

**REGULAR MEETING OF THE PLANNING & ZONING COMMISSION
February 4, 2013**

MINUTES

1) Residents to Address Commission (Non-Agenda Items)

None

2) Call to Order

Chairman Garrison called the meeting to order at 6:30 pm.

3) Roll Call

Present were Chairman Garrison, Commissioners Eastman, Hulseley, Craig, McAda and Planning & Zoning Officer Loretta K. Hatch.

4) Pledge of Allegiance

5) Approval of Agenda

Motion by Commissioner Hulseley to approve. Seconded by Commissioner Eastman. Carried unanimously.

6) Approval of the Minutes:

Motion to approve Minutes of the January 7, 2013 Planning & Zoning Commission Meeting with correction made to item 8 to recommending approval to the Council by Commissioner Hulseley. Seconded by Commissioner Eastman. Carried Unanimously.

7) Old Business

8) New Business

A. Violation and/or Breach of the Conditional Use Permit and Re-Evaluation

1220 Bosque Farms Blvd. Bosque Farms Equities, LLC
For the reason multiple violations.

Commissioner McAda recused herself based on her client relationship with the land owner.

Loretta Hatch: Explanation of violations:

1.) Noise levels

a.) the noise level inside the building will be eighty-eight (88) decibel, but will not cause or create a noise nuisance to the public.

2.) Driveways

The decision of the Planning and Zoning Commission to require two driveways for ingress and egress is hereby modified. The driveway for ingress and egress to the site as approved by the New Mexico Department of Transportation ("NMDOT"), is hereby adopted. Applicant to follow the NMDOT's requirements. The applicant will comply with the NMDOT correspondence of May 11, 2012 which is attached here to and made apart here of, compliance within ninety (90) days from July 1, 2012.

3.) Fencing

a.) that a solid 7 foot fence will be placed along the sides and the back of the property;

b.) that the applicant will contact the property owners Mr. and Mrs. Fegan to reach an agreement on a fence as agreed by using a reasonable standard.

c.) the fence will be built in accordance with Ordinance 10-1-5-D and G

d.) any security wire is to be extended to the inside of the property

Swear in Alan Wilson, 8205 Spain Rd. NE STE 203, Albuquerque, NM 87109, attorney representing Scooter Haynes and Bosque Farms Equities, LLC.

Mr. Wilsons response to violations;

1.) Driveways

Believe to have a complete agreement with the NMDOT. The reason for the delay was due to question over who would perform and pay for the work needed. Have nothing in writing from NMDOT at current time to prove that an agreement has been reached. Will represent that the agreement has been reached with the NMDOT to have NMDOT perform and pay for the work within the last 5 or 6 days. Represents that this issue has been resolved.

2.) Noise

Represents that he is unaware of what the noise issues are. That the conditions on use are made on inside noise not outside noise. States that the operator at the business is taking measures to mitigate the noise issues. Represents that now that outside noise has become a problem they are addressing it as quickly as they can.

3.) Fencing

States that in September/October Mr. Haynes and Mr. Fegan agreed on materials and spoke with Village to see if they were appropriate. States that there was an agreement written up by Mr. Wilson's firm with additional agreements between Mr. Haynes and Mr. Fegan concerning extra materials and money. Written agreement has never been signed. States that his client has tried everything he can to move the issue forward.

Commissioner Eastman: Reads from Statement of Purpose and Intent provided to the Commission Dated April 19th, 2012 by Bosque Farms Equities, LLC stating that there will be no off-site impacts that are disruptive to contiguous properties, no cars will be purchased or stored at the property, no crunching or packaging of the material will be done at the property, which means no loud noises, nor will there be any unusually loud noise emanating from the property.

States that the above is what was represented to the Commission by Bosque Farms Equities, LLC when applying for the Conditional Use Permit.

Mr. Wilson: Does not dispute that it is a binding statement. Unaware of what the noise is that is being complained about.

Commissioner Hulsey: Explains that the noise is coming from the loading and packing of metal into metal roll-off and advises Mr. Wilson to speak to his client about it. States that the decibel level is irrelevant because it is exterior noise not interior noise.

Commissioner Craig: Recalls that at the last meeting the manager of WISE was going to make efforts to reduce the noise and vibration emanating from the property. Asks what has been done to get it to a tolerable level.

Mr. Wilson: Discussed a willingness to building a wall/barrier with the effect of deflecting and reducing the noise that emanates to the outside of the yard, but it has not been agreed to as being the best method. States that the Appeal to District Court is still pending and uncertain as to the outcome of that appeal and should they wait until after the appeal hearing to proceed.

Commissioner Craig: Asks about ordering some other equipment to help mitigate issue. Mentioned that manager stated that he would no longer forcefully compact the metal.

There was a condition set that there would be a solid wall built on the property line. Any side agreements between the parties that goes beyond that should not have any bearing.

Mr. Wilson: Does not dispute that. Admits there is an agreement to have his clients buy the same material as the fencing along the property line and making it available to the neighbor to construct at their own expense. Does not know why agreement is being held up.

Chairman Garrison: The agreement to build the fence should not have extra conditions. It is only on the materials used. No other issues should cloud it.

Mr. Wilson: Agreed.

Commissioner Hulsey: Asks if anyone has done anything to address the noise at this point. Suggest a consultant to alleviate the noise issue.

NMDOT needs to be complied with.

Mr. Wilson: An agreement has been made with NMDOT within the last week to determine who is going to do the work and pay for it. Presenting that it is resolved. NMDOT maintenance dept. will do the work and NMDOT will find funds to do that. Not sure when. Will permit the single driveway once it is reduced to writing.

Mrs. Hatch: Suggests going into recess until Village attorney is present.

Commissioner Eastman: Moves to recess until Village attorney is present.
Commissioner Craig seconded. Moved unanimously.

Attorney David Chavez attends meeting.

Commissioner Eastman: Moves to go into Executive Session. Commissioner Hulsey seconded.

David Chavez: This meeting is being conducted when there is pending litigation and an appeal. This should not in any way be used or conceived in any way that this is an attempt by the Village to distract from the appeal. The appeal will take place and this should not be used in any way to believe that this can be used to leverage the parties involved in this case into effecting the appeal. This is separate from the appeal all together that we are considering. Because of the fact that there is pending litigation and threatened litigation it would be appropriate to adjourn into Executive Session. Requests roll call vote.

Commissioner Hulsey: Yes
Commissioner Eastman: Yes
Commissioner Craig: Yes
Chairman Garrison: Yes

Executive Session conducted.

Commissioner Hulsey: Moves to adjourn back into regular meeting. Commissioner Eastman seconded.

Commissioner Hulsey: Yes
Commissioner Eastman: Yes
Commissioner Craig: Yes
Chairman Garrison: Yes

Chairman Garrison: The issues by the residents were heard at the February Commission meeting.

Commissioner Eastman: Referred to Bosque Farms Equities, LLC Statement of Purpose and Intent, there will be no off-site impacts that are disruptive to contiguous properties, no cars will be purchased or stored at the property, no crunching or packaging of the material will be done at the property, which means no loud noises, nor will there be any unusually loud noise emanating from the property. This is what was presented to the Commission at the time that Bosque Farms Equities, LLC was requesting the Conditional Use Permit. Commission was not made aware of any outside noise associated with the requested use of the property. Only inside noise was addressed. Residents have complained that the noise and vibration are a nuisance. There is also an issue with the fencing and driveway.

Moves that the Commission table this issue until the April 1, 2013 regularly scheduled Planning and Zoning Commission meeting at which time the Commission requests that the parties at interest will provide the Commission a response to the following issues:

1. Noise: Proof of the mitigation of the noise and vibrations creating a nuisance as a result of the business conducted at 1220 Bosque Farms Blvd., Bosque Farms, NM 87068.

2. Driveway: Must have met curb cut requirements as set for the as a requirement of the Conditional Use Permit.
3. Fencing: must have fence built as set forth as a requirement of the Conditional Use Permit.
4. The applicant is to show to be in full compliance with the Conditional Use Permit.
Seconded by Commissioner Hulsey. Let the record show that the vote carried unanimously.

Commissioner Eastman: Moves to amend the agenda and table item B. Discussion on effectiveness of parts of 10-1 Comprehensive Zoning Ordinances. Seconded by Commissioner Craig. Carried unanimously.

9) Monthly Report

Mrs. Hatch gave monthly report for the month of January.

13) Adjourn

Commissioner Hulsey moved to adjourn the meeting at approximately 8:30pm. Commissioner Craig seconded. Carried unanimously.

PASSED, APPROVED AND ADOPTED ON THIS _____ DAY OF _____, 2012.

Chairman, Dan Garrison

ATTEST:

Planning & Zoning Officer, Loretta K. Hatch