M I N U T E S PLANNING AND ZONING COMMISSION February 27, 2014

The Planning and Zoning Commission met in a regular session on February 27, 2014, at 3:00 p.m., in the City Council Chambers, 800 Municipal Drive, Farmington, New Mexico.

P&Z Members Present:

Chair:

Commissioners:

Joyce Cardon
Paul Thompson
Shay Davis
Clint Freeman
Kristin Langenfeld
Cheryl Ragsdale
Amy Ziesmer

P&Z Members Absent:

Commissioner:

Rory Jaques Daniel Arnold (Alt) Del Washburn (Alt)

Staff Present:

Fran Fillerup Mary Holton Cynthia Lopez Dee Dee Moore

Others Who Addressed the Commission:

Russell Hanscom
Debra Lisenbee
Joe Lisenbee
Sue Miller
Tim Miller
Michael Mordecki
Monica Mordecki
Jeremy Rowse
Mark Schwab
Daniel Sundt
Michelle Sundt

Call to Order

The meeting was called to order at 3:02 p.m. by Chair Cardon including a brief explanation of how the meeting would be run as a quasi-judicial proceeding. There being a quorum present the following proceedings were duly had and taken.

Presentation of the Agenda

Senior Planner Cynthia Lopez stated that there were no changes to the agenda.

Approval of the Minutes

A motion was made by Commissioner Ragsdale and seconded by Commissioner Freeman to approve the minutes of the February 13, 2014 P&Z Meeting. This motion was approved unanimously by a 7-0 vote.

Swearing In of Participants

All parties that wished to speak on behalf of the petition presented on the agenda were sworn in by Dee Dee Moore.

COMMUNITY DEVELOPMENT PETITION REPORT SUP 14-01 – 8319 Hood Mesa Trail Horse keeping and Size of Accessory Building

Planning and Zoning Commission Discussion of SUP 14-01 on February 27, 2014

Associate Planner Fran Fillerup presented the staff report for 8319 Hood Mesa Drive in the RE-2 Residential Estates District. The subject parcel was identified showing the additional property to the north of approximately 1.75 acres that the petitioner is purchasing. This additional acreage would increase their lot to 3.79 acres. The request is to keep up to three horses on the property, which currently has an existing special use permit to allow two horses on the current property. Mr. Fillerup stated that the petitioner

is also asking for a waiver to the size of the proposed accessory building, or barn, of 4,450 square feet, which is in excess of what the UDC allows. He also pointed out that since the agenda was published, the petitioners indicated their desire to reduce the length of the arena from the north property line of the proposed new lot line to have the arena end at the north corner of the barn.

Mr. Fillerup reviewed the site plan and stated that the barn would be located on the parcel being purchased. The petitioner has stated that there will be an arena or riding area on the west, a pen to the north of the barn, and stalls with covering also on the north. Roll up doors for the barn would be facing west. Mr. Fillerup reviewed drawings of the barn and stated that it would be set into an existing hill on the property which would lower the profile and have the same exterior finish as the home. Mr. Fillerup stated that the existing horse fencing along Hood Mesa Trail would be removed if this petition was approved. Photos the petitioners provided from their property in Bloomfield were shown. Commissioner Thompson questioned the relevance of these photos. Director Holton explained that they were showing what the Millers how have in place for their horse in Bloomfield.

Mr. Fillerup stated that staff is recommending approval given that the petitioners are acquiring additional land and that the petitioner has agreed to mitigate the impacts from the horse keeping use and meet the city ordinances.

Commissioner Freeman asked if the existing special use permit was issued to the Millers and if not, why was it still in effect. Mr. Fillerup stated no, it was issued to the previous owners, the Bartholomeus; however, the special use permit runs with the land and as long as the same conditions are met, the permit remains in effect. Commissioner Thompson asked for clarification regarding the code requirement for 1 acre per animal and yet they are kept in a pen 50x60, doesn't that defeat the purpose. Mr. Fillerup shared that the code states 1 acre per animal, and does not specify that the 1 acre would be allocated just for the animal, since a lot would also have a home and front yard.

Commissioner Thompson also commented that the purchase of the additional land appears to create a flag lot on the remaining property and asked if that would create a problem. Mr. Fillerup stated that the plat is being reviewed concurrently and the possibility of widening the width of the flag part to 100 feet for the front of the property to create a buildable area is being considered by the petitioner. Director Holton stated that staff was told by the petitioner that the purchase of this property hinges on the approval of the special use permit. A variance request to the Administrative Review Board would address the flag lot issue if it is needed.

Tim Miller and Sue Miller of 8319 Hood Mesa stated that they had read the staff report. Mr. Miller stated that he was glad that the neighbors are taking an interest in this process. Mr. Miller explained that they are trying to create the horse keeping area to the rear of the home and not along the current area on the front property line. He stated that he has had horse property for 30 years and has always maintained a clean and safe area for the animals. Their reasoning for three horses is that two additional horses could be brought in as a pair and be companions for their current horse. He explained the crusher fines ground cover and steps taken to mitigate odor and flies. Mr. Miller stated that the accessory building would also be used to hold his travel trailer and other personal belongings and that they incorporated a horse keeping section in the design.

Mrs. Miller spoke to the building style and that it would look like the other houses in the area, using the same materials, concrete tiles on the roof and have a patio. She stated they wished to keep the natural vegetation as-is and are designing the building to be built into the hillside located north of their home property. Mrs. Miller stated that her horse is 26 years old and is a dressage horse and that a pen size of approximately 50x60 is plenty of space for horses to spend most of their time. She explained her procedure for cleaning the area, storing the manure in an enclosed container, feeding the animal and that during May to October they treat for fly larvae once a month. She added that her dream was to have a full size arena to set up her dressage riding equipment, but that it would require that they remove too many cedar trees and reduce the natural vegetation and they don't want that to happen. Mrs. Miller stated that she does not expect to have lights in the area, but if so, they would be downward directional lighting and then would only be used during feedings after dark. They would not be motion activated or on dusk to dawn. She added that the hay would be kept inside the barn. She restated that the arena is not going to be needed and that the horse could be exercised on the crusher fines (the turn-around area) that would be in place for the vehicles to drive in and out of the property.

Commissioner Thompson asked the petitioners why the barn needed to be so big and why they are asking for three horses if they could already have two. Mrs. Miller stated that they had asked for three because that was the maximum allowed on the lot size. She stated that they don't actually need to have three horses. But, they would like to have up to two as they sometimes take care of a friend's horse when they go out of town. Mr. Miller added that he likes to keep his equipment and personal belongings out of sight to help keep his property looking good, and again said that the exterior of the new building would appear like their home.

Commissioner Thompson asked if the 50x60 foot pen would be big enough for three horses. Mrs. Miller stated no, not for three horses, but it would be for two. Mr. Miller stated that he was open to another five year timeframe or to just leave the permit for two horses. They added that they moved to this location to be able to have their horse and ride from their home. Mrs. Miller stated that she thought the waiver was just for the building. Staff stated that a building of this size could be reviewed as a variance, but given the need to review a special use permit, the building was included in this petition.

Commissioner Ragsdale asked for clarification regarding whether this Commission must approve the pen size. Chair Cardon stated no, that the only items for consideration by the Commission were for the building size and the horse keeping. Director Holton stated that it appears the petitioners have modified their request and if the number of horses is being reduced to two, the original special use permit requires the horses to be kept on the south side of the home so relocating the horse keeping is being considered, even if it's for two horses.

Commissioner Freeman asked what the "fly predator" that Mrs. Miller mentioned was. Mrs. Miller stated that they are alive and you sprinkle them on the ground. They eat the fly larvae only and are not harmful to anything else. Chair Cardon asked if they fly and Commissioner Freeman asked if the fly predator creates another type of problem. Mrs. Miller stated she has never seen them fly, she uses them one a month until October and that they kill the larvae and disappear.

Commissioner Langenfeld asked the petitioners if the horses were reduced to two, could the size of the building be smaller. Mr. Miller stated that they want to have a building that will fit everything inside, so they would like to keep the size as requested.

Chair Cardon asked if there was anyone within the 100-foot boundary notification that would like to speak in favor of this petition. There was no response from the floor.

Chair Cardon asked if there was anyone within the 100-foot boundary notification that wished to speak in opposition of this petition.

Russell Hanscom, owner of property located to the west and to the south stated he was not concerned about the horses and not so much about the size of the building, but that the use of the building needs to be maintained as residential only. He has concerns that commercial uses could creep into this building.

Chair Cardon asked staff to clarify these concerns. Mr. Fillerup stated that the code clearly states that the zoning is residential so the building needs to remain an accessory to the home and added that even a home occupation business is not allowed to be run from an accessory structure. Commissioner Thompson asked what the rule for the size of the building is. Mr. Fillerup stated the UDC provides that if the accessory building meets the setbacks for the property, as this one would, than the maximum size allowed is 2,000 square feet, or 50% of the dwelling is also used for maximum size. Chair Cardon asked that if this special use permit passed would this building need to be built to code standards. Mr. Fillerup answered yes. Mr. Miller stated for the record that he would never create a business at this location as long as he owned the property.

Daniel Sundt of 5101 Tampico Way, lives directly north and a little west of the property. He shared photos of the views from his property to the subject property and added that the building site would not be shielded from his view by the hill. His first concern is that the code says the size should be 50% of the main structure but the proposed building will be the same size as the home. His second concern was the horses and that when the previous owner had them, there were flies. In his opinion, where there are horses, there are flies and smells. How are the neighbors going to enforce what the special use permit grants. This is an upscale residential area and the horses should be down by the river where they can be free to roam and feed. Mr. Sundt feels that approving this permit will devalue his property.

Commissioner Thompson provided information to the public regarding the filing of complaints through the Code Compliance Division of the Police Department and that the Commission takes any past or present complaints seriously when considering their actions. He also asked Mr. Sundt how he would feel if there was a house of the same size built on that property. Mr. Sundt stated that a house would be okay, but this accessory building is more than double the 2,000 square feet allowed by code and that the combination horse area and pipe fencing is more suited to agricultural area than to a residential estates area of 2 acres.

Mr. Miller addressed this comment stating that the aesthetics of this building will be the same as the home-stucco. Mr. Sundt stated he was still against this building because it would be in full view from his home. Mrs. Miller pointed out that in the photo that Mr. Sundt provided their home is approximately 20 feet high, and you can barely see the top portion of the roof through the trees. She added that this building will be built into the hill and, depending on the floor elevation, it should be lower than the existing home roofline.

Commissioner Ragsdale left the meeting at 4:10pm.

Mike Mordecki and Monica Mordecki of 5201 Tampico Way. Mr. Mordecki stated that their property is located closest to the proposed location for the animals. He added his concerns about the manure, flies and smells. He was also concerned about where the "fly predators" go and do they multiply also. Mr. Mordecki stated he purchased this property because it was in a residential estate area and he did not want to be near animals. He has concerns about light pollution and what will happen when the next folks move onto this property. Mr. Mordecki stated he understood the process in contacting Code Compliance for issues because of situations where he currently lives. He shared that he wants to build on his site soon. In closing, he added that he was not acquainted with the Millers but feels this special use permit will be detrimental to this area. Commissioner Freeman asked Mr. Mordecki what his specific opposition to the building was. Mr. Mordecki stated that his concern was that the size is excessive, not the architecture of the building.

Mrs. Mordecki shared that when their home is built it will need to be located towards the rear of the property because of the slopes. She stated that they were excited to build there, but if this is approved, they are not so excited anymore. She added that they have owned that property for 8 years and they want to be able to enjoy the outside. In closing, she added that she has an allergy to horses. Chair Cardon again shared that the Commission takes into consideration all history of complaints for these types of permits and the renewal of the permits.

Mr. Miller addressed the Mordecki's concerns. He stated that the existing property has space for a house to be built and it could be built right behind their property and in full view from their home. Mr. Miller's building will be built into the hill and very little vegetation will be removed. He added that in time that the whole area will have houses on the properties and there will be no say in the shape and size of those homes. Mr. Miller added that he felt the accessory building and improvements will add value to his property and the aesthetics of the building will add value as well.

Michelle Sundt of 5101 Tampico Way voiced how the emotional part of all of this plays on the owners. She stated she strongly objects to this permit. She provided history on where they used to live and how they chose this lot because of the covenant and the night views. She added that they had flies at one time, but when the previous owners moved the horses, there were no more flies. She stated that she thought that the previous owners also used "fly predators". Mrs. Sundt added that they will be closer to the building and will see more than a few feet of the roofline. She feels there will be smells associated with the horses and that if there are lights that turn on every time a critter runs by it will ruin the night view of the stars. She feels that this special use permit is infringing on their rights as home owners and she was expecting the covenants to be the same, even if the Miller's property is not located in the Sundt's subdivision. She said she used to go by the existing corral on the front yard and wants this area to look nice. In closing she added that if they are always running a tractor she also has concerns about the noise.

Mrs. Miller addressed Mrs. Sundt's concerns. She stated that she does not use the tractor to pick up after one horse. The manure is placed in a covered rubber maid container and emptied regularly at the landfill. The lights will not be automatic and only will be on while the horse is being fed. She added that there is currently a light on at the unoccupied home located behind their home to the west.

Joe Lisenbee and Deborah Lisenbee of 8320 Hood Mesa Trail stated that the winds will carry the smells across the street to their home. Mr. Lisenbee stated that his son has severe allergies to hay, alfalfa and straw. He stated that they purchased their place because they did not want to live near barns and animals. He felt that if the corral was moved to the north than the smells would go to the north of his home where they cook out and spend time outdoors. Mr. Lisenbee stated that he is personally acquainted with Mr. Miller and has worked in the oil fields with him. He added that he has heard about 1, 2, and 3 horses and asked for clarification on the number of horses. He said the sign for the prior special use permit was for one horse.

Mr. Fillerup stated that he doesn't know what the sign for the previous special use permit said, but the original SUP 10-05, which appears on page 12 in the agenda, was for 2 horses.

Commissioner Freeman asked about making these two separate issues, and asked Mr. Lisenbee about the building, without having horses. Mr. Lisenbee stated that he also has a metal building that is 40×80 and that even at that size, it isn't big enough to hold all his toys. He added that he dug down this foundation so that it would not be higher than his home. He felt that the 50×60 pen was not big enough for a horse to run around in and thought that that is why there is a 1 acre per animal requirement.

Mr. Miller addressed the Commission stating that he is willing to have a 1-year time frame for the horses to prove that they can do this. He added that his wife has had this horse since it was a baby, and this is a special pet to her. She takes care of this horse like it was a human. There is no standing manure because it would not be good for the horse. Mr. Miller asked Mr. Lisenbee is he had a special use permit for his oversized 3800 square foot accessory building. Mr. Lisenbee stated he had a permit for his structure. Mr. Miller added that if Mr. Lisenbee is able to have a building almost twice the size of his home, why the Millers can't also have an oversized building.

Commissioner Freeman asked about the Planning and Zoning Commission approving a variance to build the structure that would usually go to the Administrative Review Board. Director Holton stated that this particular request is being processed as a waiver not a variance because it is associated with the special use permit petition. Commissioner Freeman asked if the Millers purchase this land would the horses have the right to be on the northern part of the property. Director Holton stated that the existing special use permit designates that the horse keeping be on the south side of their property. She added that she had checked with the Legal Department and was told that a special use permit could be tied to a particular owner and/or to a particular animal.

Mr. Miller stated that they could have the horse on the south side, but that if the horse runs free it is exposed to everybody around us and he will destroy the vegetation on the front of the property. He feels that the pipe fencing has a tendency to downgrade the property and doesn't fit in with the property. He added that they are trying to move the corral to the rear of the property. Commissioner Freeman asked about the 1 year left on the current special use permit and if the Commission put a 1-year timeframe on this permit, they would still have to return through this process anyway. Commissioner Freeman added that if there were complaints that the special use permit for the horse could be not renewed and then they would still be out the cost of the building. Mr. Miller stated that they would still like to have the structure on their property even if they did not have the horse there.

Mrs. Miller stated that she too felt as Mrs. Sundt, that her house is her dream house, too. She added that she is willing to go with a 1 year trial period for the permit. She added that much as everyone would like the area to stay the same, with vacant land around, it probably won't remain the same in the future.

There were no further parties within the 100-foot boundary notification that wished to speak in opposition of this petition.

Mark Schwab of 5350 Tampico Way stated that he is at 60-70 feet higher in elevation and would be able to see more of the building than the others who had already spoke. He asked if "fly predators" were harmful to dogs and what if they were washed downstream from property water runoff. He also asked if the pipe fence would be removed if this special use permit was approved. Mr. Schwab stated that the property owner to the west, which is the vacant house, had relocated to Texas and didn't receive the letter. He added that he had done some research into the Millers in Bloomfield and presented that they have a very clean record on how they keep their animals. He stated

he had talked to others and made come calls, but all the comments were that the Millers keep a very, very clean facility.

Jeremy Rowse of 8520 Tampico Court presented statistics that only 4% of the city land area is zoned RE-2 and that agricultural is 16% of that same area. He argued that the building is too large and does not meet the use regulations in the code. He added that the accessory building is to be subordinate to the residential use. He stated that zoning is zoning and doesn't allow the use and size of structure that is being proposed.

Mr. Miller stated that the existing pipe fencing would be removed if their request is approved.

At this time Chair Cardon closed the hearing to the public. Commissioner Langenfeld asked staff if lighting was governed in the code to protect the night skies. Mr. Fillerup stated that there is a reference to glare in Section 5.11.11, no use or operation or direct illumination across a boundary, which means the light could not cast across the property line. Chair Cardon stated that lighting is also in the building code.

Planning and Zoning Commission Action of SUP 14-01 on February 27, 2014

A motion was made by Commissioner Freeman, seconded by Commissioner Thompson to <u>approve</u> Petition SUP 14-01, a request from Tim and Sue Miller for a special use permit to keep two (2) horses at 8319 Hood Mesa Trail in the RE-2 Residential Estate District, with a waiver to the maximum allowable size of an accessory structure to allow a barn of 4,450 square feet, and subject to conditions a. through c. as follows:

- a. the horse keeping use shall expire after one year from the date the certificate of occupancy is granted for the barn;
- b. the special use permit shall allow the keeping of up to two horses; and,
- c. the fenced areas shall not include the area area shown on the site plan, but shall only include the 50-foot by 60-foot pen.

AYE:

Chair Cardon, Commissioners Davis, Freeman, Langenfeld and

Thompson

None

NAY:

Commissioner Ziesmer

ABSTAINED: ABSENT:

Commissioners Jaques, Ragsdale, Arnold (Alt) and Washburn (Alt)

Motion passed 5-1.

Chair Cardon asked each Commissioner to explain their vote.

Commissioner Freeman stated that his vote was aye, and that he felt the structure will fit in well and that horses have already been there. The 1-year timeframe will allow the Millers to prove they can make it work. Neighbors have the responsibility to report any complaints to Code Compliance which would become part of the record and be available upon the special use permit review/renewal.

Commissioner Thompson stated that his vote was aye, and that he felt the same as Commissioner Freeman. He added that at some point there will be other houses between the neighbors to the west and that property rights end at the lot line.

Commissioner Ziesmer stated that her vote was nay, and that she felt this special use permit was going against the intent of the zoning by allowing certain variances in the RE-2 District.

Chair Cardon stated that her vote was aye, and that she had changed her decision twice during the testimonies. She felt empathy for the neighbors and had also been one of the first to build in the foothills area, but that the area always changes. She believes that the Miller's intent is good and the 1-year condition made the difference in her vote.

Commissioner Langenfeld stated that her vote was aye, and that she had changed her decision back and forth also. She felt that the neighborhood has been developing and new homes would be added, but that the 1-year condition was what made the difference.

Commissioner Davis stated that his vote was aye, and that he also felt that the 1 year condition was what swayed his vote. He felt it was a good compromise and will allow the Millers to take care of the animal. He also felt that that the nature of the surrounding properties has the potential for another house to be built on the vacant lots, which will make the accessory building a lot less significant.

Chair Cardon reminded those in attendance that this petition would be considered at the City Council meeting to be held on Tuesday, March 11, 2014, at 7:00pm in the Council Chambers and they will make the final decision.

Business from the Floor: There was no business from the floor.

Business from the Chair: There was no business from the Chair.

Business from Members: Commissioner Ziesmer stated that this was her last meeting as she has resigned from this Commission. She thanked the Commission and the City for the opportunity to serve this community as a Planning and Zoning Commissioner.

Business from Staff: Director Holton informed the Commission that their recommendation for approval for the zone change at 3001 Northridge stayed on the consent agenda and was approved by city council at the February 25, 2014 regular meeting.

<u>Adjournment</u>

The Planning and Zoning Commission meeting of February 27, 2014, was adjourned at 5:20 p.m.

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Chair

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Office Manager

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