

MINUTES OF THE REGULAR MEETING OF THE

**City of Carlsbad
Planning & Zoning Commission**

January 7, 2013, at 5:00 p.m.

Meeting Held in the Planning Room

CITY OF CARLSBAD
CARLSBAD, NEW MEXICO

AGENDA

PLANNING AND ZONING COMMISSION
REGULAR MEETING

Monday, January 7, 2013 at 5:00 PM

Municipal Building 101 N. Halagueno Street
Planning Room (Second Floor)

1. Approval of Agenda.
2. Approval of Minutes from the Regular Meeting held December 10, 2012 (rescheduled from December 3, 2013).
3. Request for approval of the dedication of right-of-way in accordance with Section 3-20-5(E) NMSA 1978 and street naming in accordance with Code of Ordinances Chapter 47, Section 42(l).
4. Request for approval of an appeal (variance) from Section 56-70(b) and (c) to allow a fence of varying height up to 5' to be constructed along the front and side property lines at 2414 W. Lea Street, Zoned R-1.
5. Request for approval of an appeal (variance) from Section 56-90(b) to allow a carport to encroach 27' into the required 30' front-yard set-back at 2201 McKinley St., Zoned R-R.
6. Request for approval of an appeal (variance) from Section 47-2(j) to allow land located north of 410 Who Who Drive to be subdivided into two lots with access from a 50' easement rather than a platted street, Zoned RC-3.
7. Request for approval of a Conditional Use Permit to allow for a retail money transfer business and a full service mail and shipping business, as a Home Occupation in accordance with Sections 56-41(g) and 56-70(d)(9)(b)(v) at 516 Juarez St., Zoned R-2.
8. Request for approval of a Conditional Use Permit to allow for the construction of a new wireless telecommunications facility in accordance with Sec. 56-150(f), at 1092 N. Canal St., Zoned C-2.
9. Request for a recommendation of approval regarding the Annexation of 23.15 +/- acres located on N. Guadalupe Street between Vineyard Lane and West Cherry Lane pursuant to the petition method as provided for in Section 3-7-1 et. Seq. NMSA 1978.

If you require hearing interpreters, language interpreters, auxiliary aids in order to attend and participate in the above meeting, please contact the City Administrator's offices at (575) 887-1191 at least 48 hours prior to the scheduled meeting.

10. Request for recommendation of approval regarding the establishment of "R-1" zoning, in conjunction with an annexation, for an approximately 21.02+/- acres located on N. Guadalupe Street between Vineyard Lane and West Cherry Lane
11. Request for recommendation of approval regarding the establishment of "R-R" zoning, in conjunction with an annexation, for an approximately 0.80 acre parcel pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.
12. Request for recommendation of approval regarding the establishment of "R-R" zoning, in conjunction with an annexation, for an approximately 0.80 acre parcel pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.
13. Request for recommendation of approval of a Zoning Map Amendment from "R-R" Residential District to "R-1" Residential District for an approximately 4.56+/- acre parcel, located on N. Guadalupe Street between Vineyard Lane and West Cherry Lane, pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.
14. Report regarding plats approved through Summary Review process.
15. Adjourn.

If you require hearing interpreters, language interpreters, auxiliary aids in order to attend and participate in the above meeting, please contact the City Administrator's offices at (575) 887-1191 at least 48 hours prior to the scheduled meeting.

MINUTES OF A REGULAR MEETING OF THE CITY OF CARLSBAD PLANNING & ZONING COMMISSION HELD IN THE MUNICIPAL BUILDING PLANNING ROOM, 101 N. HALAGUENO STREET, JANUARY 7, 2013, AT 5:00 P.M.

MEMBERS PRESENT:	JAMES KNOTT JAMES MCCORMICK MIKE WELCH	CHAIRPERSON COMMISSIONER COMMISSIONER
MEMBERS ABSENT:	RICHARD HERNANDEZ	COMMISSIONER
STAFF PRESENT:	STEPHANIE SHUMSKY K. C. CASS ERIC NAVARRETE JEFF PATTERSON PATTIE PISTOLE CHARLIE GARCIA	PLANNING, ENGINEERING, & REGULATION DIRECTOR P, E & R BUILDING INSPECTOR P, E & R ENGINEER P, E & R G.I.S. TECH P, E & R SECRETARY BUILDING SECURITY
OTHERS PRESENTS:	LAURA KEEGAN WENDELL W. BANIGAN JOE D. JENKINS LOUISE TRACY JANE COLEMAN DANNY SMITH STELLA DAVIS MARION JENKINS KENNETH LICKLITER ELIZABETH LICKLITER CRAIG STEPHENS ROGER SHORT KRYSTEN KITZMAN NICK JENKINS RITA NELSON BOB WARREN BRENDA COUNTS RANDY COUNTS JACKIE BROWN RONNIE BROWN GEORGIA GOAD ARTHUR GORRELL MARIO FIERRO JO SCHEEL VANCE JENKINS ROBYN HYDEN TODD HYDEN ROGELIO ARROYO MIGUEL ARTURO LOPEZ KIMBERLY CARRASCO BOB BEEMAN SYLVIA BEEMAN JESUS L. FIERRO ED QUEEN CATHY QUEEN & SEVERAL OTHERS WHO DIDN'T SIGN IN OR SPEAK	1515 N. GUADALUPE 1613 N. MESA 413 W. CHERRY 1525 N. GUADALUPE 302 WHO WHO DR. 1611 N. MESA CURRENT-ARGUS 1627 N. GUADALUPE 1910 SANDY LN. 1910 SANDY LN. 1903 MOUNTAIN SHADOW 1626 N. GUADALUPE BLACK & VEATCH CORP. 415 CHERRY LN. 1620 N. GUADALUPE 2201 MCKINLEY 1517-3 N. GUADALUPE 1517-3 N. GUADALUPE 214 W. PEACH LN. 214 W. PEACH LN. 1506 BRYAN CIR. 1211 W. RIVERSIDE DR. 1526 N. GUADALUPE 926 SOLANA 1624 N. MESA 410 WHO WHO DRIVE 410 WHO WHO DRIVE 2414 W. LEA STREET

Time Stamps and headings below correspond to recording of meeting and the recording is hereby made a part of the official record.

0:00:00 Start Recording [5:04:36 PM]

Mr. Knott asked that Staff members present be introduced, which they were.

0:02:28 **1. Approval of Agenda.**

After introductions, motion was made by Mr. McCormick and seconded by Mr. Welch for approval of the Agenda. The vote was as follows: Yes –Mr. Welch, Mr. Knott, Mr. McCormick; No – None; Absent –Mr. Hernandez; Abstained – None. The motion carried.

0:03:00 **2. Approval of Minutes from the Regular Meeting held December 10, 2012 (rescheduled from December 3, 2013).**

Motion made by Mr. Welch and seconded by Mr. McCormick for approval of the Minutes. The vote was as follows: Yes –Mr. Welch, Mr. Knott, Mr. McCormick; No – None; Absent –Mr. Hernandez; Abstained – None. The motion carried.

0:03:29 **3. Request for approval of the dedication of right-of-way in accordance with Section 3-20-5(E) NMSA 1978 and street naming in accordance with Code of Ordinances Chapter 47, Section 42(l).**

Mr. Stephens, on behalf of the seller, and Ms. Scheel, on behalf of the buyer, spoke regarding the request. The City has a water line in the street and the applicant wants to dedicate the right-of-way to provide the City access to maintain it. The surveyor had pointed out to them that Nabors owns the road, not the City. The ingress and egress is on Greene Street. Ms. Shumsky had talked to the County about the addressing, and everyone thinks the address should remain as it is.

Motion made by Mr. McCormick and seconded by Mr. Welch for approval of the request. The vote was as follows: Yes –Mr. Welch, Mr. Knott, Mr. McCormick; No – None; Absent –Mr. Hernandez; Abstained – None. The motion carried.

0:11:43 **4. Request for approval of an appeal (variance) from Section 56-70(b) and (c) to allow a fence of varying height up to 5' to be constructed along the front and side property lines at 2414 W. Lea Street, Zoned R-1.**

Since the applicant was not present when the item came up on the Agenda, Mr. Knott said they would skip over that item for now. They could address it if he came in later.

0:12:32 **5. Request for approval of an appeal (variance) from Section 56-90(b) to allow a carport to encroach 27' into the required 30' front-yard set-back at 2201 McKinley St., Zoned R-R.**

Mr. Cass said there are numerous violations up and down the street, and that the request was beyond what we normally allow. If it were granted, he suggested it be of noncombustible material. He also stated that if it were ever closed in, it would create a line-of-site issue. He would rather see it put in as a temporary structure without a pad.

Motion made by **Mr. McCormick** and seconded by **Mr. Welch** for approval of the Variance with conditions that the structure be of noncombustible material and that the sides never be enclosed. The vote was as follows: **Yes –Mr. Welch, Mr. Knott, Mr. McCormick**; No – None; Absent –**Mr. Hernandez**; Abstained – None. The motion carried.

0:24:52 **6. Request for approval of an appeal (variance) from Section 47-2(i) to allow land located north of 410 Who Who Drive to be subdivided into two lots with access from a 50' easement rather than a platted street, Zoned RC-3.**

Ms. Shumsky noted that Staff had recommended denial, but if it was approved there should be conditions. **Mr. and Mrs. Hyden** were presenting the request. They said that the easement is in place, but not dedicated and is maintained by the owner, Mr. Henry. It is also dedicated as a utility easement. **Ms. Shumsky** clarified that it is filed as a private easement. During public comment, **Ms. Coleman** said she was against it. She owns five acres next door and is concerned about declining water pressure and the many septic tanks in the area. If the lot is divided and sold and more people come in to live, it will only make it worse. She also mentioned the horrendous traffic in the area already. **Ms. Hyden** said the property is tied to a 1" line now, but the City had recommended they tie in to the 10" main across the street and put in another fire hydrant. **Ms. Shumsky** said it is more economical and favorable to the City to have more customers tied onto the utilities. **Mr. Lickliter** commented that he is in favor of the request.

Motion made by **Mr. Welch** and seconded by **Mr. Knott** for approval of the Variance, with the following conditions recommended by staff: 1) The new 2-lot split should have a minimum of a 50-foot right-of-way easement for ingress and egress and for allowing utilities to be installed. 2) There shall be a 50-foot radius turnaround for the new 2-lot split subdivision for emergency vehicles. 3) The owner shall be required to extend all utility lines to the subject site to tie on to the 12" pipe. 4) Addressing will be off of Who Who Drive. The vote was as follows: **Yes –Mr. Welch, Mr. Knott, Mr. McCormick**; No – None; Absent –**Mr. Hernandez**; Abstained – None. The motion carried.

0:46:15 **4. Request for approval of an appeal (variance) from Section 56-70(b) and (c) to allow a fence of varying height up to 5' to be constructed along the front and side property lines at 2414 W. Lea Street, Zoned R-1.**

The applicant arrived and the Commission proceeded with hearing this item. **Ms. Shumsky** said that Staff had recommended denial. **Mr. Cass** said the City had issued a Building Permit for a 3' fence, but found during an inspection that the fence exceeded what the permit was issued for and stopped the project. None of the fence is in compliance. He said if it is approved, the applicant should provide a plot plan showing the fence is on his property and not on the right-of-way and that there should not be a line-of-site problem. The fence is a nice cinder block fence, 5' at one point with a step-down to 4' and pillars 4 ½', but the entire project is non-compliant and did not follow the plans submitted for the building permit issued. The footing is, however, sufficient for the construction. In answer to a question, **Mr. Cass** stated that our ordinance has always been 3' for fences in the front, though a contradictory document had been used in the Building

Department years ago. The City Ordinance has always been 3'. **Mr. Cass** said that there was a language barrier in this case, and that speaking on **Mr. Arroyo's** behalf, the reason he needed the fence was to keep his kids and grandkids out of the street--Lea Street. It was a safety issue. **Ms. Shumsky** noted that the police comments noted the fence did not interfere with line-of-site or have an impact on passing motorists.

Mr. McCormick made a motion to approve the Variance, and **Mr. Welch** seconded the motion. The vote was as follows: **Yes –Mr. Welch, Mr. Knott, Mr. McCormick**; No – None; Absent – **Mr. Hernandez**; Abstained – None. The motion carried.

0:56:17 **7. Request for approval of a Conditional Use Permit to allow for a retail money transfer business and a full service mail and shipping business, as a Home Occupation in accordance with Sections 56-41(g) and 56-70(d)(9)(b)(v) at 516 Juarez St., Zoned R-2.**

Ms. Shumsky explained that the applicant wanted to open a shipping and money transfer business as a home-based occupation, similar to Pac & Mail or the Mail Service Center. She said Staff recommended denial because of traffic concerns and the negative impact on the residential area. **Mr. Lopez** said there was space to park ten cars on the side of the building and that the business would be more for the money-grams than for shipping. He said there is a big demand, and that at La-Tienda the wait was forty to forty-five minutes to send money. **Ms. Carrasco**, who came forward with the applicant, said it was to send money and packages to Mexico and other parts of the world, like at Wal-Mart. This way, people will not have to wait in the long line there at Wal-Mart's Customer Service. They will have another place to go. **Mr. Knott** asked about advertising and regulations or bonding of the business. **Mr. Lopez** said they told him he just needs a place to start the business, the customers are waiting. The company is all ready. He did not specify who "they" were or who the company is that is ready for him to start the business. He said he does not have to be bonded or regulated. When **Mr. Knott** asked about the fee, **Mr. Lopez** said he thought it would be about \$10 to send the money, and you only had to wait 15 minutes to get it anywhere in the world, not 24 hours, like at Wal-Mart. He said they would have probably 400 customers per week. **Mr. Knott** said that was a concern. Typically, home occupation licenses were for just a few customers a day. When you start getting twenty or thirty, then you have to think about your neighbor. **Mr. Lopez** said the building had been a church, a childcare center, a bar, and several businesses in the past. **Ms. Shumsky** said it was zoned R-1, and that churches are allowed in all areas but as for the other uses, they would not be allowed. She said she was not aware of the historical uses of the property. She said that Conditional Uses are not transferrable; they do not run with the land. They expire on sale of the property or termination of the use. Someone (the son) has to live on the property, and there can be one outside employee only. **Mr. Lopez** said he had read and understood the conditions for a Home Occupation and that he could comply with them, including business hours and signage. He also said he understood that a Conditional Use is not transferrable and that the business owner must live onsite.

Motion made by **Mr. McCormick** for approval of the Conditional Use with all the usual conditions for a Home Occupation as listed in Sec. 56-56-70(d)(9) of the City Ordinances. Motion was seconded by **Mr. Welch**. The vote was as follows: **Yes –Mr. Welch, Mr. Knott, Mr. McCormick**; No – None; Absent –**Mr. Hernandez**; Abstained – None. The motion carried.

1:09:44

8. Request for approval of a Conditional Use Permit to allow for the construction of a new wireless telecommunications facility in accordance with Sec. 56-150(f), at 1092 N. Canal St., Zoned C-2.

Ms. Shumsky explained that Verizon Wireless wants to place a new antenna on the south side of the property where Baja Broadband has their offices. Staff recommended approval, as long as the conditions listed are met. **Ms. Kitzman** was present to represent the applicant. She said there had been a little change from the initial proposal. They cannot remove the old tower, which belongs to Baja. The new tower will be only 85', not 100'. The existing tower cannot accommodate any more antennas. It will now have a uni-pole design (flagpole style, concealed in canisters inside the pole). It is designed to collapse upon itself if it should break. They will also have a generator as a back-up for 911 and communication, because so many people rely on wireless now. Thirty-five percent of homes do not have landlines any more. She explained that Verizon had acquired Plateau. It will be a mixed, combined build-out, with the majority done by March and the completion by the end of June. **Ms. Shumsky** explained that all wireless communication is required to secure a Conditional Use Permit. They are allowed in any zone in the city, but have to go before Planning and Zoning for review and placement of any conditions. **Ms. Nelson** asked about the impact on the Assistance League, whose building is on the northeast corner of Canal and Pierce Streets. She wanted to know about interference. **Ms. Kitzman** explained that all wireless has its own wavelength, such as the US Cable wavelength, and has to follow FCC regulations. There will be no impact on the Assistance League building because it is farther than the required fall radius.

Motion made by **Mr. Welch** and seconded by **Mr. McCormick** for approval of the Conditional Use Permit, provided the applicant follow the staff conditions listed and also provide structure drawings for the revised plans for the new tower. The vote was as follows: **Yes –Mr. Welch, Mr. Knott, Mr. McCormick**; **No – None**; **Absent –Mr. Hernandez**; **Abstained – None**. The motion carried.

1:30:42

9. Request for a recommendation of approval regarding the Annexation of 23.15 +/- acres located on N. Guadalupe Street between Vineyard Lane and West Cherry Lane pursuant to the petition method as provided for in Section 3-7-1 et. Seq. NMSA 1978.

Ms. Shumsky explained that the request for annexation was for about 23 acres on North Guadalupe, north of Vineyard and south of Cherry Lanes. It currently is vacant or utilized for agricultural purposes. The petition method as outlined by State statutes allows the majority landowner to include other areas outside his property. The utilities are nearby but would have to be extended pending future development. There is a sewer line to the south and a water line to the east. She explained that the appeal process is specified in State statute and must be filed by someone who is a party to the request and be based on procedural issues. She stated that the Count's property is included in the annexation although they are opposed to it. To leave it out would create an island of county surrounded by city, which is undesirable. **Ms. Tracy** stated that the request is for Estate planning, and the majority of the land is in the family trust. She is trying to make it easier for others to sell or develop the property. Annexation will provide more flexibility if someone buys it. There is electricity in front and back of the parcel, and sewer in the back. There is a utility and road easement in the back. **Mr. Knott** asked what the advantage would be to having the property in the City, as far as selling the property is concerned. **Ms. Tracy** said the person who buys it and wants to develop would not have to wait six months to a year for the process; they could close within 60-90 days if there was a buyer. The floor was

opened to public comment. **Mr. Knott** explained that the only item to be addressed at this point would be the annexation. They had to go in order of the items on the agenda.

Mr. Bannigan said the property is directly in front of his house, and he is opposed to redistricting to R-1. **Mr. Knott** reminded him that at this point they were only discussing the annexation.

Mr. Bannigan said he thinks there is enough affordable housing now, with all the new development. He thinks the City should concentrate on in-fill, utilizing property already inside the city limits before annexing other property. He noted problems with water/drought and more traffic over the North Canal Bridge, which is in a constant state of repair with the current traffic. He says LaHuerta is a garden spot of Carlsbad and is better off being left alone. He does not think it is necessary at this time to annex more property.

Mr. Counts stated that they moved there to be in the country and saw no benefit to being in the City. **Mr. Knott** showed him where the sewer was available nearby to hook on to if the land is annexed. **Mr. Counts** asked if he would get curbs and gutters. **Mr. Knott** said he would not, but he would get police patrols. **Mr. Counts** said he does not understand why the applicant wants to annex the property, because a buyer for the property might want the property for farmland. He wanted to know if the property could revert back and be de-annexed. **Ms. Shumsky** said it could not be de-annexed, but the property owner could apply for a change in the zoning, from dense to less dense. **Mr. Knott** added that there are farmland areas allowed within certain zones in the City limits, such as along Lea Street and on Boyd Drive by the cemetery. All those are in the City limits. Animals and farmland are allowed in some of the zones. **Mr. Counts** said their property taxes would go up, but they would not get any services such as water or sewer and would not benefit in any way. He wanted to know what zone his property would be in if it was annexed. Would it be Rural Residential? **Ms. Shumsky** said if the property is annexed, it would have to be given a zoning designation. The most rural zone in the city is R-R, which allows a ¼ acre lot-size minimum, agriculture, and livestock uses. That would not affect how Mr. Counts is using his property; he would still be able to irrigate and have livestock. Then **Mr. Counts** asked about the easement in front of his property. **Mr. Knott** said that it was a filed easement, so there would be no change. **Ms. Shumsky** added that it was required to be in perpetuity until the beneficiaries of the easement decide otherwise. **Ms. Tracy** said it is 45' wide and widens at the end. It was a court action, a prescriptive easement, very detailed. The people who benefit from it are responsible for it, and that it would come into the city with the annexation.

Ms. Nelson stated that she lives across the street on Guadalupe, and she is against it. She wants to stay in the County and keep LaHuerta as it is. She is concerned about what the next owners would do with the property. They might put up apartments. She does not want to look out and see houses or apartments. She wants to keep the minimum 1-acre lots as they are now. **Mr. Knott** explained that even as County land, it could be sold off and divided for development.

Mr. Brown said he is the neighbor on the east, and he is against the annexation. He said he has no problem with a housing development, but apartments make your land lose value. He will sell if apartments go in. He said people like to walk down the road for exercise and make a big circle in that area. **Mr. Knott** asked **Ms. Shumsky** to explain what is allowed in the County for the current RC-3 zoning. She explained that right now, with the zoning they have in place for the County, it could be used for single-family homes, a single-wide mobile home, businesses such as sand and gravel, excavation, mining, kennels, farming, and public facilities such as schools. This is all allowed in even the most restrictive County zone (RC-3). Apartments and mobile home parks would not be allowed in County RC-3.

Mr. Marion Jenkins said he owns all the property north of the area and protests the annexation. He said he developed the property for his family. He has orchards, gardens, and protective walls surrounding the property. He was very disappointed when the Copperstone Apartments came in. It created such a hassle and created a major traffic problem. He said he does not fault anyone for getting the most they can for their property. He would, too. He said the City approved all the land for Forrest for the CARC farm, and that they are going to build another set of apartments as big as Copperstone, and that now they are going to tear down the school and give the land to develop more housing. Then they will build another school, when they just spent \$2 million to bring this one up-to-date. If the land stays as 1-acre lots, apartments cannot be built. His property is for peace and security. He has City water and a 2" line, in case of fire. He is also hooked onto a well in case of problems. He said he would even buy the property for a decent price. He is afraid his property will be devalued a tremendous amount and he could kiss \$1 million goodbye.

Mr. Nick Jenkins said he is also opposed. He said property for sale in that area is not being purchased, because everyone is waiting to see what happens. If the property is annexed, it will devalue the property and affect equity and the price for property being sold. He said it would affect their livelihoods.

Mr. Joe Jenkins said he is Ms. Tracy's next door neighbor and opposes the annexation. He said he also opposes her statement that she is not a developer. He thinks she is a very accomplished developer. He chose his way of life and wants to continue the way it is.

Mr. Beeman is also opposed because of first responders. He said on the east side of Guadalupe where he lives, the sheriff has to come. He said if they are annexed, the police will have to come. First responders will be confused and dispatchers will not know whom to send. He said they already have that problem and send the wrong one. A police officer comes and leaves because they have to call the sheriff.

Mr. Smith, 1611 N. Mesa, said the dimensions on the map do not match. He said he has a dispute with Ms. Tracy. That the easement is his on the east side, but he has not been given the quitclaim. He said that the State of New Mexico says that if you have a fence, regardless of the property line, after ten years, if there is no protest, then it is yours. He just went through this same thing and got a quitclaim for another piece of property. He said the road was abandoned in 1946. He moved there in 1970, and there has never been a road there. He wants to know where it is. He said the prescriptive easement is not shown. He wants to know how they can annex if the land is his. **Mr. Knott** said any problems with ownership would be found when the property was sold. It would not affect the annexation. **Ms. Shumsky** said the documents have to be certified by a surveyor before a plat is filed. The surveyor has to do research on the ownership. Problems would come to light and be addressed at that time. But if Mr. Smith has documentation regarding this issue he should provide a copy to the City before this item is heard by the City Council. The Council might not consider his issue if he doesn't have documentation. **Mr. Knott** said that any exceptions or easements would be included in the surveyor's research. The Planning and Zoning commission would not be involved with that.

Mr. Vance Jenkins said he lives at 1624 N. Mesa and is also opposed to the annexation. He said the CARC property was brought in through annexation in 1993 and that annexation is a gateway for developers to apply for rezoning.

Ms. Counts said she was opposed, and as a realtor knows that people come in to Carlsbad looking for one-acre lots, County property.

Ms. Queen said she was opposed. She lives next to the Counts. They moved out there for the community experience for retirement. Any big development swallows them. **Mr. Knott** asked where they are located on the map, and Ms. Queen discovered that she already lives inside the City limits. She said she does have City water.

Mr. Joe Jenkins asked how they could be considering annexation if the land was in dispute. **Mr. Knott** explained that it depended on how far along the process was and that the Planning and Zoning Commission does not annex property. They only make a recommendation to the City Council, who has the final say in annexation. He suggested that if he had any legal documents or papers, to take them to the City Attorney. **Ms. Shumsky** said she was writing down questions to ask our attorney, as well. **Mr. Marion Jenkins** said it would be a matter of public record as to the owner of the property.

Mr. Fierro, Ms. Keegan, Ms. Coleman, and Mr. Short all expressed their opposition also.

Motion made by **Mr. Welch** to recommend denial of the Annexation. **Mr. McCormick** seconded the motion. The vote to recommend denial was as follows: **Yes –Mr. Welch, Mr. Knott, Mr. McCormick**; **No – None**; **Absent –Mr. Hernandez**; **Abstained – None**. The motion carried to recommend denial. **Mr. Knott** stressed that the City Council could still annex the property, and the decision was up to them.

2:49:58 **10. Request for recommendation of approval regarding the establishment of “R-1” zoning, in conjunction with an annexation, for an approximately 21.02+/- acres located on N. Guadalupe Street between Vineyard Lane and West Cherry Lane pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.**

Ms. Shumsky explained that R-1 is for single family residences. Increasing density where there are existing utilities is desirable, and there is a mix of zoning in the area. Staff recommends approval, if annexation is approved. **Mr. Knott** stressed the Commission is only making a recommendation. The City Council would make its own decision. **Ms. Nelson** asked if they would have a voice in the vote, since they were in the County. **Ms. Shumsky** said the City Council considers what everyone has to say. Also, the Minutes are a matter of public record. **Ms. Nelson** wanted to know if they would be notified by the City. **Ms. Shumsky** replied that property owners within 100’ are required to be notified, and it would be posted in the newspaper 30-days prior to the hearing. **Mr. Knott** explained that in making his decision on this item and the next, he has to think about it as if the Council had annexed the property against their recommendation. He has to make that assumption in determining his vote on the next two items. What zone would be best, if it were already in the City limits?

Mr. Bannigan read the City Ordinance Section 56:3(b). Then, as an example of the character of the neighborhood they wanted to preserve, he read a quote by Ms. Tracy from the transcript of the City Council Minutes from May 11, 1993. After a lengthy reading, **Mr. Knott** explained that if the City annexes, they need to determine the best possible use for the property. He asked Ms. Tracy to explain why they should choose R-1. **Ms. Tracy** said she purposely decided to ask for zoning that would not permit apartments. She thinks there are plenty of apartments in the city. She said she was told development was like a flower, with petals, developed one at a time to grow, so that as the city develops from the compact area, each petal in turn is able to have City

services. She said if she were a developer, which she is not, she thought that the City would want sewer, because of all the septic systems in La Huerta. She has heard that in the past many of the irrigation and drinking wells in LaHuerta were tested. But now, no one will allow them to be tested. She thought the area would be required to have sewer in any new development. When Copperstone was started, she worked hard to get road, ditch, utility, and well easements and the sewer nearby. She worked hard to make sure that was all available. She does not know about drainage or how that works. She knew it would not be her or her family doing it, but felt no one would allow the rest of the land to be developed without all of that. **Mr. Knott** asked if she was sold on R-1 zoning, because it was more restrictive on developers. R-1 zoning is a big gamble for developers, because of having to put in curbs and gutters and drainage, etc. **Mr. Bannigan** said he thought that as far as best use of property and keeping the character, R-1 could be sold to another developer who did not have sympathy with the LaHuerta landowners like Ms. Tracy does. He said that with 5.4 lots per acre, there could be 125 residences surrounded by 1-acre tracts. He said that is not in keeping with the character of the area.

Mr. Marion Jenkins wanted to know if the notes [for the meeting] could go to their Eddy County commissioner, so they would know someone was speaking for them. **Mr. Knott** pointed out that they would all be able to speak at the public hearing of the City Council meeting, even County residents. **Ms. Shumsky** added that they could ask their county commissioner to speak at the meeting, and they could request a copy of the minutes for the meeting. **Mr. Knott** repeated many times that everyone was welcome to speak, but if they could please keep it brief and try to bring up something new and fresh, or if they would like to simply express agreement with previous speakers.

Ms. Keegan, of 1515 Guadalupe, said she is in the rural section within the City limits and has a septic system. Previous owners had alpacas, and the Keegans still want to have livestock. She is afraid if the zoning is more restrictive, then that would restrict the use of their property. They have made a significant investment. They would be against R-1 zoning, because they would rather have less restrictions.

Mr. Joe Jenkins said that he felt the same as before, because of the septic tanks. He felt the City would not want to continue their use. He said there is only a state enforcement division, not a City one. **Mr. Knott** explained that there is an IED office in town. Any property that changes hands needs an EID inspection. For example, a 4-bedroom, 2-bath house would need an acre. Very strict enforcement is in place for property transfers with septic tanks. In R-1, because of the lot size, septic tanks are not permitted. They have been enforcing this for the past twelve months. They do not catch them all, but if a transaction goes through a realtor, a title company, or has a lien holder, the EID inspection is necessary.

Mr. Queen, 1517-2 Guadalupe, said that if the City Council approves, that would bring many more people into the neighborhood. He likes to walk and exercise along the road. There are also kids in the area. It is already bad with the Copperstone Apartments. He said noise and light pollution would be increased. Traffic would be worse. **Mr. Knott** asked what zone he would like to see, if the City did annex this property. **Mr. Queen** said he wants 1-acre lots. He is against the R-1 zoning.

Ms. Counts asked if she understood correctly, that in the City's R-R zoning, with ¼ acre, you could still have animals. **Ms. Shumsky** explained that you could. It is determined by how many square feet you have, as to how many animals you may have. For example, you need 10,000 square feet per horse. On a quarter acre, you could maybe have a sheep and a goat. If you owned several lots, you could combine them and have more animals. There are different area

requirements for different kinds of animals. **Mr. Knott** added that they cannot be a nuisance to your neighbors. **Ms. Shumsky** added that the minimum lot size in R-1 was 6,000 square feet and in R-R it is 10,890 square feet. A developer would have to apply for a zone change to do something different.

Public comment was closed, and **Mr. McCormick** made a motion to recommend denial. **Mr. Welch** seconded the motion. The vote to recommend denial was as follows: **Yes –Mr. Welch, Mr. Knott, Mr. McCormick**; No – None; Absent –**Mr. Hernandez**; Abstained – None. The motion to recommend denial carried.

Ms. Shumsky clarified that if the area is annexed, and then if the City Council follows this recommendation, then the default zoning will be R-R. After annexation, there has to be some designation of what the zone will be.

3:26:26 **11. Request for recommendation of approval regarding the establishment of “R-R” zoning, in conjunction with an annexation, for an approximately 0.80 acre parcel pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.**

Ms. Shumsky explained that the parcel in this request belongs to the Counts. If the property does come into the City through annexation, then the zoning need to be established. Based on current use of the property, Staff recommends approval, because R-R is the most rural zone in the City limits.

Mr. Counts stated that he wants to stay rural, so he is in agreement with this request.

Mr. Welch made a motion to recommend approval. **Mr. McCormick** seconded the motion. The vote to recommend approval was as follows: **Yes –Mr. Welch, Mr. Knott, Mr. McCormick**; No – None; Absent –**Mr. Hernandez**; Abstained – None. The motion carried.

3:28:57 **12. Request for recommendation of approval of a Zoning Map Amendment from “R-R” Residential District to “R-1” Residential District for an approximately 4.56+/- acre parcel, located on N. Guadalupe Street between Vineyard Lane and West Cherry Lane, pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.**

Ms. Shumsky explained that the property involved in this request is in the City limits, and is currently zoned R-R. She said the applicant is a Trust, and Ms. Tracy is the agent for the Trust. The property would eventually be developed for single-family use. Ms. Tracy said she was discouraged at this point and did not know what to say. She felt her property rights had been violated, when she was trying to think of the future, petal by petal. She said she understood spot-zoning, and knew this section would need to conform to the surrounding area, so as not to create a spot-zone. **Ms. Shumsky** suggested that possibly, since this remaining request depends on the outcome of the preceding requests, the recommendation could be to go along with whatever decision is made for the other parcels. **Mr. Knott** agreed that for this item, if the annexation was approved, then assuming the approval of R-1 in Item 14, then it would make sense for this parcel to be R-1. If the other parcel was zoned R-R, then it would be better to recommend this parcel for R-R. **Ms. Shumsky** added that, though you cannot put conditions on a zone change, you can make your recommendation consistent with the other parcels. That way the recommendation is

contingent upon the City Council's preceding decisions for these related items. When the Chairman opened the floor for public comment, someone had a question, but did not come forward or identify herself. She wanted clarification of what had just been discussed. **Mr. McCormick** rephrased what had been said, and **Ms. Keegan** came forward to see the map more clearly. **Mr. Knott** offered the chance for anyone interested to come forward to see the map better. **Mr. McCormick** explained that they would want to keep the area consistent. **Ms. Shumsky** also clarified that zoning has to be requested by the owner, whereas annexation can come from City action. When a property comes into the City, though, it has to be assigned a zoning. It would come in as R-R, and then could be changed by the owner later.

Mr. McCormick made a motion to recommend this zoning be made consistent with whatever decisions the Council makes for the two previous items. **Mr. Welch** seconded the motion. The vote was as follows: **Yes –Mr. Welch, Mr. Knott, Mr. McCormick**; **No – None**; **Absent –Mr. Hernandez**; **Abstained – None**. The motion carried.

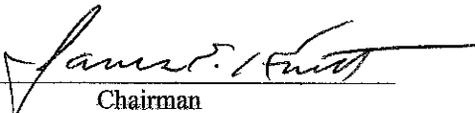
3:42:12 **13. Report regarding plats approved through Summary Review process.**

Commissioners stated they had no questions regarding any of the plats Ms. Shumsky had signed.

3:42:21 **14. Adjourn.**

There being no further business, the meeting was adjourned.

3:42:25 Stop Recording [8:47:02 PM]



Chairman

Date

ATTEST: 

City Clerk

2-5-13

Date