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**MINUTES OF THE**  
**SANTA FE COUNTY**  
**PLANNING COMMISSION**

**Santa Fe, New Mexico**

**April 21, 2016**

**I.** This meeting of the Santa Fe County Planning Commission convened on the above-cited date at approximately 4:07 p.m. at the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

The Chair and Vice Chair both being absent, the members present elected Louie Gonzales to act as Chairman.

**II.&III.** Roll call preceded the Pledge of Allegiance and indicated the presence of a quorum as follows:

**Members Present:**

Louie Gonzales  
Leroy Lopez  
Rena Gray  
Phil Anaya [telephonically]

**Member(s) Excused:**

Frank Katz, Chair  
Susan Martin, Vice Chair  
Bette Booth

**Staff Present:**

Penny Ellis-Green, Growth Management Director  
Vicki Lucero, Building & Services Manager  
John Lovato, Development Review Specialist  
Jose Larrañaga, Development Review Team Leader  
Andrea Salazar, Assistant County Attorney  
Vicente Archuleta, Development Review Specialist, Subdivisions

**IV. APPROVAL OF AGENDA**

Commissioner Anaya moved to approve the agenda as published. Member Gray seconded and the motion passed by unanimous voice vote.

## V. APPROVAL OF MINUTES: March 17, 2016

Commissioner Gray moved to approve the March minutes as submitted. Commissioner Lopez seconded and the motion passed by unanimous voice vote.

## VI. NEW BUSINESS

- A. **CDRC CASE # V 15-5191. Two Bens, LLC, Appellant, JenkinsGavin, Design & Development Inc., Agents, request an Appeal of the Land Use Administrator's decision to require Two Bens LLC, to submit a new Application under the Sustainable Land Development Code, Ordinance No. 2015-11 (SLDC) for a minor subdivision. Two Bens LLC, requests to retain its approval under the repealed Santa Fe County Land Development Code, Ordinance 1996-10 (Code) for a Summary Review Subdivision of 11.32 acres into four lots based on the SLDC, Chapter 1, Section 1.11.6, Approved but Unrecorded Final Development Plans and Plats). The property is located at 17 Camino Terra Bella within Section 30, Township 17 North, Range 9 East, Commission District 2**

JOHN LOVATO (Case Manager): On June 30, of 2015, the Land Use Administrator approved Case # 14-3080, Two Bens LLC, an application for a summary review subdivision of 11.32 acres to be divided into four lots. On July 7, 2015, the Puesta del Sol Homeowners Association, through its agent, Chris Graeser, submitted a timely letter appealing the Land Use Administrator's decision. The agent requested an appeal of the Land Use Administrator's decision to approve a summary review subdivision of 11.32 acres into four lots in accordance with Ordinance 1996-10, the Land Development Code.

On September 17, 2015, after a public hearing the CDRC denied the appeal. The CDRC's final order was recorded on November 20, 2015.

On December 20, 2015, Puesta del Sol's agent submitted a timely appeal of the CDRC's decision, to be heard by the Board of County Commissioners. The appeal was submitted in accordance with the code requirements. However, the Sustainable Land Development Code, Ordinance No. 2015-1,1 became effective on January 15, 2015, repealing, the code prior to a hearing occurring before the BCC on the appeal. Under the SLDC, Chapter 1, Section 1.11, Transition Provisions, the CDRC's decision is an approval without a vested rights because administrative remedies were not exhausted, meaning the appeal was not heard by the BCC prior to repeal of the code. Therefore, the approval of the application by Two Bens, LLC, which was confirmed by the CDRC for summary review subdivision, is now null and void. A new application must be submitted for review and approval, under the requirements of the SLDC.

On January 28, 2016, Two Bens LLC was sent a letter by Santa Fe County informing them of the Land Use Administrator's decision that the approval of the summary review subdivision was null and void and requesting that they submit a new Application under the SLDC.

On February 4, 2016, Two Bens LLC submitted an appeal of the Land Use Administrator's January 28<sup>th</sup> decision. The appeal asserted that the SLDC, Chapter 1, Section 1.11.6, Approved but Unrecorded Final Plans and Plats, allows the recording of the

plat approved by the CDRC. SLDC, Chapter 1, Section 1.11.6.1 states, Properties that have received final development plan or plat approval but have not recorded the plan or plat may complete the recordation process under the terms of the final approval.

Staff Response: Two Bens, LLC did not have final approval because there was an appeal to the BCC pending at the time the SLDC was adopted. Under the SLDC, Chapter 1, Section 1.11.3, Transitional Provisions, the CDRC's decision could be appealed leaving the approval without a vested right. The plat cannot be recorded because the appeal process did not end with the CDRC but was appealed to the BCC. The appeal to the BCC was submitted in a timely manner but could not be heard because the code was repealed and replaced by the SLDC. Therefore, the approval of the application by Two Bens, LLC for a summary review subdivision, was null and void. An application must be submitted in accordance with Ordinance No. 2015-11, The Sustainable Land Development Code. There is neither a process nor remedy for this appeal under the repealed Code. The only way to move forward is to submit an application under the SLDC.

Staff recommendation: Staff recommends denial of the appeal and to require the applicants submit an application under the SLDC. Staff also recommends upholding the Land Use Administrator's decision to deny the request because the applicant does not have vested rights in the prior approval. Mr. Chair, I stand for any questions.

ACTING CHAIR GONZALES: Thank you. Are there any questions of staff?

COMMISSIONER GRAY: I have one. How much does it cost to resubmit another application or reapply? Is that why Two Bens doesn't want to just submit a new application or is it because they have to start the process all over again, or why?

VICKI LUCERO (Building & Development Services Manager): Mr. Chair, Committee Member Gray, I believe the applicant would have to address as to why they would prefer to take this approach rather than to submit a new application. In regards to your question on the fees, it would be approximately \$450 application fee for the land use application part of it, and then there would be a separate fee for the Fire Marshal's review.

COMMISSIONER GRAY: How much longer would it take to start this process all over again?

MS. LUCERO: Mr. Chair, Committee Member Gray, from the time that they actually made a complete application, it would take – staff would render a decision within 30 days. It just depends. That decision may include conditions that need to be addressed prior to them being able to record the plat.

COMMISSIONER GRAY: Thank you.

ACTING CHAIR GONZALES: Are there any other questions of staff? Member Anaya, do you have any questions?

COMMISSIONER ANAYA: Negative.

ACTING CHAIR GONZALES: Under the new code, Vicki, do they have to go before this Planning Commission and the BCC? I thought there's something regarding subdivisions where they will come and hear the cases that are less than a number of certain lots and then the other ones are before?

MS. LUCERO: Mr. Chair, if they submitted an application for a minor subdivision, which this would be a minor subdivision because they're requesting to create

four lots, it would be an administrative process. So it would be handled administratively. It wouldn't have to come before the Planning Commission or the County Commission.

ACTING CHAIR GONZALES: When you say administrative, that is you guys, right? The staff? It wouldn't be coming before us?

MS. LUCERO: That's correct. The Land Use Administrator would render a decision.

ACTING CHAIR GONZALES: Thank you. Are there any other questions of the staff? Thank you. Could we have the applicant please?

[Duly sworn, Jennifer Jenkins testified as follows:]

JENNIFER JENKINS: My name is Jennifer Jenkins with JenkinsGavin Design and Development. I'm at 130 Grant Avenue, Suite 101 in Santa Fe. I'm here this evening – actually this afternoon on behalf of Two Bens, LLC in appeal of the administrative decision to render our previous approval null and void and I do have a few handouts so if I may I'm going to approach. *[Exhibit 1: SLDC Sections; Exhibit 2: Timeline]*

So, thank you, Chairman, Commissioners. So the first item I want to point out, and Commissioner Lopez, as you asked previously to staff, you have seen this case before and I will be going through that timeline for you later in my presentation. The transitional provisions in the new SLDC clearly state if you have a final approval, if you have a final plat that is approved but not yet recorded – that's the first sheet that I handed out that's highlighted there, you're permitted to proceed with the recordation process.

So we had an approval from the administrator. I have a copy of the mylar that's been signed by everybody at Santa Fe County that is required to sign it and that decision of the Land Use Administrator to approve the subdivision was appealed to this body. The only decisions that are appealable are final decisions. No other decision is even appealable. You can't submit an appeal on a preliminary decision. Appeals are not accepted until a decision is rendered final.

So staff asserts, on the second page that I handed out, staff asserts that we did not have a vested right because of the pending appeal. But if you look at the highlighted portion, this is the definition of vested right, straight out of the SLDC. The definition says that vested rights are pursuant to a prior, lawful development approval obtained in good faith which does apply to the Two Bens Subdivision. And it says, "where use, construction or occupancy is currently prohibited by the SLDC." There's nothing about this summary subdivision that is prohibited by the SLDC. So the vested right argument doesn't even apply to this project. It is not applicable in accordance with the definition that's in the code.

The last sheet that I passed out is a little timeline, because there's been a lot going on with this project, so I thought it would be useful. As stated previously, the Land Use Administrator signed the final mylar for the subdivision on June 30<sup>th</sup>. That approval was appealed by the Puesta del Sol neighborhood on July 7<sup>th</sup>. This body denied that appeal on September 17<sup>th</sup>. You adopted the final order of that denial on November 19<sup>th</sup>. The final order. The appeal period doesn't even start until the final order is adopted. The Puesta del Sol neighborhood then proceeded to appeal your denial to the Board of County Commissioners. Staff mentions a December 20<sup>th</sup> date; my records have December 17<sup>th</sup>. It's a couple of days. It's not a big deal.

So here's the key thing. Throughout this process, when the appeal was submitted of your decision to deny the first appeal, staff never informed us that there would be a

requirement for this appeal to be heard before the SLDC was effective on January 15<sup>th</sup>. We were never told. Nowhere in the code does it say that, in the old code or in the new code. Nowhere does it say that. And there's a requirement that appeals are heard within 60 days. So if it was so critical that this appeal get heard before January 15<sup>th</sup> they could have put it on the January 12<sup>th</sup> BCC agenda. The notices could have been sent out on December 22<sup>nd</sup> and it could have been heard.

As the appellee in this situation we are not in control of when those notices get sent. That is the appellant's obligation to send those notices. It is the County's obligation to provide them. It's the appellant's obligation to mail them, as we mailed our notices for this hearing. So on sheer principle, because they did not handle the schedule as they deem it should have been handled, that we have to start over on something we started almost a year and a half ago? It is not right under any circumstances. They had time. If it was so important and it had to happen or our approval is null and void after almost a year and a half? Show me in the code where it says that.

I've demonstrated that the vested right holds no water. It absolutely is not applicable in this situation. We have a final approval; we have a signed mylar. And the appeal that was filed on December 17<sup>th</sup> appealing your denial of their first appeal, there was a requirement that that get heard, per the code, no later than February 15<sup>th</sup>. So guess what, that appeal – there is no longer a pending appeal. So if it's staff's argument that our application is null and void because there was a pending appeal, there's no longer a pending appeal. That ship has sailed. They did not meet the obligation for it to be heard in a timely matter.

So I am sitting today with a final subdivision approval that is an unappealable action today. And these applicants have a right just to move forward and record this plat and get on with it. We have done everything we've been asked to do. And for somebody to drag their feet and meet their own self-imposed schedule and self-imposed obligations, and then make us suffer for that? That's unconscionable. I appreciate your attention. I'd be happy to stand for any questions at all. Thank you very much.

ACTING CHAIR GONZALES: Thank you, Ms. Jenkins. This seems to be, just an observation, the staff has a position, the applicants have a position as well as the Puesta del Sol so whatever decision we make is going to be appealed, I would assume. I'm not a rocket scientist but I think it will be appealed to the BCC, I would think. I'm not sure. That being said, we'll let the public speak now. Those in favor of this application, come and speak.

COMMISSIONER ANAYA: Mr. Chair.

ACTING CHAIR GONZALES: Member Anaya.

COMMISSIONER ANAYA: Yes, I have some questions before the public speaks.

ACTING CHAIR GONZALES: Go ahead.

COMMISSIONER ANAYA: I have a question for staff.

ACTING CHAIR GONZALES: Go ahead.

COMMISSIONER ANAYA: Staff, is this correct that there is a copy of the mylar that has all signatures on it?

PENNY ELLIS-GREEN (Growth Management Director): Mr. Chair, Committee Member Anaya, yes, the mylar had to get an approval before it could be appealed. So it did have a final approval. It was appealed onto what was the CDRC last

year, and then a timely appeal was submitted for the CDRC's decision, to appeal that on to the Board. Staff did not have time when that appeal came in to get that on the January 12<sup>th</sup> agenda, which was the last agenda that was being used under the old code, before the SLDC came into effect. That would have had to have been submitted I believe by – or legal notice would have had to be in by I believe December 17<sup>th</sup> in order to meet that notice. We didn't have the application until December 20<sup>th</sup>. And I believe Andrea would like to address a couple of the legal issues as well.

COMMISSIONER ANAYA: Great. Thank you, Penny.

ACTING CHAIR GONZALES: Andrea.

ANDREA SALAZAR (Assistant County Attorney): In terms of the transitional provisions, the one that talks about vested rights, in order to really evaluate vested rights you do need to kind of take a step into case law. There are two case laws, *Andalucía Development Corp. Inc. v. City of Albuquerque* and the *Miller v. Santa Fe Board of County Commissioners*, which really kind of picks apart what a vested right is. It's a two-pronged analysis. Two elements must be met for a developer to establish that a vested right has occurred. The first is approval by the regulatory body, and that's complete approval, so when we're talking about that you have to have the exhaustion of the administrative process. So we had an appeal that could move forward to the BCC who has the final making decision which, it could be appealed to the district court but at least that administrative process would have been complete.

The second part is a substantial change in the position on reliance of that approval, meaning they had their plat, they moved forward on it. Neither of those elements have been met in this case. In the transitional provisions it does distinguish the difference between a vested right and not having a vested right, and what Mr. Lovato did read in the vested right section, I think it was 1.11-1. Is that correct? 1.11.3, Permits and approvals with vested rights. Development permits and final approvals granted by the Board, County Development Review Committee or Administrator prior to the enactment of the SLDC for which rights have vested shall remain valid and development and use of the property shall be allowed so long and the development and use is in accordance with the development permit and final approval.

Now it does say all of those different individuals. You have the Land Use Administrator – if it had not been appealed from the Land Use Administrator's decision and the appeal time had been exhausted it would have been a final approval. If it had come before you and you had approved it after the first appeal and no one had appealed it, then it would have been a vested right, but that did not happen in this case. There was an appeal that was filed within the timeframe. So it did not get to be heard before the BCC and because that administrative process has not been exhausted it is not a vested right.

ACTING CHAIR GONZALES: That's where it's at right now.

MS. SALAZAR: Yes.

ACTING CHAIR GONZALES: Could we have members from the public that are in favor of this project? There are none. So do we have members from the public that wish to speak against this application. State your name for the record.

MATTHEW MCQUEEN: Mr. Chair, my name is Matthew McQueen. I'm with the firm of Graeser McQueen on behalf of the Puesta del Sol Homeowners Association. So I'm their attorney in this matter.

ACTING CHAIR GONZALES: Okay. Thank you, Mr. McQueen.

MR. MCQUEEN: Mr. Chair, if I may?

ACTING CHAIR GONZALES: Please.

MR. MCQUEEN: Mr. Chair, Ms. Jenkins is quite passionate about this but her passion is not a substitute for the process, and the process is that if the approval is not final it has to go back to the starting line. It's really very clear. It's interesting. We're essentially dealing with a procedural issue. It's not the merits of the subdivision or the lack of merits of the subdivision, it's just whether or not they had final approval. The approval they got from the CDRC was appealable. It was appealed in a timely manner. That appeal was pending when that code was repealed and the new code was adopted.

It's very clear that vested rights means property rights and if you think about it the BCC could have overturned the CDRC approval. Those rights are not vested. That decision is not final on something that's appealed to the BCC until the BCC rules on it. Ms. Jenkins in her presentation at one point said show me where it says that they have to go back to the beginning, and it's in Section 1.11.2 of the SLDC. And it says if anything was approved before the effective date of the SLDC for which rights have not vested shall henceforth be governed by the SLDC.

So the BCC considered this issue. They spoke very clearly on it, and they adopted the new ordinance. And that's really the only issue we have before us today and that's all I need to tell you. I'm happy to answer any questions if you have any.

ACTING CHAIR GONZALES: Are there any questions of Mr. McQueen?

MR. MCQUEEN: Thank you, Mr. Chair.

ACTING CHAIR GONZALES: Thank you. Is there anyone else who wishes to speak against this application? Please step up to the mike and be sworn in and state your name for the record.

[Duly sworn, Ann Noble testified as follows:]

ANN NOBLE: Chairman Lopez, other committee members, I live in Puesta del Sol and we have been dealing with this issue for many, many years. I have been involved in helping the County with the codes and things like that, serving on many committees through the number of years. And we set this forth we were assuming that other developments would eventually have to come under these codes, and we're hoping that that would happen. We worked very long and many hard hours to do this and we just want the developers to fall under these codes and to do the right thing and be part of the county and part of the codes that we've addressed. So I hope that you make a decision in our favor and ask them to resubmit as all other county things have to be done under this new code. Thank you.

ACTING CHAIR GONZALES: Thank you. Is there anyone else who wants to speak in favor of this application or against it? Ms. Jenkins, you can respeak.

MS. JENKINS: Thank you. Thank you, Chair Gonzales, Commission members. So I think really the crux is the decision that was made to not allow this appeal to move forward. There's nothing that I could find in the code, and if somebody wants to point that out to me I'm all ears. There's nothing in the SLDC that says a previously filed appeal can't move forward and be considered under the terms of the code that was in effect at the time the decision was rendered. So this body rendered a decision to deny the appeal of the subdivision approval. And appeal of that decision was filed to be heard by the BCC. Nowhere could I find any requirement that the appeal not be allowed to move forward. Nobody's demonstrated that, it hasn't stated it anywhere. Often, if there's an appeal in a

court of law – I’m not a lawyer, but what is considered in an appeal in a court of law is what was the law of the land when the decision was rendered that’s under appeal, not what’s the law today – what was the law then?

So there is no reason why this appeal should not have been permitted to move forward. But that was their decision, and now the 60 days has passed. So if somebody can explain to me why this applicant, why Two Bens is made to pay the price because they didn’t move the appeal forward. If we just think about this in terms of logic and fairness there’s nothing that says that appeal should not have been allowed to move forward. Nothing. But they chose not to move it forward. County staff made that choice. I don’t know what that choice was based on but that’s the choice they made. We had no power or control over that. We have done everything required of us. Everything. To be required to start over now, I think we all know it’s not right and it is not supported by the code. Thank you very much.

ACTING CHAIR GONZALES: Thank you, Ms. Jenkins. Are there any other questions.

COMMISSIONER ANAYA: Mr. Chair, I have a question for staff.

ACTING CHAIR GONZALES: Member Anaya.

COMMISSIONER GRAY: I do have a question for Ms. Jenkins. You stated that, well, staff has stated that they received your appeal on December 20<sup>th</sup> and you stated you have reason to believe you sent it on the 17<sup>th</sup>.

MS. JENKINS: No, I apologize. That was the appeal – Puesta del Sol appealed your denial of their first appeal, and Chris Graeser and Mr. McQueen’s office emailed me a copy of the appeal on December 17<sup>th</sup>, and that’s the date on the letter, and in staff’s staff report they set the date at December 20<sup>th</sup>. I can’t speak to that but I can just speak to when it was in my inbox.

ACTING CHAIR GONZALES: When you received it.

MS. JENKINS: When I received it. Yes.

ACTING CHAIR GONZALES: Member Anaya.

COMMISSIONER ANAYA: Yes. Mr. Chair, the question is for staff.

What’s the timeframe for the BCC to hear this?

ACTING CHAIR GONZALES: I believe he said what’s the timeframe for the BCC to hear this.

MS. ELLIS-GREEN: Mr. Chair, Commissioner Anaya, if I could just get some clarification. Do you mean to hear the appeal that was submitted on December 20<sup>th</sup>?

COMMISSIONER ANAYA: No. To hear our decision.

MS. ELLIS-GREEN: To hear your decision, your decision is final because this is an appeal. It would then need to be appealed on to the Board. So a final order would need to come back for your approval and then there would be a 30-day period from when the final order comes back for an appeal to the BCC.

COMMISSIONER ANAYA: So we’re talking 60 days?

MS. ELLIS-GREEN: Probably approximately that kind of time.

COMMISSIONER ANAYA: Okay. Thank you.

ACTING CHAIR GONZALES: Okay, does anybody else want to speak?

That concludes that part of this application. I guess we could render –

MS. ELLIS-GREEN: Mr. Chair, I just wanted to add maybe Andrea would want to touch on a couple of the legal issues that have been brought up at the end. But as



we stated in our staff report, there is neither a process nor a remedy for this. It is unfortunate that this project got held up, but we as staff can't disregard an application or an appeal that was submitted in a timely manner. So this is a project that did get held up in the new code coming into effect. It is unfortunate, but we do not have a remedy.

ACTING CHAIR GONZALES: Thank you.

COMMISSIONER ANAYA: Mr. Chair.

ACTING CHAIR GONZALES: Member Anaya.

COMMISSIONER ANAYA: Yes, I'd like to make a motion please.

ACTING CHAIR GONZALES: Member Anaya is going to make a motion on – do you have the number on it there, Member Anaya?

COMMISSIONER ANAYA: Yes, I do.

ACTING CHAIR GONZALES: Okay. Go ahead.

COMMISSIONER ANAYA: Mr. Chair, I'd like to make a motion on Case #APP 15-5191, Two Bens, LLC Appeal, and the motion is that to accept the approval of staff as submitted.

ACTING CHAIR GONZALES: There's a motion by Member Anaya on Case #APP 15-5191, Two Bens, LLC, to staff's recommendation as submitted, which is denial.

MS. ELLIS-GREEN: Mr. Chair, could I just clarify, that is for denial of the appeal?

COMMISSIONER ANAYA: That is correct. The staff recommendation was to deny the appeal and I understand about all of the timeframes and the way that things were – kind of happened. And I understand that going forward with the new codes that we were going to kind of run into a situation as such. So – and I'm sorry about that for the applicant but that is my recommendation.

ACTING CHAIR GONZALES: I don't know if that's out of order, but I'll ask the attorney. We have a motion to deny but the applicants' agent, Ms. Jenkins, would like to speak. Would that be out of order in the middle of a motion?

COMMISSIONER ANAYA: That is correct.

MS. SALAZAR: Yes.

COMMISSIONER ANAYA: So we have a motion. Do we have a second.

COMMISSIONER GRAY: I second.

COMMISSIONER ANAYA: There's a second by Member Martin.

COMMISSIONER GRAY: Gray.

ACTING CHAIR GONZALES: By Member Gray to deny Case APP 15-5191, Two Bens, LLC Appeal.

**The motion passed by majority 3-1 voice vote with Commissioners Anaya, Gray and Lopez voting in favor of denial and Acting Chair Gonzales voting against.**

COMMISSIONER ANAYA: Mr. Chair, can I have a count on that? Was it 3-1, denial?

ACTING CHAIR GONZALES: That's correct.

COMMISSIONER ANAYA: Thank you.

ACTING CHAIR GONZALES: That ends the business; there's no more cases.

**B. Petitions from the Floor**

None were offered.

**C. Communications from the Committee**

None were presented.

**D. Communications from the Attorney**

None were presented.

**E. Matters from Land Use Staff**

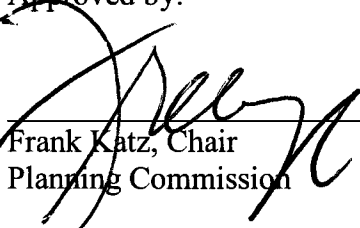
None were presented

**F. Next Planning Commission Meeting: May 19, 2016**

**G. Adjournment**

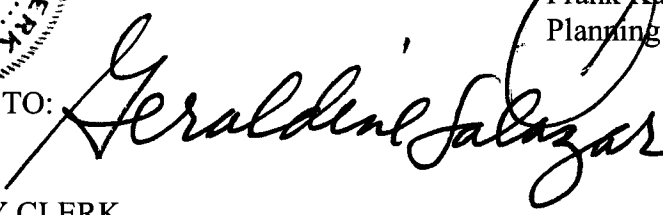
Having completed the agenda and with no further business to come before this Committee, Acting Chair Gonzales declared this meeting adjourned at approximately 4:50 p.m.

Approved by:

  
Frank Katz, Chair  
Planning Commission



ATTEST TO:

  
5-19-2016

COUNTY CLERK

Before me, this \_\_\_\_ day of \_\_\_\_\_, 2016.

My Commission Expires: \_\_\_\_\_

Notary Public

Submitted by:

  
Debbie Doyle, Wordswork

Santa Fe County Planning Commission: April 21, 2016



SFC RECORDED 05/20/2016

**Vacation:** the act of rescinding all or part of: a recorded subdivision plat; road; right including revocation of legal fee simple dedications and grants of easements.

**Vacation Plat:** a plat executed by owners of lots in a subdivision requesting vacation of the plat. Also see Plat, Vacation.

**Variance:** Permission to depart from this Code when, because of special circumstances applicable to the property, strict application of the provisions of this Code deprives such property of privileges enjoyed by other property in the same vicinity or zone. Also see § 4.9.7 (“Variances”).

**Vehicle Sign:** a sign that is attached to or painted on a vehicle that is parked on or adjacent to any property, the principal purpose of which is to attract attention to a product sold or business located on a property. Also see Sign, Vehicle.

**Vested Rights:** right to initiate or continue the use or occupancy of land, buildings or structures, or to continue construction of a building, structure or initiation of a use, pursuant to a prior lawful development approval obtained in good faith, where such use, occupancy of land, or construction is currently prohibited by the SLDC or other applicable county ordinance, statute, judicial decision or regulation in effect. Vested rights include rights obtained under principles of equitable or quasi-equitable-estoppel.

**Violation:** failure of a use, site, building, or structure to comply with the requirements of the SLDC.

**Wall Sign:** a sign attached to, painted on, or incised into the wall of a building or structure in such a manner that the wall is the supporting structure for, or forms the background surface of, the sign and which does not project more than one foot from the wall on which it is are mounted. Also see Sign, Wall.

**Warehousing:** the storage of materials in a warehouse or terminal and where such materials may be combined, broken down, or aggregated for transshipment or storage purposes where the original material is not chemically or physically changed. Also see Processing and Warehousing.

**Water and Sanitation District** –a water and sanitation district organized and operating in the County of Santa Fe under the authority of the Water and Sanitation District Act, NMSA 1978, § 7-21-1 *et seq.* (1943)(as amended).

**Water Supply System:** system to provide water for domestic use of human consumption.

**Water Surface Elevation:** the height, in relation to the National Geodetic Vertical Datum of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

**Watercourse:** a river, creek, spring, stream, acequia or any other like body having definite banks and evidencing an occasional flow of water.

**Well, Shared:** a common well that provides water to more than one lot. Also see, Shared Well.

**Wetland:** land that has a predominance of hydric soil; is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and under normal circumstances supports a prevalence of that vegetation.

**Wholesale Trade:** establishments or places of business primarily engaged in selling merchandise to retailers, industrial, commercial, institutional, or professional business users; to other wholesalers; or to

as may be specified in Section 5.8.7. of the SLDC) file an application for approval of a final development plan or subdivision plat in accordance with that preliminary plan or plat or the approval of the preliminary development plan or plat shall expire and any application for development will be governed and processed according to the SLDC.

**1.11.6. Approved but Unrecorded Final Development Plans and Plats.**

**1.11.6.1.** Properties that have received final development plan or plat approval but have not recorded the plan or plat may complete the recordation process under the terms of the final approval.

**1.11.6.2.** Properties that have received final development plan or plat approval and have recorded the plan or plat shall apply for construction permits consistent with that plan or plat within 24 months or the approval will expire and standards established by the SLDC for approval of development shall apply to any application for development of the property.

**1.11.6.3.** Any subdivision for which a Preliminary Plat was approved prior to the effective date of the SLDC may be granted Final Plat approval if the Planning Commission and Board find that the final plat is in substantial compliance with the previously approved preliminary plat. Provided that, if the final plat approval is not received within 24 months of approval of the Preliminary Plat (or such other period as may be specified in Section 5.8.7.), shall file an application for approval of a final plat in accordance with the Preliminary Plat or the approval of the Preliminary Plat shall expire and any application for development will be governed and processed according to the SLDC.

**1.11.7. Previously Approved Subdivisions and Land Divisions.** Previously approved and platted land divisions and subdivisions, and the lots created thereby, shall be recognized as legally existing lots.

**1.11.8. Final Orders for Approved Applications.** Applications that have received final approval from either the Board or the CDRC and for which there is no further administrative review, shall have their final orders approved in accordance with the voice vote of either the Board or the CDRC.

**1.12. CONCURRENT PROCESSING.** Applicants are encouraged to concurrently submit applications for multiple approvals on a single project in order to facilitate, speed up and make more efficient the development approval process. However, each application shall individually comply with all applicable provisions of the SLDC, and if any individual application request is rejected or conditioned in such a way that the subsequent (in approval order) application request cannot reasonably proceed, then the processing of the subsequent application shall not proceed.

**1.13. PERIODIC REVIEW.** The Board shall periodically review the SLDC and make appropriate amendments. The Board shall review the SLDC at the time of adoption of the Zoning Map and six (6) months thereafter. The Administrator, the Planning Commission, other interested persons or groups may make recommendations to the Board for amendments to the SLDC.

**1.14. SEVERABILITY.** If any court of competent jurisdiction decrees that any specific provision of the SLDC is invalid or unenforceable, that determination shall not affect any provision not specifically included in the order or judgment. If any court of competent jurisdiction determines that any provision of the SLDC cannot be applied to any particular property, building, structure or use, that determination shall not affect the application of the SLDC to any other property, building, structure or use not specifically included in the order or judgment.



**jenkinsgavin**  
DESIGN & DEVELOPMENT INC



SFC RECORDED 05/20/2016

## Two Bens Summary Subdivision

### Timeline

| <i>Item</i>                                      | <i>Date</i>        |
|--|--------------------|
| Subdivision approved and mylar fully executed    | June 30, 2015      |
| Appeal filed by Puesto del Sol                   | July 7, 2015       |
| The CDRC denies the Appeal                       | September 17, 2015 |
| Final Order of CDRC Decision adopted             | November 19, 2015  |
| Appeal of CDRC decision filed by Puesta del Sol* | December 17, 2015  |

\*Land Use staff never informed us that it was a requirement that the appeal be heard prior to the SLDC becoming effective on January 15<sup>th</sup>. If this was indeed the case, it would have been possible for the appeal to be heard at the January 12<sup>th</sup> BCC meeting, with the appellant sending out notices on December 22<sup>nd</sup>. Per Section 2.3.4.c. of the former Land Development Code, "*the Board shall hear the appeal within sixty (60) days after the date the appeal is filed*" or, in this case, by February 15, 2016.