

**REGULAR MEETING OF THE PLANNING & ZONING COMMISSION
January 7, 2013**

MINUTES

1) Residents to Address Commission (Non-Agenda Items)

None

2) Call to Order

Vice Chairman Eastman called the meeting to order at 6:30 pm.

3) Roll Call

Present were Commissioners Eastman, Hulsey, Craig, McAda and Planning & Zoning Officer Loretta K. Hatch.

Chairman Garrison was not in attendance.

4) Pledge of Allegiance

5) Approval of Agenda

Motion by Commissioner McAda to approve. Seconded by Commissioner Hulsey. Carried unanimously.

6) Approval of the Minutes:

Motion by Commissioner Hulsey to approve the minutes of December 3, 2012. Seconded by Commissioner McAda. Carried unanimously.

7) Old Business

8) New Business

A. Request for a Minor Subdivision as per Ordinance 10-2-16

Section 11 Township 7 North Range 2 East Lots A & B

By Paul & Jay Shore

For the purpose of access with equipment and to bequeath to family.

Motion by Commissioner McAda to recommend approval of the Minor Subdivision to the Council. Seconded by Commissioner Hulsey. Carried Unanimously.

B. Discussion on WISE Recycling noise complaints, fencing and curb cut requirements.

Commissioner McAda recused herself due to relationship with landowner.

Commissioner Eastman: There is no action to be taken on this tonight, discussion only.

Swear in all who intend to approach Commission.

Brian Caven-255 Gonzales Ln., Bosque Farms, NM 87068

Mr. Caven: Main concern is noise level. Use of back hoe in collecting steel to put in bins is shaking the ground. His house is shaking. Plates and ground are shaking. States that it feels like an earthquake and it freaks the kids out. Happens every day except Sunday. Home every day so he hears it every day. Off and on for 15 minutes at a time for about 3 hours a day. Percussion makes walls crack like when there is a big strong wind. Sounds like a "war zone" from ripping metal apart. Sound from moving of bins and steel. Track hoe is banging when they jam metal into bins. Loud enough that when on the phone people ask what the noise is. Property is maybe 100 feet from WISE. Property is not abutting, it is across the street. No actual cracking or separating of the walls, only popping noises as if settling. Dwelling is a single wide mobile home.

Paul Benevidez-290 Gonzales Ln., Bosque Farms, NM 87068

Mr. Benevidez: Noise is like thunder and the ground vibrates. Shakes the walls. Works with heavy equipment himself. Concerned about it taking place in a residential and business area, not an industrial park. If it was inside the building and quiet like they thought it would be it would not be so bad. Concerned that it is dangerous to have so close to the fence line. Anywhere from 5-7 feet from fence. Sometimes the steel is piled high over the fence. Worried that it could be moved by wind and hit someone. Most noticed when the steel is being loaded and smashed inside the roll-offs. Property located on other side of State ponding area last house on north end of Gonzales Ln. Approximately 300 feet away from WISE property. Does not understand how the property abutting WISE property can stand the disturbance. He would be really scared if he were right behind it.

Charlie Fegan-1210 Bosque Farms Blvd., Bosque Farms, NM 87068

Mr. Fegan: Likened noise to that of throwing metal into an empty metal container. The sound is shocking. Dumping large quantities of steel in to an empty metal dumpster. Shows pictures of metal on ground at WISE Recycling to Commissioners. Brought up the height of the pile of metal. States that they are taking in vehicle frames and parts. Maybe they could pick up the metal more often so that there isn't so much that it is off of the pad or get so high.

Nancy Fegan-1210 Bosque Farms Blvd., Bosque Farms, NM 87068

Mrs. Fegan: Concerned about the noise and percussion. Their house and office are being affected and make it impossible to rent out office. States that metal is not restricted to the concrete slab. Piles of large pieces of metal behind dumpsters. Noise is a screeching, a crushing and dropping of metal. Metal being unloaded from semi-trucks. States that this is not the 88 decibels that WISE Recycling said it would be.

Scott Walten-230 Gonzales Ln., Bosque Farms, NM 87068 Renter

Ryan Oldfield- 230 Gonzales Ln., Bosque Farms, NM 87068 Owner

Mr. Walten: 230 Gonzales Lane shares property line with WISE Recycling. Right next to metal pile. Works at the home during the day. The noise and vibration are issues. Vibrates the home significantly. When arm presses metal into container the tracks of the heavy equipment come off of the ground and when it comes back to the ground and hits the ground its a significant jolt.

Commissioner Eastman: Is the noise from the heavy machinery hitting the ground or is it from smashing things into the roll-offs?

Scott Walten: The noise is the metal going into the container and the equipment pushing it down. The vibration in the ground is the machine lifting and landing.

Commissioner Craig: Questioned if the property zoned Commercial or residential.

Mr. Oldfield: Residential. This is a residential/light commercial area not industrial. The noise of the metal is very disturbing to the neighborhood as well as the vibration. Concerned about their foundations, walls and windows being 30-40 feet from machinery.

Mr. Walten: Has heard the crushing machine inside the building and it is not bothersome. Sounds like a shredding noise. The containers are the issue.

Commissioner Eastman: Consensus seems to be that it is the outside moving of steel from the pad into the bins and then crushing it. As I recall the agreement there was not supposed to be a lot of outside noise.

Bill Karr-WISE Recycling-2525 Broadway Blvd. SE, Albuquerque, NM 87102

Mr. Karr- Have always said they would be putting steel into roll-offs at the back of the property. Only question ever asked about noise was the level from the can flattener at 88 decibels. Never claimed to have an 88 decibel out in the field.

Commissioner Eastman: It says it will not create a nuisance to the neighbors.

Mr. Karr- Wish the neighbor would have come sooner, they did not realize. Have ordered a new machine. The staff was very aggressive about loading containers and have been told to be more careful. Looking at pouring more concrete or putting another screen on the fence to cut down noise. The vibration should have already been taken care of by not slamming equipment. New orange peel equipment will help, not as much crushing and pinching. Should be quieter. It is on order, will take time to come in. Want to help any way possible but will never be not noisy. There's no way around it.

Commissioner Eastman: Understand that people would bring steel, put it on the concrete pad, weighed and transferred to the roll-offs. Does not recall mention of crushing of metal. There was to be no processing.

Mr. Karr: Not processing steel, picking up and putting in roll-offs.

Commissioner Hulsey: You're not compacting it?

Mr. Karr: No.

Commissioner Hulsey: The screeching has got to be some kind of compaction or dropping it to early into container.

Mr. Karr: Correct and has been addressed. Need to pick it up and lay it in, workers were overzealous trying to pack containers to save on freight. Were told to load it does not need to be compacted. Don't know if anyone has noticed a difference in the last week. Trying to have less noise, less vibration, less compaction or repercussion of equipment.

Commissioner Eastman: Have been told that using front end loader to push metal into containers. Is that compacting?

Mr. Karr: We do not have a front end loader. We have an excavator. I have addressed it with employees to not do that.

Commissioner Eastman: Some of the houses on Gonzales Ln. have been there a long time. Will not stand up to a lot of earth shattering.

Mr. Karr: Agreed. New piece of machinery will cut that way down and looking at solid fence not to change vibration but may block noise a little. Willing to work to find solutions.

Commissioner Eastman: There is an agreement with the Village of Bosque Farms for a Conditional Use Permit and it has to be complied with.

Commissioner Craig: Asked for new equipment to be explained. How is that piece of equipment going to help with the concerns that have been brought before the Commission.

Mr. Karr: Current equipment has three teeth. Because everything is facing different directions the metal will move around and drop. New equipment is 5 tine in a circle it will grab and hold. It will rotate so that the excavator will not have to move as much. Less movement, less noise. Easier for operator to load. Hope to have new equipment in the next 60 days.

Commissioner Craig: Asking about solid fence because in commercial area. How big is concrete pad?

Mr. Karr: 30 by 30.

Commissioner Craig: There is an overflow off the concrete.

Mr. Karr: Try to keep it on pad but more business than expected. Sometimes comes in faster than can be gotten rid of.

Commissioner Craig: asks about origin of metal. Semi-trailer loads?

Mr. Karr 95% of business are pick-up loads. Helped with a building that was de-constructed and took in some larger stuff on a flat-bed trailer. Majority from public.

Commissioner Eastman: how many semi's coming in and out taking the roll-offs per day?

Curtis Chavez: 2525 Broadway Blvd. SE, Albuquerque, NM 87102

Commissioner Eastman: Inquired if he was manager here (Bosque Farms).

Mr. Chavez: Yes. Driver on vacation for 10 days, roll-off driver's truck was down for a week, was getting in 20 to 25 thousand pounds a day, the boxes were full and had nowhere to put it. Usually get one roll-off in am and one in pm. Bringing in someone with an end dump. Wants to know if it is less noisy.

Mrs. Fegan: It's noisy regardless.

Mr. Chavez: Wants to know if percussions are lower.

Mr. Walten: Today is first day he has seen it.

Mr. Caven: Never seen one.

Mrs. Fegan: Stated that there are more pictures regardless of whether someone was out sick. It is consistently piled.

Mr. Fegan: When talking about the noise level it went right away to the compactor, and got "scurried" off the noise. Noise outside was skipped which is what everyone was talking about.

Commissioner Eastman: Reminded everyone it is just a discussion of the issues. Reading from the Conditional Use Permit, the outside use will not create a nuisance to the neighbors and that is noise. 88 decibel levels will be on the inside of building. Obviously it is creating a nuisance. Need to work to mitigate that.

Mr. Fegan: Mentioned seeing Loretta Hatch at Property and asked her into shop to discuss noise level. Would like Loretta to make comment on what she heard.

Mr. Walton: Felt that someone's comments felt dis-ingenuous because the noise has not been scaled down. They were trying to catch up with pile that had built up and they were compacting as of today. The pile does not bother him, but does not like the dis-ingenuous.

Mr. Karr: Not trying to be dis-ingenuous, was asking if there has been a difference or not.

Mr. Chavez: Operates the machine and is trying to be quieter.

Mr. Walten: Did you compact today or not?

Mr. Chavez: I did drop in that box.

Mr. Walten: No. Did you compact it down in?

Mr. Chavez: If there is stuff sticking up it has to be pushed down or driver is ticketed.

Commissioner Eastman: Asked Mr. Walten to sit down and Mr. Karr and Mr. Chavez to only address the Commission. There are two other issues. One is drive-way cut.

Mr. Karr: Turns over to Scooter Haynes.

Scooter Haynes-Manager of Bosque Farms Equities- PO Box 9043, Albuquerque, NM 87119

Commissioner Eastman: Asks Mr. Haynes about letter from NMDOT about driveway cuts and what he is going to do about it.

Mr. Haynes: Says the permit that was applied for has never been processed. That is what the letter refers to. It was the Commission's decision to ask for two driveways.

Commissioner Eastman: We did ask for two.

Mr. Haynes: That then went to the Council and all they ask is that we comply with NMDOT's request. Have meeting on the 9th with Tony Abo regarding this issue.

Commissioner Eastman: Urges compliance with NMDOT regardless of the preference of the Village.

Mr. Haynes: Wants to comply with CUP the issue is who will pay for alterations. Have offered the closure of that driveway but don't feel they should have to pay for the removal and installation of sidewalk since NMDOT is the one who put it in.

Commissioner Hulsey: Asks if it is an option to block or fence it off.

Mr. Haynes: That was an option offered to NMDOT, but a problem exists also with the permitting process to shut down HWY 47 to do the closure of curb cut. Closing the driveway in an alternative manner has not been acceptable to NMDOT.

Commissioner Eastman: The final question is about construction of the fence.

Mr. Haynes: Haynes and Fegan have worked hard to come to an agreement on the fence in concept. Because of the expense of the fence, and the appeal in court regarding the CUP we now bear the economic risk. To spend the additional money to complete fence, we need to know that our economic risk is diminished. Until there is a signed agreement Haynes is unwilling to do that. Fegan does not want to deal with it they have all spent a lot on attorney's fees. Are prepared to build fence as soon as a decision on the appeal or agreement to dismiss appeal have been made.

Commissioner Hulsey: How far east will fence go. Is it to the end of the WISE property.

Mr. Haynes: No.

Commissioner Hulsey: It's going to the State drain. It shows going to your concrete pad on east end on your property.

Mr. Haynes: Asks to see what Hulsey is talking about.

Commissioner Hulsey: This fence is coming here and the way that I read this it says it's going to the end of the state property.

Mr. Haynes: You read what? The plan? The plan in front of you is only in regard to the property at 1220 Bosque Farms Blvd.

Commissioner Eastman: Referred to letter.

Commissioner Hulsey: Says that is past the WISE property.

Mr. Haynes: Can you show me what you're looking at?

Mr. Fegan: Can Scooter and I talk together?

Mr. Haynes: Commissioner you are referring to a letter, a proposed agreement that Charlie and I had come to prior to any formal agreement. Charlie offered to prepare letter You are missing an e-mail from Oct. 18th from me to Charlie.

Commissioner Eastman: We've got that one.

Mr. Haynes: E-mail refers to fence design cost and an offer. Asks if Commission has e-mail dated Oct. 22nd.

Commissioner Eastman: Notes that WISE would not be responsible for any fencing that was not on their property unless some other agreement was made.

Mr. Fegan: Correct. Worked on coming to an agreement. If fence ended at their property then Fegan needed fence to go across the back. Proposed to Haynes to extend the fence 200- 230 feet past his property line and 80 feet to the south. Haynes agreed only if Fegan dropped the appeal. Fegan says he would call attorney's and make sure that happens. It got to the point of the appeal needing to be renewed without an agreement so appeal was renewed. Haynes looked at offer again and the costs are prohibitive so Haynes will give Fegan the money for the material and the Fegan will put it up at their own expense. Fegan decided that the cost of the attorney's would take up any amount of money received from Haynes and decided it was not worth it. Claims agreement was reached and then changed.

Mr. Haynes: Claims they had agreement in writing and Fegan backed out.

Commissioner Eastman: Reads requirements from CUP. Tells Haynes and Fegan to do it. It is required that a fence be put up around the WISE property, nowhere else. Only the type of fencing was to be agreed upon. Came ot an agreement on what fence looks like so just build it. It says sides with an "S", so it needs to go on both sides. Suggests that they consider solid block for the south side to help reduce nuisance to residents on that side.

Commissioner Hulsey: concerned that the pro-panel inside the block will reverberate and make more noise.

Mr. Fegan: There is nothing that can be done to change the noise. It's the type of business that is the problem. They misrepresented how noisy it was going to be when they switched us to the machine. It's an industrial business in the middle of town.

Commissioner Eastman: Calls Loretta up.

Mrs. Hatch: Agrees that a good representation of the issues has been heard. Agrees to having visited the property. Agrees to having seen the piles of metal. Agrees to having felt the percussion/vibration from the machinery. Agrees that it gets loud. Reported that she was approximately 10 feet away from property line while recording decibel levels. Average for the neighborhood no machinery running was approximately 39-41. If a large truck passed by on Hwy 47 it would go up to approximately 46-47. With the machinery just running could be as low as

approximately a 53 running, approximately a 63-65 if it was picking something up and sometimes dropping it in. The loud bangs would get up to approximately 91.6.

Commissioner Eastman: Asks if 88 decibels would be comparable to a motorcycle.

Commissioner Hulsey: Normal conversation is approximately 65-72 DB. The reading goes down 6 DB every time you double a distance. For the screeching to be heard that far away it must be loud.

Mrs. Hatch: Stated that she was using a handheld. She is not a professional with that tool.

Mr. Fegan: Bass does not register as high as high pitches. The screeching is what gets you but the bass is what is shaking the houses.

Mr. Benevidez: Voices concern over Wise Recycling's drainage plan and the State ponding area and also the safety of having a block wall around heavy equipment and it getting knocked over on someone. Says that it is an industrial business in a residential area.

Commissioners Eastman & Craig: Reiterate that they are on commercially zoned property.

Mr. Benevidez: They are but it is not an industrial area it is business.

Commissioner Eastman: States that the Village has no industrial zone just commercial.

Mr. Bennvidez: States that that is his point. It is industrial in a commercial zone. It is dangerous for the people around it. Not a proper business for being in a residential area.

Commissioner Eastman: Asks if there is anything further. Would like to see these issues mitigated before very long. There is a Conditional Use Permit and it needs to be abided by. If the conditions of the permit are not met the permit can be pulled, and then the business license. Personal opinion is that WISE needs to make an effort to slow down the vibrations and noise and get the fence up. Asks if there is anything further.

Commissioner Craig: Agrees.

Commissioner Eastman: Would you like to re-visit this issue in three months:

Commissioner Craig: Agreed.

Commissioner Hulsey: Don't let it drag on that long.

Commissioner Eastman: In two months?

Commissioner Craig: Suggests giving enough time for new equipment to come in and time to build history with it. Recommends to operator having heard from not only Mr. Karr but the residents as well that he make an effort to cut down on the noise and vibration in the meantime.

Commissioner Hulsey: WISE and their employees need to work hard to minimize issues. Need to stop compacting.

Mr. Fegan: The NMDOT issue was supposed to be resolved before he ever built.

Mrs. Fegan: States that is has been 7 months of dealing with the same issues. Now additional issues with the noise. Loretta England asked at the meeting on May 7th about noise, the only potential noise issue mentioned by Mr. Karr and Mr. Myers was inside the building. Nothing about exterior.

Commissioner Eastman: Have that on record.

Mr. Benevidez: Questions how they have the money for new equipment and not a wall.

Commissioners Hulsey and Eastman: Not the issue.

Commissioner Eastman: Mr. Haynes and Mr. Karr one last word before end of subject.

Mr. Haynes: States that he is there as a courtesy. There are issues with other permits that were out there. He is there because he wants to resolve the issues. Suggests that Loretta Hatch, staff and property owners try to mitigate the issues. Are the decibel levels acceptable? Where are the lines?

Commissioner Eastman: Should have visited outside noise more. Asks neighbors to be patient. Monthly report.

9) Monthly Report

Mrs. Hatch gave monthly report for the month of November.

13) Adjourn

Commissioner Hulsey moved to adjourn the meeting at approximately 7:15pm. Commissioner Craig seconded. Carried unanimously.

PASSED, APPROVED AND ADOPTED ON THIS _____ DAY OF _____, 2013.

Chairman, Dan Garrison

ATTEST:

Planning & Zoning Officer, Loretta K. Hatch