

MINUTES OF THE
SANTA FE COUNTY/CITY
EXTRATERRITORIAL LAND USE COMMISSION

September 16, 2009

Santa Fe, New Mexico

This meeting of the Extraterritorial Land Use Commission (ELUC) was called to order by Chair Jon Paul Romero at approximately 6:20 p.m. on the above-cited date at the Santa Fe County Courthouse, Santa Fe, New Mexico.

Preceding the Pledge of Allegiance, roll call indicated a quorum as follows:

Members Present:

Jon Paul Romero, Chair
John M. Salazar, Vice Chair
Ken Hughes
Juan Jose Gonzales
Signe Lindell
Matthew O'Reilly

Member(s) Excused:

Gloria Lopez
Don Dayton
Charlie Gonzales
Jim Salazar

Staff Present:

Frank Katz, City Attorney
Shelley Cobau, County Building & Development Supervisor
Wayne Dalton, County Building & Development Manager
Rachel Brown, Deputy County Attorney
Reed Liming, Long Range Planning Division Director

Elected Officials


Miguel Chavez, City Councilor



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

ELUC MINUTES
PAGES: 9

I Hereby Certify That This Instrument Was Filed for
Record On The 25TH Day Of September, 2013 at 11:27:13 AM
And Was Duly Recorded as Instrument # 1718936
Of The Records Of Santa Fe County

Deputy  Witness My Hand And Seal Of Office
Geraldine Salazar
County Clerk, Santa Fe, NM

APPROVAL OF THE AGENDA

Ms. Cobau noted an amended agenda was distributed before the meeting and those changes include tabling Consent Calendar case LDFT 09-4050 (Althouse and Carnes-Johnson) and the withdrawal of New Business item LDFT 09-4040 (Perez).

Member Salazar moved approval as amended. Member Gonzales seconded. The motion carried unanimously.

APPROVAL OF MINUTES: August 13, 2009

Member Salazar moved to approve the August 13th meeting minutes as submitted, and Member Hughes seconded. The motion passed unanimously.

CONSENT CALENDAR

1. **EZ Case #LDDL #09-4060: Jay Gould Land Division.** Jay Gould, applicant, requests plat approval to divide 9.554 acres into three tracts. The tracts will be known as Tract 1-B1, Tract 1-B2 and Tract 1-B3. The property is located at 5289 Agua Fria Street, within Section 1, Township 16 North, Range 8 East, within the 2-Mile EZ District 2)

Applicant, Jay Gould, appeared before the Commission and said he agreed to all conditions.

Member Salazar moved to approve the consent calendar and all associated staff-imposed conditions. His motion was seconded by Member Hughes and the motion passed by unanimous voice vote.

NEW BUSINESS

1. **The City of Santa Fe: Requests annexation of the Phase 1 Annexation Areas, totaling approximately 1,852 acres, in accordance with the provisions of the Settlement Agreement and Mutual Release of Claims executed in May 2008 by the City of the Santa Fe, Santa Fe County and Las Soleras developers. The Phase 1 Annexation comprises Areas 3, 6, 8, 9, 10, 11, 13, 15, 16 and 17 and a portion of the Interstate 25 right-of-way**

City Planner Reed Liming stated the commission has a request before them from the City of Santa Fe-initiated annexation of Phase 1. He provided an overview of the City and County agreements that led to this point. In 2008 the City and County signed a historic agreement to agree that the City would annex land known to be within the presumptive City limits over a five-year period. In order to implement the agreement another agreement was reached to form the ELUC and ELUA. The third agreement was a phasing agreement. This established three phases and tonight's request deals with Phase 1. He cited the state law that establishes the

Extraterritorial Land Use Commission and Authority and the steps required for the petition and approval of the annexation.

Mr. Liming said Phase 1 is made up of a series of areas referred to as “donut holes” or “enclaves” surrounded by City land. By state law, any annexation that abuts a public road must include the right-of-way and for that reason Phase 1 includes I-25 r-o-w on from Old Pecos Trail to 599.

The land use and zoning was handled through the Subdivision Planning, Platting and Zoning Ordinance (SPPaZO), which was recommended by the ELUC and approved by the ELUA on August 27th.

Mr. Liming said this evening’s request is for Phase 1 of the annexation plan.

Mr. Liming introduced Jennifer Jenkins, Jenkins & Gavin Design and Development firm, hired by the City to facilitate the public outreach process.

Ms. Jenkins said she and Colleen Gavin were engaged by the City of Santa Fe to facilitate the public process and community outreach with respect to Phase 1 annexation. She said three early neighborhood notification meetings were scheduled in compliance with City code to discuss the annexation process with the affected property owners, stakeholders and residents. The meetings were split by geographics or by future City Council districts to insure “meaningful” dialogues.

Ms. Jenkins said the meetings were held in July starting with areas 16 and 17 around Old Pecos Trail and Arroyo Chamiso. The second meeting was areas 3, 6 and 8, followed by the final meeting with areas 9, 10, 11, 13, and 15. She explained the meeting process started with an informal open house, displaying maps with assorted City staff available to answer questions. The informal open house was followed with a formal presentation that she and Mr. Liming provided.

Ms. Jenkins noted that the presentation reviewed how the annexation would impact property owners through property taxes, zoning, utilities, etc. in the affected areas. She said it was important to communicate to the communities that this was a bigger picture issue and not about one property owner: “This is a broader community-wide issue for the City and the County to create more easily identifiable boundaries.”

Ms. Jenkins said one question that came up often was whether the annexation would cause a reassessment of one’s property. The answer given was “absolutely not.” The County Assessor’s assessment will not change by virtue of the annexation, nor is there a planned reassessment process.

Any roads the County currently maintains as public roads within the annexation areas will now be maintained by the City. All private roads will retain their designation. Solid waste will be provided to all annexed properties. Abandonment of neither wells nor septic systems is required because of annexation.

Pursuant to the Early Neighborhood Notification rule, Mr. Liming said first-class letters were sent to all affected property owners and there were public notice in the local newspapers.

Ms. Jenkins said the attendance at the three meetings varied from 15 to 35 individuals.

City Councilor Miguel Chavez thanked the Commission for their efforts on the annexation issue. He mentioned the population/development change that has occurred in the two-mile EZ district which has put stress on fire, police and medical services.

He asked the Commission to support this annexation request and expressed confidence in the City's ability to protect the rural character that exists in those areas.

Member Gonzales asked how many people would be affected by the annexation and Mr. Liming responded according to the 2000 census information approximately 500 housing units and 1,300+ residents. There is 1,922 acres with approximately 40 percent or 800 acres of that on the I-25 right-of-way.

Ms. Jenkins noted that of the three annexation phases, Phase 2 (Airport Road/everything south of 599) will be the most significant increase in City population. That petition is scheduled by the end of 2012.

With no further questions, Chair Romero opened the public hearing.

Kevin Chapman, a resident of Area 15, which is not surrounded by any other City land and is part of tonight's issue. Area 15 has seven residences and Mr. Chapman said they have been "completely ignored" in the process. The ENN meeting for the area lacked any officials with authority or decision making powers – "We had no access to anyone." Mr. Chapman said Area 15 filed a petition with Ms. Jenkins requesting the removal of Area 15 from Annexation Phase 1. He said he that was "completely ignored" and Area 15 residents have filed letters with City and County council members protesting the annexation. He said he received a conciliatory letter stating that basically they were out of luck.

Mr. Chapman said he was very disturbed at the political process and said they have not been treated as a territory. Mr. Chapman identified himself as an attorney licensed in two states, and citing a statute, said it appears each territory should be treated on its own merits. Mr. Chapman lauded Ms. Jenkins' incredible ability to articulate and masterfully made this a "community issue" rather than an individual territory issue as the statute "implies" it should be addressed.

Because Area 15 is not bounded by City property, Mr. Chapman concluded, based on his interpretation of the statute, that it should be treated differently or on its own merits. He said the annexation did not meet the standard because there were no benefits to the property owners of Area 15. "The City cannot provide us with one benefit," stated Mr. Chapman.

Referring to benefits, Mr. Chapman said the only service the City can provide is garbage pick-up and for that "our taxes will go through the roof...we're going to pay 10 or 15 times what we currently pay for garbage and that's the only benefit they're going to give us."

Mr. Chapman cited Statute 3-7-5 that sets out when the City makes its petition for annexation it has to declare that there is benefit of municipal government through the territory being annexed. He argued that there was no benefit "whatsoever" to his area.

Mr. Chapman argued the City lacked jurisdiction because Area 15 has no surrounding neighbors. He cited statute 3-7-17.1, "When non-consenting property owners are totally surrounded by consenting property owners the City Council may approve the annexation without approval and disapproval..." and said the City has no jurisdiction.

"We don't want our taxes raised for no benefit," repeated Mr. Chapman. He said without evidence that the area received a benefit it will not hold up in court. In the course of his narrative, he stated he was still waiting for a meeting or phone call with officials and Area 15 is uniquely different.

Mr. Chapman asked to be removed from Annexation Phase 1 and have the opportunity to review the law, meet with officials and determine whether Area 15's due process has been met. The rights of the residents within the seven homes in Area 15 have been violated and it is a pure and simply a taking.

Mr. Chapman discussed the road maintenance issue and said based on his experience as a resident of Area 15 for nine months, he said the City doesn't take care of the portion of road that is a City street: "They can't provide the benefits that they're suppose to provide right now..."

Closing his comments, Mr. Chapman beseeched the Commission to remove Area 15 from tonight's decision, to slow down,. He believed they were violating the statute, and there would be angry citizens appearing at the meetings. He said he didn't know what would happen if the Commission included Area 15, "you're going to have to answer to a judge, probably and maybe the Attorney General...Consider this an oral petition not to put 15 in Annexation 1 and ultimately to remove it from annexation all together."

George Sanchez, 2192 Camino San Andres within Area 15, asked the City representatives to identify Area 15.

Mr. Liming said it is south of Yucca, east of the Governor Miles, and north of I-25.

Mr. Sanchez said the residents of Area 15 have attended many meetings and at one point Area 15 included property by Ten Thousand Waves. He said Area 15 as a parcel south of Yucca Road was never discussed. While other areas have had discussions with Joe Catanach, Area 15 has yet to have any discussions regarding the use of their properties.

Speaking as a third generation native and property owner of Santa Fe, Mr. Sanchez said he wants his rights as a property owner respected by the City. He said his rights have been violated and the information presented before this Commission have not been forthright and honest.

Sherry Sanchez, 2192 Camino San Andres within Area 15, said while the intentions have been good there have been misrepresentations. Area 15 has been excluded from conversations. Ms. Jenkins said there had been dialogue with the communities and that was incorrect; there was a monologue.

Ms. Sanchez said she also represents Nella Sanchez of 2157 Camino San Andres, a property has been in the family since the 1930s, and family has lived in the residence for over 30 years in the County.

Ms. Sanchez said it was disrespectful, disheartening and disillusioning to see the residents of Area 15 excluded from the annexation conversation. She requested a conversation with an official that would provide the time and respect that any "native of Santa Fe and anyone that resides in Santa Fe" deserves.

Ms. Sanchez asked the Commission to reconsider Area 15 in this annexation phase and asked them to look in their hearts and minds and do the right thing.

Randy Mondragon, 1894 Paseo de Enrique, a 15-year resident of Area 15, he said his due rights were violated. He stated he was never informed about any of the situation – other than from his neighbors and the one letter he received from the City. He said he wanted it on the public record that he was not treated justly.

Loretta Gonzales, 1894 Paseo de Enrique, she said her due process has been violated. "No one has listened to us," and there was no one from the County representing Area 15 at the City forums. Repeating that she wanted it on record that her rights were violated and that she was not happy with the entire situation, Ms. Gonzales urged the Commission to remove her area from annexation.

Lucas Sanchez, 1986 Paseo de Enrique, said his rights have been violated and he was opposed to annexation of Area 15.

Joseph Lopez, 2036 Paseo de Enrique, appeared in opposition of annexation for Area 15. He said the area needs meetings and planning before annexation should be considered.

There were no other speakers and Chair Romero closed the public hearing.

Chair Romero said the ELU Commission directed staff to hold community meetings and he asked whether, aside from the three ENN meetings, that had been accomplished. Ms. Jenkins said an individual could request a staff follow-up and those responses occurred via phone or email. She did not recall a staff follow-up request form from Area 15 residents.

Chair Romero asked about Mr. Chapman's assertion that Area 15 is unique based on his interpretation of the statutes. Mr. Katz said there is no requirement that the area be surrounded, however, Area 15 is bordered on two of three sides by the City and the third side is the interstate. He pointed out that the Area 15 receives fire and police services from the City and it is not unreasonable that they pay the small increase in property tax for those services.

Chair Romero asked whether moving Area 15 to another phase of annexation was problematic. Mr. Liming responded that it exacerbates the issue of small pockets of unincorporated land. Phase 1 will eliminate the duplication of life-safety services and provide a unified governance.

Chair Romero mentioned Area 12 that was not included in Phase 1 and Mr. Liming said that area, Town & Country Subdivision, was part of the settlement agreement and was moved to Phase 3.

Commissioner O'Reilly asked about the increase in taxes the residents would incur. Mr. Liming said that was included in the FAQ and reviewed at the ENN meeting. The increase for residential property owners is \$50 per \$100,000 of assessed value per year. Commercial property will increase \$82 per \$100,000 of assessed value per year.

Referring to the City-County Settlement Agreement, Mr. Liming said it contains a separate provision that the City and County public works departments will develop an agreement to address the roads identified as County-maintained roads to transfer to City maintenance.

Mr. Katz, in response to Commissioner O'Reilly's concern regarding Mr. Chapman's interpretation of the statute, stated the annexation was being conducted as the City statutes, City ordinances and State statutes anticipate.

Mr. Katz said a number of the individuals this evening complained about due process. These individuals have received notice and an opportunity to be heard. They will have other opportunities to speak before the ELUA, the City Planning Commission and the City Council. That's the way it works in a democracy, stated Mr. Katz.

Member Salazar noted that Areas 10, 11, 13 and 15 fall within the County's urban basin hydrologic zone. He asked whether the R-1 zoning applied without City water and sewer and Ms. Jenkins confirmed that was correct. Because of its proximity to the interstate corridor, Ms. Jenkins noted that Area 15 is designated as a mountain corridor area and only eligible for one dwelling on a one-acre lot with a guesthouse.

Member Salazar asked whether that up-zoning would be considered a benefit and Ms. Jenkins said it's a subjective call but she opined it would be.

Mr. Liming said the City's R-1 zoning permits a guesthouse on a shared well. He indicated that land use and zoning tried to match the developed areas with City zoning.

Member Gonzales said the residents of Area 15 were present this evening in opposition to the annexation and the process. He said he'd like the City, County and Area 15 residents get together, work out their differences and reach a consensus. He said he didn't like to see annexation when all the issues have not been worked out. He said he sees the encroachment of the City moving out toward his area in the County.

Member Gonzales asked staff to comment on whether Area 15 could be moved to a later annexation phase.

Stating he understood the Commissioner's concern, Mr. Liming said the Settlement Agreement calls for this area's annexation.

Mr. Katz said it was not uncommon for people who live in the County to not want to be in the City. He said the Agreement items have been worked out. The issue is these residents do not want to be annexed. Mr. Katz doubted delaying the process would improve the issue.

Member Gonzales expressed his preference to work with the Area 15 residents at this stage of the process rather than requiring them to appear before the ELUA and other committees with the same issues.

Member Lindell asked which entity currently provides police and fire services to Area 15. Mr. Liming responded that the County is the first responder but an MOU addresses support and backup in the area. Ms. Jenkins said the City and County have an MOU for the urban area that authorizes the closest unit to respond.

Chair Romero thanked the public for attending this evening and staff for extending the ENN process.

Member Gonzales moved to adopt Phase 1, moving Area 15 to Phase 3. Chair Romero seconded.

Member O'Reilly asked whether excluding Area 15 posed any danger to those residents regarding provision of fire and police services. Mr. Liming said the Settlement Agreement would probably be amended. Mr. Katz pointed out the ELU Authority is a subset of the governing bodies that are signatories of the Settlement Agreement.

By friendly amendment, the motion was amended eliminating which phase Area 15 would be included within.

City Councilor Chavez said any modification to the Settlement Agreement will require action by the two governing bodies.

The motion failed by a 3-3 tie vote with Members Romero, O'Reilly and Gonzales voting for and Members Hughes, Lindell and Salazar voting against.

An issue regarding whether the Chair votes was discussed with the attorneys and according to County rules the Chair does vote. The practice of the EZC and EZA was to use County rules and that practice continues.

Member Hughes moved to recommend the City of Santa Fe's request for annexation of areas in Phase 1 as proposed by staff be forwarded to the ELU Authority. His motion was seconded Member Lindell and passed by majority [4-2] voice vote with Members Gonzales and Romero voting against.

Mr. Liming announced the ELUA meeting was scheduled for Thursday, September 24th at 6 p.m. in this room.

PETITIONS FROM THE FLOOR

None were presented.

COMMUNICATION FROM THE COMMISSION

Chair Romero recognized Member O'Reilly for his services on the Commission and congratulated him on his new position with the City.

MATTERS FROM THE ATTORNEY

None were presented.

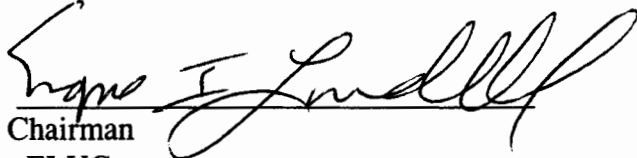
MATTERS FROM THE LAND USE STAFF

None were presented.

ADJOURNMENT

This meeting was declared adjourned at approximately 7:40 p.m.



Approved by:


Chairman
ELUC

ATTEST TO:

SANTA FE COUNTY CLERK

ATTEST TO:



SANTA FE CITY CLERK

Respectfully submitted:

Karen Farrell, Wordswork