



CITY OF SANTA FE CITY ATTORNEY

Date: December 5, 2024
To: Governing Body
From: Rebecca Mnuk-Herrmann, Assistant City Attorney *RM*
Via: Erin K. McSherry, City Attorney EM
RE: Land Use Appeal No. 2024-8666

I. INTRODUCTION

On July 8, 2024, Karl Sommer, Agent for Ferran Properties LLC (“Appellant”) filed a verified appeal petition (“Petition”), asking the Planning Commission to overturn a land use director decision to decline to take enforcement action against a business located at 7625 Baca Lane, which the Petition describes as “Mr. G’s Auto Sales, LLC aka Mr. G’s Pro Tow” (Petition, Exh. 1, p.1).

The Land Use Director (“Director”) and City Attorney’s Office (“CAO”) reviewed Appellants’ appeal petition for conformity with the legal requirements set forth in the Santa Fe City Code (“SFCC” or “Code”) Section 14-3.17. After their review, the Director and CAO determined that there was no basis for appeal, because there was no final action. The Director and CAO therefore recommend that the Governing Body deny the appeal without a public hearing.

II. ANALYSIS

SFCC 1987, Section 14-3.17 governs appeals. Under this section, the Director must “promptly review all appeals for conformity with the requirements of Section 14-3.17.” SFCC 1987, § 14- 3.17(D)(6). If the Director determines that an appeal does not conform to the requirements of Section 14-3.17, the City’s Code dictates that the Director refer that determination to the CAO for review. See SFCC 1987, § 14-3.17(D)(6). If the CAO agrees with the Director, the CAO is required to prepare a written recommendation for discussion by the Governing Body. *Id.* § 14- 3.7(D)(6)(a). If the Governing Body accepts the recommendation, the “decision is final and may be appealed to district court.” *Id.* If the Governing Body disagrees with the recommendation, the case is scheduled for an appeal hearing. See *id.*

The Director and CAO reviewed Appellants’ appeal petition for conformity with the legal requirements set forth in Section 14-3.17. It provides that “[o]nly final actions may be appealed.” SFCC § 14- 3.17(A)(1)(a). **Critically, the Code states specifically that final action does *not* include “a decision not to take**

enforcement action.” SFCC 1987, § 14-3.17(A)(1)(d)(iv). Therefore, a decision not to take enforcement action is not a final action and is not appealable.

"Rules and regulations adopted by city ordinance have the force of law." *Apodaca v. AAA Gas Co.*, 2003-NMCA-085, 48, 134 N.M. 77, 73 P.3d 215. "Having the force of law, municipal rules and regulations impose a standard and a duty to comply with that standard." *Id.* The City's Code specifically prohibits appeals of decisions not to take enforcement action.

After their review, the Director and CAO determined that there was no appealable, final action. The CAO concurs with the Director's determination that the appeal does not conform to the legal requirements of Section 14-3.17(D)(2). The Director and CAO therefore recommend that the Governing Body deny the appeal without a public hearing.

V. CONCLUSION

For the reasons described above, the CAO recommends that the Governing Body deny the appeal without a public hearing.

If the Governing Body accepts this recommendation, the City's decision is final and may be appealed to district court. See SFCC 1987, § 14-3.17(D)(6)(a). If the Governing Body does not accept this recommendation, the appeal will be set for a public appeal hearing before the Governing Body in accordance with Chapter 14 of the SFCC. See *id.*

VI. OPTIONS FOR MOTIONS

There are two options for motions, as follows:

- I move to accept the recommendation of the City Attorney's Office and deny the appeal without a public hearing. The City's decision is final and may be appealed to the district court.
- I move to reject the recommendation of the City Attorney's Office and to set the appeal for a public hearing before the Governing Body in accordance with Chapter 14 of the Santa Fe City Code.

EXHIBITS:

Exhibit 1, Petition, with attachments. Petition attachments include:

1. "Exhibit A to Verified Appeal of Ferran Properties Inc."
2. Letter from Jason Kluck to Karl Sommer, dated 6/21/24, Re: Request to confirm legal non-conforming status of Mr. G's located at 7625 Baca Lane, Santa Fe, New Mexico
3. Email From Karl H. Sommer to Heather Lamboy, dated July 8, 2024, regarding appeal payment confirmation
4. "Proof of Service" by Manny Maestas, dated July 9, 2024
5. Certified Mail Receipt, addressed to Brian Gutierrez, 7625 Baca Lane, Santa Fe NM 87507
6. Santa Fe County – Development Review Division – Development Permit Application – dated 4/2/1999
7. Baca Industrial Park Plat

Signature: 

Email: ramnukherrmann@santafenm.gov

Signature: 

Email: ekmcsherry@santafenm.gov