
3. Public interest-Mr. Campbell stated the plat was in the public interest and further characterized the commission's approval as being in the public interest. Mr. Campbell further stated it was not in the public interest to have approval removed in a year's time.
4. Mr. Campbell stated the residents of Sandia knolls had been very active in opposing the development at the PRC and presented a letter from the Sandia Knolls association to the PRC chairman David King. This letter was to show the delay has been unavoidable as the intervention of the association has created the unavoidable delay.

Mr. Henderson asked if Mr. Able, a Campbell Ranch attorney was familiar with the facts in the letter submitted with the request for an extension, Mr. Able stated he was generally familiar with the facts. Mr. Henderson stated he was asking this was that facts attached to the letter of request be made a part of the record:

Page 3 of 5 of Vogel Campbell & Blueher, P.C request for extension:

1. Hiring of Smith Engineering for the wastewater and drainage studies;
2. Hiring of GND, LLC MASTER PLATTING THE Subdivision including civil engineering;

3. Hiring of Hardwick Engineering for the development of a traffic study;
4. Cooperation with New Mexico Water Service Company in the PRC proceeding;
5. Engagement of lawyers to develop land use plans, including Covenants and Restrictions;
6. Engagement of EDAW Land Planning for assistance on the land planning;
7. Performance of well water testing in the Subdivision;
8. Cooperation and negotiation with Bernalillo County regarding Public Improvement District (P.I.D.) establishment;
9. Negotiation and execution of the Sandia Knolls Water System Improvement and Extension Agreement between the Company and the Developer;
10. Payment of legal fees associated with the company's efforts to obtain the declaratory judgment from the PRC (Developer has agreed to share equally in the costs of approvals and permitting related to the extension).

The letter further states: "We believe that the foregoing actions, and their concomitant costs have established that the Developer has met both prongs of New Mexico's vested rights test".

Ms. Mahalick asked Mr. Able when Smith Engineering was hired; Mr. Able stated he did not know.

Ms. Mahalick asked Mr. Able when GND, LLC was hired; Mr. Able stated he did not know.

Ms. Mahalick asked Mr. Able when Hardwick Engineering was hired; Mr. Able stated he did not know.

Ms. Mahalick asked Mr. Able when EDAW Land Planning was hired; Mr. Able stated he did not know.

Ms. Mahalick asked Mr. Able when Bernalillo County had been contacted for the PID; Mr. Able stated he personally began negotiating in March of 2008.

Ms. Mahalick asked Mr. Able if the highway access permit had been applied for which had been a condition of platting and the placement of a temporary office facility. Mr. Able stated no.

Ms. Mahalick asked Mr. Able if the subdivision improvement agreement had been prepared. Mr. Able stated no.

Commissioner Schober asked Mr. Campbell to state specifically how he believed this request was in the public interest.

Mr. Campbell-the public interest is served by allowing the developer to continue with the plat, and it is not in the public interest to allow land owners or non-land owners to be arbitrarily thrown out of the process.

Mr. Campbell used the analogy of a race and Sandia Knolls residents were pulling on Campbell's jersey and unfairly from reaching the finish line i.e. proceeding with their plat.

Commissioner Schober asked Mr. Campbell if the PRC reached a decision would it take another 24 months to complete their work? Mr. Campbell did not know as there are multiple hearings before the PRC, but Campbell is not a party before the PCD. Mr. Able testified that there were multiple hearings still to be decided before the PRC, the water rights, the expansion of service and there State Engineer still needed to render a decision about additional points of diversion.

Staff asked if Campbell Ranch had been in negotiation with Entramosa Water for service and whether Entramosa could supply the water. Mr. Able was not familiar with these negotiations.

Mr. Henderson asked Mr. Able what the conditions of the letter of service from the water company were?

Mr. Able did not know, Mr. Campbell read from the minutes of December 17th 2007 Planning Commission stating water was conditioned upon approval of New Mexico Water Service Company's ability to serve.

Mr. Henderson asked Mr. Campbell is he was aware of the Findings of Fact? Mr. Campbell affirmed but did not have a copy. Mr. Henderson read that the findings stated that Campbell Corp cannot receive final plat approval without further review from the PRC and the State Engineer. Mr. Henderson asked if Mr. Campbell would agree that Campbell was required to clear up any problems regarding the availability of water service.

Commissioner Fleming asked Mr. Henderson to explain the argument that the Campbell Corp had established a vested right which could not be taken away. Commissioner Fleming stated that in his opinion this would preclude being able to deny any preliminary plat. Mr. Henderson stated he did not agree with Mr. Campbell's characterization that a vested right had been established, but that case law requires all compliance with the all aspects of the subdivision ordinance. Mr. Henderson stated Campbell had not achieved compliance otherwise they would not be asking for an extension but would be asking for final plat approval. Mr. Henderson further stated that if the argument presented that the applicant that the expenditure of financial resources was sufficient to establish a vested right then it would need to be applied to all applicants and in fact would negate the extension request process. Courts will render a decision based upon whether the commission acted fairly or in an arbitrary and capricious manner.

Commissioner Fleming asked why when the water service looked like they were in jeopardy of not being able to serve Campbell Corp did not seek another water provider.

Mr. Campbell stated he did not believe a year was a very long time.

Commissioner Fleming asked Mr. Henderson if a completed PID application had been received as was required by the conditions of preliminary plat.

Mr. Campbell stated that Campbell Corp was approaching these conditions sequentially and it did not make a whole lot of sense to move forward until the water issue was cleared up.

Commissioner Turner asked about the water issue timeline-in 2006 Ms. Turner asked if the Sandia Knolls intervention was before the application for preliminary plat? Mr. Campbell stated that yes they had filed with the PRC prior to the requested preliminary plat.

Commissioner Fleming asked Mr. Campbell which studies would need to be redone for a new submittal.

Mr. Campbell stated that there were numerous studies which would need to be redone if the applicant reapplied several years from now.

Commissioner Fleming asked staff what studies might expire. Staff stated there might be a change in the grading and drainage requirements in the next few years; the commission had experience with ponding which was proving problematic for neighboring properties and there had been discussion about how better to serve the public safety then the present requirements.

Commissioner Chemistruck asked in the town's nine year history what was the longest extension requested? Staff responded one year.

Mr. Henderson asked what conditions were placed on the approval-staff responded meeting all aspects of the subdivision ordinance. Mr. Henderson asked if the applicant had been involved in litigation? Staff responded the applicant was involved in a bankruptcy.

Commissioner Schober asked staff for a report.

Staff reported that to date Campbell has not moved forward with the following:

1. Highway access permit which was also a requirement of placing the temporary office.
2. Wastewater permitting with the New Mexico Environmental Department.
3. Subdivision Improvement agreement.
4. Renewed PID application.

It was staff's opinion that Campbell Corporation was not any further prepared for preliminary plat then in December of 2007 and Campbell needed to clear up there various issues and reapply for preliminary plat once they are ready to move forward.

Citizen's testimony

Bruce Hawkinson-Mr. Hawkinson took a contrary view to the characterization of the Campbell preliminary plat approval as a race where they were being held back and characterized it rather as an obstacle course needing to be maneuvered through and that the applicant knew there would be difficulties. Mr. Hawkinson stated the residents were concerned about water in the area.

Janet Winchester-Silbaugh, Ms. Winchester-Silbaugh testified that Bernalillo County had published a report stating there was a significant decline in wet water from Frost road down to the Interstate. Bernalillo County reported that given another drought 20% of the wells could go dry. Ms. Winchester-Silbaugh requested that Campbell extension be denied because they are not ready and it could have significant impact on people in the East Mountain area. Mr. Henderson asked if the PRC ruled that there were sufficient water would Ms. Winchester-Silbaugh still be opposed to the development. Ms. Winchester-Silbaugh declined to answer. Mr. Henderson asked this question several more times and, Ms. Winchester-Silbaugh declined to answer each time. Mr. Henderson asked why Ms. Winchester believed she had a right to decline to answer at which time commissioner Schober intervened and asked if any Commissioners had any questions for Ms. Winchester-Silbaugh.

There was a discussion whether this was or was not a quasi-judicial proceeding as this was not noticed as such. The ordinance does not require extension's to be a public hearing proceeding and this meeting is a public meeting not noticed as public hearing with certified mailing to adjoining property owners. Mr. Henderson believed the ordinance should be amended and this meeting adjourned for proper notice. Mr. Henderson stated that other citizens present should be allowed to testify.

Kathy McCoy- Representing both Edgewood and the North 14 area. Ms. McCoy believed the surrounding community should have a say in the impact of this development. Ms. McCoy pointed out that none of the conditions of approval have been met. Ms. McCoy stated the “unavoidable” delays were not unavoidable rather a choice because of the terms for dealing with Entranosa or Bernalillo making the terms unacceptable to Campbell, not unavoidable. Ms. McCoy asked the Commission to deny the extension until Campbell has a better plan which will fit in with Edgewood and the surrounding community. Mr. Henderson asked Ms. McCoy when Campbell negotiated with Entranosa; Ms. McCoy was not aware of the dates of negotiation.

Julie Lynch President of the Lois Lane Homeowner Association-the well on the Campbell properties is approximately ½ mile from them and will directly impact the Association’s well and they are asking the commission to deny the extension request.

Frances Lusso- Los Suenos Association President-concerned about the traffic studies on the north 14 area, early studies with Bernalillo brought up concerns would mean adding additional lanes and they do not believe Campbell has resolved this necessity.

Diana Schroen-Sandia Park-she has redrilled her well from 200 to 300 feet and is concerned that Campbell Development will again require redrilling.

David Campbell for Campbell Corp-Mr. Campbell believes that there was proper notice given and stated he would waive the applicants right to written notice. The PRC process is responsible for this unavoidable delay. Ms. Lynch and Ms. Lusso argued about issues which were before the commission previously for preliminary plat approval. Mr. Campbell stated he believes the case before the PRC is due diligence as tasked by the Commission. Commissioner Fleming asked if Mr. Campbell wanted the Commission to move forward tonight. Mr. Campbell affirmed this. Commissioner Turner asked if Mr. Campbell was asking the Commission to proceed administratively and not as a quasi-judicial body. Mr. Campbell said he was asking the Commission to proceed as a public entity, a body that had given notice, had sworn in the persons giving testimony under oath having a hearing about a particular property. Ms. Turner asked if quasi-judicial hearings require different notice procedures. This was affirmed by Ms. Mahalick, quasi-judicial hearings require a published notice in the newspaper, certified mailing to adjoining property owners within 500 feet and posting of public notice signs. Public meetings have the agenda posted at our six (6) town areas.

Mr. Henderson believes the request for extension of the preliminary plat should be noticed as a public hearing.

Action: Commissioner Fleming moved to table the request for a preliminary plat extension until February 16, 2009 and notice the meeting for public hearing and that the plat will remain current until March 15, 2009. The motion was seconded and approved unanimously.

- 5. Sign Ordinance discussion.** Staff presented the changes to ordinance which included:
- i. Removal of all graphics from the ordinance body, these will be appendices to the ordinance.
 - ii. Editing the definitions to include those from business sign committee.
 - iii. Removal of overlay zones.
 - iv. Freestanding signs 1 sign per street frontage, 36 feet in height up to 140 square feet of sign face.
 - v. Shopping center pad site signs 16 feet in height up to 100 square feet of sign face.
 - vi. Canopy signs of 40% of the canopy.
 - vii. Awning signs of 50% area of awning
 - viii. Projecting signs 1 per building not exceeding 100 square feet.
 - ix. Residential signs 6 square feet and 3 feet in height for detached, building signs of 6 square feet and 6 feet in height, unlit.
 - x. Real Estate signs remain the same.
 - xi. Variance procedures simplified.

Commissioner Turner requested that the 8 purpose statements be included in the ordinance. Commissioner Chemistruck requested the comprehensive sign program with architectural design standards, kiosk signs and appendices be rolled into the draft.

Action: Staff was directed to bring the draft back for the commission but to post for public hearing the first of January.

6. Calendar Update- January 2009 meeting calendar, Commissioners discussed meeting on Jan 12th and Jan 26th for January 2009. These dates were agreed upon pending confirmation of the community calendar

12. Adjourn. Commissioner Wilhite made a motion to adjourn the meeting. Commissioner Fleming seconded the motion. The meeting adjourned at 9:10 p.m.

Gary Chemistruck, Vice Chairman

Date: _____

ATTEST: _____
Karen Mahalick, Community Development Manager