



City of Albuquerque
Planning Department
Development Review Division
P.O. Box 1293
Albuquerque, New Mexico 87103

Date: September 19, 2008

OFFICIAL NOTIFICATION OF DECISION

FILE: **Project# 1004075**
08EPC-40047 AMNDT TO SECTOR DEV,
AREA, FAC, OR COMP PLAN

Forest City Covington NM LLC
801 University Blvd. SE, Ste 200
Albuq. NM 87106

LEGAL DESCRIPTION: an amendment to the Mesa del Sol Level B Master Plan regarding Wireless Telecommunications Facilities (WTF) for all or a portion of bulk land plat of Tracts 1A-16A, Mesa del Sol, zoned PC, located on east of Broadway Blvd. and south of Los Picaros Rd., containing approximately 3100 acres. Catalina Lehner, Staff Planner

On September 18, 2008 the Environmental Planning Commission voted to approve Project 1004075/08EPC 40047, an amendment to the Level B Community Master Plan regarding wireless telecommunications facilities (WTFs) for the approximately 3,100-acre Level B Plan area of Mesa del Sol, based on the following Findings and subject to the following Conditions:

FINDINGS:

1. This is a request for an amendment to the Level B Community Master Plan for an approximately 3,100-acre area of Mesa del Sol, generally located east of Broadway Blvd. and south of Los Picaros Rd., encompassing land near roughly: the intersection of Broadway Blvd. and Interstate 25, between Broadway Blvd. and Interstate 25, to the south and east of the regional park and amphitheater, east of the buffer with Kirtland Air Force Base (KAFB), and a few miles north of the southern boundary with Isleta Pueblo, commonly known as Mesa del Sol Level B Plan area.
2. The Planned Communities Criteria (PCC) Policy Element document (the "PCC") specifies that the Environmental Planning Commission (EPC) is the approval body for Level B Plans. Therefore, the EPC is the approval body for the proposed Level B Plan amendment, which is not required to be forwarded to the City Council.

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3. The two Level B Development Agreements, one with the City and the other with the Albuquerque/Bernalillo County Water Utility Authority. Both development agreements have been finalized and fully executed, which makes the Level B Plan final.
4. Policy guidance for review and approval of amendments to the Level B Plan comes from the Planned Communities Criteria (PCC) and the Level A Community Master Plan. The proposed amendment to the Level B Plan demonstrates *partial consistency* with the Planned Communities Criteria (PCC) and *partially furthers* the applicable Community Building principles in the Level A Plan.
5. The Level A Community Master Plan (the "Level A Plan") and the Level B Community Master Plan (the "Level B Plan") have been adopted and approved based on extensive analysis. The decisions made regarding these projects have found them to be in substantial conformance with applicable Comprehensive Plan Goals and policies.
6. The following Level A requirements are relevant to the proposed text amendment:
 - A. Land Use Requirement 3: The text amendment proposes to locate two of the six WTFs near open space areas, and one within a linear open space area intended to preserve views. The proposed locations do not show sensitivity to open space and do not further the concepts in Requirement 3. The request *does not further* Requirement 3.
 - B. Land Use Requirement 6: The proposed text amendment would introduce a strategy for providing wireless service in the Level B Plan area, though it does little to describe how the future WTFs are intended to fit into the larger context of Mesa del Sol and support the overall land use plan. The request *partially furthers* Requirement 6.
7. The following Level B requirements are particularly relevant to the proposed text amendment:
 - A. Land Use Requirement 4: The text amendment proposes to locate three of the six WTFs near open space areas, and one in a linear open space area. A primary WTF located in a linear open space area would adversely affect the area's ability to link land uses. The proposed locations do not show sensitivity to open space and *do not further* Requirement 4.
 - B. Government and Public Services Requirement 2: The proposed text amendment would introduce a strategy for providing wireless service in the Level B Plan area, though the language is unspecific in places and defines parameters rather loosely. The request *partially furthers* Requirement 2.
8. Planned Communities that are zoned PC, such as Mesa del Sol, are allowed to essentially "write their own rules" that differ from City ordinances of general application. In this case, the proposed amendment would result in wireless telecommunications regulations that differ substantially from the City's WTF regulations found in Zoning Code §14-16-3-17. The request would become part of the Level B Plan and would take precedence over the Zoning Code regulations, which would then apply only to issues not specified in the amendment.

9. This request was continued from the August 21, 2008 EPC hearing, where the EPC directed the applicant to provide additional information regarding the proposed height and siting of free-standing wireless telecommunications facilities (WTFs). The applicant has provided the following four scenarios based on: the Zoning Code regulations, use of three 90 foot primary WTFs, use of three 120 foot WTFs and use of two 150 foot WTFs.
10. As the approval body for the proposed amendment, the EPC has the authority to decide which scenario is the most appropriate and to place conditions of approval on the proposed amendment which would bring it closer to complying with the City's WTF regulations.
11. The affected Neighborhood Association (NA) is the Mountain View NA, which the applicant notified as required. Staff has not received any comments as of this writing.

CONDITIONS:

1. 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. 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.
2. Prior to final DRB sign off, the applicant shall meet with the Development Review Staff planner to ensure that the conditions of approval are met. Evidence of this meeting shall be provided to the DRB at the time of application.
3. Section 2(A)- Primary Wireless Telecommunications Facilities (WTFs):
 - A. The housing of the Primary WTFs shall be finished in a neutral color, such as pale blue, with a low level of reflectance, to make the PWTFs the least visible as possible from the surrounding area. The towers may also be finished in 3 separate harmonious color schemes which compliment each other.
 - B. The finish of the housing of the Primary WTFs shall be a material that has a low sheen and low level of reflectance, to make the PWTFs the least visible as possible from the surrounding area.
4. Section 2(B)- Secondary Wireless Telecommunications Facilities (WTFs):

The phrase "and be designed as free-standing WTFs" shall be added to the end of the introductory text of Subection B, to parallel the text in Subsection 2.(A).

5. Equipment Enclosures:
 - A. Landscaping shall be permitted around the wall of an equipment enclosure, but shall not constitute the enclosure itself.
 - B. Section 3.C.2 shall be clarified to state that "A tower structure that is part of a PWTF or SWTF need not be enclosed by a wall."
6. Section 3- Exceptions to the City's WTF Regulations (Substantive):
 - A. The SWTFs shall not (not may not) replicate the design of the PWTFs.
 - B. Subsection C.1 shall state that abandonment shall follow the requirements of Zoning Code § 14.16.3.17 except for portions of TWTFs that are architecturally integrated into the structures on which they are located. Sites that have visible ground equipment shall be rehabilitated and/or revegetated.
7. Section 3- Exceptions to the City's WTF Regulations (Clean-up):
 - A. The reference in 3.A.(1) to the Concealed Facility Criteria shall be corrected.
 - B. The phrase "shall be permitted" shall be added to Section 3.A.(4) to remedy the unfinished sentence regarding signage (maximum size 4 square feet) for the PWTFs.
 - C. The reference to the "housing" in subsections A.2 and B.2 shall be clarified to mean the "housing of the tower structure."
8. Section 4- Tertiary Wireless Telecommunications Facilities (TWTFs):
 - A. Like Subsections 4.(2)(a), (b) and (c), (d) shall require an affidavit as justification that the owners(s) of the PWTFs and SWTFs will not allow the applicant to place its telecommunications facility thereon, and/ or such owners are requiring payments thereof that substantially exceed commercially reasonable rates, despite attempts to negotiate commercially reasonable rates.
 - B. The terms "commercially reasonable" and "substantially exceed" in Subsection 4.(2)(a) shall be defined.
9. CONDITION OF APPROVAL FROM PNM:

Developer must contact PNM for services to be spot. It is the applicant's obligation to determine if utility easements cross the property and to abide by any conditions or terms of those easements.
10. CONDITION OF APPROVAL FROM THE ENVIRONMENTAL HEALTH DEPARTMENT:

The applicant shall coordinate with the Environmental Health Department, Env. Services Division regarding potential impacts from landfill gas generated by the South Broadway Landfill. The developers of this site shall follow the most current version of the City of Albuquerque Interim Guidelines for Development within City Designated Landfill Buffer Zones.

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PROTEST: IT IS NOT POSSIBLE TO APPEAL EPC RECOMMENDATIONS TO CITY COUNCIL; RATHER, A FORMAL PROTEST OF THE EPC'S RECOMMENDATION CAN BE FILED WITHIN THE 15 DAY PERIOD FOLLOWING THE EPC'S DECISION, WHICH IS BY **OCTOBER 3, 2008**.

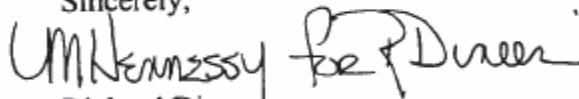
APPEAL: IF YOU WISH TO APPEAL A FINAL DECISION, YOU MUST DO SO BY **OCTOBER 3, 2008** IN THE MANNER DESCRIBED BELOW. A NON-REFUNDABLE FILING FEE WILL BE CALCULATED AT THE LAND DEVELOPMENT COORDINATION COUNTER AND IS REQUIRED AT THE TIME THE APPEAL IS FILED.

Appeal to the City Council: Persons aggrieved with any determination of the Environmental Planning Commission acting under this ordinance and who have legal standing as defined in Section 14-16-4-4.B.2 of the City of Albuquerque Comprehensive Zoning Code may file an appeal to the City Council by submitting written application on the Planning Department form to the Planning Department within 15 days of the Planning Commission's decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on a Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for filing the appeal. The City Council may decline to hear the appeal if it finds that all City plans, policies and ordinances have been properly followed. If they decide that all City plans, policies and ordinances have not been properly followed, they shall hear the appeal. Such appeal, if heard, shall be heard within 45 days of its filing.

YOU WILL RECEIVE NOTIFICATION IF ANY PERSON FILES AN APPEAL. IF THERE IS NO APPEAL, YOU CAN RECEIVE BUILDING PERMITS AT ANY TIME AFTER THE APPEAL DEADLINE QUOTED ABOVE, PROVIDED ALL CONDITIONS IMPOSED AT THE TIME OF APPROVAL HAVE BEEN MET. SUCCESSFUL APPLICANTS ARE REMINDED THAT OTHER REGULATIONS OF THE CITY MUST BE COMPLIED WITH, EVEN AFTER APPROVAL OF THE REFERENCED APPLICATION(S).

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

Sincerely,


Richard Dineen
Planning Director

RD/CL/ac

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cc: Brian Richmond, ANTHEM TELECOM, 436 Prospect Street, Newport Beach, CA 92663
Patty Grice, Mountain View NA, 206 Fentiman Pl. SE, Albuquerque, NM 87105
Marla Painter, Mountain View NA, 506 Valley High St. SE, Albuquerque, NM 87106
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