

**MINUTES OF THE REGULAR MEETING OF THE**

**City of Carlsbad  
Planning & Zoning Commission**

**March 4, 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, March 4, 2013 at 5:00 PM

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

1. Roll call of voting members and determination of quorum.
2. Approval of Agenda.
3. Approval of Minutes from the Regular Meeting held February 4, 2013.
4. Select member to serve as Commission Secretary.
5. Consider request for Appeal (variance) from Section 56-90(b) to allow a side setback variance of 6' from both the north and south property lines at Tipton Tracts Subdivision, Tract 2 (located south of 611 N. Eleventh St.), Zoned R-1.
6. Consider request for Appeal (variance) from Section 56-90(b) to allow a side setback variance of 5' to the north property line, which would result in a 0' side-yard setback, at 206 S. Mesa St., Zoned R-2.
7. Consider recommendation of a Zoning Change from "R-1" Residential District to "I" Industrial District for an approximately 1.5 acres, legally known as Dowmac Subdivision, Block 5, Lots 10, 11 and 12 pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.
8. Consider recommendation of a Zoning Change from "R-R" Rural Residential District to "C-2" Commercial District for an approximately 1 acre parcel, legally known as Joel Subdivision, Block D, Lots 17&18 (east of 909 Loving Avenue) pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.
9. Distribution of Planning and Zoning Commission Handbooks.
10. Report regarding plats approved through Summary Review process.
11. 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, MARCH 4, 2013, AT 5:00 P.M.**

**VOTING MEMBERS PRESENT:**

**JAMES KNOTT  
JAMES MCCORMICK  
RICHARD HERNANDEZ  
WANDA DURHAM**

**CHAIRPERSON  
COMMISSIONER  
COMMISSIONER  
COMMISSIONER**

**VOTING MEMBERS ABSENT: NONE (ONE VACANCY)**

**EX-OFFICIO MEMBERS PRESENT:**

**STEPHANIE SHUMSKY  
ERIC NAVARRETE**

**PLANNING, ENGINEERING, &  
REGULATION DIRECTOR  
PERD ENGINEER**

**EX-OFFICIO MEMBERS ABSENT:**

**DALE JANWAY  
JON TULLY  
EILEEN RIORDAN  
TOM CARLSON**

**MAYOR  
CITY ADMINISTRATOR  
CITY ATTORNEY  
ACTING PUBLIC WORKS  
DIRECTOR**

**PATSY JACKSON-CHRISTOPHER**

**CULTURE, RECREATION, &  
COMMUNITY SERVICE  
DIRECTOR**

**K.C. CASS  
DANNY JONES**

**BUILDING INSPECTOR  
BUILDING INSPECTOR**

**BOARD SECRETARY:**

**(BOARD MEMBER NOT SELECTED YET)  
PATTIE PISTOLE**

**PLANNING, ENGINEERING  
AND REGULATION DEPT.  
SECRETARY**

**OTHERS PRESENT:**

**RICHARD L BROWN  
ROBERT SCHOOLCRAFT  
GARY L. DESOTO JR.  
OFELIA ACOSTA  
MORRIS GAUNTT  
TERESA GAUNTT  
JOHN RANSON  
RONNIE LEE  
JUNE LEE  
JERRY R. VILLA  
WAYNE BALLARD  
REGINA BALLARD  
JOHN PERRY  
SANDRA WARNER  
DARWIN WARNER  
AMY ENGLAND**

**1408 DOEPP  
909 LOVING AVENUE  
2402 LEGION  
402 N. 7<sup>TH</sup>  
606 N. 11<sup>TH</sup>  
606 N. 11<sup>TH</sup>  
2805 MOUNTAIN VIEW  
604 N. 11<sup>TH</sup>  
612 N. 11<sup>TH</sup>  
603 N. 11<sup>TH</sup>  
3405 PINEVIEW LANE  
3405 PINEVIEW LANE  
308 E. ORCHARD LANE  
615 N. 11<sup>TH</sup>  
615 N. 11<sup>TH</sup>  
206 S. MESA**

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 [5:00:30 PM]

0:00:11 **1. Roll call of voting members and determination of quorum.**

**Mr. Knott** called roll. There was a quorum. Present: **Mr. McCormick, Mr. Knott, Mr. Hernandez.** Absent: **Ms. Durham** (who arrived at 5:03 PM). Vacancy: One.

0:00:46 **2. Approval of Agenda.**

Motion was made by **Mr. Hernandez** and seconded by **Mr. McCormick** for approval of the Agenda with one change—moving Item #4, selection of a Board Secretary, to #9 nine on the agenda. The vote was as follows: **Yes – Mr. McCormick, Mr. Knott, Mr. Hernandez;** No – None; Abstained – None; Absent – **Ms Durham.** The motion carried.

0:01:45 **3. Approval of Minutes from the Regular Meeting held February 4, 2013.**

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

0:02:32 **5. Consider request for Appeal (variance) from Section 56-90(b) to allow a side setback variance of 6” from both the north and south property lines at Tipton Tracts Subdivision, Tract 2 (located south of 611 N. Eleventh St.), Zoned R-1.**

**Ms. Durham** arrived at 5:03 p.m.

**Ms. Acosta** was present to ask for the Variance. She wanted to encroach on the required side-yard setback by six inches on each side, in order to place her manufactured home facing the street. **Mr. Knott** asked several questions regarding the measurement of the house, what company she had bought it from, what kind of improvements she intended to make, and what was the price range of the homes in the area. **Ms. Acosta** replied that she wanted to put in a driveway and grass, that she thought the price range for homes in the area was from \$120,000 to \$180,000 and her home would be 2,200 square feet.

During public comment, **Mr. Villa** came forward and expressed his dissatisfaction with the City's ordinance allowing manufactured homes aka doublewides in all areas of the city. He is against manufactured homes being put next to stick-built homes. He said it depreciates the value of homes in the area. **Ms. Shumsky** explained that the State Manufacturing Housing Division oversees construction of manufactured homes and that it is a State mandate that manufactured homes cannot be excluded. The homes can have a permanent foundation or staking, and skirting is required. **Ms. Gant** asked if the rule was for the entire city, including Riverside Drive. **Ms. Shumsky** explained that covenants and restrictions may be placed on a property when a subdivision is formed. The city cannot enforce covenants, it can only enforce city ordinances. Covenants and restrictions are generally addressed by homeowner associations or architectural

review committees. Their only recourse is to take the issue to district court if there is an infraction against the covenants. **Mr. Warner** said that he is not against modular homes, but said the original covenants stipulated the end of the street had to have stick-built dwellings. **Ms. Shumsky** said that some covenants expire after ten years, and reiterated that the city does not enforce those. According to the City, manufactured housing is appropriate and allowed everywhere in the city where a stick built home is allowed. **Mr. Lee** said that as long as the manufactured house was going to be in the neighborhood (since the owner could turn the home sideways and place the unit without a variance), he would rather it faced the street. **Ms. Lee** also expressed that she would want the front to face the street. **Mr. Villa** came forward again and said that after talking to his neighbors, he decided that he also would prefer the front door in the front, so he would rather the owner get the variance.

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

0:38:05            **6. Consider request for Appeal (variance) from Section 56-90(b) to allow a side setback variance of 5' to the north property line, which would result in a 0' side-yard setback, at 206 S. Mesa St., Zoned R-2.**

**Ms. England** stated that she did not get a building permit for the structure, which is built to the property line. When her structure was almost complete, a City Building Inspector was inspecting a project next door and saw her unpermitted structure being built. He told her to stop work. She had not gotten a building permit, and was encroaching on the side-yard setback. He told her she would need to apply for a Variance in order to get permission to leave the structure there. She said she cannot refinance the house with a half-finished building on the property. There was no public comment.

**Mr. Hernandez** made a motion to approve the Variance, with the conditions that the structure already there be made fireproof and that gutters be put in, so that any drainage would not affect the adjacent property. **Ms. Durham** seconded the motion. The vote was as follows: **Yes – Mr. McCormick, Mr. Knott, Mr. Hernandez, Ms Durham;** No – None; Abstained – None; Absent –None. The motion carried.

0:51:12            **7. Consider recommendation of a Zoning Change from “R-1” Residential District to “I” Industrial District for an approximately 1.5 acres, legally known as Dowmac Subdivision, Block 5, Lots 10, 11 and 12 pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.**

**Mr. DeSoto Jr.** attended the meeting to present his request for a zone change. **Ms. Shumsky** explained that staff was recommending denial because the change would create a spot zone of industrial zoning surrounded by residential zoning. In the 1940s, the area had been platted for residential use but not built out. There are no utilities there. According to our new subdivision regulations, the owners will have to extend utilities to build on the land, because septic systems are no longer allowed in the city for any new subdivisions. **Mr. DeSoto** said he has bought some of the land, and wants to buy other property in the area to rent out for offices, pipe yards, and other industrial or commercial enterprises. He is not in contact with any businesses yet, but knows there is a demand.

**Mr. & Ms. Ballard** spoke against the zoning. They were concerned about industry in a residential area, because of the possibility of chemicals, noise and traffic. **Mr. Knott** reminded them that if any houses are ever built there, it would be up to the developer to provide water, sewer, roads, curbs, and drainage. **Ms. Shumsky** added that since the property has multiple owners it would be hard to get services installed. The City will be looking at a drainage study in the area in the future, but they are not looking to extend utilities there. **Ms. Ballard** said that the original subdivision was dedicated for hospital or educational use. The restrictive covenants were approved by the City Council and the County. Item number six of the covenants said there could be no noxious or offensive activities, no annoyance or nuisance to the neighborhood. She said it was to be in force until 1968 and could only be changed by 2/3 of the owners. She said this would fall under these covenants. **Mr. Knott** explained that the Commission can only vote on the City rules, not on covenants. **Ms. Ballard** said she wanted the Commission to take it under advisement. **Mr. Ballard** said he would like to build there one day, but not if there was an industrial area right in his backyard. He said that Gibson's had started to build a store out there, but the wind knocked it down. That is why there are old foundations up there. **Mr. Knott** asked Ms. Shumsky to review the position and authority of the Commission. **Ms. Shumsky** explained that the Planning and Zoning Commission makes a recommendation to the City Council on zoning issues. They cannot make the final decision. Before the City Council meeting, the issue would have to be advertised for 30 days, and then another notice would be sent out to property owners within 100 feet 15 days prior to the Council meeting.

**Ms. Ballard** said she thought it was supposed to stay like the original covenants until 2/3 of the owners changed it. **Mr. Knott** explained that enforcing the covenants would be a civil issue for the courts to decide for the homeowner's association or neighborhood organization. **Mr. DeSoto** stated that he understood that the owners did not want to put up with the cost of developing, because of the wind and the rock. **Ms. Shumsky** explained that Industrial zoning allows for more offensive uses than "C-2" such as oil and gas extraction, waste transfer stations, petroleum storage and refineries are allowed in Industrial areas. An owner would need to get Conditional Use approval for such things as mining, asphalt plants, and hazardous chemicals and wastes. **Mr. DeSoto** stated that he would like to change his request to "C-2" zoning, rather than "I," and would take care of the paperwork the next day.

**Mr. McCormick** made a motion to recommend approval of the revised request for "C-2" zoning. **Mr. Hernandez** seconded the motion. The vote to recommend approval of C-2 zoning was as follows: **Yes – Mr. McCormick, Mr. Knott, Mr. Hernandez, Ms Durham**; **No – None**; **Abstained – None**; **Absent –None**. The motion carried.

1:42:58            **8. Consider recommendation of a Zoning Change from "R-R" Rural Residential District to "C-2" Commercial District for an approximately 1 acre parcel, legally known as Joel Subdivision, Block D, Lots 17&18 (east of 909 Loving Avenue) pursuant to Section 3-21-1 et. Seq. NMSA 1978 and Sections 56-150(b) and 56-140(i), Carlsbad Code of Ordinances.**

**Mr. Schoolcraft** came forward for the Zone Change request from "R-R" to "C-2." He said he owned two lots on Loving Avenue. His shop straddles lot and zoning lines. When his wife's grandparents wanted to put a trailer in, they discovered the problem.

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

1:48:01            **4.        Select member to serve as Commission Secretary.**

**Ms. Shumsky** explained that the duties of the Commission Secretary included signing plats that were beyond the scope of what she could sign, such as major subdivisions or anything she was not sure about, and leading the meeting if the chairperson is absent. **Mr. McCormick** volunteered. **Ms. Durham** made a motion to select James McCormick as Secretary. **Mr. Hernandez** seconded the motion. The vote was as follows: **Yes – Mr. McCormick, Mr. Knott, Mr. Hernandez, Ms Durham**; No – None; Abstained – None; Absent –None. The motion carried.

1:53:08            **9.        Distribution of Planning and Zoning Commission Handbooks.**

The Commission Handbooks were distributed, and **Ms. Shumsky** went over the Table of Contents to familiarize the members with the layout and contents.

2:00:19            **10.      Report regarding plats approved through Summary Review process.**

**Ms. Shumsky** explained that the two plats in the packet were not out of the ordinary and asked if there were any questions. For the benefit of the others present, she explained that she was authorized to approve and sign lot-line adjustments, lot splits, and multi-lots combined together.

2:01:05            **11.      Adjourn.**

There being no further business, the meeting was adjourned.

2:01:14            Stop Recording [8:47:02 PM]

_____	_____
Chairman	Date
ATTEST: _____	_____
City Clerk	Date