

**Summary Minutes**  
**City of Sedona**  
**Planning & Zoning Commission Retreat**  
**Vultee Conference Room, 102 Roadrunner Drive, Building 106, Sedona, AZ**  
**Thursday, February 13, 2014 – 1:00 p.m.**

**1. VERIFICATION OF NOTICE**

Chair Losoff verified the retreat had been properly noticed.

**2. CALL TO ORDER & ROLL CALL**

Chair Losoff called the retreat to order at 1:00 p.m.

**Roll Call:**

**Planning & Zoning Commissioners Present:** Chair Marty Losoff, Vice Chair Hadley and Commissioners Eric Brandt, John Currivan, Scott Jablow, Kathy Levin and Norm Taylor

**Staff Present:** Mike Goimarac, Audree Juhlin, Cynthia Lovely, Cari Meyer, Donna Puckett, Mike Raber and Ron Ramsey

**3. ANNOUNCEMENTS & SUMMARY OF CURRENT EVENTS BY COMMISSIONERS & STAFF**

The Chair explained that the retreat will be informal and there was no request for other announcements.

**4. RETREAT**

**a. Discussion: Legal overview of zoning law (1 hour)**

Mike Goimarac addressed the following points in a PowerPoint presentation:

- Definition of zoning - "Ordinance or bylaws adopted by cities and towns to regulate the use of land, buildings and structures to the full extent of the independent constitutional powers of cities and towns to protect the health, safety and general welfare of their present and future inhabitants."
- Competing Objectives are the police power needs, aesthetics and small town character versus the private property rights. P&Z is a balancing entity; it isn't one to curtail development or design projects to fit individual needs. The Commission isn't the architectural committee for the City or to determine how many pounds of flesh can be extracted from a developer to get something for the City.
- Key Principles in Zoning
  - Equal Application - fairness. Ensure the public and any developer or property owner is assured of equal application and fairness.
  - Protection from undesirable impacts on adjacent lands.
  - Proportionality of requirements. There has to be a reasonable nexus between what we ask a developer to do and those concepts of advancing health, safety, welfare, aesthetics, etc. Provide an open process to avoid the perception that your minds are made up. As a "police power", we are controlling the excesses of human activity.
- Types of Constitutional Claims - property rights are ingrained in both the State and Federal Constitution, and when they are violated, people make claims against municipalities, including "taking" claims.  
The 5th Amendment of the Federal Constitution states:
  - "Nor shall private property be taken for public use without just compensation". It is not just taking the bare land and using it for a governmental purpose, it is taking away

some of those bundles of rights that people claim they have, and those are "regulatory takings".

- "No person shall be deprived of life, liberty or property without due process of law." Due process of law is a Planning & Zoning meeting, a meeting where we give notice of actions to be taken, we give them an opportunity to be heard, and it is done before a fair and impartial tribunal. Some people may claim they were not given a fair hearing; the Commission was biased or didn't give notice to neighbors, etc.

The 14th Amendment of the Federal Constitution states:

- "No state shall deny to any person within its jurisdiction the equal protection of the laws." For property, it means that if the property is zoned under one zoning category, then the expectation is that properties under that zoning should be treated the same. If they are treated differently without a rational basis, then you could run into trouble.
- Three Categories of Taking Claims
    - Physical Occupation Cases - the City decides it wants a property and the owner doesn't want to part with it, and the City exercises the right of eminent domain and takes it.
    - Regulatory Takings - when actions are being construed or a property owner alleges that the City, by its laws, rules or decisions, has deprived an owner of property rights and it diminished the value of the property.
    - Dedications and Exactions - when land use decisions that condition the approval of a development on the dedication of property or giving up property rights, etc. For example, an approval of a CUP or Development Review can be conditioned on the developer giving the City something, but there are some rules behind that.
  - What is a Regulatory Taking? Anytime the government rules interfere with any use of any private property - in entirety, partial or temporary, and these things can come about through zoning regulations, wetlands protection, etc.
  - *Pennsylvania Coal Company v. Mahon* case - is one of the first cases that dealt with a regulatory taking. The issue was that Mahon bought land and gave his underground rights to Pennsylvania Coal, and he also said that he waived any right to sue. Pennsylvania Coal is planning to mine coal under his property, but the Pennsylvania Legislature enacted a law that says if you mine under a person's property and there is any chance of it subsiding, you aren't allowed to mine there. The coal company sued, because they were prevented from mining there and the outcome was the U.S. Supreme Court sided with the coal company and said it was a regulatory taking.
  - The Holmes Rule - Chief Justice Oliver Wendell Holmes said the general rule is that while property may be regulated to a certain extent, if the regulation goes too far, it will be recognized as a taking. The question is how far is too far.
  - *Penn Central Transportation Company v. the City of New York* case - The issue was that the developer wanted to build a 50-story skyscraper on top of Grand Central Station and it was an historic landmark. The Commission indicated they could build 17 stories on top and sell the extra airspace rights to other building projects, so they were being given the same value. The lawsuit went to the U.S. Supreme Court and the court ruled there was no taking, because it wasn't interfering with the present use, they had the value of the other, they weren't completely prohibited from occupying the airspace above the terminal, and the airspace rights were transferrable; however, there were some factors the Court said to look at when you do a regulatory taking.
    - The character of the regulation - one factor was the historical nature of the structure and the Court indicated that you can go a little further in these kinds of cases to preserve historic buildings.
    - The economic impact of the regulation upon the private property owner.

- The extent to which the regulation interferes with the distinct investment-backed expectations of the property owner.

This case is a good example of the kind of analysis that Commissions need to go through. You don't see that the Commission wanted some community benefits, etc.; it has to relate to the property itself and the development in question.

- *Lucas v. South Carolina Coastal Commission* case - Mr. Lucas bought two lots and intended to build two homes, and then South Carolina passed a law called the "Beachfront Management Act" that didn't allow any more houses to be built, so he sued and the court said it was a taking, because he couldn't do anything and he was denied all viable use of the property, so they awarded him \$1.2 million. The issue was why the burden to protect the beach should be put on Mr. Lucas, and the court said, "Regulations that deny the property owner all "economically viable use of his land" constitute one of the discrete categories of regulatory deprivations that requires compensation without the usual case-specific inquiry into the public interest advanced in support of the restraint."
- *Dolan v. City of Tigard* case - The issue in this case is how far can the government go in requiring "compensation & mitigation" from property owners whose projects impact public interests? The Dolans wanted to expand their hardware store that was located on a busy street next to a river, and Oregon passed comprehensive land use planning regulations that required drafting plans and addressing flood control drainage, etc., and the City said the Dolans could do that, but the City wanted some land for flood storage, a bicycle path and help with traffic control, etc., so these exactions were added to his request. Mr. Dolan appealed and the court said the City made a mistake. One of the principle purposes of the Takings Cause is "to bar government from forcing some people alone to bear public burdens, which in all fairness and justice, should be borne by the public as a whole." The court said it was not proportional and he was required to do more than what he was causing. On the bike path, the court said, "Such public access would deprive the petitioner the right to exclude others, one of the most essential sticks in the bundle of rights that are commonly characterized as property." There was no nexus between his expansion of a hardware store and requiring him to dedicate land for a bike path, and that connection must always be kept in place, when developers are asked to do things. Is the request really related to their development, etc.? No case was found that says that in order for a property owner to exercise use of his property, he has to give a community benefit first, so that term is foreign in these cases. The cases are saying that you have to look at the impacts and any conditions imposed have to be related roughly proportional to the impacts they create.

Regarding a question about property owners who need a zone change in order to develop, Mike Goimarac indicated that is different to a degree. You do have more latitude, because people don't have a constitutional right to a rezoning. Zoning is a legislative decision and you do have more discretion, etc., but if the motives aren't proper or if it can be perceived that the owner isn't being treated equally to other similarly-situated properties, etc., you could run afoul of the fairness concepts. The bottom line in the case is that there was no proportionality between impact and mitigation and there must be a reasonable connection. The public greenway didn't address floodplain or traffic impacts, etc., and dedication of land for the bicycle path was not related to traffic, so there was no nexus, connection or proportionality; therefore, the City overstepped its bounds.

Regarding a question about what the city could have done to avoid that from being a taking, Mike Goimarac explained that it was a taking and the owner should have been compensated for it, rather than saying it was a requirement to get the permit. Development Agreements are one way to avoid takings, because there is a contractual agreement in terms of the give and take. You want to get any voluntary commitments on the record, and when people suggest things they can do, always try to make that connection between that and satisfying some health and safety concern, if you connect it to satisfying a community need, rather than something all developers are expected to give. For example, if a

developer is willing to put in a right-turn lane and we can show that is necessary, because the development will increase traffic, then yes, we will take that. Always try to attach what you are getting to the satisfaction of community concerns.

Ron Ramsey pointed out that both of those Supreme Court cases were the result of the city taking action from state law that was "in the code". The problem was the state law itself, so it isn't a safe harbor, because you can identify that the Land Development Code says you have to do this community benefit. There is still the obligation to balance what is proportional to that project, in terms of what that project should be offering, if anything.

Mike Goimarac stated that in Arizona, A.R.S. 9-513 says, "A city or town or an agency or instrumentality of a city or town shall comply with United States Supreme Court cases *Dolan vs. City of Tigard*, *Nolan vs. California Coastal Commission*, *Lucas vs. South Carolina Coastal Council*, and *First Evangelical Lutheran Church vs. City of Los Angeles*." It is basically saying that you have a mandate to live up to the principles of these cases.

- The Nolan/Dolan Test
  - Requires an "essential nexus" between a legitimate state interest and the condition that the government has placed on approval.
  - Requires that the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." In other words, we are not asking one property owner to bear too much of the burden in terms of satisfying the public need. "A city must make a showing of "rough proportionality" between the required dedication and the proposed development's impact. That balance must be kept in mind; tie the community benefit to a legitimate state interest.

Chair Losoff suggested proceeding to the Arizona Taking Cases; however, Mike indicated that he first wanted to talk about one more case.

- *Del Monte Dunes v. City of Monterey* case - The owner wanted to build a 344-unit residential complex, but P&Z denied it and said if the owner would do 264 units, they would probably approve it. The owner came back to P&Z with plans for 264 units, and the Commission wanted him to go back and make it 224 units, which the owner did. P&Z then denied it, so the owner appealed to the City Council. The Council overturned the denial and sent it back to P&Z with instructions to consider 190 units, but the Commission decided it didn't like 190 units, so the Council overruled the Commission and granted an 18-month permit to develop, but when the owner went for a Development Review, P&Z didn't like the development plan and claimed that as part of their rejection the proposed development would damage or endanger the Smith's Blue Butterfly. The developer then sued and the trial court awarded him \$1.45 million, which the city said wasn't fair and appealed it to the U.S. Supreme Court. The city's main issue was juries having the right to decide whether or not the city abused its discretion; however, the Supreme Court said that in these kinds of cases, juries can decide if Planning & Zoning Commissions have abused their discretion, so it is not just a judge, juries can second guess the Commission's decisions. The question asked is, "Did the landowner enter the project with good intentions to meet every regulatory requirement, but was stifled by a governmental entity clearly acting on a subversive agenda?" So, it is really important in the way the Commission interacts with developers and members of the public to remain fair. At the beginning of a meeting, you don't want to seem to be saying that you have your mind made up and you aren't going to vote for this, because it tells a developer and a jury that you weren't really looking at the facts and you might have a different agenda. You always want to ensure you are doing due process.
- Three Categories of Due Process Claims
  - Decision is not adequately supported by the record. When you make a decision it is always good to include a factual basis behind the decision.

- Decision is irrational - no reasonable basis in law.
  - Decision is outside the limits of delegated authority.
- *Corrigan v. City of Scottsdale case* - Mrs. Corrigan owned ranchland next to the McDowell Mountains and she wanted to develop it, but Scottsdale wanted to preserve some of the hillside, so the city enacted an ordinance regulating hillside development. The ordinance was eventually declared invalid, but Mrs. Corrigan sued claiming that the ordinance was on the books for five years and she wasn't allowed to develop the property, so for that time, the city took her property. The Arizona Supreme Court agreed that cities and towns are not only responsible for taking property permanently, but if you temporarily take it, you have to compensate people, so the Commission needs to watch out for temporary takings also. The Court held that, "Once an unconstitutional taking is shown, a person should receive damages for the time in which the confiscatory zoning ordinance has 'taken the property' that is, the time between taking and the invalidation of the ordinance."
  - *Aegis of Arizona L.L.C. v. Town of Marana case* - The developer wanted to put in a medical waste disposal company in a heavy industrial zone, and he met with the development director who gave him a verbal okay, so the developer bought the property; however, the neighbors complained and the city employee then writes a letter saying that after more consideration, it has been determined that a CUP is needed. The Commission then says no and the Council says no, so the developer sued, because the development director told him he could do it, his due process was violated, etc., he had protectable property interest in the granting of the CUP, and he was being denied a property use for political reasons. The court said that the developer didn't have a right to rely on oral preliminary decisions of the development director and he had no reasonable expectation of entitlement to have the CUP granted; therefore, no constitutionally protected property interest, and even if there was a property interest, there was no due process violation, and in order to show due process violation, it has to be something that shocks the conscience. One quote is, "The law is clear that listening to public opposition to proposed land uses is part of the legislative process of rezoning. Indeed, nothing is more common in zoning disputes than selfish opposition to zoning changes. The Constitution does not forbid government to yield to such opposition; it does not outlaw the characteristic operations of democratic governments, operations which are permeated by pressure from special interests." So as long as you are not doing something that shocks the conscience and you have factual reasons behind your decision and you state those on the record, making it clear that it is not the result of some bias, etc., then you will be safe. The court seemed to side on the concept that a CUP is more of a legislative act than an administrative act, and therefore, they gave them the discretion in that case -- more similar to a rezoning than a Development Review.

Ron Ramsey pointed out that it pays to define what is permitted in the districts, rather than having a C-1 district with 45 uses, if you have a C-1 through C-17, you can define exactly where that could be located.

- Summary Takings
  - Remember the Penn Central's three factors test regarding a partial taking
  - The Nolan/Dolan Test regarding exactions and dedications
  - Remember that a jury can now decide these cases and they will look at perceived motives
  - Remember that in Arizona, when a decision temporarily deprives a landowner of the use of property, a city is liable for the temporary deprivation.
- Summary Due Process
  - Make a good record with specific findings and reasons for the decision
  - Make sure decisions are logical and rational
  - Understand that it is expected that political pressures will come to bear on decisions and that a jury may look those potential political influences differently than a judge will

**b. Discussion: Legal review of state law, including, but not limited to, Senate Bill 1598, Open Meeting Law, and Recent Case Law (1 hour)**

Ron Ramsey referenced a summary by Frank Cassidy, the town attorney for Marana, who has been one of Ron's continuing authorities on zoning in Arizona; however, Chair Losoff suggested having the Commissioners ask questions now rather than waiting.

**Commissioners' Questions/Comments:**

- Commissioner Brandt indicated that the summary in the last slide were the best points in how it applies to the P&Z Commission and those were right on. In the Dunes situation, the best point is don't design the project for the applicant or say make it X number of units. Usually the applicant would come in with a new proposal and maybe those units are all on the beach, not the highway, so the Commission doesn't like that, etc. We don't know enough about each situation to apply it to our own projects, and it seemed that the examples were fairly conservative in their outcome, like the coal company saying that you can't regulate to not undermine private property. It is just like saying that you can't regulate a power company from polluting the air, but the 1970 EPA rules say you can regulate the pollution laws, so today, the Supreme Court might say that undermining of property is dangerous to the general public and that wouldn't be the finding today, so some of the examples aren't good specifics in his mind, but the summary was right on.
- Chair Losoff indicated that in his opinion saying that a developer should put in more glass, etc., is okay, but once it is past that and we are still insisting on things, or when just one person says something or we have our own personal feelings, we have to be careful when it reaches a certain stage. At a certain stage, we have to be very specific and know that it meets a specific standard.
- Commissioner Brandt noted that we all take short cuts and say we don't like it, but it is usually because the guideline says that it should be more like the buildings nearby, so maybe we just need to take the extra step of saying that because of guideline X, I don't care for it.
- Vice Chair Hadley agreed that at times it doesn't seem that something fits the Design Review Manual and some of those have been changed to be mandatory, like using materials that seem out of context, so the question is how much discretion does the Commission have.

Ron Ramsey explained that there are sections in the Design Review Manual that are fairly neutral and direct, but you can find sections that are inconsistent too, such as saying preserve view corridors, but then saying that we recognize that all development will impact views. The Commission is also going to ensure a project is consistent with the Community Plan as one of the criteria, and there is going to be quite a change. In the old Community Plan, you could find things like community benefits, but you won't see that as he indicated in his summary of quotes. You will see some language that seems to protect property rights and then some language that are the goals, especially when talking about land development goals and vision. You can rely on those, because you are supposed to look at the Community Plan, but beyond what you can point to, you are in a gray area.

- Chair Losoff referenced a former project when the Commission was told they met the criteria in good faith and here is what they are going to do if the Commission doesn't approve it, so there is discretion, but we have to be careful.
- Commissioner Currivan stated that the comment that the requirements in the Land Development Code are the minimum requirements indicates there is some discretion. There is also some material that says the things that don't require any discretion are probably handled by staff. The things brought to the Commission tend to be the ones that do require some discretion, so if we can get a better feel for how to exercise that discretion . . . Ron Ramsey explained that Mike Goimarac's point was how you balance that discretion with the rights of the property owner.

- Commissioner Currivan then commented that he isn't sure that they have to approve the project, because it meets these criteria; he is not sure that is quite right. There is enough in there that gives the Commission discretion. Ron Ramsey agreed that it gives some discretion, but the limitation of the discretion is going to be project by project. There are also projects where you want to focus on the number of units, because of the hillside, etc., and some of those questions can get into the problem of equal treatment. The same sort of criteria should be applied to a development in an R-1 area that you apply for a project in another R-1 area, for example. Of course you have some discretion, because you have to make certain findings, but they have to be rational and related to the project. Mike Goimarac cautioned that there might be a temptation to talk about current projects, but be careful in terms of the examples to ensure that they are truly hypothetical. Ron Ramsey explained that these are recurring themes.

Ron Ramsey then referenced the handout titled, "Learning Zoning From Legal Cases" and explained that it does touch on things like traffic studies, which has been a theme in almost every development project, and what weight you give traffic studies. Ron then explained the issue and read the content of the handout for the *Transamerica Title v. City of Tucson* case. He also stressed the Court's statement that the City cannot justify its actions simply by saying that more intensive uses can be made of B-1 zoned property than property zoned R-1.

- Commissioner Brandt indicated that the crucial point of that case is because they were using the residential property for commercial parking; however, Ron explained that their code allowed it. The Commissioner then indicated that in this request the outcomes were the same and the amount of traffic was the same, so there wasn't any increase on the impact, and that is how they based their findings. The lesson is don't allow commercial parking on residential property. The inference is that there are cases in Sedona that we shouldn't be doing things like they asked for, but if there had been an increase in traffic, they wouldn't have found it that way. Ron Ramsey explained that they would have to meet the "appreciable increase in traffic that in turn causes or adds to control or safety problems on the existing streets". The underlying theme is that they wanted to have the property owner widen Speedway at the property owner's expense, and it was based upon insufficient information about a traffic study and erroneous information about the potential of immediate projects adjacent to that, that would increase the traffic but was not the responsibility of this property owner. In the last quote, the Court said that the property owner gets the rezoning and doesn't have to do the dedications.
- Vice Chair Hadley noted that if the City had purchased the property, it would have been okay, and Ron Ramsey added or if there had been a study showing an appreciable increase in traffic related to additional hazards, etc., from this project.
- Commissioner Currivan indicated that under Sedona's rules, you can't use residential property for commercial parking and the other difference is when you are trying to do a study, you have to show the incremental impact, not the overall impact, because they had the right to put a commercial building on that one lot. The Court seemed to say take what they are already authorized to do as a baseline, and then look at how much additional traffic there will be. Ron Ramsey noted that it is a good case to remember when you are relying on traffic studies, and don't think about what is going on down the street, etc. In this case there was evidence that the City had a Master Traffic Engineering Plan, and this was consistent with that Plan, and that didn't help them.
- Chair Losoff asked about a proposed project with 300 units, and the Commission votes against it because 250 units would be better, but there are no reasons why and zoning allows for 300 units, so the Commission is off base, but what if the Commission says it wants 250 units, because of A, B, C and D. Ron Ramsey explained that the Commission can create A, B, C and D like drainage issues or the parking is minimal or the infringement on open space, etc., whatever it is that might be in the code that gives you a rational basis.
- Chair Losoff then asked if a developer comes in with a consultant, is it reasonable to say that the Commission wants a more independent study. Ron Ramsey pointed out that is

sending the message that the Commission doesn't trust the applicant and that is an improper comment, because it implies that you don't trust anything from that developer.

- The Chair then asked if there is a time it would be reasonable, like for a second opinion, and Ron Ramsey asked why the Commission would want a second opinion, the City has an Engineering Department and staff. Audree Juhlin agreed that staff does function as a second opinion, because they validate what is submitted.
- Commissioner Brandt noted that in the Tucson case, part of the language was adjoining the property there wasn't an appreciable change in traffic, so they used that really close nexus, but what about the increase in traffic it creates down the street and those owners had to make the street wider? Ron Ramsey explained that the court said you can't look upstream to justify this taking, and you can't tell the property owner that you are doing this taking, because you want to set it up so people downstream don't have to do the taking. The premise of the case is that nobody should have been required to widen the street, because of somebody else's traffic. It should be related to the traffic generated by that project. "You cannot rely on a traffic increase as a justification for an exaction for right-of-way unless it would be an appreciable increase in traffic, which in turn causes or adds to the control or safety problems on existing streets." You could look downstream, for example say there is a traffic circle downstream and the traffic is already going to be backing up, it is close to the premises, so with that test he just presented, you might succeed in passing that test. The Court isn't saying the traffic right in front of the property, and that is a valid comment by the Court and how the Court would look at an exaction for open space or a trailhead, etc. Can you show that the impact of that project is related to what you are asking for?

Ron Ramsey referenced a 2009 Training Memo and the Commission's conduct during the meetings. In 2009, there were some informal discussions occurring during the meetings and those raise a couple of issues. When the meeting is underway and there is a side conversation, you may be talking about something unrelated, but the public doesn't know that and the perception is that you have a side conversation going on about what the applicant is saying -- that is a no, no. The one foundational rule in the Open Meeting Law is that the public has a right to know how you think, and that is where you get the violations of informal conversations, the off-premises meeting of a quorum, and improper exchange of emails, etc. The common denominator is that the public doesn't know what you were thinking, because it wasn't in an open, publicized session. Another variation of that is to take a recess and two or three Commissioners talk together, so please don't congregate or talk to the applicant. You need to say you can't have that conversation; it has to go on the record.

Additionally, Ron explained that Commissioners can discuss agenda items with the press, and in the 2009 memo and in some Attorney General opinions, you aren't prevented from talking to the press about particular projects. You can also write editorials, but you cannot use the press as a sounding board to carry on a debate with an absent Council member, so if one or two of you were on opposite sides, you can make your comment to the press about your opinion, but you can't say that unlike your fellow Commissioner . . . , because then you are trying to initiate dialogue back and forth through the press. Your rights to speak to the public are not hampered just because you are a Commissioner.

Ron referenced the *Yetman v. Nauman* case that talks about conflicts of interest and indicated that at times people have said they are uncomfortable making a decision in certain situations, so they are going to abstain, but the Yetman case points out that it is okay to have a bias. We want dialogue and converging opinions, so just because something is a controversial item, it doesn't mean you should stay off of the record. There are rules and procedures for the Commission that were adopted in 1988 that talks about conflicts of interest in more detail. The case is instructive, because it says that you can go ahead and have a particular strong feeling about something, and that won't be a problem that would require you to recuse yourself.

Ron pointed out that in Article 10 of the Planning & Zoning Rules & Procedures, no member present may abstain from voting unless (a) that member was absent during all or a portion of a

hearing on a subject, or (b) because of a conflict of office, or (c) a conflict of interest exists according to Arizona Revised Statutes, so in the Commission's own rules, the Commission is urged not to abstain.

Regarding ex parte communications in Article 14, Ron read, "(a) Whenever any party initiates contact with a member regarding a filed application, the member shall refer that party to the staff. (b) Whenever an external contact persists in offering information, the member shall report the information, identity of the source, and date of the contact to the Commission for inclusion in its formal record. (c) Written information transmitted to a member shall be forwarded directly to the staff for review and incorporation into its report. (d) Members may seek information from other members, the secretary, the legal counsel or staff prior to a meeting, but no member shall discuss any application with any other party prior to the hearing or express any bias, prejudice, or individual opinion on proper judgment of the application prior to its hearing." Ron added that the point is not to continue a dialogue with the applicant if you can refer them to staff. You can't have a conversation like that without expressing opinions, and then it is not an opinion that has been expressed in public, in a group or called session. Additionally for clarification, Ron explained that if a member misses a hearing, it does not mean that the member must abstain, and the safe practice is if a neighbor or member of the public wants to discuss a project, the member should make sure that gets on the record somehow. Audree Juhlin explained that ex parte means one-sided; it is a one-sided discussion, and then you don't have the benefit of the rest of the Commission hearing what you are hearing.

Regarding Rule 4 in the February 11, 2009 memo to John O'Brien, Ron explained that is referring to City Council procedures and those have probably been changed, so that language may not exist today. There used to be a concern because there were some Commissioners and Councilors who loved to flow upstream and downstream with Councilors going to Commission meetings and Commissioners going to the Council meetings, but each body is supposed to make an independent determination in that process, so Commissions aren't supposed to be influenced and vice versa. Additionally, if Councilors listen to a project the Commission is hearing what is that Councilor going to do, and if the Councilor is there to find out what is going on, then they should read the minutes, and that was the genesis of what became their rules of Council.

Chair Losoff commented that it is best if the Commissioners don't attend Council meetings and Ron indicated that is true, on the projects; it is okay to hear a Council meeting on general public issues. Commissioner Currivan indicated there should be a difference between upstream and downstream. Commissioner Levin then asked about the role of the Council Liaison to the P&Z Commission and Ron Ramsey indicated they are possibly to report back. Commissioner Currivan pointed out that as a citizen, Commissioners have the right to attend City Council meetings and Ron Ramsey agreed; however, the best practice is if you went to a City Council meeting and one item is on zoning, and that is the only time in two years you attended a meeting, that would kind of imply why you are there or if you excuse yourself for that particular item, he would rather see that. Chair Losoff noted that in any case, Commissioners shouldn't speak to the issue and Ron Ramsey agreed that he certainly wouldn't recommend that.

Commissioner Brandt noted that the Council Liaison is there for almost every meeting, so he isn't there for just one project. Chair Losoff indicated that Councilor Ward has said that his role is to listen and not to participate, so he won't say anything, but will go back and talk to the Councilors about some of the issues. Councilor Ward recently heard the discussion on community benefits, so he talked to others about getting something set up between Council and the Commission to discuss community benefits.

*Chair Losoff recessed the retreat at 3:00 p.m. and reconvened the retreat at 3:12 p.m.*

Ron Ramsey indicated that he had noticed some inconsistencies in the past. Looking at the 1988 Operating Rules and Procedures, those are based on the 1988 ordinance, and the

ordinance goes on to cover such things as voting, etc., that is inconsistent with the operating rules, and both documents are probably not consistent with the ordinance as it became codified in the Land Development Code, so he will report back to the Commission on that. For example, a quorum under the rules was a majority of the members, but under the ordinance a quorum is a majority of the members present. At one point, he wrote a summary about the different statutes that address that issue based upon the different bodies you might be in front of or different requirements in terms of a vote. When the City Council has to pass something by a 2/3 vote, it is of the entire Council.

Ron indicated that in his memo, which the Commission doesn't have, he talked about community benefits under the new Community Plan. He developed a list and would like to get the Commission's feedback on that list. There is a good emphasis on what the Community Plan is not and on the fact that you have to preserve private property rights, and then there are some comments about the image of Sedona. One place states, "Sedona will have a unique and distinctive image and identity. Later on page 99 it says, "The term "community character" is hard to define, but it encompasses many things that contribute to the quality of life for residents. . . . However, for many, if not all, each experience is distinct. For example, many Sedonans still treasure a "small-town" feeling. Others see that small-town ambience slipping away with growth and new residents. One of the most obvious character features that a new arrival sees is a harmony in buildings and signage that have minimum visual impact. There are others who believe that this harmony is being lost as new development introduces different architectural designs and expression. These differences contribute to the vibrancy of the community . . ." Even the new Community Plan acknowledges that community character is variant and supposed to be divergent. He tried to excerpt from the Community Plan what the Commission will be looking at based on prior review of the Community Plan, to ensure your decisions are consistent with the Community Plan.

Chair Losoff explained that the City Manager is trying to form an advisory group regarding community benefits; however, Commissioner Levin noted that she didn't see any authority for it now, and Ron Ramsey indicated he had seen minimal authority for it in the past. Chair Losoff indicated that an issue coming up is if there is any authority. Kevin Snyder had indicated that he had never been involved with community benefits as much as in Sedona. Audree Juhlin explained that the purpose is that we have a mindset that exists at the Commission and Council level that you have to have some community benefits, so it is really evaluating that and determining if we do, then what is the policy by which we look at benefits. Mike Goimarac and Ron Ramsey have kind of outlined the legal parameters, based on the current project and not all of the other benefits we want.

Ron Ramsey indicated he had suggested that there should be a policy matrix adopted by the Council that looks at the projects and each project may have a stronger community benefit than another. One might be strong for trails and another might be strong for circulation, etc., and then they get so many points. If community benefits are a valid consideration, it tries to preserve some objectivity. Another problem when we had multiple Commissions was a project might go through Historic Preservation, Housing and P&Z with different emphases on different and competing community benefits.

Ron then commented that if some policy is adopted, will it be something upheld by a court in terms of a reference document? There are two pieces of state legislation; first was Prop 207, where if you were to pass zoning regulations and enactments or a property ordinance that diminishes the value of the property, the owner is entitled to compensation. We have owners sign Prop 207 waivers, because they voluntarily submitted for a rezoning, but the statute was trying to get to the point that if you created an exaction that causes a diminution in value of the property, you have to pay for it. You can't use conditions, community benefits, whatever you call them, as a way to build your city. More recent is SB1598, which is the Regulatory Bill of Rights that essentially says that anytime the City grants any license or permission or approval, etc., it has to be based on some established ordinance, statute or substantive policy statement,

and if you can't point to that, there should be fewer restrictions in terms of the application process. There are exceptions in SB1598, as it gets codified, for something initiated by the property owner, but in too many cases the property owner is carrying out what they administratively must do to make the application, because if they want any change on their property, they have to go through a Design Review or go through a rezoning. Therefore, he is not sure that, in most cases initiated by the property owner, you are free of SB1598. The solution is if this group creates some substantive policy statement you are on better ground when asking for a community benefit.

Commissioner Brandt asked about having nothing in the Community Plan regarding community benefits and Mike Raber stated that in Community Focus Areas, the Plan talks about community expectations and it is similar to community benefits in the current Plan, but the difference is that they have taken a higher level look at those, instead of getting very specific. Throughout the Plan those specific benefits have been consolidated and generalized in the new Plan, so they aren't as definitive. They pulled across those from the Special Planning Areas and kept those intact, and they are called Planned Areas in the new Community Plan. The term "community benefits" is used a couple of times to indicate those were pulled out, but they also generalized the benefits, so they aren't so specific. The generic benefits were intended to be for those Special Planning Areas, and that has sometimes been misread to be for anything. The Plan is specific about needs and benefits being applicable only in the Special Planning Areas.

Chair Losoff indicated that there is some parameter for some of the things and the group will put together perhaps a matrix, so some of these issues may be resolved. Commissioner Levin noted that there are some areas for which there are no community benefits. There was not a specific plan developed for a Community Focus Area that has a list of expectations, so outside of the 13, there may be things that come to the Commission for which there are no quotable expectations, because they couldn't do everything. Chair Losoff indicated that the community probably won't look at what the Plan states as much as how we come up with a series of benefits that relate.

Commissioner Currivan suggested making a distinction between situations when the applicant is requesting something from the City and situations when the applicant isn't requesting anything other than approval for something he already has a right to do. The Housing Policy makes it clear that if somebody is asking for a zoning change, we might say they need to do something in the way of affordable housing, but if they are not requesting a zoning change, it is a different situation, and whoever is coming up with that matrix ought to take that distinction into consideration.

Chair Losoff explained that the only time benefits come up is when there is a CUP or zoning application. Ron Ramsey indicated that he is still uncomfortable when it is said that if they want something, they have to give something. To give something, it still has to meet those foundational requirements of the court cases and it has to be related to the impact. Commissioner Currivan noted that the applicant doesn't have the expectation of approval; it's not like if he can show that there is no impact, then he has an absolute right to have a zoning change, etc. Ron Ramsey explained that there is criteria applied on those and he agrees that the general criteria meets the health, safety and welfare, and conforms to the Community Plan, etc., but again, it is not just automatic that he is asking for a change, so we get to have something. There has to be some valid discussion about how that change impacts the surrounding neighborhood, etc.

Commissioner Brandt indicated that the implementation pages of the new Plan do say that there are exactions or community benefits; the wording is in the Community Plan, so do those enable the rest of the process? Mike Raber indicated that Ron is talking about the kind of benefits that had been listed in the current Plan that didn't have any link to a specific area, and you won't find that in the new Plan; there isn't a general list. Commissioner Brandt indicated he

is referencing pages 112, 116 and 120 about the implementation policies. Ron Ramsey pointed out that the language says, "The exaction must be directly related to the need created by the development, in proportion to the cost of the development", and that is essentially verbalizing what those cases said.

**c. Discussion: Roles and Responsibilities of the Planning and Zoning Commission, including, but not limited to, procedures, review authority, decorum, and behavior (1 hour)**

Audree Juhlin distributed a handout titled *City of Sedona Planning & Zoning Commission Roles and Responsibilities* and highlighted some of the public's perceptions of the Commission. The first thing is to listen and relay back that you are listening. You can show you are listening by not having the side bar conversations, and another reason is because those side bar conversations are in the recording. Acknowledge what you heard, and then give the reasons for your decision.

Chair Losoff noted that when the public forum is closed, we could summarize some of the questions and ask staff to respond. Audree Juhlin added that the applicant has prepared for weeks and spent thousands and thousands of dollars to get before the Commission, so it is important to give them their day in court and be respectful of what they are saying. Also, listen to yourself -- how are you being perceived in what you are saying. Tone of voice goes a long ways and 80% to 90% of communication is non-verbal communication, so how are you receiving their information and how are you talking back to them? Are you being accusatory, defensive, etc.? So look at how you are participating in that dialogue.

Audree Juhlin added that when citizens become angry, it is important not to engage in dialogue back and forth -- listen to their input, but don't engage in that dialogue. Regarding questions for staff or applicants, ask the questions. No question is dumb; it helps the perception that you want to know what is going on with the project, so don't assume the unstated. If you want more information, ask for more information. If they say it won't impact traffic and we don't have a Traffic Impact Analysis, then say you need it to help make your decision. Additionally, an opinion is just an opinion until it is backed up by facts.

Ron Ramsey asked about the most effective procedural sequence and indicated that it is generally to open the agenda item with questions between the Commission and staff, then you go to the public forum, but there is no dialogue back and forth. You wait until the public forum is over, and then respond, and then you go to the applicant, or do you have the applicant speak before the public. Chair Losoff indicated that the Commission has been doing the applicant first, but the Commissioners prefer to save their questions until after the public speaks. Audree indicated that it is highly desirable to not state any positions until everybody has presented their side and you have all the facts in front of you.

Ron Ramsey suggested saying to the public that this is your procedure, and the presentations could answer some questions or allow the public to make more informed comments. Donna Puckett stressed that if you allow questions of the applicant or staff prior to the public speaking, they should be questions to get more information or clarification and not be judgmental opinions about the project, because in a sense that is like having the public there and you are the jury giving the verdict before they have given the testimony, if you say you don't like this project and you aren't going to vote for it when the public hasn't had a chance to speak, which is the very reason for the hearing.

Audree Juhlin reminded the Commissioners that they are independent advisors to Council, but it doesn't mean that your independent biases can overrule the codes and the Plan. If the codes and the Plan state that they can have something that you don't want, you can't let your personal opinions overrule the code.

Audree then encouraged the Commissioners to rely on staff for technical questions, so you can make your discretionary decisions based on what you have in front of you. She then explained that there are three phases of review -- Conceptual, Work Session and Public Hearing. The Conceptual Review is to introduce the project to the Commission. It is a time to hear the concept, not all of the details. The Commission should identify the big issues and what you need as the project moves forward. The work session is when we bring back all of the details to make sure you are comfortable with the information or if more information is needed before getting to the public hearing. By the time we get to the public hearing, hopefully, all of your questions have been addressed, so you are able to make an informed recommendation or decision.

Commissioner Jablow asked for clarification about asking questions of staff and to what extent, and Audree explained that as you go through the Staff Report and you have questions, get with staff before the meeting, because a lot of times the questions require research, and it is helpful if you can make an appointment. Chair Losoff indicated that the questions should be directed to Audree or Cari, and they will get the answers; don't go directly to other departments. Audree added that the questions are important, and there have been times that Commissioners have found things that staff missed.

Chair Losoff indicated that getting with staff ahead of time is preferred, because a lot of the questions can be answered without spending a lot of time in the meeting. Commissioner Taylor asked if the procedure should start with a public hearing, because we are trying to get all of the inputs in the beginning, so shouldn't the Commission hear from the client and let him make his presentation, then have the work session to formulate our opinions, and then when we have another public hearing we can express our opinions.

Audree Juhlin explained before developers really invest a lot of time and money in a project, they want to make sure their proposal will be something the City can approve. Some concepts received don't meet the code at all, so they like to get with the Commission to make sure the Commission is supportive of the concept. Commissioner Taylor asked if the City can't determine that and Audree Juhlin explained that another Citizen Engagement group is going to look at the Development Review process, and that could be discussed.

Chair Losoff noted that the process was modified a couple of years ago to have the preliminary work session to give developers, and in some cases the public, a chance to comment. Audree indicated that the conceptual is the first opportunity that the public has to provide input, and she then explained the purpose of the conceptual hearing in more detail.

Cari Meyer clarified that the general concept is that for the conceptual, they are required to submit a Letter of Intent, a sample site plan, some sample elevations, and a general idea of what they want to do, and that meeting is noticed to the neighbors within the notification radius, so they get a notice when the application is submitted and before a conceptual hearing, and the basic documents are sent to reviewing agencies, plus we put them on the website, and then at the conceptual hearing the applicant will present his ideas and has received input from staff and the reviewing agencies, so they will receive input from the Commission and the public on the big issues in moving the project forward, and it is before they have done grading and drainage reports, traffic studies, etc., which are the big money items. Then once we have a complete package, we have the Commission's work session to say what looks good, what doesn't look good, what needs to be clarified and what additional information is needed. Once all of those concerns are addressed, it is scheduled for a public hearing.

Audree Juhlin pointed out that the very first work session is not when opinions should be formed; information is still being gathered at that stage. Like a trial, you gather all of the information and give your verdict at the end. Cari added that is the time to point out that is a problem intersection or there is a unique feature on that site, etc., to make sure they have all of the information as they develop their plans.

Marty Losoff indicated that he hadn't heard complaints from the public about not being heard, but he hears complaints about the process and they think they are coming before an inquisition. It is not necessarily what is asked, but the tone and how we are presenting ourselves. It is not the content of the questions but our overall demeanor and style, like they are all guilty until proven innocent, so we need to be conscious of how we come across and be more aware of how we conduct ourselves during the meetings. He also hears about what is mentioned on page 12 in the handbook relating to Planning & Zoning Commissions getting caught up in minutia. Developers understand that we have codes, criteria, etc., and they think we try to micromanage the projects. It is okay to provide comments and conceptual ideas, but at a point, we need to get beyond that.

Commissioner Brandt indicated that he heard that work sessions were to determine if there was anything that was a deal breaker or such a big problem that it is not going to go forward, but in a way that is putting a project on trial. Audree explained that it is an evaluation of how it meets the laws, the Community Plan guidelines, etc. Cari added that it is sometimes how it is phrased, like saying there is a big wash through here, so you can't develop it at all versus saying there is a big wash through here, so how are you going to address that?

Commissioner Brandt indicated that he earlier heard that it would be good to have the applicant do a presentation at the work session, because they don't get to speak until they are asked a question, and it would be good to have a presentation by the applicant. Audree Juhlin explained that she and Chair Losoff are looking at having the developers and applicants at the table with the Commission and give a presentation, hear the comments, etc., at the conceptual meeting.

Commissioner Currivan indicated he thought he heard there were four meetings; however, staff clarified there are six now. Cari then listed the following:

- | <u>Conceptual</u>            | <u>Final Review</u>          |
|------------------------------|------------------------------|
| 1) Introductory Work Session | 3) Introductory Work Session |
| 2) Work Session              | 4) Work Session              |
| 3) Public Hearing            | 6) Public Hearing            |

Audree explained that staff has sensed a lot of frustration on the part of the Commission, because by the third meeting, you are ready to get into the project details, so we are trying to streamline it to have one Conceptual meeting, and then go to the Final Review work session and public hearing. Donna Puckett added that what is unfortunate is that meeting #6 is the final hearing for the public, and at some of them there have been comments that you have already beat this to death, so can't we just vote on it, but the public hasn't necessarily heard the other five meetings.

Audree Juhlin added that if the Commission needs more meetings, then we will have more meetings. Chair Losoff pointed out that the public is invited to all meetings; however, Commissioner Jablow asked if they were able to speak at all of them, and staff indicated no. The Chair then indicated that they haven't in the past, but he thinks it is going to be more flexible to keep it more open. Commissioner Taylor noted that the public hearings are at 5:30 p.m. and most people can attend, but at 3:30 p.m. some people can't come.

The Chair indicated that it will be discussed more in future meetings, but there are three things the Commission should ask itself, 1) What do we like about the project? 2) What are things that can be improved upon in the project, and 3) What additional information is needed? Those are objective as opposed to, "I don't like . . ." or "This doesn't look good." The Chair noted that while he has been Chair, he is not aware of any legal issues that have come up or of anything that has caused any major concerns, so overall, the Commission is doing okay. In the last two years, there has been a perception of a change of tone perhaps, so we just have to be careful of that.

The Chair then referenced Riggin's Rules and noted that it said that we shouldn't use first names. The Commissioners were then asked if they wanted to rotate the seating and the Commissioners indicated no.

**d. Executive Session pursuant to ARS 38-431.03.A.3 for consultation with the City Attorney on legal issues associated with zoning decisions by the Commission (1 hour)**

*If an Executive Session is necessary, it will be held in the Vultee Conference Room at 106 Roadrunner Drive. Upon a public majority vote of the members constituting a quorum, the Planning and Zoning Commission may hold an Executive Session that is not open to the public for the following purposes:*

- i. **To consult with legal counsel for advice on matters listed on this agenda per A.R.S. § 38-431.03(A)(3).**
- ii. **Return to open session. Discussion/possible action on executive session items.**

The Commission and staff discussed the purpose of Executive Sessions and that the agenda did not allow for the discussion of current projects. The Commission determined that an Executive Session was not needed.

*The Chair then suggested returning to agenda items 4.a, b and c for an open discussion as they apply generally or hypothetically to any issues, and there was no objection.*

**4. RETREAT (continued)**

- a. **Discussion: Legal overview of zoning law (1 hour)**
- b. **Discussion: Legal review of state law, including, but not limited to, Senate Bill 1598, Open Meeting Law, and Recent Case Law (1 hour), and**
- c. **Discussion: Roles and Responsibilities of the Planning and Zoning Commission, including, but not limited to, procedures, review authority, decorum, and behavior (1 hour)**

Commissioner Currivan noted that there was tension between having discretion and the Bill of Rights that says you can't make decisions unless they are grounded in a code, ordinance or policy statement, and he suggested talking about to what extent we have discretion as opposed to saying it meets the criteria and must be approved.

Mike Goimmarac explained that it really is a case-by-case analysis. If you have certain characteristics of a project that don't lend themselves well to a direct application of the code, then you might have to do something, but the caveat is that is not to say there are maximum standards. The Commission doesn't have total discretion to do anything it wants, so when you stay with the code, the safer you are in those situations. It all goes back to the balancing process and if you are going to deviate from the code, you have to articulate why the minimum standard isn't enough and make a factual record for why you need to go beyond what the code says. Then, you are justified and a judge looking at that is going to assess whether or not you are being arbitrary or if there is a rational basis for asking for more. Yes, there may be situations where you can go beyond the code, but you need to be able to articulate why the code is not enough.

Ron Ramsey added that each project has certain features that stand out and some of them may meet the code and some may not, so the level of discretion can be supported by saying that you meet the code in these particular requirements, but because of the way this property immediately abuts a residential area, etc., the Commission would like to see a modification of the code in that aspect. Every one of them has a bundle of things involved and they aren't all exactly meet the code, some are going to be a little off of the code, and you can justify trying to ask for a little more, because of the collective impact of the project in those areas. It is legitimate to say that you have a lot of things going on in this project that make it rather a intense project and you do this.

Audree Juhlin added that there may be circumstances like noise, and they meet the code requirements, but the City may ask for noise mitigation measures above what the code may require. Chair Losoff then stated that if a project meets minimum standards, and one Commissioner says they should go beyond that in x, y and z, but the project is still voted up, then no issue. If the consensus is that they met minimum standards, but the Commission doesn't like the results and still wants to see improvements, but the applicant isn't willing to do that and it is voted down, the applicant would have a big case against the City, if he applied doing it in good faith, because the codes and manual talk about "in good faith". Audree Juhlin noted that if the Commission votes it down, you need to state specifically those reasons for which you are voting it down. The Chair commented that the applicant can still say that he met the standards in good faith. There is a balance and no right or wrong in some cases and each case is different.

Commissioner Brandt indicated that part of the standards of the Land Development Code is Chapter 10, which is the Design Review Manual, so how do you say what the minimum is; it provides a lot of leeway. Commissioner Currivan noted that a lot of things aren't cut and dry, and the Commission should be able to say we don't like something, because it is not consistent with Sedona architecture and it is importing another city's style, etc. Commissioner Brandt explained that you can say that as long as you cite where your opinions are coming from.

Commissioner Levin pointed out that these are guidelines and they say encouraged and discouraged and it isn't tied to the document with "shall". Chair Losoff indicated that a project that didn't look like Sedona, etc., was going to be denied, and the applicant referred to the manual that says, that it could or is encouraged, and that doesn't mean they have to do it. Commissioner Levin indicated that it also says that applicants must demonstrate good faith and intent, and the Chair recalled the Commission was told to be careful, because it was getting into that good faith issue.

Mike Goimarac stated that most developers don't like to litigate; they want to try to find a compromise and be treated fairly, and they are willing to bend quite a bit if you give them a justifiable reason for why they need to bend. They can get their hackles up when they feel that what is being imposed is entirely subjective or it is a personal preference and it doesn't have enough of a nexus or connection to what the code is suggesting, so his suggestion is when you get in those situations where you feel the code says something, but doesn't articulate it enough, then you need to fill in the blanks with specific explanations for why you think something has to be requested beyond it. If you do that and try to give an articulate reason that doesn't sound totally subjective; for example, it looks too much like Scottsdale -- how can you say that differently? You perhaps could say it in terms of it not being in character with the rest of the Uptown area, etc.

Commissioner Jablow asked about doing Executive Sessions to make sure the Commission is doing the right things; it is a tool that can be used. Chair Losoff indicated that if he felt the Commission was going to run afoul of some issues, he would probably call for one, but he hasn't seen that happen. Ron Ramsey added that they can't give any further advice than what they have shared in open session. The Executive Sessions have more meaning when a project is on the agenda and things are getting sticky or we hear that it shouldn't look like Scottsdale, and you call for an Executive Session for legal advice; that is where you would get your answer and that is more appropriate. Chair Losoff indicated that if the Commission goes into Executive Session, the public immediately gets suspicious of something, so he wouldn't want to have an Executive Session at the times the Commission is going to make a decision, but if it is getting hairy yes.

Chair Losoff repeated that the Commission doesn't have a specific problem, but we are reminded that there are a couple of projects maybe going forward that have indicated that if we continue as we have, and he thinks it is mostly the demeanor, so we need to be conscious of

how we say things and conduct ourselves in meetings. Overall, we do okay, but this is all very informative.

Vice Chair Hadley referenced how Commissioners should act and asked staff how the Commission is doing. Audree Juhlin indicated that the Commissioners show up on time, and for the most part, you are pretty prepared, you do a good job of asking questions, but we have to be careful of stating opinions too early in the process. We have to be a little more conscious of how we are being perceived, because there is a perception that the developer is the defendant and being cross-examined, and he is guilty until the verdict says he is innocent or not. Otherwise, the Commission is doing a really good job overall.

Chair Losoff noted that staff is hearing that maybe we are coming across too sternly, but it is interesting, because sometimes we ask hard questions and he thinks the project is going to be voted down, and the vote is unanimous approval, so sometimes it is like why do we cause the fuss and create animosity and then vote for it or vice versa.

Commissioner Brandt noted that he likes to hear Vice Chair Hadley when he presents his case, because he is always thankful to the applicant and he is glad he says that, but the government is for and of the people of the City of Sedona, so today he has heard a lot about private property rights and that is a major component, and where a lot of flack would come from, but the flipside is where the people sued the Commission and City, because they didn't do enough and follow the guidelines enough, so it works both ways and we are there to protect the applicant and make sure the process is fair for them, so there aren't any challenges.

Donna Puckett added that part of the balance is really showing the same respect to the applicant that you want to receive from them, and some have said that they feel like the trap is being baited and you are waiting for the kill, and the way the questions are asked should show that you do respect their thoughts and feelings, and everyone in Sedona is passionate about something, and when that project hits your button, you need to be aware of how you are asking your questions and that you are not letting your own personal bias take over.

Cari Meyer added that in the way you present your questions. even if they get a 7-0 approval, it makes them not want to come back, so when they realize that they need to make a significant change that needs to come back to Planning & Zoning, the image they have is that they don't want to come back and they are going to make it work, so we don't get the best project, because people are scared to come back.

Chair Losoff pointed out that sometimes a Commissioner or two will make comments, so the applicant goes back and makes all of the changes, when maybe there was no consensus. The applicant shouldn't have to go back and redesign something because of one or two people, so he is trying to get more of a consensus during the meetings.

Vice Chair Hadley explained that when he has been an applicant, there is nothing more disturbing than standing at the podium and giving a presentation when every Commissioner is looking down at the paper, so you feel that nobody is listening to a word being said. It is really important to sit there and look at the person speaking.

Audree Juhlin added that word of mouth in a small community travels fast, so we have people who would have come in to go through the process to develop in Sedona, but based on what they have heard, they go to Cottonwood or somewhere else, because it is so frightening with the exaggeration factor, so remember that word travels.

Chair Losoff noted that not all of it falls on the Commission, because other entities are involved too. Commissioner Jablow indicated before becoming a Commissioner he was told that if it was for development, it will be approved, and that is not the case, but the general public needs to know they were listened to, and asking too many questions isn't a bad thing, but maybe how

they are asked is important. The questions need to be asked so all aspects of the project can be heard, and then the people know that we at least scrutinized the project. Staff gives us enough time to go through the paperwork and he appreciates that, and he hasn't seen anyone on the Commission who is fumbling with that.

Commissioner Currivan asked if we are hearing two conflicting criticisms that tell us we are in the middle where we ought to be. One is that we are almost like the inquisition and the other is that we are rubber stamping developments, so how can they both be true? Audree Juhlin indicated that you hear the last one from the public who is not participating in the process; they just know it was approved and nothing else. Commissioner Brandt noted that it is also when people don't want any development next door on the open space they have enjoyed. Chair Losoff added that in the Community Plan effort, they heard conflicting interests regarding access to Oak Creek, so there has to be a balance.

**e. Discussion: Planning and Zoning Commission proposed work program (15 minutes)**

Chair Losoff indicated that there is an agenda item on the 18th to carry over from today's meeting, so he would suggest a brief discussion on the work program. The Chair then referenced an outline and the advisory groups being set up to discuss improving the process and defining community benefits. Defining community character should be on a future agenda. Cari suggested before discussing that, the Commissioners should review what the Design Review Manual and Sedona Main Street Guidelines say, in addition to the new Community Plan. The Chair then asked to put it on an agenda and we'll figure out the date.

The Chair indicated that the next thing is to review and update codes and the Design Review Manual, and we will save that for another discussion in about a month or so, particularly after the new Community Plan is decided on, because it will have a lot of impact on many issues.

Mike Goimarac informed the Commission that the City Council included ham radio antennas among their priorities, and Parks & Rec. wants us to look at the off-premises public kiosk provisions, because they are interested in doing a kiosk at S.R. 89A and Posse Grounds that might have an electronic sign, which is not allowed in the code.

Chair Losoff noted that the Capital Improvement Program will be presented to the Commission and Audree Juhlin added that it will be on February 27th. Commissioner Taylor indicated that he understands the law, but thinks that the Fire District and Schools should have to show the Commission what they are doing, even if it is on a different level, but that isn't on the agenda for discussion. Chair Losoff explained that when the school passed their bond issue, they gave a presentation to P&Z, and the Fire District gave a presentation as a courtesy to staff and he was invited to attend.

Commissioner Taylor indicated that he understands there is a committee appointed by Council to study parking in Uptown and he would think that should come to the Commission as well as Parks & Rec., because they have a plan and he has no idea what is in that plan. Chair Losoff asked if other Commissioners wanted to hear about parking in Uptown, and the consensus was if they want to build something like a 3-story parking garage, then yes, and Audree Juhlin indicated that would absolutely come before the Commission. The consensus was that the Commissioners didn't need to hear the parking study. Chair Losoff then requested that in the updates, staff let the Commission know if there is anything that would impact the Commission.

Ron Ramsey noted that some issues are like the Commission's interest in looking at being more active in economic development, and that is not one of the Commission's assigned tasks, but on the other hand, both the state law and our local code repeat something to the effect that the Commission can always do whatever the Council asks the Commission to do, so if you're asking to be more active in the processing of an approved Parks & Rec. Plan or overall City

Parking Plan, when it is not really a land use item that you normally handle, then it is appropriate to agendaize it to ask the Council if the Commission should be involved or not.

- 5. FUTURE MEETING DATES AND AGENDA ITEMS (10 minutes)**
- a. **Tuesday, February 18, 2014; 5:30pm (Public Hearing)**
  - b. **Thursday, February 27, 2014; 3:30pm (Work Session)**
  - c. **Tuesday, March 4, 2014; 5:30pm (Public Hearing)**
  - d. **Thursday, March 13, 2014 (Work Session)**

Chair Losoff stated that the next meeting is February 18th followed by the 27th, and then March 4th and 13th.

**6. ADJOURNMENT**

Chair Losoff called for adjournment at 4:50 p.m., without objection.

I certify that the above is a true and correct summary of the retreat of the Planning & Zoning Commission held on February 13, 2014.

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Donna A. S. Puckett, *Administrative Assistant*

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Date