

**AGENDA
TOWN OF EDGEWOOD
PLANNING & ZONING COMMISSION MEETING
APRIL 19, 2016 AT 6:00 PM
EDGEWOOD COMMUNITY CENTER
27 E. FRONTAGE ROAD, EDGEWOOD, NM 87015**

The Town of Edgewood Planning & Zoning Commission is pleased to have residents of the community take time to attend commission meetings. Attendance and participation is encouraged. Individuals wishing to be heard during public hearing proceedings are encouraged to be prepared. Public comments may not be disruptive or harassing, and all persons are expected to maintain respect and decorum. Accordingly, rude, slanderous, or abusive comments and/or boisterous behavior will not be permitted. Written comments are welcome and should be given to the town administrator prior to the start of the meeting.

1. CALL TO ORDER & ROLL CALL.

2. APPROVAL OF AGENDA.

3. APPROVAL OF MINUTES.

A. Draft Planning & Zoning Commission Meeting Minutes of April 5, 2016

4. PUBLIC COMMENT: (Limited to 2 minutes per person)

5. REQUEST FOR LOT LINE VACATION FOR PROPERTY AT.

A. 6 & 8 Marietta Court, Section 28, T10N, R7E, NMPM, Edgewood, Santa Fe County, NM

6. FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER.

A. Zone Change for 88 Church St, 92A Church St and 92B Church St.

7. MATTERS FROM THE CHAIR AND COMMISSION MEMBERS.

8. MATTERS FROM STAFF.

A. **Resolution 2016-05** "A Resolution of the Planning & Zoning Commission of the Town of Edgewood".

9. CALENDAR UPDATE AND FUTURE AGENDA ITEMS.

A. 05/10/16 Commission Meeting: Organizational Meeting

B. 05/17/16 Commission Meeting: Minor Subdivision for Lone Pine Ranch

10. ADJOURN.

A copy of the agenda may be obtained at the Town Office, 1911 Historic Route 66 during regular business hours of 8:00 am - 5:00 pm. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Town Clerk at 505-286-4518 at least one week prior to the meeting or as soon as possible.

**DRAFT MINUTES
TOWN OF EDGEWOOD
PLANNING & ZONING COMMISSION MEETING
APRIL 5, 2016 AT 6:00 PM
EDGEWOOD COMMUNITY CENTER
27 E. FRONTAGE ROAD, EDGEWOOD, NM 87015**

1. CALL TO ORDER & ROLL CALL:

Vice Chairman Thompson called the meeting to order at 6:13 pm.
Commissioners present were: Pat Markley, Cheryl Huppertz & Dan Thompson. Also present were: Steve Shepherd, Town Administrator and Bonnie Pettee, Planning & Zoning.

2. APPROVAL OF AGENDA:

MOTION: Commissioner Huppertz made a motion to approve the agenda. Commissioner Markley seconded the motion.

VOTE: Commissioner Huppertz voted aye. Commissioner Markley voted aye. Vice Chairman Thompson voted aye. Motion carried.

3. APPROVAL OF MINUTES:

A. Draft Planning & Zoning Commission Meeting Minutes of March 15, 2016

MOTION: Commissioner Huppertz made a motion to approve the minutes of March 15, 2016 as presented. Commissioner Markley seconded the motion.

VOTE: Commissioner Huppertz voted aye. Commissioner Markley voted aye. Vice Chairman Thompson voted aye. Motion carried.

4. PUBLIC COMMENT: (Limited to 2 minutes per person)

There were none.

5. REQUEST FOR ZONE CHANGE FROM R-1, RESIDENTIAL TO MU-MIXED USE FOR PROPERTY LOCATED AT:

- 92A Church Street: (Tract A .95 acres)
- 92C Church Street: (Tract D .86 acres)
- 88 Church Street: (Tract B .95 acres).

Lands of Gervais and Patricia Williams, Section 27 T10N R7E, Santa Fe County, Edgewood, New Mexico.

Bonnie Pettee presented the Staff Report. She stated this request for MU Mixed Use zoning would allow for the development of higher density residential units or non-residential used to develop small neighborhood type business establishments. Ms. Pettee added the staff believed the MU Mixed Use zoning would be a good transitional zoning for the area with the various zoning surrounding the property. The request would be consistent with the Comprehensive Land Use Plan Goals for Economic Development in that it would identify areas of cluster development of commercial, business, institutional and mixed use

development with direct access to major arterials. Ms. Pettee added the change in zoning to Mixed Use would not impair the value or character of the community. Staff recommends approval of the request to change the three parcels from R1- Residential to MU Mixed Use Zoning. The applicant did not have anything to add to the staff report. There were no questions or further discussion.

MOTION: Commissioner Markley made a motion to forward to Town Council the recommendation of approval of the request for a zone change from R1- Residential to MU Mixed Use for property located at 88 East Church Street, Tract B .95 acres; 92 A East Church Street, Tract A .95 acres; and 92C East Church Street, Tract D.86 acres, Lands of Gervais and Patricia Williams, Section 27 T10N, R7E, Santa Fe County, Edgewood, NM. Commissioner Huppertz seconded the motion.

VOTE: Commissioner Huppertz voted aye. Commissioner Markley voted aye. Vice Chairman Thompson voted aye. The motion carried.

6. FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER:

A. Final Plat for Mountain Meadows Subdivision

Steve Shepherd reviewed to Findings of Fact for the Final Plat of Mountain Meadows Subdivision. He noted that previously it had been recorded that Ms. Janelle Turner was sworn in for testimony at the Public Hearing concerning the Preliminary Plat for the project. Mr. Shepherd stated this was not accurate and the section in the Findings of Fact for the Final Plat is an attempt to document and correct this inaccuracy. The final plat was approved by the Commission on March 15, 2016 with no conditions.

MOTION: Commissioner Huppertz made a motion to approve the Findings of Fact, Conclusions of Law and Recommended Order for the Final Plat for property located at East High Meadow Loop, Mountain Meadows Subdivision, Unit 2 Being Tract C-5-R-3 of the Lands of the Maguire Family Trust, S ½ of the NE ¼, Section 3, T10N, R7E, NM PM, Town of Edgewood, Santa Fe County New Mexico. Commissioner Markley seconded the motion.

VOTE: Commissioner Huppertz voted aye. Commissioner Markley voted aye. Vice Chairman Thompson voted aye. Motion carried.

B. Hillcrest: Amendment to the Master Plan

Mr. Shepherd stated that the Commission had previously reviewed and approved these findings for Hillcrest at the last meeting. The previous Chairperson signed the document after she resigned, which may have made them invalid. At this time we are looking for a second vote for approval and current signatures.

MOTION: Commissioner Markley made a motion to approve the Amendment to the Hillcrest Master Plan, Unit 2, being a portion of Tract A of the Lands of Highland Stock Farm LLC, Section 10, T10N, R7E, Town of Edgewood, Santa Fe County, New Mexico, NMPM for a MU Mixed Use Zoning Designation. Commissioner Huppertz seconded the motion.

VOTE: Commissioner Huppertz voted aye. Commissioner Markley voted aye. Vice Chairman Thompson voted aye. Motion carried

7. MATTERS FROM THE CHAIR AND COMMISSION MEMBERS:

There were none.

8. MATTERS FROM STAFF:

Ms. Pettee spoke about the upcoming training sessions. She emphasized the May 4, 2016 training for new commissioners to be held at MRCOG. She asked each of the commissioners to please try to make that half day session.

Steve Shepherd confirmed that this would be the last meeting for Commissioner Markley. He thanked Commissioner Markley for his service and contributions to Edgewood.

Mr. Shepherd spoke about the Edgewood Roads and the process of prioritizing their need for upgrades. He noted that Walker Road is near completion. NMDOT MAP funds are available for Entrada del Norte, and the construction crew will continue around the corner and complete Entrada Del Norte without having to mobilize. He added that Horton Road between Dinkle and Venus is the next road in line to be paved.

9. CALENDAR UPDATE AND FUTURE AGENDA ITEMS:

Due to a conflict in staff schedule, Ms. Pettee asked the Commissioners if they would mind moving the May 4, 2016 meeting to May 10, 2016. The Commissioners agreed to move the meeting back one week.

10. ADJOURN.

MOTION: Commissioner Markley made motion to adjourn the meeting. Commissioner Huppertz seconded the motion.

VOTE: Commissioner Markley voted aye. Commissioner Huppertz voted aye. Vice Chairman Thompson voted aye. Motion carried.

Vice Chairman Thompson adjourned the meeting of April 5, 2016 at 6:35 pm.

PASSED, APPROVED and ADOPTED this 19th day of APRIL, 2016.

Dan Thompson, Vice Chairman

ATTEST:

Cheryl Huppertz, Secretary

**TOWN OF EDGEWOOD
PLANNING & ZONING COMMISSION
STAFF REPORT**

SUBJECT : 2016-SUB 003
APPLICANT : Aspire Hotels/Scott McCall

REQUESTED ACTION

The applicant is seeking to vacate an interior lot line and re-plat two (2) lots into one (1) lot, for the property at: 6 & 8 Marietta Court, Lot 18R & Lot 19R, Edgewood Plaza, Section 28, T10N, R7E, Santa Fe County, Edgewood, NM.

APPLICATION EXHIBITS

- A) Staff Report
- B) Application for Lot Line/Re-plat
- C) Owner letter of Request
- D) Original Plat
- E) Revised Plat
- F) Current Warranty Deed/Purchase Agreement
- G) Site Plan Drawing
- H) Zone Atlas Map

APPLICABLE REGULATIONS

Subdivision Ordinance 2014-03

NOTIFICATION

Signs were posted along Marietta Court at the property site on April 13, 2016 and letters to fourteen (14) property owners within 500 feet of the subject property were mailed noticing the request.

LOCATION

Subject properties are located at:

6 Marietta Court, Lot 19R, (.960 Acres), Edgewood Plaza Subdivision, Section 28, T10N, R7E
Edgewood, Santa Fe County, New Mexico

8 Marietta Court, Lot 18R, (.940 acres), Edgewood Plaza Subdivision, Section 28, T10N, R7E,
Edgewood, Santa Fe County, New Mexico

BACKGROUND

The applicant submitted an application on April 6, 2016 requesting an interior lot line vacation of two lots into one lot. The surrounding properties are C-2 Commercial Business zone. The property is off Route 66 and adjacent to Interstate 40.

PROJECT DESCRIPTION

The request is necessary for the applicant to build a 72 room hotel that will be situated on one lot instead of across two (2) lots. The combined acreage of the two lots will be approximately 1.900 acres. Utility easements and sewer connection is readily available onsite. The utilities will not be affected by the property line that is to be vacated. Variances for the building height and sign locations were approved in 2015. Grading and Drainage plans were approved earlier this year and work is well under way. This lot line vacation is needed prior to the building plans being approved.

The hotel is proposed to be 4 stories high, include 72 rooms, 87 parking stalls, and amenities including a swimming pool and breakfast area.

STAFF ANALYSIS

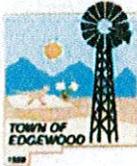
- 1) Staff performed a review of the application, submitted materials, and applicable ordinances.
- 2) The plat was found to be in compliance with requirements of the Subdivision Ordinance 2014, Sections 8 & 14.
- 3) This application, being deemed a Minor Subdivision, and requires complete action within 60 days per Subdivision Ordinance 2014-03, as amended 02/04/15, Section 8. Minor Subdivisions.

STAFF RECOMMENDATION

It is the opinion of staff that the applicant has met the requirement for a Lot Line Vacation and Re-plat as specified in the Subdivision Ordinance 2014-03, as amended 02/04/15, and therefore, recommends approval of this request. Upon approval, a copy of the recorded plat shall be provided to the Town of Edgewood Planning Office.

Future development of the lots is required to meet the provisions of the following Town of Edgewood Ordinances:

- Fire and Rescue Impact Fees 2004-09
- Grading & Drainage 2001-01
- Landscaping Ordinance 2000-25
- Sign Ordinance 2009-02
- Sub-Division Ordinance 2014-03, as amended 02/04/15
- Uniform Fire Code 1999-T
- Zoning Ordinance 2014-02, as amended 08/05/15



Town of Edgewood
 Community Planning & Development
 P.O. Box 3610
 Edgewood, NM 87015
 (505) 286-4519 ext. 3 Fax: 286-4519

SUBDIVISION AND PLATTING APPLICATION

For Municipal Use Only: File No. 2016-Sub 003
 Date of Receipt: 4.6.16
 Planning Commission Meeting Date: _____

The undersigned hereby applies for approval under the Town of Edgewood Subdivision Ordinance, for the Plan, submitted herewith and described below:

Application Classification:

- _____ Sketch Plat/Pre-Application
- _____ Minor Subdivision Plat \$250.00 + 10.00 per resulting lot (limit three)
- _____ Preliminary Plat \$50.00 per resulting lot
- _____ Final Plat \$ 250.00 + 10.00 per resulting lot
- _____ Vacation of Plat
- X Lot line vacation/replat \$ 50.00
- _____ Right-of-way vacation \$ 100.00

Applicant: Aspire Hotels LLC Telephone: 505-235-9018
 Address: P.O. Box 687 Edgewood, NM 87015
Street Address City State Zip Code
 Agent: Scott M. Cook Telephone: 505-235-9018
 Address: SAME AS ABOVE
Street Address City State Zip Code

Legal Description: Section 28, T. 10N., R. 7E, NM. P.M.
Existing Subdivision
 Project Address: S. Marquette Ct.

Address: 608 Marquette Ct.

Number of Lots Created: 1 Total Acreage: 1.92
 Current Zoning: C-2

*****IMPORTANT - PLEASE READ AND REVIEW*****

- Check if there are any easements on the property and show them on all concept and preliminary plats.
- Check if there are any drainage or stormwater facilities on the property and show them on all concept and preliminary plats.
- Check if there are any encroachments on current or proposed easements and show them on all concept and preliminary plats.
- Check if there are any public or private utilities on the property and show them on all concept and preliminary plats.

In applying for and signing this application, the property owner hereby grants permission to Municipal staff to access the property before and after the Planning Commission's; review for the purposes of inspecting the proposed and/or approved parcels. Notarized Agent Authorizations are required as part of the application documents in the event an Agent is assigned.

Applicant's Signature: [Signature] Date: 2-19-16

Owner's Signature: _____ Date: _____
(if different from applicant)

Fee Paid: 5000 Date: 4.6.16

Receipt: _____ Initials: [Initials]

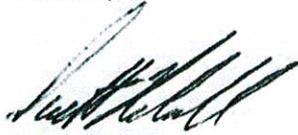
Scott McCall
Leverage Development/Aspire Hotels
P.O. Box 687
Edgewood, New Mexico 87015
March 30, 2016

Dear Town of Edgewood Planning and Zoning Commission:

It was brought to my attention by the Town's staff that we need to formally request that the lot line that divides Lot 18R and 19R be vacated. Both lots were purchased to consolidate both lots into one building side for the Comfort Inn and Suites at 8 Marietta Court. I did not realize that a formal request for vacating the common line that splits these lots needs to be requested and approved by the Planning and Zoning Commission. Therefore, I would like to "formerly" request that this common lot line, per the submitted drawing, be eliminated and both lots be combined into one larger lot.

We look forward to the opportunity to bring the Town its first hotel hopefully by the end of this year. Please let me know if there is anything else that might be needed to vacate this lot.

Sincerely,



Scott McCall
Managing Partner
Leverage Development/Aspire Hotels

BOUNDARY SURVEY OF
LOTS 18R AND 19R, EDGEWOOD PLAZA, LOCATED IN SECTION 28, T10N, R7E,
N.M.P.M., TOWN OF EDGEWOOD, SANTA FE COUNTY, NEW MEXICO

DESCRIPTION

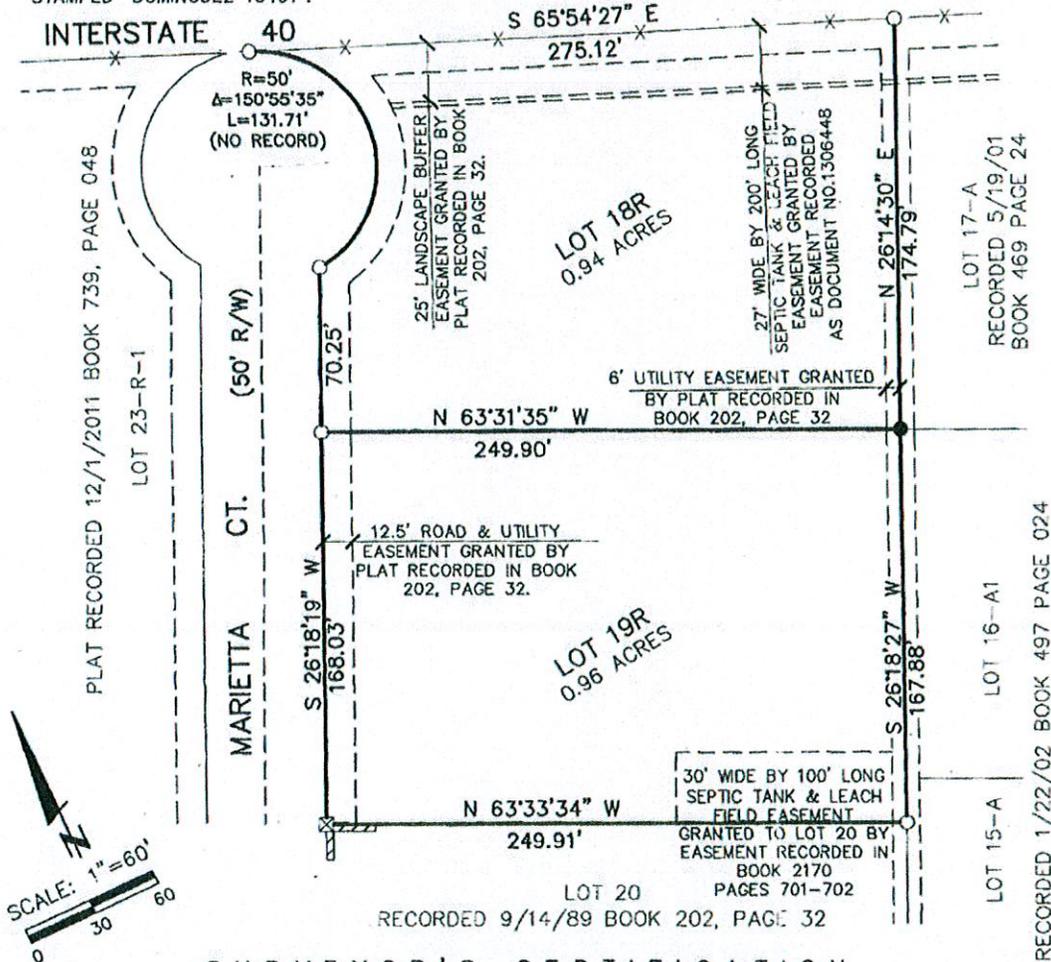
LOTS 18R AND 19R AS SHOWN ON THE 'REPLAT AND LOT CONSOLIDATION OF LOTS 18, 19, 22, 23, 24, 25, 29, AND 30 OF EDGEWOOD PLAZA...'; FILED IN THE OFFICE OF THE COUNTY CLERK, SANTA FE, NEW MEXICO ON AUGUST 5, 2005 IN PLAT BOOK 595, PAGE 019 AS DOCUMENT NO. 1392081.

SURVEY GENERAL NOTES

1. THE BASIS OF THIS SURVEY IS THE WARRANTY DEED TO WASHINGTON FEDERAL, RECORDED ON DECEMBER 27, 2012, AS DOCUMENT NO. 1691876, AS SHOWN ON THAT PLAT IN ITEM 4-B BELOW.
2. BEARINGS SHOWN ARE THE SAME AS SHOWN ON THAT PLAT OF EDGEWOOD PLAZA NOTED IN ITEM 4-B BELOW.
3. LANDS SHOWN HEREON LIE OUTSIDE THE 100 YEAR FLOODPLAIN ACCORDING TO F.I.R.M. PANEL NO. 35049C1000E.
4. THE FOLLOWING DOCUMENTS WERE USED TO DETERMINE THE BOUNDARIES SHOWN ON THIS SURVEY:
 - A. WARRANTY DEED TO WASHINGTON FEDERAL, RECORDED ON DECEMBER 27, 2012, AS DOCUMENT NO. 1691876;
 - B. PLAT OF 'REPLAT AND CONSOLIDATION OF LOTS 18, 19, 22, 23, 24, 25, 29 AND 30, EDGEWOOD PLAZA RECORDED ON AUGUST 5, 2005, IN PLAT BOOK 595, PAGE 019;
 - C. PLAT OF EDGEWOOD PLAZA, RECORDED ON SEPTEMBER 14, 1989, IN PLAT BOOK 202, PAGE 32;
 - D. COMMITMENT FOR TITLE INSURANCE ISSUED BY FIDELITY NATIONAL TITLE INSURANCE COMPANY, FILE No. 184933-VILLANEC, DATED JULY 16, 2015.

LEGEND

- | | | |
|---|---------------------------------|----------------------|
| ○ SET 5/8"Øx16" LONG REBAR & I.D. CAP STAMPED "OA PS 14405" | ☒ CHISELED "X" IN CONCRETE CURB | —— BOUNDARY LINE |
| ● FOUND 1/2" REBAR & CAP STAMPED "DOMINGUEZ 10461". | ▬ CONCRETE CURB | - - - EASEMENT LINE |
| | | - x - x - WIRE FENCE |



SURVEYOR'S CERTIFICATION

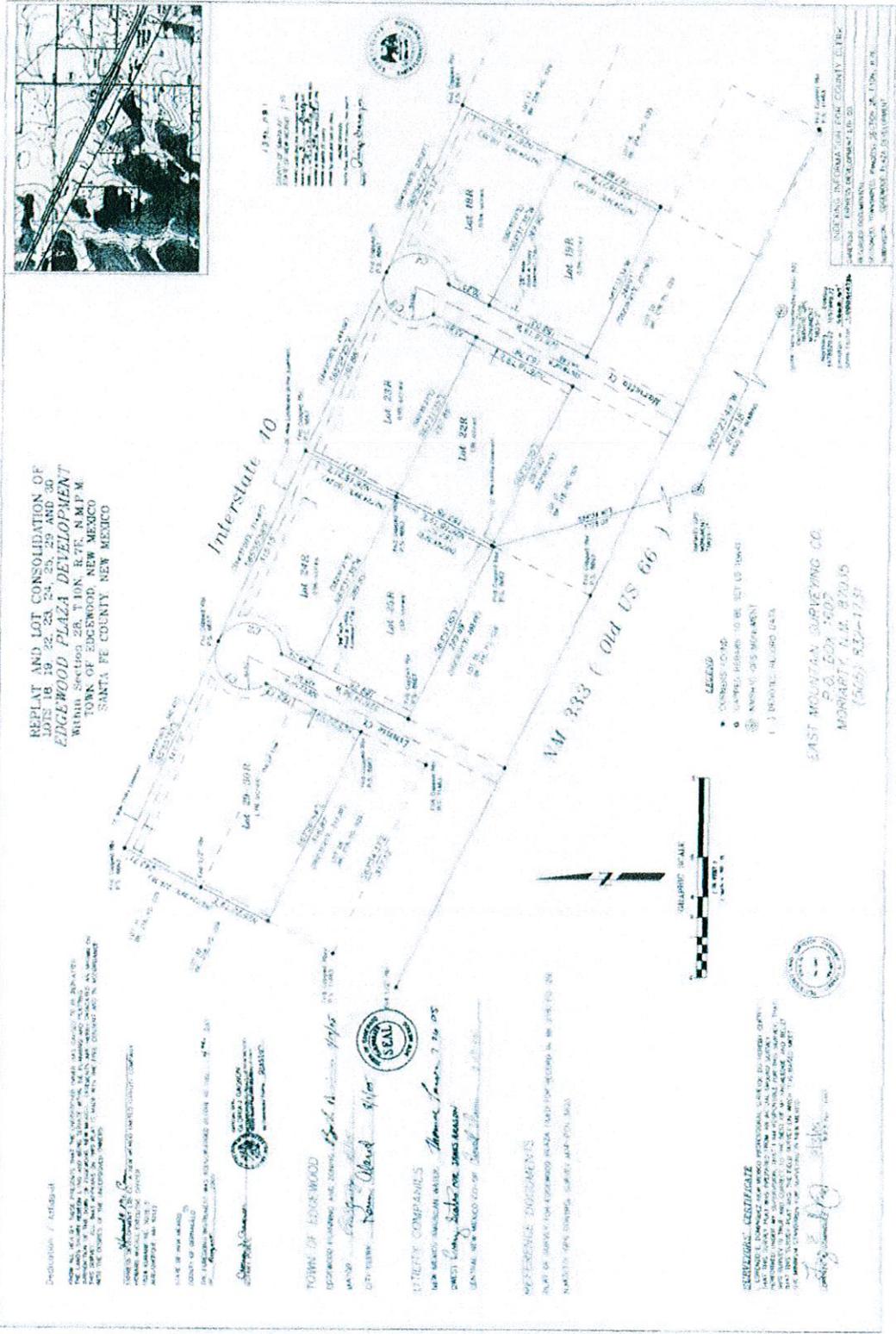
I, ROGER G. SCUSSEL, A NEW MEXICO PROFESSIONAL SURVEYOR NO. 14405, DO HEREBY CERTIFY THAT THIS BOUNDARY SURVEY PLAT AND THE ACTUAL SURVEY ON THE GROUND UPON WHICH IT IS BASED WERE PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION; THAT I AM RESPONSIBLE FOR THIS SURVEY; THAT THIS SURVEY MEETS THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO; AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER CERTIFY THAT THIS SURVEY IS NOT A LAND DIVISION OR SUBDIVISION AS DEFINED IN THE NEW MEXICO LAND SURVEY ACT AND THAT THIS INSTRUMENT IS A BOUNDARY SURVEY PLAT OF AN EXISTING TRACT OR TRACTS.

Roger G. Scussel
 ROGER G. SCUSSEL
 P.S. NO. 14405

8-7-15
 DATE



1392081.001



**REPLAT AND LOT CONSOLIDATION OF
LOTS 19, 22, 23, 24, 25, 29 AND 30
EDGEWOOD PLAZA DEVELOPMENT
Within Sections 28, T 10N, R 7E, NMP M
TOWN OF EDGEWOOD, NEW MEXICO
SANTA FE COUNTY, NEW MEXICO**

DECLARATION
I, the undersigned, being the owner of the above described land, do hereby declare that the replat and lot consolidation shown on this plat is correct and true to the best of my knowledge and belief, and that the same conform to the requirements of the laws of the State of New Mexico, and that the same are not in violation of any law, ordinance, or regulation of any governmental authority having jurisdiction over the same.

STATE OF NEW MEXICO
COUNTY OF SHERIDAN

SEAL
Notary Public
My Comm. Expires 12/31/2011

TOWN OF EDGEWOOD
SEVERED FINANCING AND ZONING, *Edgewood Plaza*, 1996
BY *Don Ward*, Mayor

UTILITY COMPANIES
NEW MEXICO MUNICIPAL WATER, *Thomas Town*, 2005
SANTA FE COUNTY WATER, *Edgewood Plaza*, 2005
GENERAL UTILITIES CO. OF NEW MEXICO, *Edgewood Plaza*, 2005

REFERENCE DOCUMENTS
PLAT OF LOTS 19, 22, 23, 24, 25, 29 AND 30 FOR SECTION 28, T 10N, R 7E, NMP M
NORTH 40N BOUNDARY, 1996, MAP 101, 300

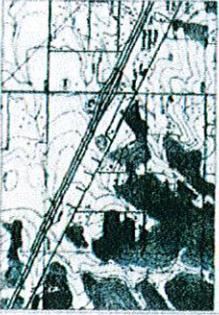
LEGEND

- CONVEYING COMPANY
- LATEST REVISION TO BE SET OF TOWNSHIP
- ⊕ ANTI-COLLISION MARKER
- 1" = 100 FEET, UNLESS NOTED

EAST MOUNTAIN SURVEYING CO.
P.O. BOX 5005
MONTEZUMA, N.M. 87015
(505) 832-1131

SEAL
Notary Public
My Comm. Expires 12/31/2011

SEAL
Notary Public
My Comm. Expires 12/31/2011



INDEXING INFORMATION FOR COUNTY CLERK
RECORDS SECTION
SANTA FE COUNTY, NEW MEXICO
RECORDS SECTION
SANTA FE COUNTY, NEW MEXICO
RECORDS SECTION
SANTA FE COUNTY, NEW MEXICO

RESOLUTION NO: 2016-05
A RESOLUTION OF THE PLANNING AND ZONING
COMMISSION OF THE TOWN OF EDGEWOOD

WHEREAS, Section 3-19-3 of the NM Statutes provides, in part that “A planning commission shall adopt rules for the transaction of business”; and

WHEREAS, the Planning and Zoning Commission of the Town of Edgewood (hereinafter called “Commission”) desires that its business be conducted in a fair, impartial and orderly manner for the public good;

NOW THEREFORE, be it resolved that the following rules are established for the transaction of business before the Commission this 10th day of May 2016:

1) **Members and Officers:**

- a. By Town Ordinance 2014-05 the Commission shall consist of five (5) members, a minimum of three (3) of whom must reside within the municipal boundaries, and one alternate, appointed by the Mayor with the consent of the Town Council. Commissioners serve two-year terms, on a staggered basis.
- b. Terms for new Commissioners begin upon swearing in at a regularly scheduled Planning Commission meeting following appointment.
- c. The Commission at its first regularly scheduled meeting each January elects as Officers its Chairman, Vice-Chairman and Secretary, to serve one-year terms as outlined in Ordinance 2014-05.
 - i. **Chairman:** The duties of the Chairman include the following: presiding at all meetings of the Commission, calling special meetings as necessary, in coordination with the Town Administrator (or their designee), preparation of the meeting agenda, signing documents of the Commission, assuring that all actions of the Commission are taken in accordance with Town Ordinances and other relevant laws and regulations, representing the Commission and speaking on its behalf, where so prescribed in the Land Use regulations and ordinances of the Town of Edgewood.
 - ii. **Vice-Chairman:** The duties of the Vice-Chairman include the following: presiding or performing all the duties of the Chairman during the absence, disability or disqualification of the Chairman; reviewing and signing documents of the Commission.
 - iii. **Secretary:** The duties of the Secretary include the following: affirming and maintaining copies of the minutes of all meetings, and preparing or informing the Commission of correspondence relating to the business of the Commission. The recording and drafting of meeting minutes may be delegated to the Town Staff at the discretion of the Secretary.

2) **Meetings:**

- a. **Regular Meetings:** Regular meetings are held on the **first and third Monday** of each month, at the Edgewood Community Center at 6:00 PM, or, if that facility is not available, at a location in the Town of Edgewood fully accessible to the public.
- b. **Special Meetings:** Special meetings may be called by the Chairman or by a majority of Commissioners for a time and date certain at a location fully accessible to the public in the Town of Edgewood.
- c. **Meeting Notices:** Public notices of regular and special meetings of the Commission shall specify the date, time, location and subject matter of the meeting.
 - i. Where notice requirements are not otherwise specified by Ordinance, notices of regular meetings are posted a minimum of seven calendar days in advance of the meeting date and in accordance with the Open Meetings Act of the New Mexico Statutes.
 - ii. Where notice requirements are not otherwise specified by Ordinance, notice of special meetings are posted a minimum of three calendar days in advance of the meeting date and in accordance with the Open Meetings Act of the New Mexico Statutes.
 - iii. Notices for regular and special meetings are posted at the following places within the Town of Edgewood:
 1. Municipal Offices: 1911 Route 66
 2. Smith's Food & Drug Center: 2B State Road 344
 3. Edgewood Community Library: 95 State Road 344
 4. Mr. Gas Mart: #1 State Road 344
 5. Edgewood Community Center: 27 E. Frontage Road
 6. Mail & Copy Business Center: 2 Marietta Court
- d. **Quorum:** A majority of the members of the Commission, but no less than three (3), shall constitute a quorum for the transaction of business.
- e. **Duration of Meetings:** Regular and Special meetings shall not extend beyond the hour of 10:00 p.m. unless agreed upon at the time the meeting takes place by a majority of Commission members in attendance and affirmed by any applicants with matters still pending. The Commission will make every effort to hear and consider all agenda items on a regular or special meeting prior to 10:00 p.m. If the Commission is unable to complete all agenda items by such hour, a Motion to reconvene at a date certain is in order. Notice of the time and place of the reconvened meeting will be posted within 24 hours of the approved Motion to Reconvene and such reconvened meeting will comply in all respects with the Open Meetings Act of the New Mexico Statutes. Reconvened meetings will be held only on an exceptional basis in compliance with the Ordinances.
- f. **Agenda:** The Commission's agenda for regular meetings shall proceed in the following sequence, unless otherwise agreed upon by vote of a majority of the Commission present:

call to order, approval of the agenda posted in advance; Commission business items, to include approval of minutes of prior meetings; applications for subdivision plat approval requests, zoning items, public comment, matters from the Chair and Commissioners, matters from the Town Staff, calendar update and adjournment.

- g. **Minutes:** Minutes are prepared using notes, electronic recordings or other media recordings taken at the meetings. The minutes include the following; the date, time and place of the meeting; the names of Commissioners in attendance and those absent; the names of Town Staff present; the agenda items; the substance of the proposals considered; names of citizens who address the Commission; a record of any decisions and votes taken which show how each member voted.
 - h. **Testimony under Oath:** All persons giving testimony before the Commission shall be sworn in under oath before proceeding by the Town Administrator, or other qualified notary public, and shall be obligated thereby to testify in a truthful manner.
 - i. To assist in the orderly presentation of testimony and maintenance of minutes and other Commission records, all persons wishing to testify (and attorneys representing clients) are asked to provide their names and addresses on the sign-in sheet prior to appearing before the Commission.
- 3) **Conduct of Meetings:** Roberts Rules of Order, newly Revised is hereby adopted for the governance of the Commission in cases not otherwise provided for in these rules.
- a. When conducting hearings in performance of its quasi-judicial functions, the Commission shall follow the due process requirements of State of New Mexico ex. Rel. Battershell v. City of Albuquerque. 108 N.M. 658, 77 P2d 386 (Ct. App. 1987)
 - b. **Presentation by Applicants and the Public:** Applicant will be allowed up to 15 minutes to make their presentation. At the conclusion of an applicant's presentation, Commissioners may question the applicant to assist their understanding. Persons in favor of the application will be invited to speak, then person's opposed to the application will be invited to speak. Proponents, opponents and others testifying are asked to confine their remarks to matters relevant to the commission's decision-making responsibilities concerning the pending application. The applicant may cross-examine those appearing in support of, in opposition to, or presenting testimony concerning his/her application. Speakers will be called to the podium by the Chairman.
 - c. The Town Administrator (or their designee) will acknowledge and enter into the record signed, written communications received from the public concerning the pending application at least five (5) working days prior to the public hearing and those communications will be distributed to the Commission and the applicant by the Department staff. No written documents shall be distributed to the Commission except through the Community Planning and Development Department.
 - d. At no time will the public be allowed to confront the applicant or members of the Planning Commission using derogatory language or in an unprofessional manner. The Chair shall have the discretion to require a person to leave the hearing if this occurs.

After the hearing is closed, discussion will be limited to the Commission and the Staff.

- 4) **Voting and Decisions by the Commission:** Decisions by the Commission shall be made in the affirmative on motion by a Commissioner, duly seconded. Approval of a motion shall occur on the affirmative verbal vote of a majority of Commissioners present. If the decision is unanimous, the Chairman shall so state for the record. In the event of a divided vote, the Chairman shall announce those Commissioners recorded in favor, those recorded against, and those abstaining. Voting in absentia, fax or other written or electronic means is not permitted. Voting during closed sessions or by secret ballot is not permitted. The maker of a motion shall set forth supporting reasons (findings) in the text of his/her motion to assist in understanding the decision to be made by the Commission.

- 5) **Completeness of Materials and Record of the Meeting:** It is the responsibility of applicants to present all relevant written material in accordance with Ordinances as required and present all relevant testimony prior to decisions by the Commission. Applicants will not be permitted to supplement or add new documents after the Commission's action. All testimony, information and documents submitted to the Commission prior to its decision and the transcript of the meeting will constitute the record in the event of an appeal.

- 6) **Postponement of Decisions:** Following receipt of all testimony, the Commission may choose to keep the record open for a period not to exceed the time until the next regularly scheduled meeting, and reserves its right to postpone vote and decision making to a subsequent meeting, unless town ordinances or laws require a decision be made with a specific time.

- 7) **Distribution of Materials to Commissioners:** Agenda and other written materials assembled for distribution to Commissioners by the Community Planning & Development Department shall be provided electronically via Town e-mail, and copies placed in the cabinet provided for that purpose outside of the Municipal Offices. It is the responsibility of each Commissioner to check periodically his/her name slot to remove materials for preparation in advance of meetings.
 - a. The Commission requests staff of the Community Planning & Development Department to distribute all written material needed for preparation for decision-making by the Commission at least five (5) working days prior to regular or special meetings.
 - b. The Commission requests that except in unusual circumstances, written communications from professionals such as legal counsel or professional engineers retained by the Town regarding matters pending before the Commission shall be distributed at least five (5) working days prior to regular or special meetings.

- 8) **Ex Parte Communication:** When an application or other request is placed on the agenda for a regular or special meeting it becomes a matter within the jurisdiction of the Commission and subject to the legal restraints on ex parte communications with

Commissioners. Undisclosed ex parte communications could compromise the fair and open purposes of these rules for the transaction of Commission business. If a Commissioner believes he/she has been contacted ex parte on a matter pending before the Commission, it is his/her obligation so to inform the other members of the Commission prior to the matters consideration and, if the ex parte communication was in writing, submit it as part of the record for the meeting.

- 9) **Conflicts of Interest:** Applications, presented to the Commission for decision may, on occasion, present the potential for conflicts of interest for individual Commissioners. A conflict could exist if a decision conferred a direct or indirect financial or personal benefit to a member of the Commission or benefit someone with whom the Commissioner has a business or kinship relationship.

It is the obligation of each Commissioner to declare for the record any instance where a conflict of interest or the appearance of a conflict of interest might exist with regard to matters pending before the Commission. Such Commissioner must then withdraw from further deliberations, including participation in discussion, and any decision making and should leave the room where the hearing is taking place.

- 10) **Site Visits:** The Commission may conduct properly noticed meetings for the purpose of site visits. The objective of the site visit is to provide Commissioners with a geographic orientation. Members of the public may attend, however, no public testimony, substantive discussion of the issues or exchange of evidence will be allowed. In addition, ex parte communication with members of the Commission is prohibited.

- a. Site visits will be publicly noticed and will normally take place on the day of the planning & zoning commission meeting giving sufficient time to arrive back at the Community Center at least 15 minutes before the start of the commission meeting.
- b. Commissioners should either travel to the site at the same time, if present at the site before the visit begins particular care should be taken to ensure that they maintain their objectivity. Hospitality or lifts should not be accepted from applicant or objector as this could be seen to show favor.
- c. Members may ask the Town Administrator (or their designee) for factual clarification of any planning matter relating to the proposal or surrounding land, for example, distances to adjoining or objectors' properties. At no time during the site visit should commissioners debate or comment on the planning merits of a proposal.
- d. The Commission attendance at the site visits will be noted in the minutes.

- 11) **Amendments to these Rules:** These rules may be amended at any regular or special meeting by vote of a majority of the entire membership of the Commission, provided that a written copy of the proposed amendment has been distributed to each member of the commission seven days in advance of such meeting.

PASSED AND ADOPTED THIS 10th day of May, 2016

Dan Thompson, Vice Chairman

ATTEST:

Cheryl Huppertz, Secretary

Return To:
Fidelity National Title of New Mexico, Inc
8500 Menaul Blvd NE, Ste. B150
Albuquerque, NM 87112

Return To: FT000184933LV
FIDELITY NATIONAL TITLE INSURANCE CO.

Recorded 1778387 10/29/15 S.F.C.

GF# FT000184933-NM01

SPECIAL WARRANTY DEED

Washington Federal, A National Association who acquired title as Washington Federal, a Federal Savings Association for consideration paid, grant to

Aspire Hotels, LLC, A New Mexico Limited Liability Company

whose address is P.O. Box 687, Edgewood, NM 87015 the following described real estate in Santa Fe County, New Mexico:

Lots 18R and 19R as shown on the "Replat and Lot Consolidation of Lots 18, 19, 22, 23, 24, 25, 29 and 30 of Edgewood Plaza Development", filed in the office of the County Clerk, Santa Fe, New Mexico on August 5, 2005 in Plat Book 595, page 019 as Document No. 1392081.

with special warranty covenants.

SUBJECT TO Patent, reservations, restrictions, and easements of record and to taxes for the year 2016, and subsequent years.

Witness my hand and seal this 27th day of Oct 2015

Washington Federal, A National Association
BY: Ricki Gerstmann
Ricki Gerstmann, Assistant Vice President

STATE OF Washington
COUNTY OF King

This instrument was acknowledged before me Joy N. Pardue
this 27th day of October 2015

by Ricka Gerstmann
(Name of Officer)
AVP of Washington Federal NA
(Title of Officer) (Name of Corporation Acknowledging)
a National Association.
(State of Incorporation) corporation, on behalf of said corporation.

Joy N. Pardue
Notary Public

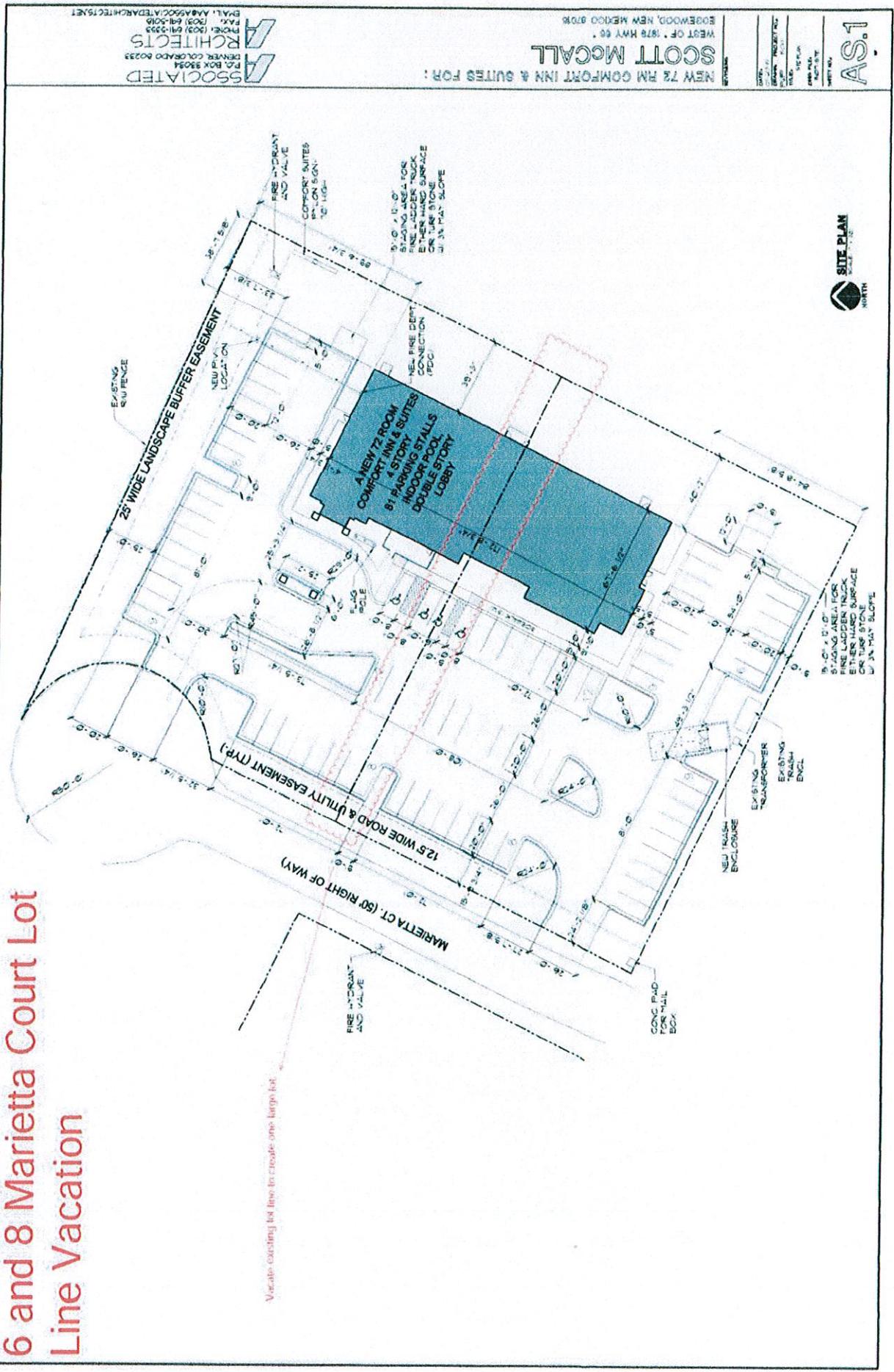


My Commission Expires: 9-23-2018

(SEAL) JOY N PARDUE
Notary Public, State of Washington
My Commission Expires
September 23, 2018

COUNTY OF SANTA FE 1
STATE OF NEW MEXICO 158 SPECIAL WARRANTY DEED
PAGE: 1
I Hereby Certify That This Instrument Was Filed for
Record On the 29th Day Of October, A.D., 2015 at 01:48:25 PM
And Was Duly Recorded as Instrument # 1778387
Of The Records Of Santa Fe County
Witness My Hand And Seal Of Office
Geraldine Salazar
Deputy - EQUINTANA County Clerk, Santa Fe, NM

6 and 8 Marietta Court Lot Line Vacation



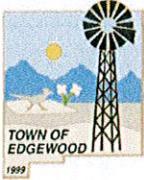
Vacate existing lot line to create one large lot

ASSOCIATED ARCHITECTS
 720 BOX 35034
 DENVER, COLORADO 80233
 PHONE: (303) 491-2255
 FAX: (303) 491-2255
 EMAIL: ASSOCIATEDARCHITECTS@AARCHITECTS.COM

SCOTT MCCALL
 WEST OF 1878 HWY 66
 EDGEWOOD, NEW MEXICO 87016
 NEW 7.7 ROOM COMFORT INN & SUITES FOR:



AS1



BEFORE THE TOWN OF EDGEWOOD PLANNING & ZONING COMMISSION

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER

IN THE MATTER OF AN APPLICATION BY:

WILLIAMS, CLAY

CASE: ZC 2015-1119

ZONE CHANGE FROM R-1 RESIDENTIAL TO MU-MIXED USE
FOR PROPERTY LOCATED AT 88 CHURCH, TRACT B, 92A CHURCH, TRACT A, AND 92C CHURCH TRACT
D, LAND DIVISION OF THE LANDS OF GERVAIS & PATRICIA WILLIAMS,
SECTION 27, T10N, R7E, N.M.P.M. EDGEWOOD, NM 87015

I. APPLICATION PROCESS

1.1 LEGAL

A request by Clay Williams, for a Zone Change from R-1 Residential zoning to MU-Mixed Use zoning for property located at:

- 92A East Church Street: Tract A: 0.95 Acres
- 92C East Church Street: Tract B: 0.95 Acres
- 88 East Church Street: Tract D: 0.86 Acres

of the Land Division of the Lands of Gervais & Patricia Williams, Section 27, T10N, R7E, NMPM, Santa Fe County, Edgewood, NM 87015.

2. PUBLIC MEETING

On April 5, 2016 the Planning & Zoning Commission reviewed this application for recommendation to the Town Council.

Applicant Presenting Information : Mr. Clay Williams
Staff Presenting Information : Bonnie Pettee and Steve Shepherd

3. FINDINGS OF FACT

- 3.1 The Edgewood Planning & Zoning Commission is authorized to hear this case and to make a recommendation to the Edgewood Town Council to approve this Zone Change application for Clay Williams.
- 3.2 The authority to recommend approval of this application is within the jurisdiction of the Commission.
- 3.3 Recommendation for approval of this Zone Change will not adversely affect the general plan of the Town or be contrary to the general public health and welfare.

4. CONCLUSIONS OF LAW

The request for a Zone Change from R-1 Residential zoning to MU-Mixed Use zoning for property located at 88 Church, 92A Church, and 92C Church is:

4.1 Determined to have met the requirements for a Zone Change Request per the Zoning Ordinance 2014-02, as amended 08/05/15, Section 40 Amendments and Section 20. MU-Mixed Use Zone, with the following conditions:

A. Town Ordinances to be followed as the project moves forward in development.

- Zoning Ordinance 2014-02
- Grading & Drainage Ordinance 2002-01
- Landscaping Ordinance 2000-25
- Sign Ordinance 2009-02
- Uniform Fire Code 1999-T
- Fire and Rescue Impact Fees 2004-09

4.2 Approval of this request is not detrimental to the public health, safety or welfare in the zone in which it is proposed.

4.3 Approval of this request will not result in adverse impact on neighboring properties.

5. ORDER OF DECISION

Based on the Findings of Fact, Conclusions of Law and the reasons stated, the Town of Edgewood Planning and Zoning Commission recommends that Zone Change Application ZC 2015-1119, a request for a change to the zoning designation from R-1 Residential to MU Mixed Use Zone for the property identified as 88 Church, Tract B, 0.95 acres; 92A Church, Tract A, 0.95 acres; and 92C Church, Tract D, 0.86 acres; Land Division of the Lands of Gervais & Patricia Williams, Section 27, T10N, R7E, N.M.P.M. Edgewood, NM 87015 be forwarded to the Town Council for approval and Zone Map Amendment.

THIS RECOMMENDATION WAS APPROVED BY THE EDGEWOOD PLANNING AND ZONING COMMISSION APRIL 19, 2016.

Dan Thompson , Vice Chairman
Town of Edgewood Planning & Zoning Commission

Date

Attest:

Cheryl Huppertz, Secretary
Town of Edgewood Planning & Zoning Commission

Date

Save the date!

2016 Planning Commissioners Workshop

Spring Cleaning Time! *Shake Off Those Cobwebs, Dust Off Your Maps!*

Topics

Rezoning an Entire Town: How Corrales Did it
There's a Map For That: MRCOG Can Help Update Your Maps
Doing The Right Thing: Responsibilities of Planning Commissioners

Guest Speakers: Anita Miller and Cynthia Tidwell

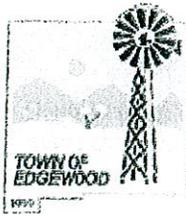
When: May 13, 9AM-12PM

Where: MRCOG Board Room

Address: 809 Copper Ave NW
Albuquerque, NM 87102



**Please Bring Handouts
Attached After This
Page To The Next
Meeting**



The Planning Commission

Four Basic Questions

1. What is the planning commission?

It is a committee of 5 or more citizens who have been appointed by the mayor, confirmed by the council to review matters related to planning and development. The commission holds public hearings on a regular schedule to consider land use matters. These include such things as the comprehensive plan, specific plans, rezonings, use permits, and subdivisions. Commissioners serve at the pleasure of the council and mayor, so commission membership changes in response to changes in those bodies.

The commission is the town council's advisor on land use planning. The council may choose to follow the recommendations of the commission or not.

Accordingly, they may reverse or modify commission actions or send proposals back to the commission for further review. In addition, commission decisions are subject to appeal to the council. The council has the final say in all town matters, respectively. Because the commission focuses on planning issues, it is a valuable intermediary between the public and the town council. When matters run smoothly, the commission has a low profile. However, when there is a controversy, it is there, in the thick of things, doing its best to sort through the facts and make a good decision.

2. Why have a planning commission?

The idea of appointing a group of laymen to make decisions and recommendations about land use planning originated at the turn of the century. Government reformers, seeking to take local government out of the hands of

party "machines," reorganized administrative procedures in an attempt to reduce political influence on decisions. One solution was to create a planning commission, made up of appointed citizens that would be responsible for setting the community's development direction.

3. How does it relate to the planning department?

The town planning department is the commission's research staff advising the commission on the comprehensive plan, zoning ordinance, subdivision ordinance and other land use regulations. In addition, the planning staff provides background information and recommendations on the proposals that are under the commission's consideration; answers technical questions, and makes sure that meetings have been properly advertised in advance. A planning department staff member will always be in attendance at commission meetings. Other attendees may include representative's engineers or the town attorney.

4. What does it do?

"Plan" in order to identify important community issues (such as the direction of growth, housing needs, and environmental protection), project future demand for services (sewers, roads, fire protection, etc.), address potential problems (such as overloaded sewers or crowded roads), and establish goals and policies for directing and managing future development. The town council may assign tasks to the planning commission and adopted ordinances assign others such as:

- Assist in writing the comprehensive plan and community or specific plans and hold public hearings on such plans;
- Hold hearings and act upon proposed amendments to the comprehensive plan and community or specific plans;
- Hold hearings and act upon proposed changes to the zoning ordinance and zoning maps;
- Hold hearings and act on tentative subdivision maps;
- Promote public interest in the comprehensive plan;
- Consult with and advise public officials and agencies, utilities, organizations and citizens regarding implementation of the comprehensive plan;
- Undertake special planning studies as needed.

Commissioners can learn about their commission's particular responsibilities by asking the planning department and referring to their local zoning and subdivision

ordinances.

Meetings

The planning commission holds meetings -- lots of them. State law requires public hearings before planning actions are taken. At its regularly scheduled hearings, the planning commission weighs planning proposals in light of state and local regulations and listens to testimony from interested parties. If necessary, the commission may continue a hearing at a later time to allow more information to be gathered or to take additional testimony. The commission usually considers several items at each hearing; considering each proposal separately and taking action before moving on to the next item on the agenda. The commission's decision on a project may be: (1) referred to the town council as a recommendation for action (special use permits or annexation zoning requests); or (2) considered a final action unless appealed to the council (this is common for subdivisions, variances, and use permits). The council holds a noticed public hearing on the projects referred to it by the commission (or received on appeal). Pursuant to the Open Meetings Act, all meetings, including study sessions and workshops, must be open and public. This means that a quorum of commissioners can only discuss commission business in a public meeting. Furthermore, meeting agendas must be posted at least 72 hours in advance and topics are limited to those on the agenda.

Notice

The planning commission must publish advance notice of comprehensive plan, zone change, conditional use permit, variance, and subdivision public hearings in a newspaper of general circulation. Notice of proposed comprehensive plan and specific plan adoption or amendment must be mailed directly to the involved property owners. When a zone change, conditional use permit, variance or subdivision is involved, notice must also be mailed to the owners of property within 500 feet of the project boundaries.

The Chairperson

The commission chairperson is responsible for making sure that meetings proceed in a fashion conducive to rational decision making. The chair must be familiar with the commission's procedures and with the agenda items to be discussed at each meeting. The chairperson sets the tone of the hearing, keeps the discussion on track, encourages fairness, moderates and contributes to discussions, and helps direct testimony to the issues at hand. The chairperson will usually:

Open the meeting.

- Explain why the meeting is being held.
- Review the agenda and note any changes thereto.
- Review the procedures, rules and time limits to be in effect.

Moderate discussion.

- Describe, or ask staff to describe, the item to be discussed.
- Ask that speakers identify themselves and take turns when giving testimony.
- Ask speakers to limit themselves to new testimony.
- Ask that commission members wait to be recognized prior to speaking.
- Intervene when necessary to prevent more than one speaker from talking at one time.
- Ask staff for information or clarification, as necessary.
- Intervene when speakers ramble or get away from the issues.
- Close the meeting to testimony prior to deliberations.

Lead deliberations.

- Summarize the issues.
- Ask for input from the commission as a whole.
- Ask for more information from staff if necessary.
- When commissioners disagree, assist them in expressing their various concerns.
- When a motion is proposed, make sure that it is stated understandably and in full before a vote is taken.
- Encourage the commissioners to make timely decisions.
- Make sure that findings are adopted when required.

An Important Lesson - "Be Prepared"

Prior to every hearing, each of the commissioners should have reviewed the items on the meeting agenda. This means reading the staff report, looking at the comprehensive plan and zoning ordinance sections pertinent to the particular project, and asking questions of the planning staff when necessary.

At the hearing, commissioners should be able to both ask and answer questions about the project, its relationship to the comprehensive plan and to the zoning or subdivision ordinances, and its potential impacts on the community. If legal questions arise, don't be afraid to ask town counsel for an opinion. Don't take legal advice from anyone but the town's own lawyer.

Recipe for an Effective Planning Commission

Effective planning commissions share certain qualities. These include:

- **Ability to focus on the subject under consideration.** Focusing means not being distracted by personalities, groups or issues that do not have anything to do with the agenda item being discussed.
- **A clear view of the big picture.** A good commission has the aggregate ability to identify the main points of an issue and to concentrate on addressing those. Keeping the big picture in mind is important so that the commission doesn't bog down in excessive attention to minor detail.
- **Established rules for conducting meetings.** These needn't be as formal as Robert's Rules of Order, but they should define the responsibilities of the chairperson, the other commissioners, and the staff. They should also establish the rules for testimony, such as the length of time available, speaker identification, etc.
- **Effective leadership.** An effective chairperson assists the flow of ideas and helps keep the proceedings on track.

- **Informed commissioners.** Prior to the hearing, commissioners should have read the staff reports, reviewed the pertinent sections of the comprehensive plan, zoning ordinance or other codes.
- **Attention to legal requirements.** A commissioner must keep basic legal requirements in mind. Among them: Is the proposal consistent with the comprehensive plan? Does it meet all applicable zoning or subdivision ordinance requirements? Is the commission's decision supported by findings of fact based on substantial evidence in the record? When in doubt, ask the town attorney for advice.
- **An open flow of ideas.** The chairperson and the other commissioners share responsibility for seeing that there is a continuing flow of ideas and discussion among all parties, including applicants, staff, members of the public, and the commissioners themselves. Be objective and ask questions.
- **A sense of pace.** The chair should be able to recognize that point in time at which testimony must be closed off so the commission can deliberate. Commissioners should hold their motions until the discussion has reached its conclusion. Both the chair and the other commissioners should know whether to continue a hearing or to make a decision.

The Commissioner's "Survival Kit"

Commissioners should bring the following to every meeting:

- The meeting agenda.
- Staff reports and environmental documents for each of the projects to be considered.
- A copy of the comprehensive plan.
- A copy of the zoning ordinance.
- If subdivisions are to be considered, a copy of the subdivision ordinance.
- A pad of paper and pencils.

The Legal Side of Planning

Countless volumes have been written about the legal basis for planning and all the court decisions on the subject. Commissioners should rely upon the town attorney for detailed legal opinions.

The Police Power

Planning and the regulation of land use are based upon local government's "police power." The courts have held that the police power may be used to regulate a wide and expanding variety of activities as long as it is exercised in a manner that is reasonably related to the protection of the public's health, safety, and welfare, is not preempted by federal or state law, and is within the framework

of state statute. Community planning, zoning laws, subdivision regulations, sign controls, community growth management regulations, and dedications of private land as a condition of development approval are some examples of the police power at work. Constitutional guarantees of equal protection, free speech, due process, and just compensation for the taking of private property define the boundaries of the police power. An illegal "taking" may occur as a result of either the public's acquisition of private property without just compensation or of excessively restrictive land use regulations that deprive a property owner of all uses of his/her land.

Findings

Planning commission decisions must be based on a rational decision-making process. Often, the commission must adopt written "findings" explaining the factual reasons for its decision. A finding is a statement of fact relating the information that the commission has considered to the decision that it has made. If a decision is challenged in court, the findings will be used to trace the commission's reasoning and to determine whether its action was legally justified. Findings must be supported by evidence in the hearing record (i.e., testimony, reports, environmental documents, etc.) and should not contain unsupported statements. Complete findings should be included in the commission's resolution of approval or denial. Keep in mind that findings will not rescue a decision if the commission has failed to follow the other procedures required by law.

Some actions requiring findings:

Zone change -- finding of consistency with the comprehensive plan and any specific plans.

Subdivision -- finding of consistency with the comprehensive plan and any specific plans; findings supporting approval/denial per state and local codes.

Specific plan adoption or amendment -- finding of consistency with the comprehensive plan.

Conditional use permit -- locally required findings (if any), findings supporting approval and conditions.

Variance -- specific findings required by state statute.

Planning Law

The comprehensive plan lays the groundwork for community decisions that will affect the future location of housing, business, industry, roads, parks, and other land uses, protect the public from noise and other environmental hazards, and conserve natural resources. Each town council, upon recommendation of their planning commission, carries out its comprehensive plan through its zoning, subdivision and other ordinances.

There is no requirement that adjoining cities or counties have identical, or even similar, plans and ordinances. Each town and each county adopts its own comprehensive plan and development regulations. In turn, each is solely responsible for the planning decisions made within its jurisdiction.

The Comprehensive Plan and Zoning Are Not the Same

A comprehensive plan is a set of long-term goals and policies that the community uses to guide development decisions. Although the plan establishes standards for population density, building intensity, and the distribution of land uses, it does not directly regulate land use.

Zoning, on the other hand, is regulatory. Under the zoning ordinance, development must comply with specific, enforceable standards such as minimum lot size, maximum building height, minimum building setback, and a list of allowable uses. Zoning applies lot-by-lot, whereas the comprehensive plan has a community-wide perspective.

Put another way, the comprehensive plan is a blueprint and zoning is a tool for making it a reality. The plan is the basis for programs such as the zoning and subdivision ordinances. In turn, zoning is a means of putting into action the plan's long term goals.

THE COMPREHENSIVE PLAN

The comprehensive plan is a community's blueprint for future development. It describes a community's development goals and policies. It also forms the basis for land use decisions made by the planning commission and town council.

Contents

A comprehensive plan consists of at least two parts. There is a written text describing the community's goals, objectives, and policies toward development. There is also a map (or maps) and diagrams illustrating the generalized distribution of land uses, the major road system, the open space system, and other policy statements that can be illustrated.

Elements covering subjects of local interest such as recreation, community design, or public facilities are contained in the Comprehensive Plan. It is quite common for a comprehensive plan to have only three or four "super-elements" which combine into the essence of the plan; there is no requirement for the number of maps and diagrams that must be adopted as part of the plan. Each local government decides the specific format and organization of its comprehensive plan. Although comprehensive plans are not required to follow a standard format, many contain similar features. Some of the things to look for in your local plan are goals (abstract and comprehensive expressions of community values), objectives (specific intermediate steps in attaining a goal), policies (specific statements that guide decision making), and implementation programs (descriptions of how the goals, objectives, and policies are to be put into action). Many plans also contain background information about the community, such as population projections, traffic levels, seismic hazards, community history, and housing characteristics. Comprehensive plans use maps and diagrams to identify the locations of proposed and existing land uses, flood hazard areas, open space lands, roads, and other features. The maps and diagrams must work together with the written portions of the plan to establish a clear view of the community's future.

Consistency

The comprehensive plan is important because it is the basis for many local land use decisions. Zoning, subdivisions, and public works projects should be consistent with the comprehensive plan. An action, program or project is consistent with the comprehensive plan if, considering all its aspects, it will further the goals, objectives and policies of the plan and not obstruct their attainment.

Each part of the comprehensive plan, be it a goal, policy or map/diagram, must mesh with all of the other parts of the plan. For instance, the land use element must not contain statements or assertions that conflict with the housing element. Similarly, the maps and diagrams adopted as part of the plan must agree with one another. For example, the location of a major highway on the land use element diagram must match its location on the circulation element diagram as well.

Approving and Amending the Plan

The process of adopting or amending a comprehensive plan encourages public participation. Public hearings are held for such proposals. Advance notice of the place and time of the hearing must be published in the newspaper and posted at standard posting spots. Copies of the adopted or amended plans must be available for the public purchase prior to a final decision.

The planning commission and the town council must hold at least one public hearing prior to approving or amending the plan. The commission will hold its hearing first and make specific recommendations to the council. A recommendation for approval must be made by a majority of the total membership of the commission.

The council will take final action on the proposals at their hearing. Approvals must be made by a majority of the total membership of the council. If they make substantial changes to any planning commission recommendations, those items should be sent back to the commission for further study and recommendations before a final decision is made.

Specific Plans

A "specific plan" implements, but is not technically a part of, the local comprehensive plan. Specific plans describe allowable land uses, identify open space, and detail infrastructure availability and financing for a portion of the community. A specific plan should be consistent with the comprehensive plan. In turn, zoning, subdivision, and public works decisions should comply with the provisions of the specific plan.

Amendment Considerations

The comprehensive plan shouldn't be amended casually. In fact, state law requires that amendments only be made when "in the public interest."

Commissioners should be able to answer all the following questions affirmatively when approving an amendment.

- Is the amendment in the public interest (i.e., it advances community goals, describes a community interest, etc.)?
- Is the amendment consistent with all other parts of the comprehensive plan (in other words, it doesn't conflict with any of the goals, objectives, policies maps or diagrams contained in any of the comprehensive plan's other elements)?
- If the amendment creates a "ripple effect," necessitating other changes to the plan, are those related changes being considered at the same time?
- Will the amendment necessitate changes in zoning or other ordinances and are those changes to be considered within a reasonable time?

ZONING

The zoning ordinance regulates land uses within the community. It assigns each piece of property to a "zone" which describes the rules under which that land may be used. These classifications, such as "R-1" for single-family residences or "C-1" for commercial uses, cover in specific terms the range of uses that is discussed broadly in the comprehensive plan.

A typical zoning ordinance may describe 10 or more zone classifications. Each of these zones identifies allowable uses and sets standards such as minimum lot size, maximum building height, and minimum front yard depth. In most local ordinances, development of allowable uses does not require a public hearing. Increasingly, however, communities are requiring a public review of the project's design before a building permit is issued.

The distribution of residential, commercial, industrial, and other zones must be based on the pattern of land uses established by the community's comprehensive plan. Zoning maps illustrate how zones have been distributed. Zoning is adopted by ordinance and carries the weight of local law. Land may be put only to those uses listed in the zone assigned to it. For example, if a commercial zone does not allow 5-story office buildings, then no such building could be built on land which has been assigned that zone.

In Edgewood the zoning administrator considers building and site development plans. Public notice of zoning hearings must be given at least 15 days before the hearing by advertisement in a newspaper of comprehensive circulation and by direct mailing to the owners of property located within 500 feet of the proposal's boundaries.

Rezoning

If a landowner proposes a use that is not allowed in that zone, then he/she must obtain a change of zone if that use is to occur. The planning commission holds public hearings, before property may be rezoned. The commission is not obligated to approve requests for rezoning and should deny such requests when the proposed zone conflicts with the comprehensive plan. Typically, zoning ordinances also provide for limited waivers to zoning regulations (variances), subject to a public hearing.

Rezoning Considerations

Commissioners should be able to answer the following questions affirmatively when approving a rezoning.

1. Is the proposed zone consistent with all component parts of the comprehensive plan (including text and maps)?

2. Is the proposed zone and its allowable uses compatible with existing and planned uses in the area?
3. If significant environmental effects have been identified as a result of the proposed rezoning, are actions being required or programs initiated to mitigate those effects?
4. Will the traffic impact be safely mitigated?
5. Public safety?

Variances

A variance is a limited waiver of development standards. It may be granted, after a public hearing, in special cases where: (1) strict application of the zoning regulations would deprive property of the uses enjoyed by nearby lands in the same zone; and (2) restrictions have been imposed to ensure that the variance will not be a grant of special privilege. A variance must not be granted if it would permit a use that is not otherwise allowed in that zone (for example, a commercial use may not be approved in a residential zone by variance). In addition, economic hardship alone is not sufficient justification for approval of a variance.

Typically, variances are considered when the physical characteristics of the property make it difficult to use. For instance, in a situation where the rear half of a lot is a steep slope, a variance might be approved to allow a house to be built closer to the street than usually allowed.

Variance Considerations

Commissioners should be able to answer the following questions affirmatively when approving a proposed variance.

- Are there special circumstances applicable to the proposal site (such as size, shape, topography, location or surroundings) whereby strict application of the zoning ordinance would deprive it of privileges enjoyed by nearby properties with the same zoning? Identify them specifically.
- Do the proposed conditions ensure that the approval will not be a grant of special privilege?
- Is the use for which the variance is being granted already allowed in that zone? (A variance cannot be approved if the use isn't already allowed.)
- Are the proposed conditions reasonably related to the use proposed by the variance?

Conditional Use Permits (CUPs)

Some types of land uses are only allowed upon approval of a conditional use permit (also called a CUP or special use permit) after a public hearing. These uses might include community facilities (i.e., hospitals or schools), public buildings or grounds (i.e., fire stations or parks), temporary or hard-to-classify uses (i.e., Christmas tree sales), or uses with potentially significant environmental impacts (i.e., hazardous chemical storage or surface mining). The local zoning ordinance specifies the uses for which a conditional use permit is required, the zones they may be allowed in, and the public hearing procedure. When allowing a project, the CUP will impose special development requirements to insure that the use will not be detrimental to its surroundings. Requirements might include such things as additional landscaping, soundproofing, limited hours of operation, additional parking, or road improvements. A CUP does not rezone the land.

Conditional Use Permit Considerations

Commissioners should be able to answer the following questions affirmatively when approving a conditional use permit.

- Is the site appropriate for the proposed use?
- Is the proposed use, as conditioned, compatible with its surroundings and with the uses of nearby lands?
- Is the project design, as conditioned, suited to the site?
- As conditioned, will adequate water (including fire flows), utilities, sewage disposal, drainage, roads, fire protection, and other services be provided to the project?
- If significant environmental effects have been identified as a result of the proposed CUP, have conditions been required (or the project redesigned) to mitigate those effects?
- Are the imposed conditions reasonably related to the use proposed by the CUP (i.e. they address concerns raised by 1-4 above)?

SUBDIVISIONS

Land cannot be subdivided in New Mexico without local government approval. Dividing land for sale, lease or financing is regulated by local ordinances based on the state Subdivision Act. The local comprehensive plan and the zoning, subdivision, and other ordinances govern the design of the subdivision, the size of its lots, and the types of improvements that will be required as conditions of approval.

Subdivision Types

Subdivision approval is conditioned upon the subdivider providing public improvements such as streets, drainage facilities, water supply or sewer lines to serve the subdivision. These improvements must be installed or secured by bond before the town will grant final map approval and allow the subdivision to be recorded in the county recorder's office.

Lots within the subdivision cannot be sold and are not legal divisions of land until a final map has been recorded. The subdivider has at least two years (and with extensions, usually more) in which to comply with the improvement requirements, gain final administrative approval, and record the final map.

Subdivision Considerations

Commissioners should be able to answer the following questions affirmatively when approving a subdivision map.

- Is the proposed map consistent with the comprehensive plan and any applicable specific plans?
- Is the proposed design or improvement of the subdivision consistent with the comprehensive plan and any applicable specific plans?
- Is the site physically suited to the proposed type and density of development?
- Is the design of the subdivision or type of improvements unlikely to cause serious public health problems?
- Is the design of the subdivision or the proposed improvements unlikely to cause substantial environmental damage?
- Have adequate conditions been applied to the approval (or the project redesigned) to mitigate the environmental effects for the project?
- Are all dedications reasonably related to the impacts resulting from the subdivision?

Common Planning Terms

Accessory Use

An activity or structure that is incidental to the main use of a site.

Building Envelope

The space remaining on a site for structures after all building setback, height limit, and bulk requirements have been met.

Capital Improvement Program

A timetable for the installation of permanent public structures, facilities, roads, and other improvements based upon budget projections.

Cluster Development

Development which is clustered in a portion of a site, leaving the remainder in open-space. The amount of development allowed equals the amount that would have otherwise been allowed on the entire site.

COG

Council of Governments. Regional planning agencies concerned primarily with transportation planning and housing; they do not directly regulate land use. Elected officials from each of the cities and counties belonging to the COG make up its governing board.

Community Plan

A portion of the comprehensive plan that focuses on a particular area or community within the town or county. Community plans supplement the contents of the general plan.

Conditional Use Permit (CUP)

A permit authorizing a use not routinely allowed on a particular site, subject to a public hearing. If approval is granted, the developer must meet certain conditions to harmonize the project with its surroundings.

Dedication

A grant of private land to a public agency for public use. Dedications are often used to obtain roads and parkland needed to serve a project.

Development Agreement

A binding contract between a developer and a town or county establishing the conditions under which a particular development may occur. The local government "freezes" the regulations applicable to the site for an agreed upon period of time.

Development Fees

Fees charged as a precondition to construction or development approval. The most common are: (1) impact fees (such as parkland acquisition fees, school facilities fees, or street construction fees) related to funding public improvements necessitated in part or in whole by the development; (2) connection fees (such as water fees) to cover the cost of installing public services to the development; (3) permit fees (such as building permits or grading permits) for the administrative costs of processing development plans; and, (4) application fees (rezoning, variance, etc.) for the administrative costs of reviewing and hearing development proposals.

Downzone

A change of zoning to a more restrictive zone (for example, from multi-family residential to single-family residential).

Easement

The right to use property owned by another for a specific purpose. Power line easements are a common example.

Eminent Domain

The right of government to take private property for public use upon the payment of just compensation to the owner. This is also called condemnation (condemnation can also mean the closing of an unsafe structure by a public agency to protect the community safety).

Exaction

A fee or dedication required as a condition of development permit approval.

Final Map Subdivision (*also, tract map or major subdivision*)

Land divisions creating 5 or more lots. They are generally subject to stricter standards than parcel maps. Requirements may include road improvements, the construction of drainage and sewer facilities, park land dedications, and more.

Findings

The legal "footprints" which an agency must leave to bridge the analytical gap between the raw data considered by the agency and its ultimate decision. They expose its mode of analysis of facts, regulations, and policies.

Floor Area Ratio (FAR)

A measure of development intensity. FAR is the ratio of the floor area of a building to the area of its site. For instance, both a two-story building that covers an entire lot and a four-story building that covers 1/2 of a lot have FARs of 2.

Comprehensive Plan

A statement of policies, including text and diagrams, setting forth objectives, principles, standards, and plan proposals, for the future physical development of the town or county. (see Government Code section 65300)

Growth Management

A local program limiting the rate of community growth. Growth management strategies vary, but they can include capping the annual number of building permits, relating allowable development intensity to certain levels of infrastructure service or limiting the location of new development.

Impact Fees

See *Development Fees*.

Infrastructure

A general term for public and quasi-public utilities and facilities such as roads, bridges, sewer plants, water lines, power lines, fire stations, etc.

Initiative

A ballot measure which has qualified for election as a result of voter petition. At the local level, initiatives usually focus on changes or additions to the comprehensive plan and zoning ordinance.

Inverse Condemnation

The illegal removal of property value through excessive government regulation. Legal advice should be sought before proceeding in cases of potential inverse condemnation.

Moratorium

A halt to new development or the issuance of permits.

Nonconforming Use

A land use which does not meet current zoning requirements.

Overlay Zone

A zone which is superimposed upon other zoning. Overlay zones are used in areas which need special protection (as in a historic preservation district) or have special problems (such as steep slopes or flooding). Development of land subject to an overlay must comply with the regulations of both zones.

Referendum

A voter challenge to legislative action taken by a town council. If enough voters' signatures are filed before the legislative action becomes final, the council or board must either rescind its decision or call an election on the issue.

Setback

The minimum distance required by zoning to be maintained between two structures or between a structure and a property line.

Specific Plan

A plan addressing land use distribution, open space availability, infrastructure, and infrastructure financing for a portion of the community. Specific plans put the provisions of the local comprehensive plan into action.

Spot Zoning

The zoning of an isolated parcel in a manner which is inconsistent or incompatible with surrounding zoning or land uses, particularly if done to favor a particular landowner. A conditional use permit is not a spot zone.

Strip Development

Commercial and high-density residential development located adjacent to major streets. This type of development is characterized by its shallow depth, street-oriented layout, lack of unified design theme, and numerous points of street access. It impedes smooth traffic flow.

Transportation Systems Management (TSM)

A program coordinating many forms of transportation (car, bus, carpool, rapid transit, bicycle, etc.) in order to distribute the traffic impacts of new development. Instead of emphasizing road expansion or construction, TSM examines methods of increasing road efficiency.

Variance

A limited waiver from the requirements of the zoning ordinance. Variance requests are subject to public hearing and may only be granted under special circumstances.

Zoning

Local codes regulating the use and development of property. The zoning ordinance divides the town or county into land use districts or "zones", illustrated on zoning maps, and specifies the allowable uses within each such zone. It establishes development standards such as minimum lot size, maximum structure height, building setbacks, and yard size.

CHAPTER XIV

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Following the presentation of all the evidence, the Commission is in a position to render its decision. It may either do so on the spot, recess into executive session (upon making an appropriate motion and taking a vote in accordance with the Open Meetings Act) to deliberate the matter with a view towards returning in a short time with a decision, or it may decide to render its decision at a later date. Regardless of the course of action the Commission decides to take, certain requirements must be met before the decision of the Commission is a final decision that may either be implemented or appealed to the next higher authority.

The Legislature enacted provisions concerning appeals from final decisions of administrative agencies; (NMSA 1978 §39-3-1.1) and the Supreme Court bolstered the statute by adopting new rules governing appeals of administrative agencies, (Rules 1-074, 1-075,) in an effort to standardize the appellate procedures. Prior to this statutory change, district courts (sitting as appeals courts from Commission decisions) and the Court of Appeals and Supreme Court were faced with the task of deciding appeals from Commission decisions or City Council/Commission decisions without the benefit of a record in many cases, and certainly without an adequate record in most cases. The Legislature made this appellate procedure applicable to most administrative agencies, including local government (meaning planning and zoning commissions and Governing Bodies acting as the planning and zoning authority for the municipality).

In NMSA 1978 § 39-3-1.1, the legislature imposed on Boards and Commissions and the City Council/Commission sitting as the planning and zoning authority for the municipality, the requirement that any final agency decisions be reduced to writing. All decisions of Planning and Zoning Commissions and Governing Bodies acting as the

planning and zoning authority of the municipality are considered to be covered by the statute. The written decision must include an order granting or denying relief and a statement of the factual and legal basis for the order. The decision must be filed with the appropriate records custodian of the agency (Planning and Zoning Commission or city clerk if it is the Governing body acting as a planning and zoning authority). Finally, the written decision must be served on all parties and on every person who has made a written request for the decision. Along with the decision of the administrative agency, the agency must supply parties with information on how to file an appeal of the decision. Although this might sound like a daunting task, it really does not require much more action on the part of Commissions than under the previous system.

1. The requirement that the order be in writing. This is not an overwhelming requirement for most Commissions. (For purposes of this paper "Commissions" also refers to Governing Bodies acting as the planning and zoning authority for the municipality). Most if not all decisions involving planning and zoning decisions have generally been reduced to some form of writing, either a letter of denial or the issuance of some sort of permit, whether it be a sign permit, conditional use or special use permit, or acknowledgement and enactment of a zone map amendment. The writing requirement therefore is not over burdensome. In order to comply with the statute, the decision simply needs to be more formal and couched as an "order" of the Commission.

2. The requirements of findings of fact and conclusions of law. This is perhaps the more tricky part of the statute, but it probably is not much more onerous than the procedure currently followed by most Commissions. The statute requires that the order of the Commission contain a statement of the factual and legal basis for the order. Prior caselaw addressing decisions of adjudicative and quasi-judicial bodies also required that the decision be supported by substantial evidence in the record; and many statutes

and ordinances required that the order of the Commission set forth those findings of fact and conclusions of law in support of its order. Because of the adoption of NMSA 1978 §39-3-1.1, the Commission is required to reduce to writing that which it has already been required to state; the factual reasons and legal basis behind its decision. The requirement of findings and conclusions is nothing more than the Commissions' reasons for its action on the application and a statement of the legal grounds supporting the decision. The reasons have to be supported by some evidence in the record, be it written letters, oral testimony or other information. This is something Commissions should have already been doing. No Commission has ever had the authority to act arbitrarily or capriciously on an application. Commissions have always been required to base decisions on the information placed before it; this is simply a more formal way of implementing what is already required.

3. Preparation of Findings of Fact and Conclusions of Law. There are several ways to attack this requirement. The first involves the Commission meeting in closed session to discuss the application and the Commission coming to consensus concerning the evidence in the record supporting the decision. If this can be accomplished in a short period of time, the Commission attorney or other staff person would be in a position to draft a document representing the views of the Commission. This is normally done at the conclusion of the public hearing, when all the evidence and testimony has been received by the Commission and following Commission deliberations.

If the Commission is dealing with more sophisticated participants in the application process, the Commission might ask the participants to prepare proposed findings of fact and conclusions of law for use by the Commission. Having received proposed findings and conclusions from all interested parties, the Commission may pick and choose from the proposed findings and conclusions, those that match the mindset of the Commission;

assuming the proposed finding or conclusion was presented during the course of the public hearing. It is customary under this process to ask for proposed findings and conclusions at the conclusion of the hearing.

In some cases there might be a split on the Commission or a divergence of viewpoints on a particular issue. Although not contemplated by the statute, there does not appear to be anything wrong with the Commission also adopting a minority position or minority opinion in conjunction with a decision.

In some cases the decision of the Commission will be rendered on the spot, meaning that the applicant will be notified that the application has been granted or denied. **IT IS IMPERATIVE TO NOTE** that the decision announced by the Commission **CANNOT BE ENFORCED** unless and until the written order containing the findings of fact and conclusions of law is prepared and filed with the appropriate authority. In some cases this might be a few days or a few weeks after the public hearing and announcement of the Commission decision. Similarly, since the decision of the Commission cannot be enforced until it is reduced to writing and filed, the statute of limitations concerning a person's time to appeal a decision of the Commission does not begin to run until the decision is reduced to writing and filed.

4. Adoption of Findings of Fact and Conclusions of Law. The findings of fact and conclusions of law and the decision on the application are **ALL** decisions of the Commission. Consequently, the Commission must establish a process for adoption of the findings of fact and conclusions of law. The preferred, but most time-consuming method of approving the findings and conclusions is to have the decision (complete with findings and conclusions) prepared sometime after the public hearing. The document would be presented at the next regular meeting of the Commission for its formal approval, unless the Commission desires to call a short special meeting for the purpose of approval. In

either circumstance, the decision (including the findings and conclusions) would not be filed until formally adopted by the Commission at a meeting of the Commission. The down side to this option is that implementation of the decision is delayed until the decision, complete with findings and conclusions, is approved by a majority of the Commission at a subsequent meeting.

5. Filing the Decision of the Commission. The statute requires that the decision be filed with the official public records of the agency. This might vary depending upon who is responsible for maintaining the records of the Commission. If the Commission retains its own records, the decision must be filed with the official responsible for maintaining custody of the Commission records. If the municipality maintains the records of the Commission, then the decision should be filed with the municipal clerk. Clearly, if the Governing Body of the municipality is acting as the planning or zoning authority, the decision should be filed with the municipal clerk.

6. Service of the Decision. The final requirement of the statute is that the decision and instructions on how to file an appeal of the decision be served on all persons who were parties to the proceedings and on every person who files a written request for notice of the final decision. Obviously, the person filing the application is considered a party to the proceeding. The municipality is more than likely also a party, although in many cases the outcome of the application might not matter to the municipality. To be safe, the municipality should also be served with a copy of the decision. Other people who might be considered parties are an owner of property located within a short distance of the property that is the subject of the hearing (usually within 100 feet), an organized neighborhood association that has adopted by-laws and that includes the area affected by the hearing or land within 100 feet, and any other person or organization that can demonstrate a significant interest in the subject matter of the hearing. This interest may be

pecuniary or some other direct interest in the outcome of the hearing. The decision concerning whether a person is a party and thus whom to serve with the decision is going to rest largely on the level of participation and involvement of the particular individual. It is probably best to err on the side of "over service" even in the face of increased costs.

Therefore, it is recommended that in addition to the applicant and the municipality that anyone who filed a written letter of protest or objection also be served with a copy of the decision. As to those giving testimony, a good process would be to have a sign-up sheet in the hearing room and require that anyone wishing to give testimony must sign the sheet. Include on the sheet a space indicating whether or not the person giving testimony desires a copy of the decision. If the person giving testimony indicates that (s)he wants a copy of the decision, treat this as a written request for notice of the final decision of the Commission.

CHAPTER XII
TYPES OF HEARINGS

I. LEGISLATIVE vs. QUASI-JUDICIAL

- A. A decision making process will be characterized as either Legislative or *Quasi-Judicial* depending upon the nature of the governmental decision and the process by which that decision is reached.
- B. The Commission will employ a different procedure for conducting hearings depending upon whether the action is Legislative or *Quasi-Judicial*.

II. LEGISLATIVE ACTIONS (DECISION MAKING)

A. Characteristics of Legislative Actions

- 1. Legislative action is the most common form of action for Municipal Governing Bodies. Commissions do sit from time-to-time in a legislative capacity.
- 2. In a Legislative capacity, Commission members undertake the role of legislator or policy maker.
- 3. Legislative Action reflects some public policy relating to matters of a permanent or general character, and is usually not restricted to identifiable people or groups.
- 4. Legislative action is usually prospective in nature.
- 5. Examples:
 - a) adoption of a city-wide zoning ordinance;
 - b) adoption of the city's comprehensive plan;
 - c) consideration of a petition for annexation;
 - d) adoption of policies applicable to municipal operations;
 - e) enacting most ordinances (some zoning ordinances and other narrowly drawn ordinances may be quasi-judicial in nature);
 - f) prescribing a course of action for the municipality; and
 - g) deciding matter that affect the municipality as a whole.

B. Role of the Commission Member

1. Gather information or opinions.
 - a) from citizens;
 - b) from staff;
 - c) any other source of information;
2. Implement policy based upon the information that is acquired.
3. Apply policy based upon the best interests of the municipality.
4. A Commission member may be appointed to "represent" an area of town or a specified constituency.

C. The Law that Applies

1. Globally: The Municipal Code: NMSA 1978 §§3-1-1 to 3-65-10
2. Planning and Platting: NMSA 1978 §§3-19-1 to 3-19-12
3. Subdivisions: NMSA 1978 §§3-20-1 to 3-20-16
4. Zoning: NMSA 1978 §§3-21-1 to 3-21-26
5. Manufactured Housing and Zoning NMSA 1978 §§3-21A-1 to 3-21A-8.
6. Local planning, subdivision and zoning ordinances.

D. Notice

1. Provided for in the Open Meetings Act ("OMA") NMSA 1978 §§10-15-1 *et. seq.*
2. Meetings must be open to the public
3. OMA requires notice to be reasonable
4. Public body to determine reasonableness on an annual basis.
5. Left to discretion of the public body
6. Adoption of ordinances require special notice (See: NMSA 1978 §3-17-1)
7. Local notice requirements may be applicable.
8. Maximum Notice possible is advisable.
9. OMA requires a prepared agenda be made available to the public.
10. OMA requires that Minutes of meetings be adopted and retained.
11. Required contents of Minutes
 - a) Date of meeting
 - b) Time of meeting
 - c) Place of meeting
 - d) Members in attendance
 - e) Members absent
 - f) Substance of proposals considered
 - g) Record of decisions made or votes taken
 - h) How each member voted

E. Procedural Requirements

1. Roberts Rules of Order
2. Local Rules of Procedure

III. Quasi-Judicial Proceedings

A. Characteristics of Quasi-Judicial Proceedings

1. Similar to court proceedings.
2. Involves a determination of the rights, duties or obligations of specific individuals on the basis of presently existing legal standards or policy considerations to past or present facts developed at a hearing conducted for the purpose of resolving the particular interests in question.
3. Focus is on the nature of the governmental decision and the process by which that decision is reached.
4. Essence is where the agency is required to investigate facts, or ascertain the existence of facts, hold hearings and draw conclusions from them as a basis for their official action.
5. Requires the agency to afford participants with:
 - a) Procedural Due Process
 - b) Substantive Due Process
6. Required when the agency is required to notify and hear from the parties.
7. Proceedings where the decision must be based on evidence "in the record."

B. Role of Commission Member

1. Take on the persona of a Judge.
2. Entertains evidence and arguments put forth by interested parties to the dispute.
3. Does not actively gather information or opinions.
4. Does not represent any particular district or constituency.

C. The Law that Applies

1. Federal Due Process Jurisprudence
2. *State ex. rel. Battershell v. City of Albuquerque*
108 N.M. 658, 777 P.2d 386 (Ct. App. 1989)
3. Planning: NMSA 1978 §3-19-6
4. Zoning: NMSA 1978 §3-21-6

D. Procedural Due Process

1. Notice reasonably calculated to inform interested parties.
2. Meaningful opportunity to be heard at the hearing.

E. Substantive Due Process

1. Focused on the result of the hearing.
2. Was the decision:
 - a) Arbitrary;
 - b) Capricious;
 - c) Not supported by substantial evidence in the record; or
 - d) Otherwise not in accordance with law.

F. Notice Requirement

1. Must be reasonable and comply with the specific statute authorizing the public hearing.
2. Planning: NMSA 1978 §3-19-6
3. Zoning: NMSA 1978 §3-21-6
4. Must also comply with the notice and agenda requirements of the Open Meetings Act.

G. Records to be Kept

1. Must keep minutes of the proceedings in accordance with the Open Meetings Act.
2. Requirement for the Commission to prepare Findings of Fact, Conclusions of Law and an appropriate Order. (See: NMSA 1978 § 39-3-1.1)

H. Procedural Requirements

1. Procedure outlined in *State ex. rel. Battershell v. City of Albuquerque* 108 N.M. 658, 777 P.2d 386 (Ct. App. 1989).
2. Prepare written decision of the Commission:
 - a) an order granting or denying relief
 - b) file the decision with the official public records of the Commission
 - c) serve a copy of the decision and order and instructions on how to file an appeal on:
 - (i) all parties to the proceeding
 - (ii) every person who has filed a written request for notice of the final decision.