



**Environmental  
Planning  
Commission**

**Agenda Number: 7  
Project Number: 1003859  
Case #: 13EPC-40137  
November 14, 2013**

**Staff Report**

**Applicant** COA Planning Department

**Request** To determine the status of the Andalucia Tract 6B site development plan for building permit, Project #1003859, 04EPC-01844

**Location** southeast corner of Coors & Montano NW

**Acreage** approx. 15 acres

**Zoning** SU-1/O-1, C-2 & PRD

**RECOMMENDATION**

**That the 2005 Andalucia, Tract 6B, SPBP is [expired/is not expired], based on Findings beginning on page ---**

**Carmen Marrone, Manager  
Current Planning Section  
COA Planning Department**

**Request**

This is a request for clarification by the EPC regarding the status of Project #1003859, 04EPC-01844, a site development plan for building permit (SPBP) that was approved by the EPC on 6/16/2005. The EPC's decision was upheld by the City Council on appeal on 9/19/05, with modifications to the EPC Findings and Conditions.

On January 25, 2006, the DRB conditionally approved the SPBP with final signatures to be obtained by board members representing Transportation Development and Planning. In May of this year, the applicant began meeting with Transportation and Planning DRB Members in order to obtain their signatures on the SPBP. On June 5 of this year, a letter was submitted to the DRB Chair by Mr. Tim Flynn-O'Brien as the representative of the Taylor Ranch Neighborhood Association, questioning the status of the subject site plan and whether it was expired.

The purpose of the current request is to determine the status of said site plan and whether the applicant can pursue final sign-off of the site plan at DRB.

Staff is not making a recommendation and is relying on the EPC to make the final decision.

City Departments and other interested agencies reviewed this application.  
Their comments can be found at the end of this staff report.

## I. INTRODUCTION

### *Proposal*

This is a request for clarification by the EPC on an issue related to EPC Project #1003859, 04EPC-01844, a site development plan for building permit (SPBP) that was approved by the EPC on June 16, 2005. The request is from the DRB Chair, stated in a letter to the EPC Chair, dated July 26, 2013. The letter poses the following question:

1. At what point did the EPC intend that the Plan be “adopted” or “approved” so as to start the Zoning Code’s seven year time period for plan expiration?

The EPC adopted Findings and Conditions associated with the approval of the 2005 SPBP. Condition #1 states,

*“The EPC delegates final sign-off authority of this site development plan to the Development Review Board (DRB). The DRB is responsible for ensuring that all EPC Conditions have been satisfied and that other applicable City requirements have been met including elements of the Coors Corridor Plan. A letter shall accompany the submittal, specifying all modifications that have been made to the site plan since the EPC hearing, including how the site plan has been modified to meet each of the EPC conditions. Unauthorized changes to this site plan, including before or after DRB final sign-off, may result in forfeiture of approvals.”*

At its January 25, 2006 meeting, the DRB conditionally approved the SPBP with final signatures to be obtained by board members representing Transportation Development and Planning. In May of this year, the applicant began meeting with DRB members representing Transportation and Planning to get their signatures on the site plan. On June 5 of this year, a letter was submitted to the DRB Chair by Mr. Tim Flynn-O’Brien as the representative of the Taylor Ranch Neighborhood Association, questioning the status of the subject site plan and whether it was still valid.

The purpose of the current request is to determine the status of said site plan and whether the applicant can pursue final sign-off of the site plan.

### *EPC Role*

The EPC’s role is to determine when and if the site plan for building permit, Project #1003859, Case #04EPC-01844 was “adopted” or “approved” by the EPC or if adoption occurs with the final sign off of the SPBP by the DRB based on Condition #1 of the Official Notice of Decision dated June 17, 2005 and in conjunction with Section 14-16-3-11(C) of the Zoning Code.

### *History/Background*

On **June 16, 2005**, the EPC conditionally approved Project #1003859, 04EPC-01844, a site development plan for building permit for Andalucia, Tract 6B containing approximately 15 acres and delegated final sign-off of the SPBP to the DRB (Condition 1). The EPC’s decision was appealed

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and referred to the Land Use Hearing Officer (LUHO). The LUHO recommended that the City Council grant the appeal and modify the EPC's Findings and Conditions as follows:

Finding #16 should be modified to read:

*The proposed buildings did not meet the height, bulk and setback requirements of the view preservation policies within the Coors Corridor Plan.*

Condition #9.a should be modified to read:

*All buildings must comply with all the requirements of Issue 4, Visual Impression and Urban Design Overlay Zone of the Coors Corridor Plan including, but not limited to the portion in Section C, View Preservation for Corridor Segments 3 and 4, Policy 1 View Preservation, Section B.1 and 2, Height, Bulk, and Massing that specified, "In no event will the building height be permitted to penetrate above the view of the ridge line of the Sandia Mountains as seen from four feet above the east edge of the roadway. Also, in no event will more than one-third of the total building height outside of the setback area for multi-story buildings be permitted to penetrate through the view plane. Not more than 50% of the view area shall be obscured by the bulk of the buildings placed on the parcel. The applicant shall ensure that all single story or multi-story buildings and towers comply with this requirement. The [2005] submitted site development will be required to meet the view preservation policies contained in the Coors Corridor Plan.*

In addition, the LUHO recommended an additional condition for approval by the City Council:

*Measurement for the view plane on Coors Boulevard shall be taken from the east edge of the east driving lane as it exists today.*

**Note:** Final DRB sign-off of the 2005 SPBP will require compliance with the above conditions.

On **September 19, 2005**, the City Council voted to accept the LUHO's recommendation, in full.

On **January 25, 2006**, the DRB conditionally approved the SPBP with further sign-off delegated to DRB members representing Transportation Development and Planning (DRB Chair). To date, the final two signatures have not been obtained by Transportation or the DRB Chair.

In **October of 2011**, the property owner/applicant submitted an application for SPBP regarding the subject site. The intention was to have the 2011 SPBP supersede the 2005 SPBP. After many public hearings, the City Council ultimately denied the request for SPBP on **March 4, 2013**.

In **April of 2013**, the property owner/applicant of the subject site began inquiring about obtaining the final two DRB signatures on the 2005 SPBP and held separate meetings with various Planning and Transportation staff in order to address the EPC Conditions of Approval imposed by the EPC. The applicant was informed by the Zoning Enforcement Manager and other managers within the Planning Department that the 2005 SPBP was still active and that expiration of a SPBP occurred seven (7) years from DRB final sign-off.

On **June 5, 2013**, the DRB Chair received a letter from Mr. Timothy Flynn-O'Brien, Esq., as the representative of the Taylor Ranch Neighborhood Association, challenging the status of the 2005 SPBP. Mr. Flynn-O'Brien claims that adoption of the SPBP occurred with the EPC approval in June

of 2005. As such, the SPBP expired seven years after that date - June of 2012. According to Mr. Flynn-O'Brien, the applicant cannot seek final signatures on an expired SPBP and will have to re-apply for SPBP approval.

## II. ANALYSIS

### COMPREHENSIVE ZONING CODE

#### *Applicable Section Language*

Section 14-16-3-11

#### ***(C) Possible Termination of Site Development Plans for Sites which have not been fully developed.***

- (1) If less than one half of the approved square footage of a site development plan has been built or less than one half of the site has been developed, the plan for the undeveloped areas shall terminate automatically when specified below unless extended as provided below:
  - (a) Seven years after adoption of major amendment of the plan: within six months prior to the seven-year deadline, the owners of the property shall request in writing through the Planning Director that the Planning Commission extend the plan's life an additional five years. At an advertised public hearing, the Planning Commission shall grant approval if it deems that the Site Development Plan remains appropriate and the owner intends to fully develop the site according to the plan concept. The Planning Commission shall be less likely to terminate a site plan if there is little flexibility in how the site can be developed or if there is a strong architectural or landscaping character on the site which should be preserved.
- (2) (c) A major amendment of a Site Development Plan is an amendment adopted by the Planning Commission which is not a minor amendment as contemplated by §14-16-2-22(A)(6) of this Zoning Code.

The question before the EPC is whether the 7-year time clock starts with "adoption" or "approval" of the site plan by the EPC or the DRB. Zoning Enforcement Managers (ZEM), both past and present, have had a long-standing interpretation that a site development plan expires seven years after DRB sign-off of the plan.

#### ***Arguments for the Zoning Enforcement Manager's interpretation***

The Zoning Enforcement Manager has relied on the first section of the ordinance, §14-16-3-11(C) (1), that provides the intent of the regulation – that is, in order for an owner to get at least one-half of the site built or developed, a DRB signed-off site plan is required. Development cannot occur with an EPC-approved site plan. Staff and applicants have relied on this interpretation since 1994 when this section of the zoning code was amended to establish procedures for possible plan termination (C/S O-23, Enactment No. 43-1994). Except for the current case in question, Planning Staff cannot recall a case where the current language in the ordinance has raised a question.

***Arguments against the Zoning Enforcement Manager's interpretation***

The Taylor Ranch Neighborhood Association and the West Side Coalition of Neighborhood Associations disputes the Zoning Enforcement Managers' long standing interpretation of the ordinance and relies on the second part of the ordinance, §14-16-3-11 (C) (1) (a), that indicates that the seven-year time clock starts with "adoption or major amendment of the plan."

Regarding "major amendment of the plan", the 2005 SPBP is not considered an amendment of a plan since there is no previous plan to amend. The 2005 SPBP is the first site plan to receive conditional approval by the EPC.

Regarding "adoption of the plan", the Zoning Enforcement Manager considers adoption or approval of a plan to occur with the final signature of the DRB.

***EPC Condition of Approval #1***

Condition #1 of the 2005 SPBP is standard language that the EPC adopts when approving site development plans. This condition is still being applied today. A question for the EPC to consider is whether this condition means that the site development plan is officially approved by the EPC or the DRB. It is the Planning Department's belief that Condition #1 indicates that final approval of the site plan does not occur until the DRB signs off on the plan. An applicant cannot move forward with development of a site until the plan is officially signed off by the DRB. The DRB sign-off is the second step in the approval process and without the sign-off, approval is not complete. The Planning Department equates DRB final sign-off with final "adoption" of the plan.

***III. AGENCY & NEIGHBORHOOD COMMENTS***

***Reviewing Agencies***

The application was distributed to all of the regular agencies for comment. No comments were received.

***Neighborhood/Public***

The La Luz Del Sol N.A., La Luz Landowners Assoc., Taylor Ranch N.A. and the Westside Coalition of N.A.s were notified regarding this request. Comments have been received from some of the associations indicating opposition with the Zoning Enforcement Manager's and the Planning Department's interpretation regarding which body actually adopts a site plan. The Neighborhood Associations believe that adoption of a site plan occurs with EPC approval.

Letters to the EPC have been submitted by Tim Flynn-O'Brien, Esq., representing the Taylor Ranch N.A. and by Catherine F. Davis, P.C., representing the property owner/applicant. Both attorneys have expressed opposing views of the matter and are relying on the EPC to make the final decision.

Mr. Flynn-O'Brien asserts that the ZEM's interpretation regarding site plan expiration is inconsistent with the purpose of the ordinance, which is, "to terminate site plans so that development is subject to current plans." He claims that if the time clock starts after final DRB signoff, it would allow site plans to have an infinite life if the developer does not obtain sign off. "This is inconsistent with the plain language, legislative purpose, legislative history and the City's written interpretation of §14-16-3-11". Mr. Flynn-O'Brien emphasizes this point by pointing out that the Official Notice of Decision for the 2005 SPBP includes information from the Planning Department that states, "Generally, plan approval is terminated 7 years after approval by the EPC." This statement was changed in 2010 to simply refer to §14-16-3-11 regarding site plan termination.

Ms. Davis, who represents the applicant for the 2005 SPBP, is of the position that the EPC delegated final sign-off authority to DRB, therefore the Plan's adoption date is not until DRB sign-off. Ms. Davis also claims that the infrastructure on the site has been fully constructed, which amounts to at least \$6,500,000. She refers to a letter from the City Engineer to the applicant dated April 14, 2010. This letter refers to a Subdivision Improvements Agreement (SIA) between the applicant and the City of Albuquerque, executed on September 27, 2005. Staff has not verified whether the SIA is part of the overall site development for subdivision for Andalucia North (approx. 70 acres between Montano and Learning Rd.), which was also approved by the EPC at around the same time as the 2005 SPBP or if the SIA is part of the 2005 SPBP for Tract 6B, approximately 15 acres. Since the 2005 SPBP did not receive conditional approval by the DRB until January 25, 2006, it appears that the \$6,500,000 infrastructure costs are associated with the overall site development for subdivision.

#### ***IV. CONCLUSION***

Mention that Staff has prepared Findings of Fact that provide historical context for the case. Staff is not making a recommendation, rather Finding #18 presents options from which the EPC must choose.

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**FINDINGS – 13EPC 40137, to determine the status of the Andalucia, Tract 6B Site Development Plan for Building Permit, Project #1003859, Case #04EPC-01844**

1. This is a request for clarification by the EPC regarding the status of the Andalucia, Tract 6B Site Development Plan for Building Permit (SPBP), Project #1003859, Case #04EPC-01844. The subject site is undeveloped and located at the southeast corner of Coors & Montano NW and contains approximately 15 acres.
2. The SPBP was approved by the EPC, with Conditions, on June 16, 2005. Condition #1 states, “The EPC delegates final sign-off authority of this site development plan to the Development Review Board (DRB). The DRB is responsible for ensuring that all EPC Conditions have been satisfied and that other applicable City Requirements have been met, including elements of the Coors Corridor Plan. A letter shall accompany the submittal, specifying all modifications that have been made to the site plan since the EPC hearing, including how the site plan has been modified to meet each of the EPC conditions. Unauthorized changes to this site plan, including before or after DRB final sign-off, may result in forfeiture of approvals.”
3. The Official Notice of Decision regarding the SPBP, dated June 17, 2005, includes standard template language that informs the applicant of his responsibility for completing the development process. The last section of the template language states, “Successful applicants should be aware of the termination provisions for Site Development Plans specified in Section 14-16-3-11 of the Comprehensive Zoning Code. Generally, plan approval is terminated 7 years after approval by the EPC.”
4. The EPC’s decision of June 16, 2005 was appealed by the La Luz Landowner’s Association. The appeal was referred to the Land Use Hearing Officer (LUHO) who heard the appeal on August 24, 2005. The LUHO recommended that the City Council grant the appeal and modify the EPC’s Finding #16 and Condition #9.a. and to add clarifying language regarding the location of where the measurements should be taken of the view plane on Coors Blvd. On September 19, 2005, the City Council voted to accept the LUHO’s recommendation, in full.
5. At its January 25, 2006 meeting, the DRB conditionally approved the SPBP but withheld the final signatures of the individual board members representing Transportation Development and Planning.
6. In October of 2011, the property owner/applicant submitted an application for site development plan for building permit approval regarding the subject site. The intention was to have the 2011 SPBP supersede the 2005 SPBP. After several public hearings, the City Council ultimately denied the request on March 4, 2013.

7. In April of 2013, the owner/applicant began seeking final DRB sign-off on the 2005 SPBP involving the subject site. The applicant made several inquiries of Planning Staff, including the Zoning Enforcement Manager, the Urban Design & Development Manager and the Current Planning Section Manager regarding the status of the 2005 SPBP and whether the applicant could seek final sign-off of the 2005 SPBP. In all instances of inquiry, the Planning Staff determined that the 2005 SPBP had not expired and that the applicant could proceed with final DRB sign-off of the 2005 SPBP.
  
8. On June 5, 2013, the DRB Chair received a letter from Mr. Timothy V. Flynn-O'Brien, Esq., as the representative of the Taylor Ranch Neighborhood Association, challenging the status of the 2005 SPBP. Mr. Flynn-O'Brien claims that pursuant to Section 14-16-3-11 (C) of the Zoning Code, the SPBP expired on June 16, 2012, seven years after EPC approval of the plan.
  
9. Section 14-16-3-11 (C) (1) of the Zoning Code states,  

If less than one-half of the approved square footage of a Site Development Plan has been built or less than one-half of the site has been developed, the plan for the undeveloped areas shall terminate automatically when specified below unless extended as provided below:

  - (a) Seven years after adoption of major amendment of the plan: within six months prior to the seven-year deadline, the owners of the property shall request in writing through the Planning Director that the Planning Commission extend the plan's life an additional five years. At an advertised public hearing, the Planning Commission shall grant approval if it deems that the Site Development Plan remains appropriate and the owner intends to fully develop the site according to the plan concept. The Planning Commission shall be less likely to terminate a site plan if there is little flexibility in how the site can be developed or if there is a strong architectural or landscaping character on the site which should be preserved.
  
10. The long-standing interpretation of the current and past Zoning Enforcement Managers has been that a site development plan expires seven years after DRB sign-off of the plan. The reason for this interpretation is that they have relied on the first section of the ordinance, §14-16-3-11(C) (1), that provides the intent of the regulation – that is, in order for an owner to get at least one-half of the site built or developed, a DRB signed-off site plan is required. Development cannot occur with an EPC-approved site plan. This same interpretation was communicated to the applicant in April of 2013 when he began pursuing final sign-off of the 2005 SPBP.
  
11. Less than one-half of the approved square footage of the Site Development Plan has been built.
  
12. The Taylor Ranch Neighborhood Association and the West Side Coalition of Neighborhood Associations disputes the Zoning Enforcement Managers' long standing interpretation and relies



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on the second part of the ordinance, §14-16-3-11 (C) (1) (a), that indicates that the seven-year time clock starts with “adoption or major amendment of the plan.” (emphasis added)

13. Section 14-16-3-11 (C) (2) (c) of the Zoning Code states that “A major amendment of a Site Development Plan is an amendment adopted by the Planning Commission which is not a minor amendment as contemplated by §14-16-2-22(A)(6) of this Zoning Code.”
  14. The 2005 SPBP is not a major amendment of a site development plan but is instead a site development plan awaiting final sign-off approval by the DRB.
  15. With regard to the standard Condition of Approval for site development plans that “delegates final sign-off authority of the site development plan to the DRB”, the Planning Department has interpreted this to mean that the DRB sign-off is the second step in the approval process and without the sign-off, approval is not complete. Final DRB sign-off is final adoption of the plan.
  16. There may be a discrepancy regarding §14-16-3-11 (C) (1) (a), that indicates that the seven-year time clock starts with “adoption or major amendment of the plan.” Adoption, as interpreted by the Planning Department, occurs with the final sign-off of a site plan while “major amendment of a plan” applies to EPC approval of a site plan.
  17. Several Neighborhood Associations were notified regarding this request including La Luz Del Sol N.A., La Luz Landowners Assoc., Taylor Ranch N.A. and the Westside Coalition of N.A.s. Comments have been received from some of the associations indicating opposition of the Zoning Enforcement Manager’s and the Planning Department’s interpretation regarding which body actually adopts a site plan.
  18. After reviewing the record and after much discussion, the EPC determines the following:
    - a. Adoption of a site development plan, as it relates to §14-16-3-11 (C), occurs with **[EPC/DRB]** approval of the plan.
    - b. The 2005 SPBP for Andalucia, Tract 6B, Project #1003859, Case #04EPC-01844, is **[expired/not expired]**.
    - c. The applicant for the 2005 SPBP **[can/cannot]** pursue final sign-off of the site plan at DRB.
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***Carmen Marrone, Manager  
Current Planning Section  
Urban Design & Development Division  
COA Planning Department***

***Notice of Decision cc list:***

Name, Address, City, State Zip Code

***Attachments***

## *CITY OF ALBUQUERQUE AGENCY COMMENTS*

NO COMMENTS RECEIVED REGARDING THIS CASE