

-DRAFT – DRAFT – DRAFT – DRAFT – DRAFT-
MINUTES OF THE SANTA FE COUNTY

DEVELOPMENT REVIEW COMMITTEE

SPECIAL MEETING

Santa Fe, New Mexico

August 5, 2008

This special meeting of the Santa Fe County Development Review Committee (CDRC) was called to order by Chair Jon Paul Romero, on the above-cited date at approximately 8:04 a.m. at the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Roll call preceded the Pledge of Allegiance and indicated the presence of a quorum as follows:

Members Present:

Jon Paul Romero, Chairman
Don Dayton, Vice Chair
Kathleen Holian
Charlie Gonzales
Juan José Gonzales [8:07 arrival]
Jim Salazar [8:35 arrival]

Member(s) Excused:

One vacancy

Staff Present:

Shelley Cobau, Review Division Director
Wayne Dalton, Building & Development Services Supervisor
Jack Kolkmeier, Land Use Administrator
Steve Ross, County Attorney
Robert Griego, Senior Planner
Rachel Brown, Assistant County Attorney

Others Present:

Robert Freilich
Bruce Kramer

APPROVAL OF AGENDA

There were no changes offered and Member Holian moved approval of the agenda as published. Her motion was seconded by Member C. Gonzales and passed by unanimous voice vote. [Members Salazar and J.J. Gonzales were not present for this action.]

APPROVAL OF MINUTES: June 10, 2008 – Special Meeting

Member Holian moved to approve. Member Dayton seconded and the motion passed by unanimous voice vote. [Members Salazar and J.J. Gonzales were not present for this action.]

NEW BUSINESS

1. Presentation by Robert Freilich updating the CDRC on growth management planning for the Galisteo Area and oil and gas ordinance development

Robert Freilich from the Miller Barondess Law Firm in California reviewed the history of his involvement with the County, stating the prospect of oil and gas drilling in the Galisteo Basin concerned many citizens leading to a four-month moratorium and a permanent ordinance. Upon review of the ordinance, he suggested extending the moratorium by 12 months and developing a work program to study the matter. The County's general plan lacks any mention of oil and gas drilling, therefore there was no basis for planning or policy, nor an ordinance that could be upheld in court.

Mr. Freilich recommended amendments be made to the general plan, and adoption of an interim development ordinance (IDO) in lieu of a moratorium. He gave an example of the degradation of Lake Tahoe being halted through an interstate compact to do a study, which called for a 31-month moratorium. This withstood legal challenge. The same principle is applicable in this case.

Explaining the difference between "surface estate" and "subsurface estate" Mr. Freilich noted the subsurface estate can be separately deeded out and divided into various types of leases. "Under New Mexico law when you own the subsurface mineral rights you have a right to control what happens on the surface." Thus the surface owner cannot complain about surface changes involving equipment, etc.

A "taking" requires loss of 90 percent of the value, but if the property is severed and only the mineral estate is in question the problem is complex and difficult to resolve.

Mr. Freilich also recommended development of a Galisteo Area Basin Plan in order to determine the physical, environmental and infrastructure conditions in place, along with population, land use, etc. This will establish the location of wildlife corridors and aquifers to determine where harm could be caused by drilling. Complicating the

matter further, jurisdictional questions arise between the County and the State. He referred to the movie “There Will Be Blood” which details how laws arose to protect various interests. An area plan will help clarify issues.

General plan policies will be applied to the Galisteo Basin, maps will be generated and there will be a detailed study on infrastructure availability. Are there roads sufficient to haul oil and who is going to pay for them? Mr. Freilich suggested developing a 20-year capital improvement program for the basin. Additionally, there will be a need for police, fire and emergency services in the event of an explosion or fire, and these services will need to be paid for. He believed an excellent model will be developed in terms of long-term growth management strategy. Changes will be made to subdivision regulations and zoning ordinances that will outline where drilling can occur, over what period of time and with what facilities. An assessment district will arise to assess new growth for the costs of improvements and facilities. There will be regulations to ensure drilling does not interfere with habitat corridors and aquifers. He said, “We’re moving along very well.”

Turning to the role of the CDRC, Mr. Freilich indicated Santa Fe County is unusual in there is no Planning Commission nor Zoning Board of Adjustment. Zoning is generally structured in three layers: the legislative body (the Board of County Commissioners) who make the laws and adopt zoning ordinances; administrative agencies (Planning Commission and Board of Adjustments) who develop, adopt and supervise the general plan, review subdivisions and decide on variances; and staff, who issues non-discretionary permits.

The CDRC is an advisory body without legal status. In order to move into the 21st century, Mr. Freilich recommended that the CDRC be changed into a Planning Commission, which can adopt area plans, approve subdivisions, and consider variances. The BCC could still handle appeals. He speculated that this would not require major additional requirements of time, particularly if a hearing examiner were involved to sort out the problems beforehand. A mandatory early neighbor notification process could be instituted to narrow the issues. Changes contemplated would streamline the development process in that it should be possible to apply for a general plan amendment, zoning changes and subdivision approval all at one time.

Mr. Freilich stood for questions. Chairman Romero thanked him for the presentation and asked what timeline was anticipated. Mr. Freilich said there should be a draft of the area plan and general plan amendments by the end of September. He noted there have been a number of public meetings and work sessions. Today they are meeting with technical experts – hydrologists, petroleum engineers – and with the Pueblos.

[Member Salazar joined the meeting.]

Member Dayton asked if the CDRC would be transformed into the Planning Commission. Mr. Freilich said the CDRC would be given a new legal standing and a more vital role.

Member Holian asked if useful information had emerged from the community meetings in July. Mr. Freilich referred her to the website, which currently has 460 documents and studies. He commended the Planning Works organization for their expertise. The community has some extreme factions, one which says “just say no” and one which says “just say yes”. In order to avoid a \$300 million law suit it should be possible to have a middle way involving bonding and insurance requirements, payment for infrastructure, and prudent siting. “We’re listening to all sides.”

Member J.J. Gonzales, pointing out that the Galisteo Basin is a vast area, asked if the County was getting a late start in regulation. He asked how much of the land is in federal and state hands. Mr. Freilich said there is a detailed procedure for working on federal lands, involving environmental impact assessments, and the County has no jurisdiction on those lands nor State lands. The State is beginning to look at the broader picture with regard to drilling. Originally, the State was involved in evaluating archeological, historical and culture factors. They have found 3,000 significant sites, 25 of which are on the National Register of Historic Places and therefore protected. However, they have only surveyed 15 percent of the land area, so a huge number of sites could be involved. He said the Governor is leading the effort, involving 13 state agencies in looking at the matter. It’s possible that “areas of critical concern” could be established.

Apart from federal and state lands there are still large areas to deal with, and it is true that they are late getting into the process. However, this allows them to take advantage of technologies not available previously.

Member J.J. Gonzales noted that community plans in the past have taken years to get approved and often give rise to controversy. He said focus on oil and gas regulation should be the priority. Mr. Freilich said if you focus on oil and gas and gas you eliminate 80 percent of the tools for regulation of the industry. It is necessary to look at the whole environment, including financing mechanism. He speculated that some pieces of the plan will get adopted before others. He emphasized the importance of establishing the authority structure.

Member Holian asked if the CDRC would be involved in the technical meetings. Mr. Freilich said the information would be brought to the CDRC in workshops, and if warranted, experts would be brought to these meetings.

Member Dayton pointed out there could be a reactivation of a major gold mine in the Ortiz Mountains. He asked if the plan would cover that. Mr. Freilich said he was not aware of that development and would look into it.

Member C. Gonzales said when he worked with the County on mining the problem always arose that the Code was designed for residential development and this made regulation difficult. Mr. Freilich said they would be looking into that. A discussion ensued on sideways drilling and migration within natural rock formations.

Member C. Gonzales asked if there was an easement standard when they drill. Dr. Bruce Kramer said there is normally a 2 to 2.5-acre involved and there can be more than

one well usually positioned in the center. “When mineral estates were severed from surface estates the right to use the surface to get to the minerals was given to the mineral owner.” However, New Mexico now has the Surface Owners Protection Act which institutes restrictions and payments. The OCD regulates these concerns, and it is now possible to drill diagonally to get to a target formation up to a half-mile away. “It’s the bottom location that counts.”

Mr. Freilich said they would try to get the committee a schedule soon, and he and Dr. Kramer left the meeting.

PETITIONS FROM THE FLOOR

None were presented

COMMUNICATIONS FROM THE COMMITTEE

Chairman Romero urged the committee members to attend meetings regularly as the major changes occur. He asked about the specific process of changing into a Planning Commission. County Attorney Steve Ross said it would be accomplished through a simple ordinance amendment, a 60-day process, probably involving two public hearings. He anticipated it could be done by October, since the validity of the decisions that are made by this body hinge on compliance with State law, which requires a Planning Commission.

Member Holian asked what the role of Land Use would be. Land Use Administrator Jack Kolkmeier said the strategic plan was being modified and would be presented to the BCC next Tuesday. Changes are being accelerated by the issues raised by the oil and gas situation. The Land Use Department has to deal with all development. For instance, septic tanks and roadcuts into the foothills pose problems.

Member C. Gonzales asked if they would be hiring more staff. Mr. Kolkmeier said that depends on what the area plans mandate. He said there are Code enforcement and NPDES issues and those may require more staff, as might oil and gas permits.

COMMUNICATIONS FROM THE ATTORNEY

Mr. Ross thanked the committee for coming and said more meetings would be planned although they were looking into streamlining the process so as not to be too much of a burden.

COMMUNICATIONS FROM STAFF

Wayne Dalton stated the October meeting would be held at 6:00 pm due to early voting.

ADJOURNMENT

With all business completed, this meeting was declared adjourned at approximately 9:10 a.m.

Approved by:

Jon Paul Romero, Chair
CDRC

ATTEST TO:

COUNTY CLERK

Before me, this ____ day of _____, 2008.

My Commission Expires:

Notary Public

Submitted by:

Debbie Doyle , Wordswork

D R A F T

subject to approval