

PLANNING & ZONING COMMISSION WORK SESSION

THURSDAY, MAY 30, 2019 – 6 PM

COUNCIL CHAMBERS, CITY HALL

405 N PASEO DE OÑATE, ESPAÑOLA, NM 87532

I. CALL TO ORDER

Chairman Vigil called the meeting to order at 6:14 pm with the following in attendance:

COMMISSIONERS

A. ERLE WRIGHT

ADÁN CASADOS

ANISSA MARTINEZ

CLYDE VIGIL, CHAIRMAN

DINA QUINTANA

ERIC MARTINEZ, VICE-CHAIR

STAFF

ALISON GILLETTE, PLANNING DIRECTOR

RICHARD HUBLER, CITY PLANNER

PUBLIC

AUSTIN FISHER, RIO GRANDE SUN NEWS EDITOR

II. PLEDGE OF ALLEGIANCE

Commissioner Casados led the pledge of allegiance.

III. APPROVAL OF AGENDA

VICE CHAIRMAN MARTINEZ MOTIONED TO APPROVE THE AGENDA AS PRESENTED. COMMISSIONER CASADOS SECONDED. MOTION CARRIED 6-0 VOTE.

IV. DISCUSSION

a. What is a quasi-judicial hearing?

Director Alison Gillette reviews the changes that have recently been made to the procedures with which we hold quasi-judicial hearings proceedings. Quasi-judicial hearings, as opposed to legislative, are meant to give the applicant, interested parties, and the public their due process when it comes to changes that respect a specific property.

Director Gillette explains that the Department is re-examining how to process the minutes for the Commission meetings and work sessions. New Mexico law does not require the extensive types of minutes that are currently being taken, but such minutes also take a great deal of staff time that could be spent elsewhere. Audio recordings would be saved in perpetuity and available at any point. Vice Chair Martinez and Chairman Vigil agree that this is acceptable.

Commissioner Wright is concerned that audio and video recordings are not part of the record and are not included in the state's or City's retention schedule. Commissioner Wright believes that minutes from previous administrations are too brief.

Commissioner Anissa Martinez is leery about the recordings being deleted once the minutes are adopted. Planner Hubler explains this is not the process the Department will use; the Department will make the recordings part of the record and available on the website. The goal is to make the minutes more robust, not less. Planner Hubler explains that the Commission could adopt a policy that makes the audio minutes part of the retention plan.

Commissioner Wright is concerned that the Commission's decision about retention is not binding. Commissioner Wright states that Santa Fe County's attorneys believe that digital files are not an adequate replacement for the written files. Commissioner Wright states that the governing body must adopt a resolution making audio/video recordings part of the record.

Commissioner Quintana inquires further about the record retention policies. Vice Chairman Martinez states that Los Alamos County has audio/visual recordings going back at least ten years that the public can view. Los Alamos County has a resolution for this; perhaps the City of Española could do something similar. Director Gillette states that she will speak to City Clerk Melissa Velasquez about adopting a similar resolution.

Chairman Vigil states that he will be following the quasi-judicial proceedings as presented in the New Mexico League of Zoning Officials Handbook. Director Gillette questions whether or not we should help instruct Planning & Zoning Commission meeting attendees on how the quasi-judicial meeting will run. Chairman Vigil would like staff to provide this explanation to the public. Commissioner Wright believes that giving this explanation is the duty of the Commission.

Commissioner Wright explains the other type of hearing—legislative. Planner Hubler gives examples of what constitutes quasi-judicial cases and what constitutes legislative cases.

Commissioners bring up the idea of having yearly trainings for Commissioners about different types of hearings, what constitutes conflicts of interests or *ex parte* communication, etc. Commission requests that staff indicate which cases on an agenda are quasi-judicial and which are legislative.

b. Findings of Fact

City Planner Richard Hubler explains that findings of facts are the written record that is created to capture the decision made during a quasi-judicial hearing. Department staff currently send out follow-up letters and take minutes that are similar to findings of facts, but will now work to issue official findings of facts. Two examples are presented for the Commission's review.

Commissioner Anissa Martinez requests further detail on Case 2019-02, item 6, and Vice Chairman Martinez notes that the findings of facts are intended to be concise. Planner Hubler agrees and notes that the findings of fact are not meant to repeat the record, but to reference the key components that lead the Commission to their decision.

Vice Chairman Martinez asks about the proposed procedure. Planner Hubler notes that various examples were found, and that our Code mandates that the findings of fact be approved no later than the next meeting. In most cases found during research, if the findings of fact were not ready to be adopted at the meeting itself, then the Chairperson would sign the findings of fact shortly after the meeting and in at least one example, the findings of facts were amended to match Commission discussion.

Commissioner Wright states that he does not believe this is appropriate. He states that Santa Fe County has a lot of experience with this, and the City of Española should follow Santa Fe County's method of signing the findings of fact at the following Commission meeting. Commissioner Wright states that this provides due process to the applicant and gives the Commission a chance to vote on the findings of fact. Commissioner Wright states that the Department should not be doing "administrative findings of fact" and that the Commission has to take testimony at the quasi-judicial hearing before you can write the findings of fact. Commissioner Wright states that public testimony has to be incorporated into the findings of fact.

Planner Hubler concludes that the discussion will shape the format of the forthcoming findings of fact and that these will be reviewed by the City Attorney for format and the procedure the city will use.

c. Commissioner Code of Conduct

Director Gillette presents examples of Codes of Conduct from NM Municipal League, Los Alamos County and Rio Rancho. She outlines the value of specific definitions especially for conflicts of interest, family, financial interests, gifts, *ex parte* communications, etc. She states that the Planning Commission can lead the way and perhaps the governing body will follow. She solicits experience from council on historic issues around ethical behavior.

Commissioner Wright requests recess to review documents, seconded by Commissioner Quintana. All in favor. 15 minutes recess declared by Chair Vigil at 8:22 p.m.

8.36 Meeting reconvenes, called to order by Chair Vigil.

Commissioner Quintana describes her professional experience with challenges that arise from broad definitions of conflicts of interest and expresses concern that the perception of a conflict might negatively impact a commissioner's opportunity to fulfill her/his role. She discusses the example of a loan at a local bank. Director Gillette responds that it is the responsibility of the individual to recuse themselves.

Commissioner Wright and Director Gillette discuss provisions for mandatory disclosure and recusal, Director Gillette concludes with suggestions for outside expert training opportunity around this issue at a future work session.

Commissioner Eric Martinez expresses concern regarding a previous case involving a fellow commissioner and suggests good definitions, yearly refresher trainings, signed disclosure statements of financial interests, and direction regarding relationships inherent in small towns and how to handle cases involving fellow commissioners.

Commissioner Wright queries if this proposal is for the Commission or the governing body. Director Gillette explains that she can propose this to the City Clerk but is suggesting this for the Planning Commission at a minimum. Commissioner Wright expresses that he feels the commission does not have the authority necessary. Director Gillette replies that a code of conduct can be adopted into chapter 350 of the city code. Commissioner Wright states that he feels this should apply to staff as well.

Commissioner Eric Martinez describes that in Los Alamos County all staff and elected officials are bound by the same code, and he agrees that the Code of Conduct should be adopted into the code so that it applies to future commissions.

Commissioner Wright reviews the example of the NM Municipal League and raises concerns regarding excused absences, activity during political elections, discussions with the press, employment conflicts, disclosure forms, and proportional benefits. He states that some provisions are unenforceable, especially considering legislative changes in a small town. Discussion about accepting meals and pizza ensued.

Director Gillette read the definition of family from the Rio Rancho example and several Commissioners expressed that is too broad. Discussion regarding the role of disclosure and conflicts of interest in small towns pertaining to the awarding of contracts and the definition of family concluded that the proposed language is overly limiting, and proper definitions are critical. Commissioner Eric Martinez described waiver process used in Los Alamos County, and stressed the value of public disclosure and standardized processes.

Commissioner Wright concluded review of NMML example by suggesting 1 year time limit for ban on lobbying efforts, and leading extensive discussion on the role of a statement regarding personal beliefs in the code of conduct.

Commissioner Eric Martinez states that chapter 3 of the NMML example has too many issues and suggests other examples as model and focusing on the role and actions of the public official.

Commissioner Anissa Martinez highlights the need for definitions, transparency, disclosures and abstentions for conflicts of interest. She details her interpretations to avoid interfering or coercing political activity, personal financial gain, and feels that there should be a process for complaints and handling violations of the code of conduct, including sanctions.

Commissioner Casados expresses that of the wide range of examples, he prefers the Los Alamos version and feels it should include all the city employees. He suggests that the city attorney review the code. Commissioner Casados also

states that commissioners should recuse themselves if they feel there is a conflict that prevents them doing their job.

Chair Vigil concludes that this issue is a persistent one for our country throughout its history. He recognizes good input from all commissioners and Director Gillette states that staff will present a draft in future meetings for more discussion following a conversation with the City Clerk to incorporate all elected officials and city employees.

Commissioner Eric Martinez highlights language from the Los Alamos example regarding how the commission interacts with staff. He addresses removal of a member if the commission feels there is a conflict. Discussion regarding the legality of such action ensues.

V. MATTERS FROM THE COMMISSION

Commissioner Wright expresses a desire for transparency and requested adequate time to review cases and suggested that the agenda be emailed to commissioners as soon as it is available. He discusses the role of appropriate communication and stresses the value of site visits. Commissioner Wright concludes with appreciation of the work staff is doing.

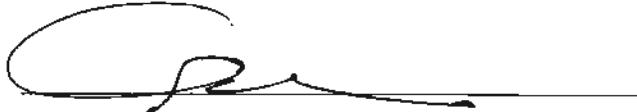
Chair Vigil requests a worksession and Director Gillette confirms work session scheduled for July 27th. Chair Vigil asks about caseload management and scheduling. Director Gillette replies that staff brings cases before the commission as they are filed and that management of the meeting may be effective solution. Chair Vigil agrees and suggests a gavel.

Commissioner Eric Martinez expresses his support for distributing the cases across different meetings. He states that the groundwork laid by staff regarding procedures and policies will benefit the city in the future.

Commissioner Quintana agrees with Commissioner Eric Martinez and appreciates the helpfulness of staff.

Motion to adjourn by Adan Casados, seconded by both Commissioners Martinez. All in favor.
MEETING ADJOURNED AT 9:57 PM.

APPROVED by the City of Española Planning Commission this 30 day of May, 2019.



Clyde Vigil, Chairman

ATTEST:



Alison Gillette, Planning & Land Use Director