

**MINUTES OF THE REGULAR MEETING OF THE**

**City of Carlsbad  
Planning & Zoning Commission**

**May 6, 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, May 6, 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 April 1, 2013.
4. Consider Amendment to the filed plat for Farmview Subdivision – Phase 1, located west of Thomason Road at the intersection of Elgin Road.
5. Consider Dedication of four lots in Spring Hollow Subdivision for public roadway and water infrastructure improvements.
6. Consider Vacation of an existing alley within the Hillcrest Subdivision located east of 6<sup>th</sup> Street between Hillcrest and W. Georgia Streets, containing no utilities or solid waste service pursuant to 3-20-12 NMSA 1978.
7. Consider request for an Appeal (variance) from Section 56-90(b) to allow side setback variances of 10' from the east and west property lines at 2217 Texas St., Zoned C-2.
8. Consider request for a Conditional Use Permit to allow a massage therapy business as a Home Occupation in accordance with Sections 56-41(g) and 56-70(d)(9)(a)(xii) at 606 N. 4<sup>th</sup> St., Zoned R-1.
9. Consider request for a Conditional Use Permit to allow the teaching of Pilates exercise classes as a Home Occupation in accordance with Sections 56-41(g) and 56-70(d)(9)(a)(xiii) at 1106 Miehl's Drive, Zoned R-1.
10. Consider request for a Conditional Use Permit for a telecommunications facility at the southwest corner of the Northgate Shopping Center parking lot located to the south of 1481 W. Pierce St., Zoned C-2, in accordance with Sec. 56-150(f).
11. Consider request for a Conditional Use Permit to operate a trucking company and park semi-trucks on his property as a Home Occupation in accordance with Sections 56-41(g) and 56-70(d)(9)(b)(v) at 2601 and 2603 Violet St., Zoned R-R.
12. Consider request for a Conditional Use Permit to allow for the operation of a Self Service Storage business within the R-2 Residential Zoning District, located adjacent to the Copperstone Apartments at 1101 Callaway Drive, in accordance with Section 56-150(f).
13. Report regarding plats approved through Summary Review process.
14. 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, MAY 6, 2013, AT 5:00 P.M.**

**VOTING MEMBERS PRESENT:**

**JAMES KNOTT  
JAMES MCCORMICK  
(ARRIVED AT 5:10 PM)  
RICHARD HERNANDEZ  
RICK BROWN  
WANDA DURHAM**

**CHAIRPERSON  
COMMISSION SECRETARY  
  
COMMISSIONER  
COMMISSIONER  
COMMISSIONER**

**VOTING MEMBERS ABSENT:**

**NONE**

**EX-OFFICIO MEMBERS PRESENT:**

**STEPHANIE SHUMSKY**

**PLANNING, ENGINEERING, &  
REGULATION DIRECTOR**

**EX-OFFICIO MEMBERS ABSENT:**

**DALE JANWAY  
JON TULLY  
EILEEN RIORDAN  
TOM CARLSON  
  
PATSY JACKSON-CHRISTOPHER  
  
ERIC NAVARRETE  
K.C. CASS  
DANNY JONES**

**MAYOR  
CITY ADMINISTRATOR  
CITY ATTORNEY  
ACTING PUBLIC WORKS  
DIRECTOR  
CULTURE, RECREATION, &  
COMMUNITY SERVICE  
DIRECTOR  
CITY ENGINEER  
BUILDING INSPECTOR  
BUILDING INSPECTOR**

**BOARD SECRETARY:**

**JAMES MCCORMICK  
PATTIE PISTOLE**

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

**OTHERS PRESENT:**

**PATRICK ERWIN  
CATHIE HEAD  
JOYCE FREEMAN  
TRACY WORKMAN  
JAMES LOWREY  
ANNIE LOWREY  
DAVE CHURCH  
KEN THURSTON  
JACK E. SEWELL  
D. SMITH  
FRED TOOTHMAN  
MARK CHRISTESSON  
JOSE SOTELO  
WENDELL BANIGAN  
KRYSTAL PATTERSON  
ESME BERNAL  
CYNTHIA SOTELO  
ROCKY WEST**

**GLOBAL TOWER PARTNERS  
CENTURY 21  
1707 LORETTA  
4006 JESSE JAMES COURT  
2202 HILLCREST  
2202 HILLCREST  
LAS CRUCES  
LAS CRUCES  
2620 PRIMROSE  
1611 N. MESA  
1713 SANDY LANE  
1206 N. COUNTRY CLUB CIR  
2603 VIOLET  
1603 N. MESA  
606 N. 4<sup>TH</sup>  
5001 LOS NOGALES  
2603 VIOLET  
1703 LORRETA**

ILLE CORDER  
SHEILA ARMSTRONG  
GAY WEST  
LOUISE TRACY  
SHEILA LOTT  
RAY PETERS  
GERI CUNNINGHAM  
VERONICA SCHROCK  
MIKE SCHROCK  
TODD SELLS  
KEN SKINNER  
YONGLIANG XIONG  
DEDEE DORADO  
JACK BLANCHARD  
CASSANDRA ARNOLD  
ZACHARY THEUS  
RICK CORDER  
ROBY ARNOLD  
GERALDINE SMITH

1106 MIEHLS DRIVE  
1106 TOWNVIEW  
1703 LORETTA LANE  
BOX 700  
510 W. CHERRY LANE  
2233 W. TEXAS STREET  
1302 W. PIERCE STREET  
114 S. SIXTH  
114 S. SIXTH  
SCOTTSDALE, ARIZONA  
ARIZONA  
1404 N. COUNTRY CLUB CIR  
107 S. FIFTH  
107 S. FIFTH  
1813 SANDY LANE  
LAS CRUCES, NEW MEXICO  
1106 MIEHLS DRIVE  
1813 SANDY LANE  
2616 PRIMROSE

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 [5:04:16 PM]

0:00:10 **1. Roll call of voting members and determination of quorum.**

Mr. Knott called roll. There was a quorum. Present: Mr. Knott, Mr. Hernandez, Mr. Brown, Ms. Durham. Absent: Mr. McCormick.

0:00:33 **2. Approval of Agenda.**

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

0:01:38 **3. Approval of Minutes from the Regular Meeting held April 1, 2013.**

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

0:2:16 **4. Consider Amendment to the filed plat for Farmview Subdivision – Phase 1, located west of Thomason Road at the intersection of Elgin Road.**

Mr. Thurston of Ken Thurston Development was present to answer questions about the application. The change from 40' to 20' rear setback still complies with the City's rear setback

requirement, which is 10'. During public comment, **Mr. Workman** spoke in favor of the amendment

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

**Mr. McCormick** came in at 5:10 p.m., after the vote.

0:09:15            **5. Consider Dedication of four lots in Spring Hollow Subdivision for public roadway and water infrastructure improvements.**

**Ms. Shumsky** explained that the City is planning for significant improvements from Pierce Street to Cherry Lane on Callaway Drive, including roadway improvements, installing a high-pressure water loop line, drainage, and sewer lines. Part of the land needed for this purpose belongs to individual owners. The City is trying to secure the land to move forward with the improvements. **Mr. Thurston** owns the portion being considered for dedication. This also includes the CID easement, CID canal, and the drainage ditch. He has a lease from the city on Tract D, so that his signs may remain until the sale of the lots in the subdivision are complete. The City is also working with the State Historic Preservation Office regarding the CID east canal, which is a contributing resource to the historic main CID canal, to find out what can and cannot be done with it.

**Mr. Toothman**, during public comment, asked if the CID water would be relocated. **Ms. Shumsky** explained that water would not be disrupted, because they would be coordinating the improvements during a time when there was no water present in the ditch. **Mr. Knott** added that since the CID was in charge of the easement, they are the responsible party to insure there was not an interruption in service.

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

0:17:04            **6. Consider Vacation of an existing alley within the Hillcrest Subdivision located east of 6<sup>th</sup> Street between Hillcrest and W. Georgia Streets, containing no utilities or solid waste service pursuant to 3-20-12 NMSA 1978.**

**Ms. Shumsky** explained that the property in question does not have any utilities and is being maintained by the property owners already. If vacated, the property will be divided down the middle and go to the owners on each side. She said she had only positive calls regarding the vacation issue, and that **Robert Armstrong** stated he was willing to follow up with the replat necessary. All property owners and area utility companies were sent letters about the application. There was no response from the utility companies. City Staff is in favor of the vacation of the alley. **Sheila Armstrong** was present to represent the applicant. **Mr. Lowery** stated that he was in favor of the vacation.

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

0:26:52        **7. Consider request for an Appeal (variance) from Section 56-90(b) to allow side setback variances of 10' from the east and west property lines at 2217 Texas St., Zoned C-2.**

**Ms. Shumsky** stated that Staff recommended denial, because the request did not meet the criteria for a variance. She also suggested conditions to impose if the Board decides to approve the request. She had one call from a property owner in favor and one call against. A building permit was issued for the project with a zero setback, but then it was found that the zoning map was wrong. It showed part of the property was residential and part was commercial. After research, it was found that all the property was zoned commercial, which caused a problem with the setback for the portion adjacent to residential zoning. That is why a variance is necessary.

**Ray Peters** was present for the request. Half of the project is complete, and the concrete pad is already poured for the second stage. During public comment, **Ms. Dorado** said her fence was pushed over when they were doing the foundation. She was also concerned about trash, weeds, runoff, and mosquitos. **Mr. Peters** said he is willing to fix anything to make it right. **Mr. Workman** said he was concerned that Mr. Peters continued to pour the pad in preparation for construction, even though the variance was on the table. He was against the variance. He said it will not add value to his property, and that the dirt work affected his property. He also was concerned about stagnant water, weeds, and mosquitos. He said he would be in favor if all the stipulations were followed, such as a privacy fence and firewall. **Mr. Peters** said he is willing to do a cinder block wall, which is cheaper than fireproofing sheetrock walls. **Ms. Shumsky** explained that the variance is for building setbacks, not for the concrete pads and that the setback in question only applies to the property adjacent to residential property, not to the property adjacent to commercially-zoned property. The allowed setback in that case is already zero feet. **Ms. Shrock** stated that she liked the fence idea. The fence right now is only on half their yard. **Mr. Peters** said the fence and the ditch are not finished yet, and he can't finish the fence until the ditch lining is done. There will be concrete on the bottom and a six-foot fence above. Conditions of approval were discussed and were determined to be:

1. After the final inspection for Phase II is complete, but prior to issuance of the Certificate of Occupancy, a 6' tall cinder block wall shall be constructed on the east side abutting 107, 113, and 115 S. Fifth St., and a 6' chain-link fence shall be constructed on the west side abutting property at 112 and 114 S. Sixth St.
2. The hours of operation shall be limited to 7 a.m. to 10 p.m.
3. All lighting shall be shielded, so as not to shine on adjacent property.
4. The units shall be gated with a secured entrance by pin code, key or other limiting lock.
5. The Fire and Police Departments shall be provided an access code for emergency entrance.
6. No hazardous materials, gasses, liquids or weapons shall be stored in the units.
7. Damage to adjacent property shall be fixed prior to issuance of the Certificate of Occupancy.
8. Permission for maintenance or maintenance easement shall be obtained from property owners.
9. The building inspector shall review the drainage pond to ensure proper depth and construction.

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

1:32:53            **8. Consider request for a Conditional Use Permit to allow a massage therapy business as a Home Occupation in accordance with Sections 56-41(g) and 56-70(d)(9)(a)(xii) at 606 N. 4<sup>th</sup> St., Zoned R-1.**

Ms. Shumsky stated that Ms. Patterson has had a home occupation for massage therapy in the past, but took a break and now wants to start up again. She is aware of the regulations. There have been no complaints in the past. Staff recommends approval. Ms. Patterson added that she read in her packet that there were negative comments about her parking area. She said there is a gate where she pulls in to park, and there is room outside the gate for two more vehicles. For her business, she only has one customer at a time, so there is plenty of room for parking.

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

1:37:21            **9. Consider request for a Conditional Use Permit to allow the teaching of Pilates exercise classes as a Home Occupation in accordance with Sections 56-41(g) and 56-70(d)(9)(a)(xiii) at 1106 Miehl Drive, Zoned R-1.**

Ms. Shumsky said the request is for small exercise classes for Pilates. She only had one neighbor call, who had misunderstood what the request was for. Ms. Corder explained that she uses a piece of equipment called a reformer for her class, which is customized to the participant for strength and flexibility and posture. It is good for people with injuries. There would only be a few people at a time.

Mr. Hernandez motioned to approve the Conditional Use. Ms. Durham seconded the motion. The vote was as follows: Yes – Mr. McCormick, Mr. Knott, Mr. Hernandez, Mr. Brown, Ms. Durham; No – None; Abstained – None; Absent – None. The motion carried.

1:44:35            **10. Consider request for a Conditional Use Permit for a telecommunications facility at the southwest corner of the Northgate Shopping Center parking lot located to the south of 1481 W. Pierce St., Zoned C-2, in accordance with Sec. 56-150(f).**

Patrick Erwin from Global Towers represented the applicant. They want to put in a fifty-foot tower and lease to two customers. At present, they have one customer committed (Sprint). It would be a mono-pole with exterior antennae at the top. It is designed to fall upon itself within the boundaries of the property if anything should happen to it. The building on the property is thirty feet from the tower, but belongs to the same owner as the tower.

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

1:57:08

**11. Consider request for a Conditional Use Permit to operate a trucking company and park semi-trucks on his property as a Home Occupation in accordance with Sections 56-41(g) and 56-70(d)(9)(b)(v) at 2601 and 2603 Violet St., Zoned R-R.**

**Ms. Shumsky** noted that the property owner has been parking two large trucks and running a business from his home without having a special use permit or a conditional use permit, or even a city business registration. Trucking is not a business allowed in a residential zone. The roads are not equipped for truck traffic, and there have been numerous complaints from the surrounding residents. Staff feels the use would be better in a commercial area and is not appropriate in a residential neighborhood. All staff recommended denial. Home occupations are not allowed to have evidence of a business on the property except for a one-foot square sign. This particular request does not comply with the rules for a home occupation. Also, there is an issue with access to the property being through residential streets.

**Mr. Sotelo** said he only goes 5 M.P.H. down the road and that most of the houses weren't there when he moved in fifteen years ago. He said the City damaged the road putting in the sewer. He also stated that he tries to keep the dust down by putting out a sprinkler, and he wants to build a metal fence around his property.

**Ms. Head** stated that she is concerned about wear and tear of the streets and the property values. **Ms. Smith** said she is opposed. She said there were three tankers and 18 wheelers and that metal pipes were being unloaded from 9 p.m. to 1 a.m. There were diesel fumes and impact wrenches changing tires. **Mr. Sewell** said his property is being devalued and there is a dirt issue. He also heard the pipes being unloaded and the air compressors used to fix the trucks. **Mr. Bannigan** said he thought this was a commercial enterprise and did not qualify as a home occupation. **Ms. Shumsky** stated that she received calls from other property owners that were also opposed to the request.

**Mr. Sotelo** responded that the pipes were a one-time deal for a month, and he does not plan to do that again. He also stated that he bought the property with the understanding that he could park his trucks there.

Motion to deny the Conditional Use was made by **Mr. Brown**. **Mr. Hernandez** seconded the motion to deny. The vote was as follows: **Yes – Mr. Hernandez, Mr. Brown, Ms. Durham; No – Mr. Knott; Abstained – Mr. McCormick; Absent – None.** The motion to deny carried.

2:39:12

**12. Consider request for a Conditional Use Permit to allow for the operation of a Self Service Storage business within the R-2 Residential Zoning District, located adjacent to the Copperstone Apartments at 1101 Callaway Drive, in accordance with Section 56-150(f).**

**Ms. Shumsky** explained that since the applicant's recent request for a zoning change to commercial zoning was turned down by the City Council, the applicant is now requesting a Conditional Use Permit to allow self-storage units to be open for rental to the public. Self-storage as an accessory use for the apartments is an allowed use and does not require a Conditional Use Permit. However, opening them for public rental qualifies it as a separate business and will require a Conditional Use Permit. Staff recommends denial, because this type of business is not allowed as a conditional use in a residential zone. If it is approved, staff has recommended several conditions.

**Mr. Theus**, representing the applicant, said he thought the units would be a service to the community, because the amount of self-storage available in Carlsbad is inadequate. He said he sees boats and RV's everywhere around the city because there is no place to store them. He said the storage area would not be very visible, and there would be buffers and fences around the storage.

**Ms. Freeman** said she feels there is little concern for the neighborhood, and worries about weeds and dirt. Also, it was supposed to be single-family dwellings, but apartments were put in. She said there now have been sexual assaults and gunshots in the neighborhood, which did not occur before. She said people can't sell their houses next to the apartments. She is opposed to the conditional use.

It was pointed out that the single-family dwellings were a previous developer's idea for the area, not the current developer.

**Mr. Xiong** said he is against the proposed conditional use because of safety and privacy.

**Mr. Theus** said there would be a wrought iron fence and landscaping buffers.

**Ms. Shumsky** pointed out that the Conditional Use Permit is only for the current owner at the current location. It is not transferrable. If the land is sold, the new owners would have to obtain a Conditional Use Permit to be able to rent to the public. Right now, the developer can build all the units planned; he just can't rent them to the public. He could only use them for the residents of the apartment complex.

**Ms. Lott** said she is opposed because of the increased traffic and speeding cars.

**Ms. Shumsky** stated that storage units as a land use generate fewer vehicle trips per day than residential apartments. She also noted that Callaway will be a significant thoroughway in the future. The City is planning improvements to make it function better.

**Mr. Smith** said he was against the project and wanted to know about the fence.

**Mr. Theus** explained that there would be a 6-8' fence down the side, which would be opaque. There would be landscaping and trees, such as pines and oleanders. Wrought iron fencing would be on one side. They want to maintain security. He said it would probably take fourteen months to complete the construction of the units, at which time the fencing and landscaping would be installed. There would also be dark-sky lighting and a video system to deter loitering. They want to provide a clean, safe area for self-storage.

**Mr. Sells** said he thinks it would be a good development for the area and would add an amenity for the general public. He said he has storage for his 4-wheeler and Christmas stuff and only visits the storage once or twice a year.

**Mr. West** said he thinks the fence should go all the way around. It stopped in his front yard and was not completed. He is against the public using the storage units because of the traffic. He thinks that way they could access it from inside the property only, and not have an additional entrance from Cherry Lane.

**Mr. Theus** said he thinks they need the extra access for fire trucks to get in.

**Mr. Bannigan** is against it and wanted to know what happened to the plans for single-family dwellings and a dog park and hiking/biking trails. **Mr. Theus** explained again that was the plan of a previous developer. He said it has always been for multi-family since his company bought in.

**Ms. Tracy** is in favor of the Conditional Use. She thinks there is a need for storage units because people have so much stuff.

**Mr. & Ms. Arnold** are against the storage units being used for the general public. They understand the units may be built, and are permitted for the residents of the apartments as an accessory use, but pointed out in Table III of the City Ordinances that for R-2 zoning self-service storage as a business is not allowed, even as a conditional use.

**Ms. Shumsky** explained that the Planning and Zoning Board of Commissioners is the appeal body when staff says "no" and things are not allowed in the ordinance. Each Conditional Use Permit request is taken on its own merits on a case-by-case basis.

**Ms. Sanford** said she has lived in La Huerta for 40 years and built her own home. She is affected, even if the apartments are not technically in La Huerta. She said the Copperstone Apartments are beautiful, but the way of life is being changed. People with \$350,000 homes don't want public access to storage nearby. The boats and RV's going in and out of the entrance on the curve will cause safety issues. Children are in the park practicing sports right there. She said it is not appropriate in a residential neighborhood with large lots and nice homes. They don't want boats and RV's pulled down their street.

**Mr. Theus** said there is plenty of room for vehicles to transverse. There is even room enough for fire trucks to turn around.

**Mr. Knott** said that storage adds minimally to the traffic. Progress is coming. There is already more traffic, and this is only a very small piece of the larger picture.

**Ms. Shumsky** added that she is not advocating for the applicant but the reality is that the people living there are splitting lots and selling them. The local residents are the ones encouraging development. She said there is a need for a variety of uses in the area and we need to balance these challenges. She mentioned that there is a large RV parked on Loretta Lane. The city has received many complaints about it but there is nowhere close by to park it. On one hand, no one wants development in their neighborhood, but on the other hand these are often the same people, when given the opportunity, who will sell their land to developers.

**Mr. Toothman** said he is opposed and can't see where they have room to widen Cherry Lane. There is a problem with control of traffic.

**Mr. Bannigan** had a petition to submit, but the petition was against the previous Zone Change, not the current request. It did not pertain to this issue and was not accepted into the record by the commission.

**Mr. Knott** made a motion to approve the Conditional Use with the conditions proposed by staff, which was seconded by **Mr. McCormick**. The vote was as follows: **Yes – Mr. McCormick, Mr. Knott, Mr. Brown; No – Mr. Hernandez, Ms. Durham; Abstained – None; Absent – None.** The motion carried.

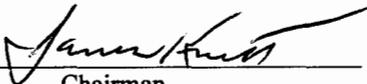
4:17:39      **13. Report regarding plats approved through Summary Review process.**

There were no questions regarding the plats presented.

4:19:09      **14. Adjourn.**

There being no further business, the meeting was adjourned.

4:19:15      Stop Recording [9:23:31 PM]

  
\_\_\_\_\_  
Chairman

6-3-13  
Date