

**City of Santa Fe, New Mexico**

## **Attachment B**

**Planning Commission Minutes -  
March 2, 2023**

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PLANNING COMMISSION MINUTES  
MARCH 2, 2023**

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**MINUTES OF THE CITY OF SANTA FE PLANNING COMMISSION**  
**Thursday, March 2, 2023 - 6:00 pm**

**CALL TO ORDER**

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

**A. ROLL CALL**

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

**Members Present**

Chair Janet Clow  
Secretary Peter Smith  
Commissioner Phil Lucero  
Commissioner Gurushabad Mirando  
Commissioner Dan Pava

**Members Absent**

Vice Chair Jessica Lawrence  
Commissioner Pilar Faulkner  
Two Vacancies

**Others Present:**

Mr. Jason Kluck, Land Use Director  
Ms. Maggie Moore, Planning Manager  
Ms. Patricia Feghali, Assistant City Attorney  
Ms. Melissa D. Byers, Stenographer

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

**B. PLEDGE OF ALLEGIANCE**

Commissioner Lucero led the Pledge of Allegiance.

**C. APPROVAL OF AGENDA**

Director Kluck said Item 1 will be postponed until April 6 and staff would like to amend the agenda to hear staff communication after approval of the Findings and Conclusions.

**MOTION:** Commissioner Pava moved, seconded by Commissioner Smith, to approve the agenda, as amended.

**VOTE:** The motion passed by roll call vote with Commissioners Smith, Lucero, Miranda and Pava voting in favor and none voting against.

**D. APPROVAL OF MINUTES**

February 2, 2023

**MOTION:** Commissioner Lucero moved, seconded by Commissioner Pava to approve the minutes of February 2, 2023 as presented.

**VOTE:** The motion passed by roll call vote with Commissioners Smith, Lucero, Miranda and Pava voting in favor and none voting against.

**E. APPROVAL OF FINDINGS/CONCLUSIONS**

**1. Case #2022-6015. LKS Multifamily Apartment Complex Development Plan.**

**MOTION:** Commissioner Pava moved, seconded by Commissioner Smith to approve the findings of fact and conclusions of law for Case #2022-6015.

**VOTE:** The motion passed by roll call vote with Commissioners Smith, Lucero, Miranda and Pava voting in favor and none voting against.

**2. Case #2022-6141. 2868 Rufina Development Plan.**

**MOTION:** Commissioner Lucero moved, seconded by Commissioner Miranda to approve the findings of fact and conclusions of law for Case #2022-6013.

**VOTE:** The motion passed by roll call vote with Commissioners Smith, Lucero, Miranda and Pava voting in favor and none voting against.

**3. Case #2022-6136. 4250 Cerrillos Road Residence Inn Development Plan**

**MOTION:** Commissioner Smith moved, seconded by Commissioner Pava to approve the findings of fact and conclusions of law for Case #2022-5899.

**VOTE:** The motion passed by roll call vote with Commissioners Smith, Lucero, Miranda and Pava voting in favor and none voting against.

## H. MATTERS FROM THE STAFF

Daniel Alvarado gave a presentation on the Land Development Code update, attached as Exhibit 1.

Commissioner Pava asked how the Development Code Update will coordinate with the General Plan Update.

Mr. Alvarado said there will be three phases to the update. Phase 1 is the foundations phase, structural changes that make the Code overall, more usable. Some substantive things such as design and density standards, etc. will happen in Phase 2. About the same time, they will start the process for the General Plan update. The resolution will be introduced to the Governing Body at their next meeting. Once approved staff will put out an RFP for the General Plan to get a consultant on board. The first phase will take about 18 months and Phase 2 around 2 years. The teams for the update and General Plan will work together. The goal is that the General Plan outcome will inform Phase 3 of the Code rewrite, which identifies everything in the General Plan that needs to be changed in the Code. They hope to coordinate the General Plan coming in about Phase 3 to establish goals that can be implemented through the Code.

Commissioner Pava said it is very important for the development Code to be consistent with the General Plan.

Chair Clow asked staff to provide the Commission with copies of the slides.

## F. OLD BUSINESS

None

## G. NEW BUSINESS

1. **Chapter 14 Text Amendment. Chapter 14 Authority for HDRB to Approve Exceptions.** An ordinance relating to the Land Development Code, Chapter 14 SFCC 1987; amending various sections to grant authority to the Historic Districts Review Board (HDRB) to grant exceptions to Section 14-5.2, Historic Districts Overlay. (Heather Lamboy)

**Postponed to April 6, 2023.**

2. **Case #2022-6201. Windmill Hill at Las Placitas Compound Preliminary Subdivision Plat.** Liaison Planning, agent for Michael Blum, requests Preliminary Subdivision Plat approval for three single family residential lots on 1.48± acres. The property is located at 623½ Garcia Street, and is zoned R-3 (Residential, three dwelling units per acre). The property is within the Downtown & Eastside Historic District and River & Trails Archeological Review District. (Lani McCulley) **(POSTPONED TO APRIL 6, 2023)**

3. **Case #2022-6202. Windmill Hill at Las Placitas Compound Variance.** Liaison Planning, agent for Michael Blum, requests a variance to reduce the minimum street width from 38 feet to the width of existing access easements of 29 feet and 20 feet. The property is located at 623½ Garcia Street, and is zoned R-3 (Residential, three dwelling units per acre). The property is within the Downtown & Eastside Historic District and River & Trails Archeological Review District. (Lani McCulley) **(POSTPONED TO APRIL 6, 2023)**
  
4. **Case #2023-6271. 507 and 511 Paseo de Peralta Development Plan.** Bradyn Furry, Agent, for Peralta's Walk, LLC, Owner, requests a development plan approval for a 9-dwelling unit development on two lots totaling 10,447 sq. ft. on 0.563 acres. The 507 Paseo de Peralta property (4,235 sq. ft. on 0.185 acres) is zoned BCD (Business Capitol District) in the Marcy subdistrict. The 511 Paseo de Peralta Property (6,212 sq. ft. on 0.378 acres) is zoned R-21 (Residential 21 dwelling units per acre). Both properties are in the Downtown and Eastside Historic District and the Historic Downtown Archaeological District. (Lani McCulley, Case Manager)

Attorney Feghali recused herself from the case noting that Attorney Ruybalid would take her place in this case.

#### **EXECUTIVE SUMMARY**

The Applicant requests approval of a development plan for approximately 0.18 acres zoned BCD and approximately 0.37 acres zoned R-21 for a total project size of approximately 0.56 acres. The proposed project includes 9 condominiums in three, two-story buildings. The western tract is zoned BCD Marcy (507 Paseo de Peralta) and consists of 4,919 sq. ft. of roofed area and 5,624 sq. ft. of gross floor area. The eastern tract is zoned R-21 (511 Paseo de Peralta) and consists of 7,774 sq. ft. of roofed area and 8,166 sq. ft. of gross floor area combined in two buildings. The overall project roofed area will be 12,693 sq. ft. with a gross floor area of 13,790 sq. ft. The proposed site design includes open space and amenities such as landscaped courtyards and a swimming pool.

The project is located in the Downtown and Eastside Historic District and received approval from the Historic Districts Review Board in 2018 under case H-14-034 and has been issued two one-year extensions. The approval through the Historic Districts Review Board expires in June of 2023.

Per SFCC §14-7.2(F) *Increase in Maximum Density in R-12, R21 and R-29 Districts*, adopted by Ord. No. 2013-16 § 41, the portion of the Development Plan zoned R21 at 511 Paseo de Peralta must request approval from the Planning Commission for a density above 10 dwelling units per acre as allowed in Table 14-7.2-1 *Table of Dimensional Standards for Residential Districts*. In evaluating the proposed increase in maximum density, the Planning Commission may consider the following factors:

- (a) if the future land use designation shown on the general plan is high density residential;
- (b) the need for the increased density ; however, financial gain or loss shall not be the sole determining factor;
- (c) if the increased density is needed to make the proposed development more affordable, what level of affordability will be provided and how that affordability will be guaranteed long term;
- (d) densities of existing developments in the vicinity; and
- (e) impacts of the increased density on the neighborhood and the community so that the increased density does not significantly interfere with the enjoyment of other land in the vicinity and is consistent with the spirit of Chapter 14 and in the general public's interest.

The Applicant proposes 5 dwelling units on .37 acres or approx. 13.5 dwelling units per acre. Without approval from the Planning Commission the applicant would only be allowed to develop at 10 dwelling units per acre or 3 dwelling units on .37 acres. A discussion of these factors is found in Section V. c. Increase in Maximum Density in R-21 of this Report.

The Applicant has complied with all applicable subsections of SFCC §14-3.1 General Provisions (Table 2). The City's Development Review Team (DRT) reviewed the Application for compliance with applicable City Code sections (Exhibit A). Staff's analysis identifies the Application has satisfied Development Plan Approval Criteria in accordance with SFCC §14-3.8(D), subject to conditions of approval and technical corrections in this report and attached as Exhibit A.

### **STAFF RECOMMENDATION**

The Planning and Land Use Department recommends approval of the Development Plan with the conditions of approval as outlined in this report.

Staff requires one change to the conditions of approval which is to include retaining walls along the north and east sides.

### **APPLICANT PRESENTATION**

Bradyn Furry, PO Box 238 Santa Fe, NM 87504, was sworn. He said they meet all the requirements for the two buildings; 507 is the BCD and 511 for R21 zoning. There is a request for an increase in the building at 511 but everything is within height and size limitations. The open space provided is more than what is required, and parking is between the two lots and an agreement is in place. They want to take the two lots and fill them with construction for easy access by residents and more walkable amenities. The staff's presentation covered almost everything else.

Commissioner Miranda asked Mr. Furry to summarize the HDRB's findings and whether there were conditions of approval.

Mr. Furry said the HBoard limited them to the standard historic requirements such as the stucco color blending with the surrounding area and using true divided lights. He said there were no other conditions of approval.

Commissioner Pava confirmed these would be condominiums for owner occupancy. He asked if short-term rental is prohibited or if there are covenant restrictions.

Mr. Furry did not have an answer. He said that will be determined by the HOA once their bylaws and covenants are drawn up.

Commissioner Pava said given there were 14 total spaces, he asked if there were accommodations for overflow parking.

Mr. Furry said only the minimum requirement is required for parking for the two lots. Additional parking would have to be found in the area.

Commissioner Smith confirmed that the Historic Board required the applicant to meet the historic code in terms of color and building consistency.

Mr. Furry said yes, and the Board included a stipulation that an existing rock wall must remain in place on the 511 property.

## **PUBLIC HEARING**

Stefanie Beninato, PO Box 1601, was sworn. She had concerns there would not be enough parking. She asked the location of the parking lot. Also, if the HOA allowed short-term rentals there is no condition of development. She asked if affordable housing was required in the condominiums.

There being no further comments, Chair Clow closed the public hearing.

## **COMMISSION DISCUSSION**

Commissioner Smith asked staff to respond to the questions on short-term rentals and affordable housing.

Ms. McCully said there are only 9 units, so this does not require affordable housing and the applicant is paying the fee.

Commissioner Smith said if the purpose of the project is to bring housing downtown, short-term rentals would not be congruent.

Attorney Ruybalid said for someone who wants to convert a unit into a short-term rental there is a separate process. It requires an application, and he doesn't know of any application for that in this case. In addition, a conversion would require a notification with

signs posted and registered mail to area residents. He said he couldn't say that will not be done but there is a full process required for short-term rentals.

Commissioner Smith asked if the City has an opportunity to preemptively comment on such a development and deny short-term rentals.

Attorney Ruybalid said he knew of none. He indicated he saw Director Kluck also confirming there is none.

Commissioner Pava said he read in the staff report about a pool.

Ms. McCully explained it is in the courtyard of 511 between the two buildings.

Commissioner Mirando said he appreciated that there is concealed parking in the application because that improves the streetscape overall.

**MOTION:** In Case #2023-6271, 507 and 511 Paseo de Peralta development plan, Commissioner Pava moved to approve with conditions of approval as outlined in the staff report. Commissioner Mirando seconded the motion.

**VOTE:** The motion passed by roll call vote with Commissioners Smith, Lucero, Mirando and Pava voting in favor and none voting against.

5. **Case #2022-4942. 2339 Botulph Road Rezoning.** Shelley Espinoza, Owner, requests rezoning per Chapter 14 SFCC 1987, 14-3.5 "Rezoning" from R-1 (Residential: one dwelling unit per acre) to R-2 (Residential: two dwelling units per acre) for a 1.41-acre lot. The property is located within the Suburban Archeological Review Districts.(Dan Esquibel, Case Manager)

Attorney Feghali returned to the meeting.

### **EXECUTIVE SUMMARY**

This matter came before the Planning Commission on May 5, 2022. The decision of the Planning Commission was to recommend the Governing Body approve the rezoning request. However, while developing the application for Governing Body review it was discovered that the Applicant failed to comply with 14-3.l(H) "Notice Requirements". The failure to comply with Subsection 14-3.l(H) requires a new hearing by the Planning Commission of Case #2022-4942, 2339 Botulph Road Rezoning.

Shelley Espinoza, representing herself (Applicant), has satisfied the notice requirements per 14-3.l(H) "Notice Requirements" and is again requesting rezoning from R-1 (Residential: one dwelling unit per acre) to R-2 (Residential: two dwelling units per acre) for +/- 1.41-acres (Project).

Much of this report and attachments are the same as presented to the Planning Commission on May 5, 2022, except for the Applicant's responses to Section 14-3.S(A) and (C) SFCC 1987 which sets forth approval criteria for rezoning requests.

The subject property is a legal lot of record approved by the City and Recorded in the Office of the Santa Fe County Clerk on May 12, 2016.

The Applicant has complied with Subsections 14-3.I(E) "Pre-Application Conferences," 14-3.I(F) "Early Neighborhood Notification Procedures," and 14-3.I(H) "Notice Requirements."

Staff's analysis finds that the Applicant has satisfied Subsection 14-3.S(C) "Approval Criteria" for the rezoning requests.

### **STAFF RECOMMENDATION**

The Planning Commission should recommend that the Governing Body approve Case #2022-4942.

Commissioner Pava asked if this is a de novo application for rezoning.

Mr. Esquibel said it was and the applicant is starting over. The applicant failed to meet the notice criteria and the previous meeting was nullified. He explained it is the same application that will be heard again because it was nullified.

Attorney Feghali clarified this is a continuation of the same case with a new application. The property and the requests are the same, but some of the questions and information is different.

Commissioner Pava asked to clarify that there were errors in the original submittal, and this is a resubmittal in accordance with the process in Chapter 14.

Attorney Feghali said that was correct that the notice was not properly given the first time and it is now.

Director Kluck clarified that the application did not have errors; the applicant provided additional information.

Commissioner Pava said the applicant did the correct thing by withdrawing the application to revise it. He confirmed there are no rules or restrictions preventing that.

### **APPLICANT PRESENTATION**

Shelly Espinosa, 27 Coyote Pass, Santa Fe, was sworn. She thanked Mr. Esquibel and Ms. Moore for their work on the case. She said she wanted to emphasize some key points. Her application proposes rezoning from R1 to R2 for an eventual lot

split which is consistent with a long-standing plan for a future designation from R-1 to R-3. What is proposed is allowed under the City ordinance and consistent with the General Plan. She noted that the General Plan emphasizes opportunity for housing for all incomes of the population in all areas. It restricts large-lot housing and promotes strategies to achieve residential including simple lot splits. She said the opponents to her request cannot continue to object to a need of higher density when a large acreage in the city is underutilized. Many people commute more than two hours a day to Santa Fe to work in jobs that benefit Santa Fe. Affordability and availability of housing is out of reach for many and Resolution 2015-65 known as the Residents Bill of Rights was composed by citizens throughout the City. The resolution directs staff to seek solutions to the affordable housing crisis and provide a framework. Santa Fe leads the nation with innovative, progressive housing policies and the Governing Body wants to build on that legacy. The 2011 Analysis of Impediments to Fair Housing Choice Report found that one third felt discriminated against in housing transactions. Her property is not within a Neighborhood Overlay District or a defined neighborhood boundary. There are no distinctive characteristics identified for preservation. The opponents' refusal to accept the City's long-term policies and vision should not affect this body or the Governing Body's decision. She asked that the Commission recommend rezoning to R2 to the Governing Body.

Commissioner Lucero said this is one of the properties separating East and West Zia. There is a utility easement to the southeast that has become a transit corridor.

Ms. Espinosa stated that her property has no easement.

Commissioner Lucero said there had been a lot of public comment and concern that the transit corridor might be reopened. He asked her to respond to that potential issue.

Ms. Espinosa said as a single person she does not want people walking across her property. And she does not want to deal with people who might be less respectful. She indicated that her neighbor has had problems with people going into her shed.

## **PUBLIC HEARING**

Tom Noble, 2255 Old Arroyo Chamiso Road, was sworn. He lives within 300 feet of the property and has been there for 45 years. He read from a letter written by John Tiano that was included in the Commission packet a year ago. Mr. Tiano lives on property adjoining this property to the south. Mr. Tiano said in his letter, *there has to be a point in which this type of development is contained, and a boundary is set to preserve and maintain the beauty and value of the original neighborhood and the traditional family homes* and their character. He said he has been trying to make the arroyo a natural boundary on the north side and R-1 areas to the south. He read from the letter, "to allow the rezoning of 2339 Botulph would be opening a slippery slope". Mr. Tiano thought it imperative the current zoning is maintained.

Mr. Noble noted that Sol y Lomas has existing protective covenants that the lots will be one acre. On the west side of Botolph there was no master plan to benefit from. He thought the west side has the most right to be preserved, as the older neighborhood. He noted that Mr. Tiano's letter stated the residents had no "ill-will" against the current owner. He also read out of a letter written by Jane Chavez who lives across the street. She said, "The Jose Chavez family bought our property on Botolph where we lived over 49 years." The 14 acres was eventually subdivided to one acre or greater lots. Ms. Chavez said rezoning to R2 does not show respect or sensitivity for the surrounding area. Santa Fe should preserve its history. Her letter concluded by saying that she took exception to the applicant saying she wants the zoning for family reasons. She said the applicant never lived on the property and bought the property in 2018.

Mr. Noble pointed out the applicant put the house on the market in 2021 but it never sold. He said it was then that the applicant decided to live at the property with her family. Originally the city agreed there should be no change to the neighborhood character and the neighborhood wants to maintain that. Secondly is the issue of affordability and the good of the community. He said listening to the neighborhood it is clear what is good for the community is to leave zoning the way it is. He said this small piece of land will never qualify as affordable housing. Lastly, he said the R2 zoning north of the arroyo had been a mistake and he didn't see that would become a problem 22 years later.

Steven Farber, 2351 Botolph Road, was sworn. He said he should not be at the meeting tonight because his stepdaughter had died. When he learned about this rezoning effort he communicated a lot with the Land Use Department. He explained his communication with land use on February 14 and 15<sup>th</sup> and 26<sup>th</sup> did not involve the substance of the case. It was on administrative issues. He has submitted copies of the correspondence to the Chair of the Planning Commission that he asked to be part of the record. He also asked for the opportunity to cross-examine Ms. Moore, Mr. Esquibel and Mr. Kluck on the issues raised. He said we have been opposed to the rezoning even in June 2022. He said there were inaccuracies in the City's report on the Planning Commission hearing date among many others. He has not had time to create a Power Point of the area and the property and why the rezoning is ill advised and inappropriate. However, he followed the new procedures on what residents should do to provide a submission for Planning Commission review. There have been changes in the process on the submission of documents. Attachments are limited in size and quantity. He said he relied on the City to present the information in the manner in which he submitted it. He checked online and the information is garbled and the attachments are not related to the public comments with which they were submitted. All of that is a violation of due process of law. He said everything is out of order on his attachments. The first 20 things are depositions he took because he was concerned there was no proper documentation. There are mischaracterizations and misstatements that he believed are tampering with evidence. There were attachments associated with May 5<sup>th</sup>, 2022, and there was no agenda item for this on that day. He said he knew this is not appropriate, proper, or legal because his public comments were included and those had not been submitted until May 25<sup>th</sup>, 2022. He feels it is his responsibility to ensure an open and transparent government.

Mr. Noble, previously sworn, said he found that in May 2022 a report was prepared but never disclosed to the Planning Commission or the public and in the June 2022 meeting the Planning Department recommended that the Planning Commission deny the request for rezoning. He found those documents after he had filed a petition. He took the time to read through 800 pages and found it in the public comments. He said there was a gap in communication and then criteria were developed which is supposed to be advantageous to the community as a whole. He said code requires balancing everything and that did not happen at the June meeting. He noted the letter from Mrs. Rubenstein, the neighbor directly to the east, who will be impacted by the rezoning.

Chair Clow noted that Ms. Rubenstein's letter was included in the record.

Mr. Farber, previously sworn, commented on Ms. Rubenstein's property and the impact if rezoning is allowed. There is an incredible burden for her to get to her property and she is very upset. Landowners to the south of the arroyo object to the zoning. The city was not forthcoming in disclosing records and the neighborhood now knows what was presented last year was not factual or accurate. That the Commission met on May 5<sup>th</sup> indicated a certain level of inattentiveness and inaccurate information. The Commissioners last year made the motion without discussion or debate to approve this. He pointed out they were new commissioners at that time. He recalled Commissioner Pava saying *small rezonings carry large issues*. He thought this boils down to the balancing criteria in the Code on the advantage to the community to grant rezoning. He said damage will be done if the rezoning is granted and it is not to the advantage of the neighborhood as stated in Code. He requested the Planning Department work on the submittal process to ensure the public comment process is accurate and makes sense.

Mr. Farber said he requested to cross-examine.

Chair Clow said her understanding is that the City Attorney recommends there be no cross-examination on the record. She said the Commission relies on the recommendation of the City Attorney.

Mr. Farber said throughout his career he relied on the Chair in such circumstances and respects that. He said he did want to acknowledge that he thought his due process of law had been violated.

Roxanne Yogum, 119 Tenorio Street, Los Alamos, was sworn. She said she is Shelly's daughter. She said her mother is a great woman and she has been a great support and is inspirational and she worked hard. She is now retired. Part of the property she wants to divide is for her family. She said she couldn't understand why that is such an issue. She and her ancestors have lived in Santa Fe for hundreds of years and are native New Mexicans. She said staff finds the zoning appropriate and that there is no impact on the community. And fire, sewer- everything was approved. She said her mother just wants to support her family and have them nearby.

Mr. Esquibel explained when it was stated earlier that staff recommended denial, staff had recommended that. The original applicant information provided did not correspond with Chapter 14 and resulted in staff not being able to recommend approval. Staff always works with the applicant to advise them of the changes needed for compliance with the Code. In this case the applicant postponed their meeting and rewrote their findings to be in line with Chapter 14. He said not everyone is fluent in how they need to meet regulations to be approved. He said Mr. Farber referenced an old memo that was never used. The applicant chose to write her application herself rather than have her agent do it. He apologized for the errors and said those happen because of the amount of work that goes through the office.

He asked that they focus back on the findings, which is what the Commission was here to assess; does the applicant's application meet the findings and whether the recommendation to the Governing Body should be positive or negative.

Chair Clow allowed Mr. Noble to speak again because he stated he wanted to set the record straight.

Mr. Noble said it should be clear Ms. Espinosa had a planner that didn't know how the process worked. Also, everything her daughter said is reasonable and can still be achieved without subdividing the property.

Chair Clow said that Ms. Espinosa had a planner was understood, and it was the planner who messed up.

There being no further comment, Chair Clow closed the public hearing.

### **COMMISSION DISCUSSION**

Commissioner Mirando said he wanted to make a general comment regarding staff recommendation changing a process submittal. He said he understands the concern it looks like a "smoking gun" but generally that is not the case. Sometimes that happens because the applications are complicated, and an applicant doesn't get enough information or fails to write an interpretation correctly, and that has to be corrected. He said not knowing why that happened, it might not be appropriate for the Commissioners to see a denial on previous information that is not the actual information the application is based on. He said he saw two criteria the applicant was hanging on. Staff found the second criterion was not met. He asked how on the third criteria staff saw that current zoning enforces the idea of R2.

Mr. Esquibel clarified if talking about Criteria 1 - *there was no mistake in the original*; that is an option. On Criteria 2, *a change to such an extent as to alter the character of the neighborhood justifies a zoning change*. He said that can happen in certain areas of the City. This Commission has seen that with Airport Road and 334 South Meadows. There has been such a change in that area that they met that criteria. That area is moving fast and changing drastically. In this area he hasn't found much

change in the last 40 years, so they cannot use that section to address a change in zoning. That leaves them with Criteria 3, a different use category is more advantageous to the community as articulated in the General Plan or other adopted City plans. He said the applicant did a good job explaining why zoning is advantageous. This is only dealing with one single lot for the area and one impact. This will still add to the housing. He said other staff members have told them there is no way to weigh one criteria over another; it is supposed to be loosely interpreted.

Commissioner Mirando said that was what he was asking.

Chair Clow said the General Plan talks about preserving neighborhoods, as well as infill and preventing sprawl. She asked how staff balanced their recommendation in relationship to preserving neighborhoods with the need for more infill and stopping sprawl and providing housing. She said they have been told any housing provided helps the entire market.

Mr. Esquibel referenced attachment E5 in the packet. He talked about the areas he reviewed and said he basically looked at the South Central Highway Corridor as the review area. He itemized all this zoning and counted all of the lots. Within this area is a global density of two units per acre. This request is not changing any historical developmental pattern by adding one more lot within the area. In fact, it benefits the neighborhood by adding one more house. And if the applicant were to build a guest house, those of been identified as part of affordable living. He couldn't see how that one lot would sacrifice the preservation of the entire area or this neighborhood.

Commissioner Pava asked if this lot is in the subdivision of Sol y Lomas.

Mr. Esquibel said it is not.

Commissioner Pava confirmed any reference to covenants is a matter of concern to lot owners in Sol y Lomas. This lot is not conditioned on the old covenants like they are in Sol y Lomas.

Mr. Esquibel said he is not aware of any.

Commissioner Pava said a lot of time was spent on this case last Spring and it is almost Spring again. He asked if the applicant has now complied with procedures regarding due process as set forth in Chapter 14 or in any other City codes or matter of law.

Attorney Feghali said all the notice requirements and everything to this point, has been met.

Commissioner Pava said it appears the document submitted by Mr. Farber and the Commission has been informed about the lawsuit between Mr. Farber and the city. He

asked if the outcome of the lawsuit has any bearing on the decision the Planning Commission will make on the application for zone change.

Attorney Feghali said it does not have any merit in this case in any way.

Commissioner Pava confirmed with Attorney Feghali that the outcome of the lawsuit the Commission was informed about had no bearing on the decision the Commission has been asked to make in this application for zone change. He said there is a lot in the lawsuit, but he does not think it relevant to this request for rezoning. He said for the record, he acknowledges Mr. Farber's pain.

**MOTION:** Commissioner Pava moved, seconded by Commissioner Smith to recommend that the Governing Body approve Case #2022-4942, 2339 Botolph Road Rezoning subject to the conditions of approval and criteria cited in the staff report regarding Section 14-3.5 (C) Criteria 3, 4, 5, and 6.

**VOTE:** The motion passed by roll call vote with Commissioners Smith, Lucero, Mirando and Pava voting in favor and none voting against.

#### **H. MATTERS FROM THE STAFF**

No other matters.

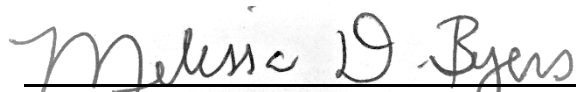
#### **I. MATTERS FROM THE COMMISSION**

Commissioner Pava said next week he would be in Denver at the Rocky Mountain Land Use Institute and will try to bring some material on the information he receives.

#### **J. ADJOURNMENT**

Chair Clow adjourned the meeting at approximately 7:56 p.m.

Submitted by:



Melissa D. Byers, Stenographer for  
Byers Organizational Support Services

Approved by:



Janet Clow, Chair