

**MINUTES**  
**PLANNING AND ZONING COMMISSION**  
**May 26, 2011**

The Planning and Zoning Commission met in a regular session on May 26, 2011 at 2:00 p.m., in the City Council Chambers, 800 Municipal Drive, Farmington, New Mexico.

P&Z Members Present:	Chairman: Commissioners:	Dennis Ivie Bruce Buchanan Joyce Cardon Clint Freeman Rory Jaques Kristin Langenfeld Cheryl Ragsdale Paul Thompson Amy Ziesmer
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P&Z Members Absent:	Commissioners:	Del Washburn (Alt)
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Staff Present:	Margaret Ambrosino Joe Delmagori Mary Holton Cindy Lopez June Markle
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Others Present:	Jay Burnham Steve Carrington Rod Montoya Troy Ramstead Ruben Salcido Craig Stoabs
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**Call to Order:**

The meeting was called to order at 2:00 p.m. by Chairman Ivie and there being a quorum present the following proceedings were duly had and taken.

**Presentation of the Agenda:**

There were no changes to the agenda.

**Approval of Minutes of the April 28, 2011 P&Z Meeting**

Commissioner Langenfeld motioned to approve the minutes from the April 28, 2011 P&Z Commission Meeting. The motion was seconded by Commissioner Buchanan and passed by unanimous vote of 9-0.

**Approval of Annual Meeting Resolution**

Attorney Burnham presented the resolution to the commission stating that the resolution states that the meetings will continue to be heard on the 1<sup>st</sup> Thursday after the 2<sup>nd</sup> Tuesday. Commissioner Freeman motioned to approve the Annual Meeting Resolution as presented and the motion was seconded by Commissioner Langenfeld. The resolution passed by unanimous vote of 9-0.

**COMMUNITY DEVELOPMENT PETITION REPORT**  
Special Use Permit  
Petition SUP 11-02 – United Pentecostal Church

**A. STAFF REPORT, May 26, 2011****PROJECT INFORMATION**

<b>Applicant</b>	United Pentecostal Church
<b>Representative</b>	Pastor Steve Carrington
<b>Date of Application</b>	April 28, 2011
<b>Requested Action</b>	Approval of a Special Use Permit to allow construction of a new sanctuary space that will exceed 4,000 square feet.
<b>Location</b>	1900 N. Fairview Ave.
<b>Existing Land Use</b>	Institutional
<b>Existing Zoning</b>	LNC, Local Neighborhood Commercial
<b>Surrounding Zoning &amp; Land Use</b>	<b>North:</b> LNC, Local Neighborhood Commercial District/Restaurant <b>South:</b> OP, Office and Professional District and MF-M, Multi-family/Office <b>East:</b> GC, General Commercial District/Retail <b>West:</b> PD, Planned Development District/Post Office
<b>Notice</b>	Publication of Notice for public hearings of the Planning and Zoning Commission and also the City Council appeared in the Daily Times on Wednesday, May 11, 2011. Property owners within 100 feet were sent notice by certified mail on Friday, May 13, 2011, and a sign was posted on Friday, May 13, 2011.
<b>Staff Planner</b>	Margaret Ambrosino, Associate Planner

**STAFF ANALYSIS****Project Description**

The petitioner is requesting a special use permit to allow the construction of a new church sanctuary space that will exceed 4,000 square feet. A companion petition (ARB 11-02) was also submitted with this special use permit request: a variance to build the sanctuary space within five feet of the north side yard property line. The LNC District requires a 20-foot side yard building setback; however the church demonstrated the need for aligning the sanctuary addition with the existing structure with a five foot setback to the interior side yard, thus requiring a 15-foot encroachment. Approval was granted for this encroachment by the Administrative Review Board on May 5, 2011. The attached site plan shows how the 6,400 square foot sanctuary space will be configured in relation to the church and existing parking lot.

Staff has identified some concerns with noise due to the increase in sanctuary space, as well as concerns as noted from the Police Department with providing parking lot access from the adjacent Hutton Plaza. The petitioner is in the process of preparing a shared parking agreement (Schedule A) with management at Hutton Plaza which would allow secondary access on 20<sup>th</sup> Street, along with overflow parking that could be provided during the church's hours of worship. Some details still need to be worked out with the wall separating the church lot and the Hutton Plaza, however.

The church is surrounded by office and retail uses. Despite the concerns of noise and parking flow/access as identified by Staff, no neighbors have inquired about this Special Use Permit or the approved variance for the side yard encroachment of the sanctuary space.

**ISSUES****Planning Division: Margaret Ambrosino**

- Per Section 2.8.2 of the Unified Development Code / Nonresidential Base Zoning District Density and Dimensional Standards, the required (interior) side yard setback of 20 feet has been reduced to five feet per approval of Petition ARB 11-02 on May 5, 2011.
- One parking space per five sanctuary seats will be required, plus additional parking for the existing office space. A full parking study and Schedule A will need to be approved by the Community Development Director, per Section 5, Schedule A, and Section 5.5.2 of the UDC.

**Code Compliance – Todd Johnston**

- Code Compliance has noise ordinance concerns for this district in which the United Pentecostal Church of Farmington is located and for which the petition is being requested. Sound levels for this district are as follows:
  - Time: 7:00 a.m. – 7:00 p.m. – 60dBA
  - Time: 7:00 p.p. – 7:00 a.m. – 50 dBA

**Police Department – Capt. Keith McPheeters**

- See attached memo.

**STAFF CONCLUSION**

Staff concludes that approval of SUP-11-02 is appropriate with conditions. The United Pentecostal Church has been working with an architect to revise their shared parking plan to meet the requirements of the Unified Development Code, and had already been working with the Hutton Plaza prior to the submittal of both the variance and special use permit applications to coordinate a shared parking agreement to alleviate internal traffic on the church's site, while providing parishioners overflow parking and access.

**STAFF RECOMMENDATION**

The Community Development Department recommends approval of Petition SUP 11-02, a request from The United Pentecostal Church of Farmington, represented by Pastor Steve Carrington, for a special use permit to construct a church sanctuary addition to their existing church that will exceed 4,000 square feet, for their property located at 1900 N. Fairview in the LNC, Local Neighborhood Commercial District, subject to the following conditions:

- a. The petitioner will submit a "Schedule B" shared parking agreement, in accordance with Sec. 5.2.3. (B) of the UDC, prior to the issuance of building permits.
- b. The petitioner will submit a revised site plan that shows limited access (by vehicular or pedestrian opening), on the shared east wall with Hutton Plaza. The access point should show a closed, locked gate when hours of worship are not in session.

**DISCUSSION FROM THE PLANNING & ZONING COMMISSION ON MAY 26, 2011**

Associate Planner Ambrosino presented the staff report to the commission. She stated that one area of concern was addressed by the Police Department regarding how the traffic will circulate between the two properties which could create issues during a police pursuit.

Pastor Steve Carrington of the United Pentecostal Church stated that he had read the recommendations presented by staff and is willing to do what he can to assist with any issues the police may have regarding the shared parking arrangement. He stated that John, with Hutton Plaza, liked the idea of extra parking for their businesses as well. Pastor Carrington stated that the church would like to use the property to the fullest benefit of the church, which includes expanding the sanctuary. Chairman Ivie asked if the block wall was to be taken down entirely. Ms. Ambrosino stated that is what she envisioned based on the architect's drawing and Pastor Carrington answered that prior to learning about the concerns from the Police Department that that was the plan. He stated that it may be possible to provide a gate system during regular hours and lock the gate after hours. Commissioner Freeman asked if condition 'b' created any issues for the church. Pastor Carrington responded that both parties were meeting with their lawyers next week to finalize the agreement to determine that.

Chairman Ivie asked if there had been any vandalism on the church property. Pastor Carrington stated that on Mother's Day there was writing on the west wall of the building and that a few years back they had a trailer marked on. These are the only two instances of vandalism; however, the church had been broken into three times. Chairman Ivie asked if the church property was encased by a fence. Pastor Carrington stated that there is no fence enclosing the property.

Chairman Ivie asked if there was anyone else that wanted to address this petition. There were no comments from the floor. Commissioner Freeman mentioned that he would have liked to hear from Captain McPheeters of the police department regarding their issues.

Commissioner Freeman made the motion to approve SUP 11-02 with revision of condition (b) to state that a shared parking agreement along with suitable security be reached between the Farmington Police Department, Hutton Plaza and the Church. The motion was seconded by Commissioner Langenfeld. The motion passed by a unanimous vote of 9-0.

AYE: Chairman Ivie, Commissioners Buchanan, Cardon, Freeman, Jaques, Langenfeld, Ragsdale, Thompson and Ziesmer  
 NAY: None  
 ABSTAINED: None  
 ABSENT: Commissioners Washburn

**THE MOTION PASSED 9-0**

**COMMUNITY DEVELOPMENT PETITION REPORT**  
 Condition Review for ZC 1430 – condition “a”  
 Petition CR 11-01 – Camaron Avenue & Messina Drive

**TO:** Dennis Ivie, Chairman and the Planning and Zoning Commission  
**FROM:** Cynthia Lopez, Senior Planner  
**DATE:** May 26, 2011

**SUBJECT:** Petition CR 11-01: Review of a Condition of Approval for ZC 1430

Petition CR 11-01 is a request from the City of Farmington to review a condition of approval for ZC 1430, a zone change conditionally approved in 1996. The property is a 5.61 acre parcel of land on the southwest corner of Messina Drive and Camaron Avenue, which is owned by Socuno, Ltd., represented by Craig Stoabs. The property is Tract 2B-2 of the College Place Subdivision Replat “C” in the City of Farmington, San Juan County, New Mexico.

The original petition (ZC 1430) requested a zone change from the R-1A (SF-10) Single-family Residential District to the R-3 (MF-M) and the City Council approved the zone change on March 12, 1996 with conditions (a) through (d). Conditions (b) through (d) did not have a time limit and were related to site improvements. The zone change condition of approval that is in question stated:

*“a.) The apartment complex, except as noted below, being generally developed as shown on a site plan under a single ownership and meeting all City Codes with development commencing within five years of the date of City Council approval, or the zoning reverting back to R-1A” (SF-10).*

The City of Farmington is requesting a review of the condition to determine if the development commenced within the five years of the date of City Council approval.

**Records of events regarding the property are listed below:**

- College Place Subdivision an 8.47 acre parcel of land carved out of a larger vacant property owned by English Land Trust was recorded Jan. 26, 1994 in the San Juan County Clerks Office. The tract of land had 615 feet of street frontage on College Blvd.
- College Place Subdivision Replat ‘A’ created two tracts, Tract 1 (0.90 acres) and Tract 2 (7.57 acres) from the original tract of land, and was recorded April 30, 1996.
- Windsor Heights Subdivision No. 6, a 9-lot single-family subdivision east and adjacent to the College Place Subdivision, which created Messina Drive and the extension of Camaron Avenue, was recorded December 19, 1997.
- On March 12, 1996 the City Council approved a zone change for a 5.61 acre tract of land located east of College Blvd. south of the proposed extension of Sunrise Parkway (Messina Drive) and west of the proposed extension of Camaron Ave. from R1-A (SF-10, single-family residential) to R-3 (MF-M, multiple-family residential) with conditions (a) through (d). Condition (a) stated *“the apartment complex, except as noted below, being generally developed as shown on the site plan under a single ownership and meeting all City Codes with development commencing within five years of the date of City Council approval or the zoning reverting back to R1-A (SF-10)”*. Also of interest in this review is condition (c) which stated *“the R-3 (MF-M) area being platted into a separate lot including full street dedication and street improvements requirements or a separate street dedication and street improvements agreement being approved by the City to address the need for streets to be constructed by the developer prior to the issuance of a building permit”*.
- Windsor Heights Subdivision No. 6 Preliminary Plan was approved by City Council on September 9, 1997. This subdivision served *“to dedicate a northerly extension of Camaron Avenue and an extension of ‘Sunrise Parkway’ (Messina Drive) from College Boulevard, east to Camaron Avenue”*. The staff report also mentions *“that this configuration with a ‘flag pole’ connection to College Blvd. makes no sense...If the intent is to get the streets for R-3 (MF-M) developed, Mr. Stoabs should deed Sunrise Parkway (Messina Drive) then dedicate Camaron as part of a larger subdivision.”* The report also mentions *“the petitioner’s planned apartment development and the recently approved Ojo Del Sol PUD are located to the west.”*
- Windsor Heights Subdivision No. 6 Final Plat was approved by City Council on October 28, 1997. This staff report also mentions this subdivision as serving to dedicate Camaron Avenue and Messina Drive (Sunrise Parkway extension) and that this subdivision is located to the west of the petitioner’s planned apartment development.
- On July 27 and July 28, 1998, United Water Services inspected (an inspection report verifies the inspection) the Manholes for Windsor Heights Subdivision No. 6 and a letter addressed to Mr. Stoabs regarding the inspections was sent August 27, 1998. These reports/letters document that the manholes were installed at the time or near the time of the street improvements on both Camaron and Messina.
- College Place Subdivision Replat ‘B’ created Tracts 2A (1.13 acres) and 2B (6.89 acres) and was recorded July 27, 2001.
- College Place Subdivision Replat ‘C’ created Tract 2B-2 (5.61 acres) and was recorded August 6, 2003.
- Sometime between May 1, 2003 and March 10, 2004 the zoning map was changed, removing the MF-M Multiple-family residential status and indicating that the property zoning is SF-10 Single-family residential.
- Operations & Maintenance Manager, Ruben Salcido, sent Community Development Department staff an email dated May 11, 2001 indicating that he had OMI (the City’s contractor for the maintenance and operation of the water and sewer system) verify the existing conditions along Camaron Avenue (see attached). There are two existing 8” sewer lateral stub-outs, stemming from two separate manholes towards the property. They also found a separate 6” waterline (not including the existing fire hydrant) stubbed-out from the existing 8” watermain along Camaron. He indicates that these provide evidence to support that the developer was prepared to build a larger structure other than single-family residential on the property at the time that they were installed. No as-builts were found to indicate when the water and sewer mainlines were installed along Camaron Avenue. However, he refers to the above mentioned inspection report and letter to indicate when construction may have occurred.
- Staff contacted the Electric Department, Luwil Aligarbes, to inquire about any electric hook-ups to the property and was informed that at the time that the streets were improved 6” stub-out casings were installed for future crossings when development occurs on the site. No electric services or lines have been installed.

- Mr. Stoabs inquired at the City about the zoning status of the property at the southwest corner of Messina and Camaron. He was told that it was SF-10 Single-family Residential. He was advised to submit an application for a zone change to MF-M Multiple-family Residential to allow the construction of apartments on the site. On January 13, 2011 Mr. Stoabs submitted an application for a zone change (ZC 11-02).
- After the receipt of Mr. Stoabs petition request and a review of the parcels history, Community Development Staff questioned the zoning map reversion clause in the original petition and the fact that the map had been changed without going through a zone change process. On February 8, 2011, the City of Farmington's Legal Department made a legal determination about conditional approval for zone changes (see attached document). The Legal Department's findings showed that a zoning reversion from multi-family residential to single-family residential based on a five-year condition (a zone change development approval expiring by 2001 from 1996) could not automatically occur, and it was therefore the City's responsibility in or after 2001 to initiate a zone change upon expiration of this developments condition. Since the City did not initiate a zone change to revert the property, the current zoning classification for the property was still MF-M Multiple-family Residential. Based on this determination Mr. Stoabs withdrew his zone change request on February 8, 2011.
- On February 10, 2011, the City of Farmington initiated a zone change request (ZC 11-04) for the property pursuant to the condition of approval from the previous zone change (ZC 1430) which was approved by City Council on March 12, 1996. Further legal review determined that the best course of action was not to pursue a zone change but to determine if the condition of approval requiring commencement of development to occur within 5 years of the approval of ZC 1430 had been met. The City withdrew its application for a zone change (ZC 11-04) on April 26, 2011.
- On April 27, 2011 the City of Farmington filed an application requesting a Condition Review (CR 11-01) to determine if the original condition of approval requiring the development to commence within the five years of the date of City Council approval had been met.
- On May 16, 2011 Mr. Craig Stoabs delivered to the offices of the Community Development Department a letter and supporting documents regarding Petition CR 11-01 (see attached).
- On May 16, 2011 the Community Development Department received a letter from a neighbor opposing any apartment development on the site (see attached).

#### **DISCUSSION FROM THE PLANNING & ZONING COMMISSION ON MAY 26, 2011**

City Attorney Jay Burnham, acting as an advisor, explained to the Commission about the quasi-judicial proceedings to be observed at this Planning and Zoning meeting. He stated that the procedures are similar to court but the rules are different. The first rule to remember is that the information you can use to make your decision is limited to what is in the record. When the hearing is opened all speakers will be sworn in and can introduce documents or statements at that time. The Commission is able to consider their own general experience and must consider that the facts given today are the only one to be considered; there will be in the record some opinion and argument that can be considered, but you are not bound by those. Please stay focused on the specific issue on hand, do not focus on what may happen in the future, only if the condition placed in 1996 has been met. This is a factual determination and you can use the facts presented in 1996 also. Please include any expression of your thoughts during the discussion to help staff during the preparation of a recommendation and findings for City Council. With no further comments or questions, the meeting moved forward to the presentation by staff.

Ms. Lopez Senior Planner presented the staff report. Chairman Ivie asked if her report would be given chronologically. Mr. Lopez began the review of the memo included in the agenda. Chairman Ivie interrupted Ms. Lopez when the timeline reached 2003, because this was after the 5-year time expiration period. Manholes for sewer and water lines were inspected and installed at the time of the street improvement. OMI was enlisted to verify that what currently exists and the results of their findings are included in the agenda packet. There are currently sewer and water lines, no electric hookups but the casings were installed under the street to the property. Commissioner Freeman asked about the stub outs and whether they were in the street or on the property. Ms. Lopez referred the question to Ruben Salcido, Operations Manager.

Mr. Salcido stated that the OMI investigation found a valve in the center of the road off of the water main and when this valve was opened water did bubble out on the property. The pipe was stubbed out to that location and it was outside of the paved road. Commissioner Freeman asked where that was in reference to the property line. Mr. Salcido stated that the edge of the road is not the property line but he did not have the exact boundary.

In reference to the lines found during the investigation, Mr. Salcido stated that normally there would only need to be one 8" sewer line, but that this property has two 8" sewer lines going to the west, in addition to the one 6" water main. Chairman Ivie asked Mr. Salcido if it was possible that the site plan that was originally submitted showing two sets of apartments intended to use one line per apartment. Mr. Salcido stated that perhaps if you didn't know the exact slope of future laterals you would then be able to use either line. Chairman Ivie asked if because of the 6" water main which is larger than a residential use that in Mr. Salcido opinion that the intent had been for a larger project than single family homes. Mr. Salcido stated that only if there was a future road or cul-de-sac would that large of a line be needed, but that is not evident on previous drawings. Commissioner Buchanan asked for clarification regarding the stub-out sizes of 6" for the waterline and 8" for the sewer line and what they imply. Mr.

Salcido stated that historically an 8" lateral into a sewer manhole implies that something larger than single family will be built and this property has two manholes and sewer lines. A 6" waterline is generally for commercial use and will also feed a fire line and fire sprinklers. Commissioner Buchanan asked what the typical residential waterline size is. Mr. Salcido stated that individual services feeding single family properties are fed by a 1" waterline. Commissioner Thompson asked what size service laterals are currently feeding the single family homes to the east of the subject property. Mr. Salcido stated they are fed by 1" lines.

Chairman Ivie questioned Ms. Lopez on the timeframe regarding the utilities. She stated that the zone change was approved in 1996 and the Windsor Heights Subdivision #6 final plan was platted in 1997. Camaron Avenue and Messina Drive streets were platted at that time. The construction drawings could not be located, however a letter dated August 27, 1998 regarding the inspections for these services show they were completed and accepted at about that time.

Mr. Craig Stoabs, 4800 College Boulevard, is the current owner representative for this property located at Camaron Avenue and Messina Drive. Chairman Ivie asked if Sol Rey Court was built after Camaron Avenue and Messina Drive. Mr. Stoabs stated no, the subdivision was being built-out from the south to the north. He mentioned that Camaron Avenue, from Sol Rey Court north to Messina Drive, and Messina Drive over to College Blvd were all built in 1997-98. Chairman Ivie asked if that street was constructed for the multi-family houses or for Windsor Heights #6 or for both. Mr. Stoabs stated that Camaron Avenue was built for both but that (Sunrise Parkway) Messina Drive was for the apartment. When we built Camaron Avenue we built it for development of both sides, including the lines for single family on the east side, and larger lines for the west side. Chairman Ivie asked if at this point in time the intent was still to build an apartment complex. Mr. Stoabs stated that it was. Chairman Ivie asked what the next step in the development would have been. Mr. Stoabs stated that the next steps would be to lay out the lots and start construction. Chairman Ivie stated that it appears that all the lot leveling and work was being done on the east side of Camaron Avenue. Mr. Stoabs agreed that there was no disturbance (dirt moving) on the west side of Camaron Avenue. Chairman Ivie asked what follows the completion of Windsor Heights #6. Mr. Stoabs stated that it would probably be Windsor Heights #7, and would be located down by Beckland Park, and Windsor Heights #8 (25-30 lots) which is north of Tijeras. Rio Street is Windsor Heights #9, Kingsway and LaJolla #10, Tijeras #11. The State Buildings north of Messina Drive were built in 2006-2007 and the Environmental Department in 2008.

Chairman Ivie asked Mr. Stoabs what the reason was behind abandoning the multi-family when it was to be started first. Mr. Stoabs stated that the numbers just wouldn't work at that time, because the rent rates were not enough to justify the construction cost. The market demands a different product now, and single-family housing isn't what is required at this time. Chairman Ivie mentioned that on page 12 of the agenda there is mention of being generally developed within condition "a". Mr. Stoabs added that in relation to the project having to commence or be generally developed that in condition "c" it specifically says, "that a street improvements agreement being approved by the city to address the needs for the streets to be constructed by the developer prior to the issuance of the building permit." Chairman Ivie shared his opinion that he understood the building requirements but he believed that the intent of the Planning and Zoning Committee and the City Council in regards to the zone change was that this project would begin and be built within that five year timeframe. The timeline shows that residential was the number one priority at that time, but now 15 years later, there is a shift in that priority.

Commissioner Langenfeld asked Mr. Stoabs what the entrance into Sol Rey was prior to the construction of Camaron Avenue north to Messina Drive connecting to College. Mr. Stoabs stated that access was from Windsor Drive onto Camaron Avenue, and that Camaron Avenue stopped just north of Sol Rey Court. Commissioner Langenfeld stated that Mr. Stoabs had mentioned that 3-phase electric power was run from College to the property. Mr. Stoabs stated that just the conduit was run under Messina Drive and then across the road to make it available to that property and was done when the roads were built. Chairman Ivie raised the question that the project now does not resemble the project from 1996 and asked if any preliminaries/construction drawings were submitted that may show streets/cul-de-sacs or tying in parking lots. Mr. Stoabs stated that renderings were done and floor plans, but didn't know if they were submitted however the utilities were set to run up the two roads. Chairman Ivie asked if the request from the original approval that drawings be submitted was completed. Mr. Stoabs stated that they were not. Commissioner Thompson asked if it was in Mr. Stoabs experience that a timeline was usually placed on a zone change. Mr. Stoabs answered that this is the only timeframe he has ever seen and that at the time of the original petition (15 years ago) he was new to the business and didn't ask enough questions.

Commissioner Jaques asked what development has occurred on this lot since 2001. Mr. Stoabs stated that there has been none. Commissioner Buchanan asked why Messina Drive was constructed at that same time. Mr. Stoabs stated that it was built for the apartments. He quoted a comment in the staff report for Windsor Height #6 Preliminary Plan, Petition 1590, where Mike Sullivan stated that this configuration of a flagpole street (Messina Drive to Camaron Avenue) made no sense to him, and then suggested that Messina Drive be dedicated as a part of a subdivision for the apartments. It clearly states in the staff report that the development of (Sunrise Parkway) Messina Drive should be reviewed in connection with the rezoning and development of the apartment when construction occurs. Messina Drive was not required in Windsor Height #6, but the road needed to be built for the apartments. Commissioner Buchanan asked if houses were being built on Messina Drive. Mr. Stoabs stated no, not on Messina Drive but at the time it was constructed the road was required only for the apartments. Commissioner Buchanan asked if Sunrise Parkway had continued through the college campus then Messina Drive would have been called Sunrise Parkway. Mr. Stoabs agreed.

Commissioner Buchanan questioned that if Messina Drive was built solely for the apartments why the stubbing of water and sewer lines is off of Camaron Avenue as though the access to the apartments would be on Camaron Avenue. Mr. Stoabs stated that OMI checked Camaron Avenue but did not check Messina Drive and that there are improvements on that street as well.

Commissioner Freeman asked Mr. Stoabs to define the start of a project. Mr. Stoabs stated that the plating of the property and road construction are the start of a project, which is a minimal cost expenditure, then proceeding with the construction. A lot of leg work is done prior to approval of the plan.

Chairman Ivie asked why then, earlier this year you completed an application for a zone change from single-family to multi-family. Mr. Stoabs believed that the time limits on the zone change had expired, only to later find out that without due process the property couldn't revert back. Prior to submitting an application for a zone change he stated that he had called the City Attorney and asked what he should do since it had been a long time. Under the City Attorneys guidance he re-filed for a zone change and talked with staff. Then after research, the City Attorney identified that the property was still zoned multi-family and he withdrew the first petition. Chairman Ivie asked if the apartment complex was indicated in the development plan or site plans within Mr. Stoabs' office. Mr. Stoabs asked about the relevance of that question. Chairman Ivie stated that if Mr. Stoabs internal maps didn't indicate multi-family that it would show that to your understanding it had reverted back to single family. Mr. Stoabs stated that his development group has one that shows R-3 and Cheney-Walters-Echols has that information, and that the road had to be built before construction could begin. Chairman Ivie stated that that is always the case before building permits are issued and wasn't a specific condition. Mr. Stoabs argued that in this case it was a specific condition and was stated over and over that the roads must be built as part of the development. It is also stated on the Windsor Heights #6 staff report, it states the same thing that; "the subdivision will serve to dedicate the northern extension of Camaron Avenue and the extension of Sunrise Parkway from College Blvd east of Camaron Avenue". The development of these roads is required in order to build apartments in the R-3 Multi-Family District. Camaron Avenue and Sunrise Parkway were plated with 60' right-of-ways (page 9 of petition 1590). Chairman Ivie then asked if because the roads were put in, the development began, thereby meeting the requirement of condition "c". Mr. Stoabs stated that the focus of this meeting is whether the development commenced and not what is going on there. Chairman Ivie stated that he still is struggling with the "general development" definition and also mentioned that the site plan has changed dramatically, but that is another issue. Mr. Stoabs stated that the site plan doesn't have to change and he could use the original site plan, however he tried to change the plan for the better by bringing the entrance to Messina and gating the community. Chairman Ivie asked if any drawings were submitted as requested by the Planning and Zoning and the City Council showing parking changes. Mr. Stoabs stated he didn't remember if the drawings were submitted (condition 'b') but condition 'c' (development of the two roads) was done and condition 'd' (building permit) was not done because the project hasn't been built), however it does not say that all four of the conditions have to be met with the five years.

Commissioner Langenfeld questioned whether or not condition 'c' regarding the completion of Messina would have been a condition if Windsor Heights #6 had been brought before the Planning and Zoning Commission prior to the zone change. Mr. Stoabs stated that Camaron Avenue would have been a requirement as part of Windsor Heights #6, but Messina would not be a condition. Commissioner Ziesmer asked that in the master plan the intent was to have the apartment buildings and then start with Windsor Heights #6. Mr. Stoabs confirmed that was the original plan, but Camaron Avenue would work as a buffer between the single family residence on the east side and landscaping would also be required. Commissioner Buchanan had an issue with that statement saying that previously Mr. Stoabs stated that Messina was specifically built for apartments and Camaron Avenue was built for Windsor

Heights #6, now Mr. Stoabs is saying that Camaron Avenue was built as a buffer. He asked Mr. Stoabs to show him where it is that stated that Messina was specifically for the apartments. What I've seen seems to show that they were connected. Mr. Stoabs restated that Camaron Avenue was built for both houses and apartments, and that he didn't state specifically for houses or apartments, it doesn't make sense not to build utilities so you don't have to recut the pavement. In order to build Camaron Avenue we had to build houses on the east side. He also stated that Victoria Way is another example where the developer tried to put in utilities for both sides of the street.

Meeting was recessed at 3:32 p.m.

Meeting reconvened at 3:40 p.m.

Mr. Stoabs stated that the staff report for petition 1590 (page 9-1) answered Commissioner Buchanan question which was asked prior to the break (page 41 of the current staff report). He stated that copies of all the bills were submitted and for road improvements. Chairman Ivie asked if the zone change for Windsor Height #6 made the lots larger or smaller. Mr. Stoabs stated that they were basically for set-back reasons and made the lots smaller. The back of the lots drop off and so the set-backs were reduced to best use the lots.

Chairman Ivie called Ms. Lopez to the podium to question what is stated in the Unified Development Code regarding timeframes. He asked if there is a time limit for starting a subdivision and what that time limit is on zone changes. Ms. Lopez stated that there are no time limits for construction to begin and zone changes stay with the land and are permanent. She stated that there can be time limits set by the Commission and Council, but the code states that to revert the zone change the City must follow its own procedures. The three reasons for time limits on a zone change are listed in the previous staff reports. Chairman Ivie then asked what the intent of the 1996 meeting was. Ms. Lopez indicated that she did not know and that her research does not indicate the intent of the condition. She is not sure whether it was applied at the staff level, the Planning & Zoning meeting or at the Council meeting. Commissioner Freeman asked if that was a standard applied timeframe. Ms. Lopez answered that there were several during that time, but it is not a common practice.

Commissioner Buchanan wondered if he read in this documentation that Mary Fischer put the condition on this. Chairman Ivie stated there was an email letter and a hard copy today that at the last City Council meeting Mary Fischer made a statement to the intent, but Ms. Lopez could not find anything to substantiate this. Commissioner Ziesmer shared that on page 43 of the report has standard definitions to see if the petition for a zone change is applicable.

Mr. Stoabs stated that he believed the condition was in the staff report and originated in the staff report and Ms. Lopez stated that it was in the draft minutes of the staff report. Mr. Stoabs stated that based on that information staff, not City Council, initiated that condition. Mr. Stoabs believed that he thought that the new UDC addresses time limits on zone changes, but that wasn't what the City Attorney said. Attorney Burnham addressed the UDC comment and stated that the UDC section 8.7.5 b, states that City Council may impose time limits and if in default may order a public hearing. Ms. Lopez shared that the legal opinion regarding the zone change reversion is part of the record and is in the staff report.

Mr. Stoabs recapped his facts in that the "as-builts" were submitted, a letter from Nica Westering in February 1999 stated the improvements were accepted, and in staying with the discussion about whether development commenced, condition "c" required that the roads were constructed and building therefore commenced with the roads being built. The Windsor Height #6 development required roads and the utilities placed were for apartments. Finally the condition did not say when the development is started or the building is started, it just said commenced. Chairman Ivie asked if the right-of-way was 60'. Mr. Stoabs stated that he wasn't sure but thought it might be 40' depending on the street classification. Commissioner Thompson questioned if the utilities on Messina Drive that were stubbed out to the north were for future plans. Mr. Stoabs stated that there are offices planned to the north of Messina and that there are currently two office complexes already built on the north side of Messina. Commissioner Thompson asked if Mr. Stoabs considered that development had commenced on the vacant lots to the north of Messina. Mr. Stoabs replied that yes, if the roads and utilities are there then development has commenced. Ms. Lopez addressed the right-of-way width and stated that the right-of-way is 60' with a required 48' of pavement.

Two additional people spoke up to share information and were sworn in.

Mr. Troy Ramstead of 4928 Camaron Avenue stated that all addresses except his are tied into the water meter on Camaron Avenue that his is from the north, off of Messina Drive. When they purchased the

lot, they weren't sure which direction the home would face because of the waterline feed, but it was built to face west.

Mr. Rod Montoya of 4902 Camaron Avenue stated that if the intent on Messina Drive was only for the apartment complex, then why was Mr. Ramstead's water line feeding from the north. I assume it would be 1" or less for that home. A prudent developer would be looking toward the future and that the apartment water line would end in front of the apartment complex on Messina Drive, it would have been 8" and stopped in preparation of future development.

Chairman Ivie asked Mr. Stoabs to explain the northern waterline feed to the corner lot. Mr. Stoabs stated that the corner lot next to the houses was zoned Office Professional and a lot split was done after Messina Drive was constructed to the corner of Camaron Avenue. So to feed the corner lot without tearing up the newly paved Camaron Avenue, his office decided to feed the lot from the unpaved portion of Messina Drive. At this point, Chairman Ivie closed the general public discussion, informing the commission that they have the task to ask any clarifying questions and to take into consideration all the things discussed and make a recommendation to City Council. The Commissioner's will be polled and state their intentions during the voting process.

Commissioner Freeman asked what it takes to place additional house taps at this point. Chairman Ivie stated that they are in the street right-of-way and the pavement would need to be cut or "t" off and stub or extend those lines. Also, he stated that all new buildings must be provisioned with sewer and water for residential or multi-family but that running the water lines for the 5.61 acres would probably be from different portions of the stub-outs, not all lines will come from one location. Commission Ragsdale mentioned that wouldn't any other homes that would be built on this property back up against businesses on College Blvd. Chairman Ivie stated that they would have to have deep lots and the only requirement, according to the UDC, would be to provide neighborhood protections. Commissioner Buchanan asked about the right-of-way and positioning of the stubs as they come off of the 6" water line. Chairman Ivie clarified that it is an 8" water line. Commissioner Buchanan asked if the stubs go to the property or are they somewhere in the right-of-way. Chairman Ivie stated that he assumed they are on the property since they go beyond the curb. Commissioner Thompson brought out the point that the water that bubbled out when OMI was investigating was not in the street right-of-way so it must have been on the property. Commissioner Buchanan stated that Mr. Salcido did not know what the intent of the lines were but that they were installed. Chairman Ivie stated that the existing lines previously installed could sufficiently handle a multi-family complex, including the curb cuts. Commissioner Thompson had a question for the City Attorney concerning using only the information contained within the documents, and the minutes from the 1996 minutes as well. Attorney Burnham stated that those documents are part of the records and can be used. Commissioner Thompson then asked what the intention of the Planning and Zoning Commission was at that time. Attorney Burnham answered that the Commission can look at the facts that were available to the Planning and Zoning Commission and City Council at that time in order to determine their intent. Chairman Ivie asked if there were any other questions or comments. There being no other discussion by the Commission, Chairman Ivie stood for a motion.

Commissioner Cardon made the motion that the intent has been established by record of the utilities being found on said property and the timeline of invoices and checks paid. That in accordance with the intent of staff for the intention of building apartments for 5.61 acres that condition "a" was met and development did commence prior to March 12, 2001. The motion was seconded by Commissioner Freeman. The motion was deadlocked by a vote of 4-4.

- AYE: Commissioners, Cardon, Freeman, Jaques and Ragsdale
- NAY: Chairman Ivie, Commissioners Buchanan, Langenfeld and Thompson
- ABSTAINED: Commissioner Ziesmer
- ABSENT: Commissioner Washburn (Alt)

**THE MOTION WAS TIED AT 4-4**

City Attorney Jay Burnham stated that the commission would need to propose another motion and vote again to break the deadlock. He thought that a new motion be made stating the opposite way, because of the deadlock. Each commissioner shared their opinions regarding the vote.

VOTE	COMMISSIONER	OPINION THAT VOTE WAS BASED ON
No	Chairman Ivie	Chairman Ivie stated he believed that the subdivision utilities for meeting the requirement was an unintended consequence with benefits for the residential area of Windsor Heights 8, 9, 10 or other

		<p>areas to the north. It was an economic decision not to build. The intent that I read is that it would be substantially completed in five years and that there would be actual dirt moving, not just being prudent by placing utilities and streets. There was no contest to the misrepresentation to the zoning map for over 10 years.</p>
No	Buchanan	<p>Commissioner Buchanan stated that he believed the condition "c" was not met. His questions come to what constituted development and what constituted physical evidence of that development. What is the definition of development? I am concerned and feel that there was documentation that there was intent as to why this would revert back. The utilities were to some degree but not to the degree of development that was compatible with the condition put on the zone change. The zone change constituted a convenience of having multi-family in an area that hadn't been developed yet, and the concern I have is that as people developed home sites that they were fully aware of the potential of multi-family. The physical degree of development is not sufficient for multi-family and the degree of development and what the intent was. I don't think that the intent was fulfilled and I don't think the degree of development was sufficient to be recognized physically for future buyers in residential areas.</p>
Yes	Cardon	<p>Commissioner Cardon stated that she believed that condition "c" was met and the intent in 1996 was to begin work. The installed utilities were a deciding factor in her vote. The placement of the utilities into the properties.</p>
Yes	Freeman	<p>Commissioner Freeman stated that the utilities crossed into that property and therefore development has occurred, however he still had an issue with disclosure, but that is not the reason we are here today.</p>

VOTE	COMMISSIONER	OPINION THAT VOTE WAS BASED ON
Yes	Jaques	Commissioner Jaques stated that he believed that the testimony and written documents provided to us it is obvious to me that it proved that development occurred. True, it appears that the project was abandoned for some time, but on a legal basis from the City Attorney office that condition "c" was met.
No	Langenfeld	Commissioner Langenfeld stated that she believes the condition was not met even though the utilities were placed, because any prudent developer would do so and believed that the roads were placed in conjunction with Windsor Heights #6. She believed that the conditions were not met for the apartment development.
Yes	Ragsdale	Commissioner Ragsdale stated that she believed the development had commenced based on the information that was distributed.
No	Thompson	Commissioner Thompson stated that this property was to be developed and be completed within five years. He stated that he agreed with the City's position and believed the intent was that this property be developed and completed within five years, but that it is a good idea because it is close to the College and he understands why the project was put on hold.
Abstained	Ziesmer	Commissioner Ziesmer abstained from the vote because she still had questions on the intent and the abandonment issues.

Chairman Ivie stated that it was 4-4 tie and that would go to Council. He asked the City Attorney whether they can send that vote. Attorney Burnham stated he believed you had to do another vote since there was no majority and the motion failed. If the second motion fails you are done. Chairman Ivie was asked to undo the previous ruling that the motion failed because of the abstention, Chairman Ivie did so. Commissioner Buchanan asked why the motion failed. Chairman Ivie stated that you needed a majority. If another motion was voiced the other way and deadlocked would be the final decision.

Another motion was made by Commissioner Buchanan regarding condition "a", the intent of the conditions were not met for the zone change made in 1996 for the said property of 5.61 acres adjacent to Camaron Avenue. This motion was seconded by Commissioner Thompson. The motion failed by a vote of 4-5.

AYE: Chairman Ivie, Commissioners Buchanan, Langenfeld and Thompson  
 NAY: Commissioners, Cardon, Freeman, Jaques, Ragsdale and Ziesmer  
 ABSTAINED: None  
 ABSENT: Commissioners Washburn (Alt)

#### THE MOTION FAILED 4-5

Chairman Ivie stated that the commission currently had two failed motions, one for and one against which would provide no recommendation to City Council because of the split vote. Commissioner Buchanan asked why the second vote was a failure, so why is there no recommendation to be derived from that vote. Chairman Ivie stated that Commissioner Ziesmer's vote had changed and asked why it had changed. Commissioner Ziesmer stated that the level of intent was a factor; also she had concerns with Mr. Stoabs statement of abandoning the project. Commissioner Buchanan stated that he was bothered by the fact that there was a "no recommendation" being made to present to City Council regarding the intent being met (condition "a"). City Attorney Burnham recapped the motions stating that the first motion was to find that development had commenced, which failed because of a tie of 4-4. The second motion to find that development did not commence failed 4-5. Commissioner Buchanan requested a recommendation from City Attorney Burnham as to the commissions' next step and thought that the City Council would see the votes. Attorney Burnham responded that perhaps another vote may be in order to reflect that the motion passed. Commissioner Buchanan was adamant that a recommendation should be sent to City Council.

A third motion was made by Commissioner Buchanan and seconded by Commissioner Cardon that condition "a" of City Council and Planning and Zoning Commission intent, that development commence prior to March 12, 2001 was met. The motion passed by a vote of 5-4.

AYE: Commissioners Cardon, Freeman, Jaques, Ragsdale and Ziesmer  
 NAY: Chairman Ivie, Commissioners Buchanan, Langenfeld and Thompson

ABSTAINED: None  
ABSENT: Commissioners Washburn (Alt)

**THE MOTION PASSED 5-4**

Chairman Ivie stated that a recommendation of approval will be sent to City Council along with staffs report.

**Business from the Floor:** There was no business from the floor.

**Business from the Chairman:** There was no business from the chairman.

**Business from the Members:** There was no business from the members.

**Business from Staff:** Ms. Lopez informed the commission that Commissioner Ziesmer is now a regular commissioner rather than an alternate commissioner and welcomed the two new commissioners, Cheryl Ragsdale and Paul Thompson. Commissioner Washburn will remain the only alternate until another is appointed by the Mayor. Chairman Ivie stated that three members were released and the two new members added. He added that all commissioners adhered to the rules of the committee. These meeting proceedings will be part of the report to City Council. Chairman Ivie stated that rules and regulations for the Planning & Zoning Commission are currently being drafted.

Ms. Ambrosino Associate Planner stated that a draft of the Rules and Regulations has been completed but a timeline has not been identified and that she is hoping to have it ready for presentation at the next Planning and Zoning Meeting on June 16, 2011. Chairman Ivie asked to place the Rules & Procedures for discussion on the next P&Z Agenda.

Ms. Lopez informed the commission that there were no petitions heard at the May 24, 2011 City Council meeting. There was a request for a waiver to Subdivision Regulations that was approved. The Strategic Affordable Housing Plan resolution was approved and approval was given for staff to draft an ordinance which will be reviewed by the MFA within 30 days.

Director Holton stated that the quasi-judicial portion of the Planning and Zoning meeting was complete and that she had two items to bring to the Commissions attention. The first being the Community Workshop on MRA Issues being held on June 15<sup>th</sup>, Wednesday, at 4:00pm in the Exhibition Hall #1 at the Civic Center. Subjects being presented are: special permits in the mixed use area, residential protections in the Downtown and Animas Districts of the MRA and protections for industrial users in the MRA. The second item was that there will be training available by the NM American Planning Association Conference in conjunction with surrounding states in September 2011 at a Planning Commissioners Workshop and to let staff know if any commissioners would like to attend and get help with tuition.

**Adjournment**

With no further business the Planning and Zoning Commission meeting of May 26, 2011 was adjourned at 4:42 p.m.

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Dennis R. Ivie  
Chairman

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Dee Dee Moore  
Office Manager