

8. New Business (Part 3)

A. New topics:

- 1) Review of Section 29 rewrite concerning Special Use permit and replat procedures (see Attachment 2 for extract of major proposed changes)

B. Public Comments:

- 1) OWNER: Pioneer Bank (Robert Mays) CONTRACTOR: Eric Collins
LEGAL: LS; U1; B3; L 7 STREET: 196 Crown Ridge
LEGAL: LS; U1; B3; L 8 STREET: vacant lot Crown Ridge
REQUEST: **4 Mar 13:** Email received from ALGCC Board member Ron Duncan that ACC may take exception to lot adjustment. Possible revisit of Replat Discussion of Lots 7 and 8, Block 3, Lakeside Estates, Unit 1 (outlined in 11 Feb '13 letter from ALSZD) – based on ALGCC concerns. (Replat has not yet been submitted for signature per 21 Feb 13 decision.)

MOTION Santos SECOND: Bass
COMMENTS: **7 Mar 13:** Email received from ALGCC Chair Gene King that the best interest of the community is served by allowing the adjustment.
21 Feb 13: Motion made/approved that Porter may sign replat once re-drawn excluding the easement statement (per ALSZD 11 Feb '13 letter). Lincoln County to approve replat as shown once back taxes are paid.

C. Commissioner Comments:

Santos advised ALSZD of upcoming expiration of GoDaddy name/hosting. Bass moved, Porter seconded extension of names (ALSZD.org, .com, .net) as well as hosting agreement for two years. Santos to present bill for reimbursement at next meeting.

D. Informal Discussions: None

E. Treasurer's Report.

- 1) Permit Fees:
 - a. Total of permit fees received = \$100.00
 - b. Additional fees received = None
- 2) Bank account: \$19,598.70 as of 6 Mar 13
- 3) Invoice Approvals:
 - a. Santos moved, Bass seconded approval of \$150 to Eagle Survey (for work at 196 Crown Ridge that was approved in previous meeting)
 - b. Santos moved, Bass seconded approval of \$44.00 to USPS for ALSZD Post Office Box.

F. Announcement of Upcoming Meetings:

Next Regular meeting: 21 March 2013 at 9:00; Stag Room of ALG&CC; 1 Mulligan Drive, Alto, NM

G. Adjournment: Santos moved, Bass seconded at 12:03pm

/S/ Marti Santos

Secretary

The agenda for the meeting can be revised and published up to twenty-four hours prior to the meeting and will be posted on the public bulletin board at ALG&CC, Alto, NM. At any time during the Open Meeting the Commission may close the meeting to the public to discuss matters not subject to the New Mexico Open Meetings Act. The Commission may revise the order of Agenda items considered at this Open Meeting.

- 10) OWNER: Brininstool CONTRACTOR: Cowen Permitted 20 Dec 12
 LEGAL: ALGCC; U2, B6, L12 STREET: 120 French Dr
 REQUEST: Additions: Dining Room, Laundry Room, Expand Kitchen, Concrete Porch, Covered Bar-B-Que, Deck, Master Bath, Guest Bath, & 2nd Level Guest Suite. Landscaping – terracing; borders; creek bed; river rock; berm circular drive; drip irrigation; mulch; synthetic turf – permitted 7 Feb 13
 COMMENTS: As of 20 Feb: Almost complete. (FU: Porter)
- 11) OWNER: Keener CONTRACTOR: Ratliff Permitted 7 Jun 12
 LEGAL: DPW, U1, L20 STREET: 141 Deer Park Dr
 REQUEST: NEW CONSTRUCTION
 COMMENTS: As of 5 Mar: Almost complete. Cert of Occ (upon completion). (FU: Porter)
- 12) OWNER: Kelley CONTRACTOR: Owner Permitted 20 Dec 12
 LEGAL: DPW; U2; B; L56 STREET: 172 Deer Park Dr
 REQUEST: NEW CONSTRUCTION; fence
 COMMENTS: As of 5 Mar: Underway (FU: Porter)
- 13) OWNER: Wright CONTRACTOR: Owner (A.D. Powers) Permitted 1 Nov 12
 LEGAL: HM; U3; B12; L19 STREET: 166 Stable Road
 REQUEST: Build shaft and install a 5x6 elevator on south side of home between main & second floors. Add 8 x 16 deck to main floor, and 8 x 8 deck to lower level of east side of home.
 COMMENTS: As of 20 Feb: Underway. (FU: Santos)
- 14) OWNER: Bramblett CONTRACTOR: Alto Mesa Builders, Inc. Permitted 19 Apr 12
 LEGAL: DPW; U6, L167 STREET: 101 Porcupine Ct
 REQUEST: NEW CONSTRUCTION
 COMMENTS: COMPLETE **OBTAIN Cert of Occ**
- 15) OWNER: Anderson CONTRACTOR: Myers Permitted 21 Feb 13
 LEGAL: DPW; U6; L168A STREET: 103 Porcupine
 REQUEST: Landscaping Amendment for utility enclosure/wall w/stucco/rock veneer to match house (to screen electric, water, gas, meters, etc.)
 COMMENTS: (FU: Porter)
- 16) OWNER: Schultz CONTRACTOR: Ratliff Permitted 18 Oct 12
 LEGAL: DPV; U8; L229A STREET: 174 Antler
 REQUEST: Install Girard roof over rear courtyard; install stamped concrete floor in existing rear courtyard
 COMMENTS: As of 5 Feb: Underway. Block & lumber on ground. (FU: Porter)
- 17) OWNER: Ratliff CONTRACTOR: Ratliff Permitted 7 Feb 13
 LEGAL: DPV; U8; L 149 STREET: 113 (111?) Reindeer
 REQUEST: NEW CONSTRUCTION
 COMMENTS: (FU: Porter)

ATTACHMENT 2

Proposed Amendment to Section 5 – Definitions - of the ALSZD Ordinance

Sec 5 – Definitions; Easement of Conveyance		Added definition: Conveyance of surface property by easement, noted by metes and bounds description.
Sec 5 – Definitions; Easement – Express grant		Added definition: “Express grant” easements are created by virtue of some instrument of conveyance or a mortgage. The conveyance may involve an actual deed or grant of easement or the easement may be created by reservation.
Sec 5 – Definitions; Injunctive Relief (mandamus)		Addition of definition: <ul style="list-style-type: none"> A. Injunction relief to prohibit replat applicant from selling, leasing or otherwise conveying any interest in the subdivided land until compliance has been made with the ALSZD Ordinance B. Injunctive relief to compel compliance by any person with the provisions of the ALSZD Ordinance
Sec 5 – Definitions; Lot Split		Added “Lot split” Lot split or replat of a previously approved subdivision plot which increases the number of lots, plots, or parcels – and thus decreases the size of one or more of the plots - shall not be allowed per Lincoln County Subdivision Act 2008-01.
Sec 5 – Definitions; Replat		Added “Replat” A change in the map of an approved or recorded subdivision plat, if such changes affect any street layout or frontage, or any lot line, or it affects any plan legally recorded prior to the adoption of any regulation controlling subdivision.
Sec 5 – Definitions; Subdivision (uppercase)		Add “Subdivision (uppercase)” “Subdivision” means an area of land within New Mexico, including land within a previously approved Subdivision, the surface of which has been divided into two or more parcels for the purpose of sale or lease, or other conveyance: or for building development whether immediate or future.
Sec 5 – Definitions; subdivision (lowercase)		Add “Subdivision (lowercase):” The division of land resulting in the alteration of parcel boundaries where parcels are altered for the purpose of increasing or reducing the size of contiguous parcels and where the number of parcels is not increased.
Sec 5 – Definitions; Surveyor		Add “Surveyor:” A person who is engaged in the practice of surveying and is qualified to so practice as attested by legal registration as a professional surveyor in the State of New Mexico.

ATTACHMENT 3

**Proposed Amendment to ALSZD Ordinance regarding
Section 29 – Variances, Conditional or Special Use Permits, Replats**

Section 29 – Variances, Conditional or Special Use Permits, Replats

- A. **Purpose.** Establish requirements and procedures for the granting of Variances, ~~and~~ Conditional or Special Use Permits, Replats that meet the requirements State Statutes, including but not limited to 3-21-8-C-1 NMSA 1978.
- B. **Applications.** The Property Owners or properly designated representative shall initiate the process by filing an Application for a Variance, Conditional or Special Use Permit, Replat Permit. While it is strongly suggested that the applicant have an informal discussion with the Zoning Commission before filing an application in order to be advised of any requirements or policies relevant to the request, applicant is solely responsible for meeting the requirements of the ordinance. Each application shall include all information required by the Commission's Application Handbook. Inaccurate or incomplete information may cause a delay in the hearing process.
- C. **Hearing.** A public hearing is required for all Applications for Variances, Conditional Use Permits, and Appeals. Hearings shall be held in accordance with the hearing and notice provisions below:
1. The applicant shall place public notice in one newspaper of general circulation in Lincoln County at least fifteen days prior to the hearing.
 2. Notice of the public hearing shall be mailed by the applicant, at least fifteen days prior to the hearing, by certified mail, return receipt requested to the owners, as shown by the public records of the Lincoln County, of lots within two hundred (200) feet, excluding public rights-of-way, for which application is made. If the requested action permits more than one building, the notification radius shall be increased to three hundred (300) feet, excluding public rights-of-way, of the boundary of the lot for which application is made. If the requested action is for improvements within the buffer area in the CC-C Zone, the notification radius shall be calculated as three hundred (300) feet from the boundary of the improvements.
 3. The applicant shall be responsible for locating the persons entitled to notice.
 4. When any of the lots immediately beyond the radius described herein is under the same ownership as the property that is the subject of the application, the owner of the lot(s) next adjacent, excluding public rights-of-way, shall be notified.
 5. All persons having an interest in the Application shall be given an opportunity to be heard at the hearing. Written comments will be considered by the Commission however the Commission is not required to accept written comments as having a basis in evidence unless the author is present to be questioned.
 6. Applicant shall provide to the Commission, an Affidavit of Publication, a list of property owners required to be notified, and receipts for all mailed notices.
- D. **Burden of Proof.** The applicant bears the burden of proving that special circumstances exist to justify its granting. If the applicant fails to comply with the Zoning District Commission's requirements, fails to appear at a hearing, or requests deferment of the hearing for more than sixty days past the date set in the published notice and/or written notice to property owners, the application shall be deemed to have expired.
- E. **Variances.**
1. **Generally.** Variances from the terms of the Zoning Ordinance shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the Ordinance deprives such property of privileges enjoyed by

other property in the vicinity and under identical zoning classification. Variances may only be granted for hardships related to the physical characteristics of land providing that:

- a. There are specific physical circumstances that distinguish the project site from its surroundings; and
- b. These unique circumstances would create an unnecessary hardship for the applicant if the usual zoning standards were imposed.

2. **Limitations on Variances.**

- a. A variance does not change the zoning of the project site. It cannot permit uses other than those already allowed under existing zoning.
- b. Variances are limited to those situations where the peculiar physical characteristics of a site make it difficult to develop under standard regulations. A variance is granted in order to bring the disadvantaged property up to the level of use enjoyed by nearby properties in the same zone. For instance, where the steep rear portion of a residential lot makes the site otherwise undevelopable, a variance might be approved to reduce the front yard setback and thereby create sufficient room for a home on the lot. Similarly, a parcel's shape might preclude construction of a garage unless side yard setback requirements are reduced by approval of a variance.
- c. Variances are only for use in unusual, individual circumstances. There is no basis for granting a variance if the circumstances of the project site cannot be distinguished from those on surrounding lots. For example, all things being equal, in a subdivision where lots are uniformly 40 feet wide, there is no basis for allowing one lot to be developed with reduced side yard setbacks.
- d. If development within a particular area is commonly leading to requests for consideration of variances, then the District should reassess the standards of the applicable zone and, if necessary, change them.
- e. Setback variances shall be limited for a specified intrusion into the setback and not for the entire setback.

3. **Requirements.** Variances are granted only when all of the following findings can be made:

- a. **Unique Circumstance.** That because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the requirements of the Zoning Ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification. A Variance cannot be granted for a self-imposed hardship.
- b. **No Special Privilege.** That the Variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zoning district in which such property is situated. In other words, the Variance is necessary to enjoy a basic property right available to other similarly zoned properties in the vicinity.
- c. **No Unauthorized Use.** The Variance does not authorize a use or activity that is not otherwise expressly authorized by the zoning regulations for the zoning district in which the subject property is located. A Variance cannot be granted to the Zoning Ordinance land use regulations.
- d. **No Adverse Impacts.** The Variance will not be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

4. **Approval.** Approval of Variances shall require a majority vote of the members of the Zoning Commission present. If approved, the Commission shall be required to make findings supporting its

decision. If an application is denied, the denial shall constitute a finding that the applicant has not shown that the conditions required for approval exist. No application for a Variance which has been denied wholly or in part shall be resubmitted for a period of six months from the date of the order of denial, except on grounds of new evidence or proof of change of conditions found to be valid by the Zoning Commission.

F. **Conditional or Special Use Permits.**

1. **Generally.** Certain Conditional Uses, as defined for each Zone defined by the Ordinance, may, under certain circumstances, be acceptable. When such circumstances exist, a Conditional Use Permit may be granted. The permit may be issued for a specified period of time, with automatic cancellation at the end of that time unless it is renewed, or conditions may be applied to the issuance of the permit and periodic review may be required. The permit shall be granted for a particular use and not for a particular person.
2. **Limitations on Conditional Use Permits.** No conditional use permit shall be given for a use that is not listed as a conditional use in the particular Zone in which it is proposed to be located. The Zoning Commission shall consider the effect of the proposed use upon the health, safety and general welfare of occupants of surrounding lands, existing and anticipated traffic conditions, including parking facilities, on adjacent streets and land, the impact upon the natural environment, and the effect of the proposed use upon the Land Use Plan. The Zoning Commission may grant the application by motion, imposing such conditions and safeguards as it deems necessary, or it may deny the application. In reviewing conditional uses in residential areas, the Zoning Commission shall consider particularly the response of adjoining property owners.
3. **Approval.** Approval of Conditional Use Permits shall require a majority vote of the members of the Zoning Commission present. If approved, the Commission shall be required to make findings supporting its decision. If an application is denied, the denial shall constitute a finding that the applicant has not shown that the conditions required for approval exist. No application for a conditional use permit which has been denied wholly or in part shall be resubmitted for a period of six months from the date of the order of denial, except on grounds of new evidence or proof of change of conditions found to be valid by the Zoning Commission.

G. **Replat (lot combination) Permits.**

1. **Generally.** All replats, parcel boundary alterations, and/or conveyance of surface property by easement shall be presented in writing and submitted to the Alto Lakes Special Zoning Commission.
 - a. Allowed lot combinations within ALSZD:
 - (1) The combining of one or more contiguous adjacent lots, all with common ownership, into a single lot, such that only one larger lot will remain.
 - (2) The combining of a vacant lot, by division between two adjacent lot owners, with the middle vacant lot divided in any proportion that equals 100 percent (i.e., 50/50, 60/40, 70/30, etc.) with the adjacent lots thereby forming two larger lots.
 - (3) Combinations may result in the expansion of the District, however a combination may not result in the decrease of the size of the ALSZD District.
 - (4) All replat fees are the responsibility of the owner(s) combining lots. No lot may be combined resulting in less than a 100% combination. No lot may be subdivided into a smaller parcel, nor sold in less than 100% of the original size.
 - b. Set back restrictions:

- (1) The more restrictive lot setbacks of the two lots shall apply to the replat of the combined lots. Reduction of setbacks due to lot combination is not allowed.

c. Zoning Restrictions:

- (1) The more restrictive zoning designation will apply to the replat combination.
- (2) If lot adjustment involves an adjoining lot having zoning other than R-1, (i.e., R-2 Multi-Family Residential Zone, C-N Neighborhood Commercial Zone, C-CC Country Club Commercial Zone, or CS Community Services Zone), and the division percentage of that lot (i.e., 50/50, 60/40, 70/30) is requesting a higher zoning use, the replat must be presented to ALSZD per the "Variance" process as outlined in Section 29 of the ALSZD Ordinance.
- (3) If lot is zoned R-1 Single-Family Residential, and the other lot is otherwise zoned, the new lot combinations would both be Zoned as R-1, or application may additionally be made for a change in Zoning via the Variance process as outlined in Section 29 of the ALSZD Ordinance.

2. The Replat Special Use and Review Process shall be as follows:

a. **Applications**

- 1) Each application shall be filed in accordance with the requirements and schedules set forth in Commission's Application Handbook
- 2) While the Commission will provide assistance to the applicant in filing applications, the applicant is solely responsible for meeting the requirements of the ordinance
- 3) No replat survey, lot splits, and or conveyance of surface property by easement shall be filed of record with Lincoln County Clerk without application and approval of the ALSZD Commission.
- 4) Inaccurate or incomplete information may cause a delay in the Approval process

b. **Plats.** All applications for Zoning District Permits shall be accompanied by a plat, showing with dimensions the lot lines, side, front, and rear setbacks, both in existence and proposed, utility easements, building or buildings, and their location on the lot, improvements such as drives, decks, and other information as may be necessary to provide for the enforcement of this ordinance, including, if necessary, a boundary survey and the staking of the lot by a competent surveyor or engineer.

c. **Signatories.** It is recommended the replat have the following signature blanks, and that approval should be in the following order of presentation:

- 1) **Dedication.** Claim of exemption approval from Lincoln County Sub Division Act, all related signatures shall be on replat survey or attached letter of exemption approval from Lincoln County. Claim of exemption from the Lincoln County Subdivision Ordinance will be provided and signed by the Lincoln County Director of Zoning (see Exemptions to Lincoln County Subdivision Ordinance 2008-01).
- 2) **Utilities** (example)
 - a) Wind stream communication
 - b) Baja Broadband
 - c) Otero Electric Coop
 - d) Alto Water District
- 3) **Zoning/Club**
 - a) Alto Lakes Special Zoning District (ALSZD)
 - b) Alto Lakes Golf & Country Club (ACC)

- 4) **Village of Ruidoso.** After all above signatures have been acquired:
 - a) Village Clerk
 - b) Village Mayor
 - c) Village Planning Director
- 5) **Lincoln County**
 - a) Planning Director
 - b) County Manager
 - c) Others as a New Mexico professional surveyor or Lincoln County Planning Director may feel are needed.

d. **ALSZD Commission Review**

- 1) The District Zoning Commission will review the application, and if found to be conforming, comment from the public will be solicited. The replat application shall be approved by Commission vote at a regularly scheduled meeting.
- 2) Permitting by the Zoning District of Replat/Special Use shall be accomplished by signing the presented replat, if the District Zoning Commission has approved the application.
- 3) If the District Zoning Commission finds that the application is nonconforming, adverse to the general welfare of the residents and real property owners, the application will be denied and resent to applicant in writing with Commission comments as to adverse findings. At that time the applicant may withdraw the application, or file an application for a Variance in light of the Commission's comments. Variance application will conform to Section 29 of the ALSZD Ordinance.

- H. **Notice of decision.** The applicant shall be notified in writing of the action taken by the Zoning Commission within 30 days of the public hearing. If the application has been granted, the Variance or Conditional Use Permit shall be issued upon the signature of the Chairman or Vice-Chairman of the Zoning Commission, and any conditions, automatic termination date, or period of review shall be stated on the notice.
- I. **Appeal.** Decisions of the District Zoning Commission issued during a public hearing may be appealed. Every owner of property that lies within the radius of properties requiring notification shall have standing to file an appeal. The District Zoning Commission may, in its sole discretion, grant any other interested party standing to file an appeal.
1. Notice of intent to appeal any decision of the District Zoning Commission shall be filed in writing within fifteen days from the date of the decision. The Notice shall state the legal basis upon which the appellant(s) believe the decision is in error. Notice must be mailed to the District Zoning Commission by **Certified Mail** with Return Receipt and must be accompanied by the Filing Fee for Appeal of Variance, Conditional or Special Use Permit, or replat.
 2. The District Zoning Commission shall schedule a public hearing on the appeal not less than forty-five days nor more than sixty days following receipt of the Notice of Appeal. The District Zoning Commission shall notify appellant of the hearing date by Certified Mail.
 3. Upon receipt of the notice of hearing date, Appellant(s) shall be required to meet the notification provisions of paragraph C above.
 4. The District Zoning Commission shall be provided with all appeal documentation not less than fifteen days prior to the scheduled hearing.
 5. The decision on the appeal shall require approval of a minimum of three (3) members of the District Zoning Commission.

6. The appeal decision of the District Zoning Commission shall be final; however, the appellant may appeal the Commission's decision to District Court.
- J. **Agreement.** The property owner is required to agree to the following minimum conditions for inclusion in all Variances, Conditional or Special Use Permits, Replats:
1. To file the approved Variance, Conditional or Special Use Permit or Replat with the County Clerk within 30 days following the date of approval by the Zoning Commission.
 2. To obtain all necessary approvals and permits prior to commencing work on any improvements for which the Variance, Conditional or Special Use Permit or Replat is granted.
 3. To commence any work for which the Variance or Conditional Use Permit is granted within six months from the date of approval and to complete all work within one year of date of approval unless alternative dates are specified in the agreement.
- K. **Conditions.** Any conditions attached to the granting of the Variance, Conditional or Special Use Permit or Replat are deemed necessary to protect the public health, safety, and general welfare. Such conditions may include requirements relative to:
1. Open space and buffers.
 2. Walls, fences and signs.
 3. Surfacing of parking areas.
 4. Location of points of vehicular egress and ingress.
 5. Landscaping and maintenance thereof.
 6. Noise, vibration, odor, lighting, and health hazards.
 7. Such other conditions as will make possible the development of the district in an orderly, efficient manner, and in conformity with the intended purpose of this ordinance.
- L. **Revocation.** If the conditions and safeguards set by the Zoning Commission are violated, the Variance, Conditional or Special Use Permit, or Replat following a public hearing before the Zoning Commission, may be revoked by a majority vote of the Zoning Commission.
- M. **Fees.** Fees, in the amount specified in **Error! Reference source not found.** shall accompany each application and appeal. When an application or appeal is withdrawn after scheduling and advertising for public hearing by the District Zoning Commission, the filing fee shall not be refunded to the applicant.