

**COUNCIL OF THE VILLAGE OF BOSQUE FARMS, NM
PUBLIC HEARING ON JUNE 28, 2012**

1. CALL TO ORDER

Mayor Bob Knowlton called the meeting to order at 6:05 p.m.

2. ROLL CALL

Present were Mayor Bob Knowlton, Councilors Wayne Ake, Dolly Wallace, Bill Kennedy and Russ Walkup, Clerk/Administrator Gayle Jones, Planning & Zoning Officer Loretta Hatch and Attorney David Chavez

3. EXECUTIVE SESSION PURSUANT TO 10-15-1 H (2) & (7) NMSA, 1978, REGARDING POTENTIAL LITIGATION

Councilor Walkup moved to adjourn to Executive Session for the purpose of threatened litigation at 6:05 p.m. Councilor Ake seconded. Mayor Knowlton called for a roll call.

Russell Walkup, for; Wayne Ake, for; Bill Kennedy. For; Dolly Wallace, for.

Motion carried unanimously.

Councilor Walkup moved to reconvene to regular session at 6:34 p.m. Councilor Kennedy seconded. **Motion carried unanimously.**

Attorney Chavez stated that the only subjects discussed in Executive Session were pending litigation.

4. PUBLIC HEARING ON APPEAL BY CHARLES & NANCY FAGEN PLANNING & ZONING CONDITIONAL USE PERMIT

Attorney Chavez thanked both attorneys for following the appeal process.

Attorney Chavez stated that there was a typographical error in the Planning and Zoning minutes of May 7, 2012. On page 23 "number six", there was credible should be there was no credible.

Attorney Chavez laid out the procedure guidelines for this public hearing.

He stated that the initial transcript from Lewis and Roca did not have a portion of the meeting which involved the Commission going into executive session and then going back into regular session; it was on the recording and our official record does reflect that. He stated that there was compliance with the Open Meetings Act.

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1
2 Attorney Chavez stated that this is an appeal on the record that the issues that are raised
3 in the appeal are the open meetings act; the ingress and egress for the NMDOT; the
4 economic impact on adjacent property; and whether the Planning and Zoning
5 Commission addressed each and every issue that is required to be addressed in the
6 ordinance under the special use permit application.

7
8 He stated that this is an appeal of a Planning and Zoning decision and no additional
9 testimony will be provided except by the record itself. He stated that the council may
10 affirm, deny or modify pursuant to section 10-1-22 E.3 and 4.

11
12 Mayor Knowlton asked for the spokesperson for the appellant. Mr. Jeff Albright with
13 Lewis & Roca spoke on behalf of the Fegan's. They had a 'gap' or inaudible section on
14 the recording they received of the May 7, 2012 Planning and Zoning meeting in regard to
15 the executive session. They still had a concern regarding the Open Meetings Act.

16
17 Mr. Albright stated that the Fegan's believe the decision of the Planning and Zoning
18 Commission should be reversed as erroneous because the Commission did not comply
19 with all applicable requirements of the ordinance.

20
21 The Fegan's are protesting the Planning and Zoning's finding of no economic effects.
22 The Fegan's think that the applicant has the burden to prove economic effects.

23
24 The Fegan's are questioning the NMDOT approval of the driveways and ponding.

25
26 There was nothing in the record about any contact with NMED regarding ponding and
27 runoff.

28
29 The Fegan's are asking that the decision be remanded back to Planning and Zoning for
30 clarification on these issues.

31
32 Mayor Knowlton asked for a representative for the applicant. Mr. Alan Wilson, Attorney
33 for Haynes and Wise, spoke on behalf of the applicants.

34
35 The applicants believe that all issues were addressed. There was a full discussion on
36 economic impact.

37
38 There was discussion on drainage and points of access.

39
40 The applicant stated that they were working with NMDOT regarding the points of access
41 to the property.

42
43 Mr. Wilson stated that applicant is asking the Council to deny the appeal and sustain the
44 action of the Planning and Zoning Commission.

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1
2 Attorney Chavez stated that the applicant has acted in good faith with the Village. They
3 have complied with all requirements and cooperated with the Village.

4
5 Attorney Chavez stated that drainage ponding and runoff requirements and NMED
6 reviews were not addressed in the appeal but were in the Planning and Zoning
7 requirements.

8
9 Attorney Chavez stated that regarding the economic impact; there was no credible
10 evidence or expert testimony that the approval of the application would be harmful to the
11 general health and welfare of the residents of the Village.

12
13 He stated that NMDOT had approved one driveway only and the Village has no authority
14 to direct how many driveways a business could have.

15
16 Councilor Wallace asked Attorney Wilson how NMDOT determines what is a historical
17 amount of drainage and what isn't. Attorney Wilson stated that it was based on
18 calculations determining pre-existing runoff and then what additional runoff may be
19 created by development of the property.

20
21 Councilor Ake asked about the reference in the minutes to runoff being pumped into the
22 NMDOT pond. Mr. Wilson stated that the drainage would be pumped into the additional
23 pond in the back of the property, not the NMDOT pond.

24
25 Councilor Ake asked about the solid fencing required of the applicant which had not been
26 complied with yet and the existing fence on the property.

27
28 Mr. Albright stated that a discussion about the fence had not occurred and he wasn't
29 prepared to discuss that tonight.

30
31 Mr. Wilson stated that the fence would be put up toward the end of the 90-day project
32 and he asked that council set a deadline for a decision on the fence.

33
34 **5. EXECUTIVE SESSION PURSUANT TO 10-15-1 H (2) & (7) NMSA, 1978,**
35 **REGARDING POTENTIAL LITIGATION**

36
37 Attorney Chavez called for a recess to adjourn to Executive Session.

38
39 Councilor Wallace moved to adjourn to Executive Session for the purpose of threatened
40 litigation at 7:25 p.m. Councilor Kennedy seconded. Mayor Knowlton called for a roll
41 call.

42
43 Russell Walkup, for; Wayne Ake, for; Bill Kennedy. For; Dolly Wallace, for.

44 **Motion carried unanimously.**

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1
2 Councilor Walkup moved to reconvene to regular session at 9:02 p.m. Councilor Ake
3 seconded. **Motion carried unanimously.**

4
5 Attorney Chavez stated that the only subjects discussed in Executive Session were
6 pending litigation.

7
8 Attorney Chavez stated that the council would need to clean up some language for the
9 Planning and Zoning commission meeting discussed earlier in the meeting.

10
11 Councilor Walkup moved to adopt by record which is incorporated in the decision
12 tonight the Village of Bosque Farms Planning and Zoning Commission meeting minutes
13 from May 7, 2012 as corrected at the Village of Bosque Farms Council meeting of June
14 28, 2012. Councilor Wallace seconded. **Motion carried unanimously.**

15
16 Mayor Knowlton stated that the Governing Body had discussed the possible pending or
17 threatened litigation regarding this case. He called for a motion.

18
19 Councilor Walkup moved to affirm the decision of the Planning and Zoning Commission
20 and approves the Conditional Use Permit to the Applicant for the property located at
21 1220 Bosque Farms Boulevard, Bosque Farms, NM 87068 except as otherwise modified,
22 as follows:

- 23
24 1. Driveways: The decision of the Planning and Zoning Commission to require two
25 driveways for ingress and egress is hereby modified. The driveway for ingress
26 and egress to the site as approved by the New Mexico Department of
27 Transportation (“NMDOT”), is hereby adopted. Applicant to follow the
28 NMDOT’s requirements. The applicant will comply with the NMDOT
29 correspondence of May 11, 2012 which is attached hereto and made a part hereof,
30 compliance within ninety (90) days from July 1, 2012.
31 2. Drainage: The applicant will comply with the NMDOT requirements as set forth
32 in the NMDOT correspondence of June 27, 2012 which is attached hereto and
33 made a part hereof. No type of off-site drainage will be permitted. Any and all
34 run off and/or drainage of any type of nature from this site will be self-contained
35 on the subject property.

36
37 I also adopt the Findings and Conclusions with reference to 1-8:

- 38
39 1. The application is proper and it is in a commercial zone.
40 2. Proper notification on the application has been given.
41 3. The applicant has met and has completed the requirements and they were received
42 by the Village in a timely manner.
43 4. The application was available for review by the public at the Village of Bosque
44 Farms.

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- 1
- 2 5. The building permit is not before the Commission.
- 3 6. There is no credible evidence or expert testimony of adverse economic effect on
- 4 adjoining property owners.
- 5 7. There was no credible evidence or expert testimony that the approval of the
- 6 application would be harmful to the general health and welfare of the residents of
- 7 the Village of Bosque Farms.
- 8 8. There was no evidence of hazardous material that would be kept on this property
- 9 that would not be in compliance with EID or EPA requirements.

10
11 The Council considered the economic effects on adjoining properties and the credibility
12 of testimony and noted no conflicting expert testimony.

13
14 Moreover, the Commission made a specific finding regarding the credibility of the
15 testimony before it. During the hearing on Applicant's Conditional use Permit, the
16 Village Planning and Zoning Commission exercised its sole role as fact finder.

17
18 The Appellants disagree with the Commission's decision does not mean it was
19 improperly considered, arbitrary or capricious.

20
21 There was no violation of the Open Meetings Act, when the Commission properly
22 recessed to consult with its attorney after threatened litigation by the Applicant and
23 Appellants.

24
25 The circumstances of the closed discussion fits squarely within the exception to the Open
26 Meetings Act as both Applicant and Appellant had threatened litigation and were
27 represented by attorneys at the Commission meeting.

28
29 There is no question that both the Applicant and the Appellants threatened litigation were
30 represented by counsel at the hearing, and the Village of Bosque Farms sought their
31 attorney's counsel in drafting the Findings of Fact and Conclusions of Law adopted as
32 part of the Commission's decision. The record indicates Commission property motioned
33 for recess, which was seconded and approved to consult with its attorney.

34
35 The finding by the Planning and Zoning Commission number seven is a statement of fact
36 of the Commission. The Commission found that there was no credible evidence provided
37 that there was an adverse economic effect on the adjoining property owners. With
38 regards to the finding of fact that there was no expert testimony is a statement of fact
39 which clarifies the statement by Nancy Fegan. Accordingly, there was no additional
40 discussion that was not contained within the record of appeal.

1
2 Councilor Wallace seconded. Mayor Knowlton called for a roll call.

3
4 Russell Walkup, for; Wayne Ake, for; Bill Kennedy. For; Dolly Wallace, for.

5 **Motion carried unanimously.**

6
7 Mayor Knowlton directed Attorney Chavez to draft Council's decision in writing and
8 provide that to all parties.

9
10 Attorney Chavez stated that the appellants have the right to appeal in district court.

11
12 **6. ADJOURNMENT**

13
14 Mayor Knowlton adjourned the meeting at 9:11 p.m.

15
16
17 **PASSED, APPROVED AND ADOPTED THIS 19TH DAY OF JULY 2012.**

18
19
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22
23 _____
24 Robert G. Knowlton, Mayor

25 (SEAL)

26
27
28
29
30 ATTEST:

31
32
33
34 _____
35 Gayle A. Jones, Clerk/Administrator