

PRE-HEARING MOTIONS

Ann Marie Wooldridge

From: Canepa & Vidal,P.A. <canepavidal@newmexico.com>
Sent: Friday, March 17, 2023 3:19 PM
To: Ann Marie Wooldridge; 'John Appel'; 'Tom Wittman'; 'J. Scott Hall and Chris Hall'; 'Felicia Weingarnter and Tom Weingarnter'; 'Robert W. Leland and Robyn H. Leland'
Cc: Joe Canepa
Subject: March 21, 2023 Special Council Meeting / Appeal Hearing / Taos Ski Valley, Inc.
Attachments: tsvi's mtn to clarify rules of order.pdf; tsvi's mtn to limit - bar addl appellants.pdf; tsvi's mtn for protective order.pdf; tsvi's exhibit list - supplemental.pdf; tsvi's witness list - supplemental.pdf; tsvi's motion to dismiss.pdf

Categories: Red Category

Attached please find:

1. Appellee Taos Ski Valley's Motion to Clarify Rules of Order Applicable to this Appeal Hearing to Allow the Presiding Officer to Make Motions Herein;
2. Appellee Taos Ski Valley, Inc.'s Motion to Dismiss Appellants' Appeal Claims for Failure to State Claims Under Village Ordinance 17-030(29)(1) and New Mexico Law;
3. Appellee Taos Ski Valley, Inc.'s Motion to Limit/Bar "Additional (Not Paying Village Appeal Fee) or any "Non-Appearing" Appellants;
4. Appellee Taos Ski Valley, Inc.'s Motion for Protective Order Preventing Appellant Weingarnter from Calling Councilor Chris Stagg as a Witness;
5. Appellee Taos Ski Valley, Inc.'s Supplement Exhibit List;
6. Appellee Taos Ski Valley, Inc.'s Supplemental Witness List.

**Amanda Adams, Assistant to
Attorney Joseph F. Canepa**

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**BEFORE THE VILLAGE COUNCIL
OF THE VILLAGE OF TAOS SKI VALLEY**

**SPECIAL COUNCIL MEETING
MARCH 21, 2023, 2:00 P.M.**

The Appeal of the Decision of the Village of Taos Ski Valley's Planning and Zoning Commission (February 6, 2023) Granting a Conditional Use Permit (CUP) to the Appellee Taos Ski Valley, Inc. for its Hotel St. Bernard Property

**APPELLEE TAOS SKI VALLEY, INC.'S MOTION TO CLARIFY
RULES OF ORDER APPLICABLE TO THIS APPEAL HEARING
TO ALLOW THE PRESIDING OFFICER TO MAKE MOTIONS HEREIN**

Appellee Taos Ski Valley, Inc. hereby moves for a ruling before commencement of this Appeal Hearing that the Rules of Order applicable to this appeal hearing involving only four (4) members to permit the Presiding Officer to make motions in this proceeding. Robert's Rules of Order (adopted for this Appeal Hearing by Village Ordinance) makes clear that, in this situation (small number of voting members) that the Presiding Officer may exercise all rights and privileges as other members may have, saying,

"If the president (presiding officer) is a member of the voting body, he or she has exactly the same rights and privileges as all other members have, including the right to make motions, to speak in debate, and to vote on all questions. So, in meetings of a small board (where there are not more than about a dozen board members present), and in meetings of a committee, the presiding officer may exercise these rights and privileges as fully as any other member."

(Emphasis added).

RONR (12th ed.) 44:12–13; see also Table A, p. 206 of *RONR In Brief*. (Exhibit 1 hereto).

CANEPA & VIDAL, P.A.

By: /s/ Joseph F. Canepa
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I certify that on March 17, 2023, a copy of this Motion to Clarify Rules of Order Applicable to this Hearing to Allow the Presiding Officer to Motion Motions Herein was emailed to the following:

Ann Marie Wooldridge, Village Clerk
awooldridge@vtsv.org

John Appel, Esq., Village Attorney
jappel@coppler.com

Tom Wittman, Village Mayor
topwit@aol.com

And sent by email/mail to:

Named Appellants Paying Appeal Filing Fee:

J. Scott Hall and Chris Hall (shall@logosresourcesllc.com)
Felicia Weingartner and Tom Weingartner (fcw@weingartnerlaw.com)
Robert W. Leland and Robyn H. Leland (robertleland@me.com)

: /s/ Joseph F. Canepa



Can't find what you're looking for below?

You may be able to find an answer in the Official Interpretations or on the Question & Answer forum.

Caution: The answers given here to the questions presented are based upon the rules contained in *Robert's Rules of Order Newly Revised*. These rules are, in effect, *default* rules; that is to say, they govern only if there are no contrary provisions in any federal, state, or other law applicable to the society, or in the society's bylaws, or in any special rules of order that the society has adopted. This fact must always be kept in mind when reading any of the answers given.

Is it true that the president can vote only to break a tie?

No, it is not true that the president can vote only to break a tie. If the president is a member of the voting body, he or she has exactly the same rights and privileges as all other members have, including the right to make motions, to speak in debate, and to vote on all questions. So, in meetings of a small board (where there are not more than about a dozen board members present), and in meetings of a committee, the presiding officer may exercise these rights and privileges as fully as any other member. However, the impartiality required of the presiding officer of any other type of assembly (especially a large one) precludes exercising the rights to make motions or speak in debate while presiding, and also requires refraining from voting except (i) when the vote is by ballot, or (ii) whenever his or her vote will affect the result.

When will the chair's vote affect the result? On a vote that is not by ballot, if a majority vote is required and there is a tie, he or she may vote in the affirmative to cause the motion to prevail. If there is one more in the affirmative than in the negative, the chair can create a tie by voting in the negative to cause the motion to fail. Similarly, if a two-thirds vote is required, he or she may vote either to cause, or to block, attainment of the necessary two thirds. [RONR (12th ed.) 44:12–13; see also Table A, p. 206 of RONR In Brief.]

**BEFORE THE VILLAGE COUNCIL
OF THE VILLAGE OF TAOS SKI VALLEY**

**SPECIAL COUNCIL MEETING
MARCH 21, 2023, 2:00 P.M.**

*The Appeal of the Decision of the Village of Taos Ski Valley's Planning and Zoning Commission
(February 6, 2023) Granting a Conditional Use Permit (CUP) to the Appellee Taos Ski Valley,
Inc. for its Hotel St. Bernard Property*

**APPELLEE TAOS SKI VALLEY, INC.'S MOTION TO DISMISS APPELLANTS'
APPEAL CLAIMS FOR FAILURE TO STATE CLAIMS UNDER
VILLAGE ORDINANCE 17-030(29)(1) AND NEW MEXICO LAW**

The Appellee and Applicant (for the CUP) Taos Ski Valley, Inc. herein (the "Appellee") hereby moves to dismiss all of the Appellants' appeal claims for failure to state claims required under Village Ordinance 17-030(29)(1) or New Mexico law.

Three (3) separate appeals were filed by Appellants, who actually paid the \$250.00 appeal fee required by Village Ordinance 17-030(29)(2) which states: "2. Application. Any appeal following a decision of . . . the Commission shall be made . . . upon payment of the applicable filing fee." (emphasis added):

(1) Felicia and Tom Weingartner (hereafter the "Weingartner Appeal") paid the appeal fee but 15 or so other individual appellants signed the appeal but did not pay the filing fee;

(2) Robert W. Leland and Robyn H. Leland (hereafter the "Leland Appeal") paid the appeal fee; and

(3) J. Scott Hall and Chris Hall (hereafter the "Hall Appeal") paid the appeal fee.

The Weingartner Appeal and the Leland Appeal are duplicative and identical as to the stated appeal claims therein.

The Hall Appeal "incorporates" the appeal claims #5 through #15 of the Weingartner Appeal by reference but makes one (1) additional, different appeal claim (a claim regarding

Appellee TSVI's non-payment of Development Impact Fees by TSVI for its Hotel St. Bernard property) at the time of issuance of the CUP.

Standard of Review

This appeal hearing before the Village Council from a decision of the Village Planning and Zoning Commission (hereafter "P&Z Commission") regarding the issuance of a Conditional Use Permit (CUP) for Appellee TSVI's Hotel St. Bernard Property (HSB) is governed by Village Ordinance No. 17-30 ["An Ordinance Adoption Zoning Regulations and Zoning Map for the Village of Taos Ski Valley, New Mexico"], which requires the following of all Appellants:

... Any person aggrieved by a decision or action of the Planning and Zoning Commission in carrying out the provisions of this Ordinance may appeal to the Village Council. Any such appeal must set forth in writing specifically wherein it is claimed there was an error or an abuse of discretion, or where the decision or action was not supported by evidence in the matter.

(Emphasis added).

Argument

None of the Appellants' appeal claims state viable appeal claims as a matter of law and Village Ordinance, and should be denied by the Village Council for the following reasons.

1. Weingartner/Leland Appeal Claims Paragraphs #1 to #4 (the Conflict Claim). The Conflict Claim is based on an alleged violation of the New Mexico Government Conduct Act § 10-16-1, *eq seq.* NMSA 1978 and Village Ordinance 20-70, Section G, which incorporates by reference the Government Conduct Act. Commissioner Stagg's vote on the matter (HSB/CUP) at the P&Z Commission hearing fell within the recognized exceptions in the Government Conduct Act allowing him to vote on the matter. Commissioner Stagg's employment by TSVI was known to all Commissioners and to the public (he has been elected to the Village Council repeatedly by

the voters of the Village). The Government Conduct Act provides the following exceptions § 10-16-3A (a vote not for the “primary purpose of directly enhancing a public officer’s financial interest or financial position”) and § 10-16-3B (a vote if “the financial benefit of the financial interest to the public officer . . . is proportionately less than the benefit to the general public.”) The Stagg vote at the CUP qualifies under both exceptions and thus this Conflict appeal claim should be dismissed.

2. Weingartner/Leland/Hall Appeal Claims #5 (The Failure to Adopt Planning Officer’s Recommended Conditions to CUP). This claim should be dismissed. No statute or Village ordinance requires that the Planning and Zoning Commission adopt any or all recommendations of the Planning Officer. Therefore, this is not an appealable issue as a matter of law and/or Village Ordinance.

3. Weingartner/Leland/Hall Claim #6 (The Gondolita/Sutton Crossing Safety Claim). This claim should be dismissed. TSVI submitted substantial evidence and expert testimony during the public hearing that clearly supports the Applicant’s condition that safety will not be negatively impacted. The Appellants introduced NO evidence and “no one spoke against” the HSB/CUP at the public hearing. (See attached Minutes of February 6, 2023 hearing, Exhibit 1).

4. Weingartner/Leland/Hall Claim #7 (the Parking Claim). Claim 7 (the Parking Claim) should be dismissed. TSVI and its experts submitted substantial evidence that parking was sufficiently addressed with several new options for valet parking and staff/employee (Hotel St. Bernard) parking on TSVI’s adjacent Strawberry Hill land with separate (from Sutton Road) access. Again, the Appellants presented NO evidence on this Parking Claim. The Minutes reflect that “no one spoke against” the HSB Project at the public hearing before the P&Z (Exhibit 1 hereto, Minutes).

5. Weingartner/Leland/Hall Claims #8-#15 (Water/Water Distribution Claims) should be dismissed. By Village Ordinance and law, water availability (Will Serve Letter) and water distribution within the Village are not subjects to be addressed at the time of issuance of a Conditional Use Permit. By law and ordinance, water issues are addressed at the time of issuance of Building Permits. The Village's water issues were discussed extensively during this P&Z public hearing. Moreover, Planning Officer Nicholson himself explicitly recommended removing the condition related to water as well (Exhibit 1, Minutes). Staff comments and recommended conditions on water availability or delivery are outside the scope of a CUP hearing as a matter of law and ordinance and are to be addressed at the time of issuance of the Building Permits.

Furthermore, the Appellee TSVI testified that it is actively working with the Village to resolve the water issues, and is confident that they will be resolved by the certificate of occupancy stage. Chair Wittman further clarified that a Certificate of Occupancy (Building Permit state) could be held back if there is inadequate water supply to serve the new structure (Exhibit 1, Minutes) at the time of the Building Permits or Certificate of Occupancy. Thus, Appellants have no adverse risk to their properties' water rights or availability by issuance of this CUP at this time, and no viable appeal claim, and the absence of a water condition on the CUP by the P&Z is not arbitrary.

6. Hall Appeal Claim #3 (the Impact Fee Claim). The additional, specific appeal claim raised by the Hall Appeal regarding TSVI's nonpayment of Impact Fees on the Hotel St. Bernard at the time of the CUP should be dismissed. The removal of the Development Impact Fees ("DIF") condition by the P&Z decision did not require the removal of the Planning Officer's "estimated" DIF assessment for the HSB; rather, only that the collection/payment of the final impact fee (DIF) at the time of issuance of the CUP. The actual payment of the impact fee at the time of CUP is

outside the scope of the CUP application process entirely by law and ordinance. Pursuant to Village Ordinance 2022-30(6)(B), "Collection of a DIF shall be made at the latest possible time." (Building Permit). In no way did this signify, as the Appellant Hall claims, that "the Commission's action will cause the Village to forego collection of the DIF for the Hotel St. Bernard Project." The Appellee TSVI is legally required to pay the finalized assessed DIF on HSB at the time of the issuance of the Building Permit for HSB. The P&Z Decision on February 6, 2023, granting the CUP for HSB without collection of DIF at that time as a condition of the CUP is thus not arbitrary and is fully in accordance with the Village Ordinances and state law on DIF "impact fees". The Appellee TSVI will pay the Impact Fees appropriately due on this Hotel St. Bernard project at the time of issuance of the Building Permit as it has on all its other prior projects in the Village.

For the reasons stated, all of Appellants' appeal claims should be dismissed.

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I certify that on March 17, 2023, a copy of this Motion to Dismiss was emailed to the following:

Ann Marie Wooldridge, Village Clerk
awooldridge@vtsv.org

John Appel, Esq., Village Attorney
jappel@coppler.com

Tom Wittman, Village Mayor
topwit@aol.com

And sent by email to:

Named Appellants Paying Appeal Filing Fee:

J. Scott Hall and Chris Hall (shall@logosresourcesllc.com)

Felicia Weingartner and Tom Weingartner (fcw@weingartnerlaw.com)

Robert W. Leland and Robyn H. Leland (robertleland@me.com)

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**PLANNING & ZONING
COMMISSION:**

Thomas P. Wittman, Chair
Henry Caldwell
Richard Duffy
Yvette Klinkmann
Susan Nichols
J. Christopher Stagg
Jim Woodard

VILLAGE ADMINISTRATOR:
John Avila

**DIRECTOR OF PLANNING &
COMMUNITY DEVELOPMENT:**
Patrick Nicholson

VILLAGE CLERK:
Ann Marie Wooldridge

**PLANNING & ZONING COMMISSION
REGULAR MEETING DRAFT MINUTES**

Monday, February 6, 2023 1:00 P.M.

Via Zoom TeleConference

See www.vtsv.org for information to attend the meeting
TAOS SKI VALLEY, NEW MEXICO

MINUTES

I. CALL TO ORDER & ROLL CALL

Commission Chair Wittman called the meeting to order at 1:00 p.m.
Commission members Wittman, Caldwell, Duffy, Klinkmann, Stagg and
Woodard were present. Commission member Nichols logged in before
item V. A.

II. APPROVAL OF THE AGENDA

MOTION: to approve the agenda as written

MOTION: Commissioner Stagg **SECOND:** Commissioner Duffy

PASSED: 6-0

**III. APPROVAL OF THE MINUTES OF THE NOVEMBER 14, 2022 P&Z
COMMISSION MEETING**

MOTION: to approve the minutes as presented

MOTION: Commissioner Stagg **SECOND:** Commissioner Duffy

PASSED: 6-0

IV. OLD BUSINESS

No items of old business

Note: Commission Member Nichols logged in at 1:06 p.m.

V. NEW BUSINESS

**A. Consideration to Approve Resolution 2023-526 Concerning
Planning Commission Meetings and Notice Required.**

Village Clerk Ann Wooldridge advised the Commission that this
Resolution is a routine matter providing for the conduct and
procedures of Commission meetings.

MOTION: to approve Resolution 2023-526

MOTION: Commissioner Stagg **SECOND:** Commissioner Duffy

PASSED: 7-0

B. PUBLIC HEARING: Consideration to Approve a Conditional Use Permit at 112 Sutton Place for the Reconstruction of the Hotel Saint Bernard by Taos Ski Valley, Inc.

Chair Wittman announced the procedures for the public hearing.

Staff Report: Planning Director Nicholson introduced the agenda item and described the application process. He stated that the application was deemed complete in November 2022 but the hearing of the application was deferred from the December 5, 2022 Commission meeting at the request of the Applicant. Mr. Nicholson stated that the proposed project would consist of three buildings including a luxury hotel with two fine dining restaurants at the south end of Sutton Place. The location is within the Village Core zone. The plans as submitted comply with Village design guidelines. Mr. Nicholson called the Commission's attention to the requirements of Ordinance No. 22-030 for approval of a conditional use permit (CUP). Mr. Nicholson stated that the project as presented complies with most but not all of the relevant guidelines, and therefore the Planning Department recommends approval of the CUP with the conditions set out in the Staff Report, reflecting (1) presently inadequate Village water supply to support the completed project; (2) development impact fees to be imposed for the project, the exact figure yet to be determined, including any request for credits; (3) off-site parking as originally proposed has been revised to provide that 44 of the required spaces will be provided on an expanded site with a lot line adjustment to provide the necessary area; (4) Applicant needs to address pedestrian safety issues on Sutton Place; (5) avalanche safety measures for which Applicant has provided a study, but still needs to provide a structural analysis of anticipated forces in the event of an avalanche; (6) drainage plan and stormwater pollution prevention plan yet to be provided; (7) Village costs for any outside expert review will be paid by the Applicant; (8) the Village's Public Works Director advises that at present there is adequate wastewater treatment capacity to support the proposed project; (9) preliminary plans as presented comply with roof height requirements, but this will be re-evaluated when final detailed plans are received; and (10) the newly revised site plan places a parking lot adjacent to a U.S. Corps of Engineers designated wetland, presenting a possible need for a Section 404 permit from the Corps of Engineers. Staff recommends approval with the following conditions as reflected in the Staff Report: (1) revised streetscape and roadway improvements to address pedestrian safety on Sutton Place, with all improvements to be completed before issuance of a certificate of occupancy; (2) condition removed and to be addressed later; (3) condition removed and to be addressed later; (4) lot line adjustment to be completed before issuance of a certificate of compatibility; (5) avalanche hazard engineering analysis by a New Mexico certified engineer; (6) condition regarding off-site parking changed to require a showing that no Section 404 permit is required, or alternatively providing such a permit; (7) snow roof retention system to be independently evaluated by the Village; (8) any substantive changes to be approved by the Commission, and other changes by the Planning Director; (9) conditional use permit will expire 2 years from date of issue if no building permit has been issued.

Commissioner Klinkmann requested that Commissioner Stagg recuse himself from this matter because he is employed by the Applicant.

Applicant's Presentation: Carl Pearson, Associate Principal of Hart Howerton, introduced the Applicant's visual (slide) presentation.

Peter Talty of TSVI described the application process to date, since the application was originally submitted on August 1, 2022. He described the Applicant's efforts to move forward while retaining elements of the character and history of Taos Ski Valley. He stated that the intent was to recreate to a significant extent the experience of the former Hotel Saint Bernard (HSB). This application does not request a variance or change of use. He introduced the project team that has been working on the HSB project.

Carl Pearson described project core goals to (1) create improvements to elevate the ski experience; (2) revitalize and improve the HSB while maintaining its spirit and character; (3) provide public amenities to draw skiers and year-round visitors; (4) elevate Village dining, nightlife and wellness experience; (5) improve the guest experience; and (6) add value, energy and activity to the Village with increased accommodation. He discussed the project's integration into the revitalization of the Village core and its relation to future anticipated projects. He described the planned increase from 28 residential (hotel) units in the old HSB to 53 residential units in the three structures of the new project. He described the landscaping and planting plans for the HSB project. He described the planned vehicle and pedestrian circulation plans, and the use of valet parking for hotel guests. He described the HSB's integration into the foot of the ski slope for access between the hotel and the slopes. He described the general scope of snowmelt plans covering many outdoor areas. Mr. Pearson stated that the new HSB would provide increased public areas, both interior and exterior, as well as re-creating key elements of the old HSB such as the original dining room and bar. He described the intent to use the Allée Mayer between the HSB and Snakedance for additional pedestrian access, protected by bollards that can be removed in the event emergency access by vehicles is necessary. He described the parking design with 65 valet parking spaces (including three handicapped spaces) on the lower level of the HSB and an additional 44 spaces for staff and overflow valet parking. The exterior parking conforms to the necessary setback from the nearby wetland area. With the removal of Mogul Medical from the area the Applicant anticipates opening up the passageway for vehicles along the extension of Sutton Drive onto the property, improving traffic and pedestrian safety. The intent is for the new HSB buildings to fit within the viewscape and be consistent in scale with existing structures in the Village Core zone. Mr. Pearson presented examples from other locations of materials and approaches that will be used to create the feeling of an alpine ski resort. The building height is consistent with restrictions in the Village's zoning ordinance. The roof design is intended to hold most snow on the roof and prevent it sliding off onto public areas.

Omeed Mollaian of Vertex Engineering described engineering enhancements for routing of pedestrians and traffic, the plans for utilities to be routed into and within the HSB site, and drainage plans including (a) drainage from the roof and hard surfaces on the site, routed into a regional detention pond, and (b) routing of water to both east and west of the site from "soft" areas without hard surfaces.

Carl Pearson and Peter Talty concluded the Applicant's presentation by reiterating that the intent is to honor the history of the Village while adding a hospitality component to make it attractive for year-round activities.

Chair Wittman Inquired about how staff would access HSB from the parking area at the foot of Strawberry Hill. Mr. Pearson indicated that staff would probably go back and forth in the area adjacent to the Gondolita next to the new Chateau Mayer, or they might be brought by shuttle service.

Commissioner Caldwell inquired about access to the area of Lift 1. Mr. Pearson described the intent to create a new path from the Gondolita area up a stairway next to extended Sutton Place to reduce the potential conflict between pedestrians and vehicles.

Public questions: From Bob G: How will trucks make deliveries to the HSB and how will they turn around? Mr. Pearson answered that trucks would be limited to a length of 22 feet, and that they had done tests to ensure that they could turn around and also enter the building to the interior loading area.

From Mary Tingerthal, an owner at Snakedance Condominiums: How will the Applicant address the difficult intersection of Sutton Place and the private entrance road near Snakedance and the Gondolita? Mr. Talty stated that Applicant was reducing the present grade, as well as removing the perpendicular parking presently in front of Mogul Medical to widen the effective roadway, and that snowmelt will be directed to a French drain. Applicant also anticipates that during most times there will be less traffic than at present because of the valet parking.

From Kent Forte: Can applicant address the present ski-in, ski-out arrangements? Mr. Talty stated that Applicant was not happy with the proposed parking area at the foot of Strawberry Hill, which was required by the Village. Mr. Pearson stated that skier access to Edelweiss and the Gondolita Plaza would be retained, but perhaps modified.

From Trudy DiLeo: Can fire engines get down the Allée Mayer? Mr. Pearson stated that they could, as could other emergency vehicles, with the removal of the bollards to allow that access.

PUBLIC HEARING:

Peter Talty spoke in favor of the project and stated that it would be beneficial for the Village.

Carl Pearson spoke in favor and emphasized that the Applicant was trying to achieve a balance between the need for new facilities while honoring the previous circumstances of the Village and the residents and honored citizens of the past.

Eduardo Sampere spoke in favor of the project. He said that he saw a real effort to honor the old HSB and the special place that it was for him, his family and others.

Lawrence Peterson, Construction Manager for Bradbury Stamm Construction, spoke in favor of the project. He stated that his company was enthusiastic about the project, which will employ hundreds of tradesmen, and his that they will use local workers and businesses during the construction process.

Anthony Rodman spoke in favor of the project. He said that it was essential to move forward with well-conceived projects like this to bring new life into the Village.

David Norden of TSVI spoke in favor of the project. He believes that the project preserves the heritage of the old HSB and helps to preserve the essence of the sport of skiing. He requested that the parking condition be removed to preserve the sledding hill and for aesthetic reasons, and stated that there was no need for it because of other available parking areas.

Chaz Rocky of TSVI spoke in favor of the project. The plans are well developed and reflect well on the

history of HSB. He also feels the added parking is not necessary.

Monique Mayer Jacobson spoke in favor of the project. She agrees with her late father that HSB and the ski mountain are inextricably linked in the history of Taos Ski Valley.

Bob Coroon spoke in favor of the project. He believes the project is important because right now there is a lack of night life and dining, and also for the tax revenues that will be produced.

Jay Lazarus, Glorieta Geoscience, spoke in favor of the project. There is plenty of water supply available; the problem is a faulty distribution system. The wetlands are not an issue because of prior approval of their delineation by the Corps of Engineers, and they have an approving letter from the Corps of Engineers. There not be any dredged or fill materials into a wetland.

Joseph Canepa, Canepa & Vidal P.A., spoke in favor of the project. He has skied on the mountain for almost 45 years and is pleased to see the way that the history and nature of the old HSB is being honored.

Andrea Heckman spoke in favor of the project. She was on Jean Mayer's staff for 44 years, and she agrees that the HSB is extremely important to the ski area. She agrees that no additional parking is needed and stated that deliveries are downloaded from larger trucks onto smaller ones that can be accommodated, and other issues can be resolved. The important thing is to get on with the project.

No one spoke against the project.

MOTION: To approve the CUP with further examination of the parking issue and that it be further addressed at a future time with the hope that the extra parking can be eliminated.

MOTION by Commissioner Nichols; **SECOND** by Commissioner Caldwell.

DISCUSSION:

Mr. Nicholson stated that the Planning Department also is not very happy about the parking solution proposed by the Applicant. The Village is aware that the water issue is a distribution issue. Corps of Engineers condition is because of the late submittal and lack of documentation from the Applicant. Commissioner Duffy stated that he thought the project was well done and well presented and he would support it. Commissioner Klinkmann inquired what would be necessary to resolve the issues with availability of water. Mr. Nicholson said that a great deal of work was needed to resolve problems with leaking pipes in the distribution system, which could take one to three years. Commissioner Klinkmann asked whether there was a traffic study done on the anticipated traffic increase due to the project. Mr. Nicholson stated that no such study was done. Commissioner Caldwell requested clarification whether the motion included elimination of all of the Planning Director's proposed conditions for approval. Commissioner Nichols said that she would like to eliminate the condition related to water supply. Mr. Nicholson inquired how the need for parking would be met if the additional parking area proposed by the Applicant was eliminated. Mr. Talty stated that the original parking plan as submitted in August 2022 included different provisions for designation of parking in other areas, similar to other businesses in the Village.

Mary Tingerthal stated that she generally supports the project but that now is the time to look at details and her primary concern is related to streetscape design and traffic management, and provisions for that are insufficient. There must be removable bollards on both ends of the Allée Mayer to avoid traffic entering and needing to back out. More time is needed for study. Trudy DiLeo stated that she agrees with everything Mr. Nicholson has said about a cautious approach to the project. She inquired why the public safety commission was no longer involved to make recommendations. Mr. Nicholson stated that it was a matter of timing and trying to accommodate the Applicant. Ms. DiLeo

asked whether there was enough water to start the building process. Mr. Nicholson stated that there appeared to be enough water for construction. Jay Lazarus added the water conditions if put in place would amount to a de facto moratorium on further building. Commissioner Caldwell observed that the water issue is a long-standing problem the significance of which has only become obvious recently. There is no lack of water; it just needs to be delivered to the appropriate places. He believes the problem can be resolved. He favors removing the conditions related to water supply and development fees—as proposed by Mr. Nicholson.

Commissioner Woodward stated that he would be inclined to approve the CUP without any conditions. Eduardo Sampere observed that there is more than one parking person per guest room, which appears to him to be more than sufficient.

Mr. Pearson clarified that there will be bollards on both ends of Allée Mayer. The civil engineers have used standard engineering programs to ensure that there will be an adequate turning radius for trucks. Mr. Lazarus added that water use during the construction period would be primarily during the off-season. Mr. Talty stated that the various landowners ought to be able to work out the parking and traffic issues by all sitting down together, and the Applicant was willing to do that, but it should not be a permit condition. TSVI is working with the Village to resolve the water supply issues, and is seeking \$5,000,000 funding from the State to help fund the necessary work. The contingencies proposed by the Village are a serious problem for the Applicant and could affect the construction schedule.

MOTION TO AMEND: Commissioner Nichols, to amend her motion to remove all conditions.

Commissioner Woodward stated that he would second the motion to amend. The amendment proposed by Commissioner Nichols did not get approval from the Second of the original motion.

MOTION WITHDRAWN: Commissioner Nichols was permitted to withdraw her original motion.

MOTION: To approve the conditional use plan without conditions.

MOTION by Commissioner Woodward; **SECOND** by Commissioner Duffy.

DISCUSSION:

Mr. Canepa requested that his Objections and Responses filed with the Commission on February 1, 2023 be entered as a part of the record. Permit from the Army Corps of Engineers is not necessary. Francie Parker stated that she was very disappointed in the proposal to summarily dismiss the recommendations of the staff. She believes Commissioner Caldwell is attempting to protect the Village with regard to the issues relating to availability of water. Water is a primary concern of many Village residents. The infrastructure problems should be addressed before an additional burden is added to the system. Ms. Tingerthal suggests that if the motion is adopted the Commission should at least go on record as proposing that the parties try to get together to resolve their differences.

Public Safety Officer Virgil Vigil stated that he was concerned about traffic safety due to the expected increase in pedestrians.

Commissioner Caldwell inquired whether issuance of a permit with no conditions amounted a “will serve” letter to the Applicant. The Chair advised that under those circumstances water was no longer an issue in the application.

Village Counsel Appel stated that in his view the Village has a general obligation to provide water to users within the Village, including this project and other potential projects. Mr. Nicholson recommended withdrawing the water availability question as a condition for this CUP.

Mr. Appel stated that the Village could potentially be held liable for damages if water was not supplied when it should have been available.

Village Administrator John Avila stated that he does have concerns about the traffic and safety issues.

Commissioner Klinkmann stated that she strongly agrees that safety concerns are a problem that needs to be addressed, and should be a part of the CUP process. Commissioner Woodward stated that he believes any traffic problems that may arise with this project can be addressed by TSVI. Mr. Talty pledged that TSVI was willing to sit down with other nearby property owners to address any potential problems and describe TSVI's proposed solutions. He also stated that the Applicant was willing to wait until the end of the project (certificate of occupancy stage) to address availability of adequate water. He believes the problem will be resolved in three years.

Jalmar Bowden, Village Building Inspector, asked about the status of proposed conditions and whether they would arise in later stages. Mr. Pearson summarized the proceedings of the meeting to this point. Francie Parker inquired whether a certificate of occupancy could be denied on the basis that there is an inadequate water supply to serve the new structure. Chair Wittman stated that a CO could be held back under those circumstances.

VOTE: A vote was initiated and the voice vote was unclear.

ROLL CALL VOTE:

Commission Caldwell:	Nay
Commissioner Duffy:	Aye
Commissioner Klinkmann:	Nay
Commissioner Stagg:	Aye
Commission Chair Wittman:	Nay
Commissioner Woodward:	Aye
Commissioner Nichols:	Aye

NOTE: Commissioner Nichols was contacted by telephone because her Zoom connection had been unexpectedly disconnected. Her vote was audibly made and recorded.

PASSED by a vote of 4-3

VI. MISCELLANEOUS: There were no items under Miscellaneous.

VII. ANNOUNCEMENT OF THE DATE, TIME, AND PLACE OF THE NEXT MEETING

Clerk Wooldridge announced that the next regular meeting will be March 6, 2023, at 1:00 p.m.

VIII. ADJOURNMENT

MOTION: To adjourn

MOTION: Commissioner Woodward **SECOND:** Commissioner Duffy **PASSED: 7-0**

Chair Wittman declared the meeting adjourned.

**BEFORE THE VILLAGE COUNCIL
OF THE VILLAGE OF TAOS SKI VALLEY**

**SPECIAL COUNCIL MEETING
MARCH 21, 2023, 2:00 P.M.**

The Appeal of the Decision of the Village of Taos Ski Valley's Planning and Zoning Commission (February 6, 2023) Granting a Conditional Use Permit (CUP) to the Appellee Taos Ski Valley, Inc. for its Hotel St. Bernard Property

**APPELLEE TAOS SKI VALLEY, INC.'S
MOTION TO LIMIT/BAR "ADDITIONAL" (NOT PAYING VILLAGE
APPEAL FEE) OR ANY "NON-APPEARING" APPELLANTS**

Appellee Taos Ski Valley, Inc. hereby moves that the Presiding Officer limit or bar any Appellants from participating at this Appeal Hearing who either do not appear in person at this hearing to testify or any Appellants who did not themselves pay the required \$250 filing fee for their appeal for lack of standing under the Village Procedures governing this Appeal Hearing and Village Ordinance.

1. Appellee hereby moves to bar/limit the participation of any Appellants who are not in attendance under paragraph 1 of the Village's Procedures for this Appeal Hearing: "Any Appellant not appearing at the hearing may be deemed to have waived his or her right to appeal." (Emphasis added).

2. Applicant further moves to disqualify the additional 15 or so appellants who signed the Weingarnter appeal but did not pay a separate appeal fee. In the alternative, Appellee moves to limit the Weingartner Appellants to a single representative as all 15 or so (signing appellants) adopted the same appeal claims as the Weingartners, and their participation is/will be excessively

“cumulative” *per se* and subject to limitation pursuant to the Procedures (Village Procedures, paragraph 6).

Village of Taos Ski Valley Ordinance 20-030(26)(2) provides:
“Any appeal following a decision of the Planning Officer or the Commission shall be made in writing on prescribed forms obtainable at the Village Office upon payment of the applicable filing fee, and submitted to the Planning Officer.”

Only three such forms were filed, and only three such payments were made. The Hall Appeal and the Leland Appeal represent single households, while the Weingartner Appeal claims to represent fifteen households. By jointly submitting one appeal form and one payment the Weingartner Appellants imply that they are a single, duplicative claim and should thusly be treated as a single party. Treating each of the Weingartner Appellants as separate, individual parties raises serious procedural and due process issues and would violate Appellee’s due process rights. In such a situation, it is not clear which, if any, of the Weingartner Appellants has standing to present testimony and/or evidence on behalf of the groups appeal nor is it even clear whether such testimony and/or evidence would apply universally to a singular group appeal or apply individually to each parties appeal. In addition to violation of Appellee TSVI’s due process rights such a situation would violate the due process of the other two Appellants who submitted the prescribed forms and payments.

CANEPA & VIDAL, P.A.

By: /s/ Joseph F. Canepa
Joseph F. Canepa
Attorney for Appellee/Applicant
Taos Ski Valley, Inc.
P.O. Box 8980
Santa Fe, NM 87540-8980
(505) 982-9229
jfcanepa@newmexico.com

I certify that on March 17, 2023, a copy of this Motion to Limit / Bar Additional (Not Paying Village Appeal Fee) or any Non-Appearing Appellants was emailed to the following:

Ann Marie Wooldridge, Village Clerk
awooldridge@vtsv.org

John Appel, Esq., Village Attorney
jappel@coppler.com

Tom Wittman, Village Mayor
topwit@aol.com

And sent by email to:

Named Appellants Paying Appeal Filing Fee:

J. Scott Hall and Chris Hall (shall@logosresourcesllc.com)
Felicia Weingartner and Tom Weingartner (fcw@weingartnerlaw.com)
Robert W. Leland and Robyn H. Leland (robertleland@me.com)

/s/ Joseph F. Canepa

**BEFORE THE VILLAGE COUNCIL
OF THE VILLAGE OF TAOS SKI VALLEY**

**SPECIAL COUNCIL MEETING
MARCH 21, 2023, 2:00 P.M.**

*The Appeal of the Decision of the Village of Taos Ski Valley's Planning and Zoning Commission
(February 6, 2023) Granting a Conditional Use Permit (CUP) to the Appellee Taos Ski Valley,
Inc. for its Hotel St. Bernard Property*

**APPELLEE TAOS SKI VALLEY, INC.'S
MOTION FOR PROTECTIVE ORDER PREVENTING
APPELLANT WEINGARTNER FROM CALLING
COUNCILOR CHRIS STAGG AS A WITNESS**

Appellee Taos Ski Valley, Inc. hereby moves that the Presiding Officer issue a protective order preventing Appellant Weingartner from calling Councilor Chris Stagg as a witness in these proceedings or, in the alternative if allowed, allow Appellee TSVI to call Councilor Henry Caldwell as a rebuttal witness.

By: /s/ Joseph F. Canepa
Joseph F. Canepa
Attorney for Appellee/Applicant
Taos Ski Valley, Inc.
P.O. Box 8980
Santa Fe, NM 87540-8980
(505) 982-9229
jfcanepa@newmexico.com

I certify that on March 17, 2023, a copy of this Motion for Protective Order was emailed to the following:

Ann Marie Wooldridge, Village Clerk
awooldridge@vtsv.org

John Appel, Esq., Village Attorney
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Tom Wittman, Village Mayor
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And sent by email to:

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J. Scott Hall and Chris Hall (shall@logosresourcesllc.com)

Felicia Weingartner and Tom Weingartner (fcw@weingartnerlaw.com)

Robert W. Leland and Robyn H. Leland (robertleland@me.com)

: /s/ Joseph F. Canepa



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**PLANNING & ZONING
COMMISSION:**

Thomas P. Wittman, Chair
Henry Caldwell
Richard Duffy
Yvette Klinkmann
Susan Nichols
J. Christopher Stagg
Jim Woodard

VILLAGE ADMINISTRATOR:
John Avila

**DIRECTOR OF PLANNING &
COMMUNITY DEVELOPMENT:**
Patrick Nicholson

VILLAGE CLERK:
Ann Marie Wooldridge

**PLANNING & ZONING COMMISSION
REGULAR MEETING DRAFT MINUTES**

Monday, February 6, 2023 1:00 P.M.

Via Zoom TeleConference

See www.vtsv.org for information to attend the meeting
TAOS SKI VALLEY, NEW MEXICO

MINUTES

I. CALL TO ORDER & ROLL CALL

Commission Chair Wittman called the meeting to order at 1:00 p.m.
Commission members Wittman, Caldwell, Duffy, Klinkmann, Stagg and
Woodard were present. Commission member Nichols logged in before
item V. A.

II. APPROVAL OF THE AGENDA

MOTION: to approve the agenda as written

MOTION: Commissioner Stagg **SECOND:** Commissioner Duffy
PASSED: 6-0

**III. APPROVAL OF THE MINUTES OF THE NOVEMBER 14, 2022 P&Z
COMMISSION MEETING**

MOTION: to approve the minutes as presented

MOTION: Commissioner Stagg **SECOND:** Commissioner Duffy
PASSED: 6-0

IV. OLD BUSINESS

No items of old business

Note: Commission Member Nichols logged in at 1:06 p.m.

V. NEW BUSINESS

**A. Consideration to Approve Resolution 2023-526 Concerning
Planning Commission Meetings and Notice Required.**

Village Clerk Ann Wooldridge advised the Commission that this
Resolution is a routine matter providing for the conduct and
procedures of Commission meetings.

MOTION: to approve Resolution 2023-526

MOTION: Commissioner Stagg **SECOND:** Commissioner Duffy

PASSED: 7-0

B. PUBLIC HEARING: Consideration to Approve a Conditional Use Permit at 112 Sutton Place for the Reconstruction of the Hotel Saint Bernard by Taos Ski Valley, Inc.

Chair Wittman announced the procedures for the public hearing.

Staff Report: Planning Director Nicholson introduced the agenda item and described the application process. He stated that the application was deemed complete in November 2022 but the hearing of the application was deferred from the December 5, 2022 Commission meeting at the request of the Applicant. Mr. Nicholson stated that the proposed project would consist of three buildings including a luxury hotel with two fine dining restaurants at the south end of Sutton Place. The location is within the Village Core zone. The plans as submitted comply with Village design guidelines. Mr. Nicholson called the Commission's attention to the requirements of Ordinance No. 22-030 for approval of a conditional use permit (CUP). Mr. Nicholson stated that the project as presented complies with most but not all of the relevant guidelines, and therefore the Planning Department recommends approval of the CUP with the conditions set out in the Staff Report, reflecting (1) presently inadequate Village water supply to support the completed project; (2) development impact fees to be imposed for the project, the exact figure yet to be determined, including any request for credits; (3) off-site parking as originally proposed has been revised to provide that 44 of the required spaces will be provided on an expanded site with a lot line adjustment to provide the necessary area; (4) Applicant needs to address pedestrian safety issues on Sutton Place; (5) avalanche safety measures for which Applicant has provided a study, but still needs to provide a structural analysis of anticipated forces in the event of an avalanche; (6) drainage plan and stormwater pollution prevention plan yet to be provided; (7) Village costs for any outside expert review will be paid by the Applicant; (8) the Village's Public Works Director advises that at present there is adequate wastewater treatment capacity to support the proposed project; (9) preliminary plans as presented comply with roof height requirements, but this will be re-evaluated when final detailed plans are received; and (10) the newly revised site plan places a parking lot adjacent to a U.S. Corps of Engineers designated wetland, presenting a possible need for a Section 404 permit from the Corps of Engineers. Staff recommends approval with the following conditions as reflected in the Staff Report: (1) revised streetscape and roadway improvements to address pedestrian safety on Sutton Place, with all improvements to be completed before issuance of a certificate of occupancy; (2) condition removed and to be addressed later; (3) condition removed and to be addressed later; (4) lot line adjustment to be completed before issuance of a certificate of compatibility; (5) avalanche hazard engineering analysis by a New Mexico certified engineer; (6) condition regarding off-site parking changed to require a showing that no Section 404 permit is required, or alternatively providing such a permit; (7) snow roof retention system to be independently evaluated by the Village; (8) any substantive changes to be approved by the Commission, and other changes by the Planning Director; (9) conditional use permit will expire 2 years from date of issue if no building permit has been issued.

Commissioner Klinkmann requested that Commissioner Stagg recuse himself from this matter because he is employed by the Applicant.

Applicant's Presentation: Carl Pearson, Associate Principal of Hart Howerton, introduced the Applicant's visual (slide) presentation.

Peter Talty of TSVI described the application process to date, since the application was originally submitted on August 1, 2022. He described the Applicant's efforts to move forward while retaining elements of the character and history of Taos Ski Valley. He stated that the intent was to recreate to a significant extent the experience of the former Hotel Saint Bernard (HSB). This application does not request a variance or change of use. He introduced the project team that has been working on the HSB project.

Carl Pearson described project core goals to (1) create improvements to elevate the ski experience; (2) revitalize and improve the HSB while maintaining its spirit and character; (3) provide public amenities to draw skiers and year-round visitors; (4) elevate Village dining, nightlife and wellness experience; (5) improve the guest experience; and (6) add value, energy and activity to the Village with increased accommodation. He discussed the project's integration into the revitalization of the Village core and its relation to future anticipated projects. He described the planned increase from 28 residential (hotel) units in the old HSB to 53 residential units in the three structures of the new project. He described the landscaping and planting plans for the HSB project. He described the planned vehicle and pedestrian circulation plans, and the use of valet parking for hotel guests. He described the HSB's integration into the foot of the ski slope for access between the hotel and the slopes. He described the general scope of snowmelt plans covering many outdoor areas. Mr. Pearson stated that the new HSB would provide increased public areas, both interior and exterior, as well as re-creating key elements of the old HSB such as the original dining room and bar. He described the intent to use the Allée Mayer between the HSB and Snakedance for additional pedestrian access, protected by bollards that can be removed in the event emergency access by vehicles is necessary. He described the parking design with 65 valet parking spaces (including three handicapped spaces) on the lower level of the HSB and an additional 44 spaces for staff and overflow valet parking. The exterior parking conforms to the necessary setback from the nearby wetland area. With the removal of Mogul Medical from the area the Applicant anticipates opening up the passageway for vehicles along the extension of Sutton Drive onto the property, improving traffic and pedestrian safety. The intent is for the new HSB buildings to fit within the viewscape and be consistent in scale with existing structures in the Village Core zone. Mr. Pearson presented examples from other locations of materials and approaches that will be used to create the feeling of an alpine ski resort. The building height is consistent with restrictions in the Village's zoning ordinance. The roof design is intended to hold most snow on the roof and prevent it sliding off onto public areas.

Omeed Mollaian of Vertex Engineering described engineering enhancements for routing of pedestrians and traffic, the plans for utilities to be routed into and within the HSB site, and drainage plans including (a) drainage from the roof and hard surfaces on the site, routed into a regional detention pond, and (b) routing of water to both east and west of the site from "soft" areas without hard surfaces.

Carl Pearson and Peter Talty concluded the Applicant's presentation by reiterating that the intent is to honor the history of the Village while adding a hospitality component to make it attractive for year-round activities.

Chair Wittman Inquired about how staff would access HSB from the parking area at the foot of Strawberry Hill. Mr. Pearson indicated that staff would probably go back and forth in the area adjacent to the Gondolita next to the new Chateau Mayer, or they might be brought by shuttle service.

Commissioner Caldwell inquired about access to the area of Lift 1. Mr. Pearson described the intent to create a new path from the Gondolita area up a stairway next to extended Sutton Place to reduce the potential conflict between pedestrians and vehicles.

Public questions: From Bob G: How will trucks make deliveries to the HSB and how will they turn around? Mr. Pearson answered that trucks would be limited to a length of 22 feet, and that they had done tests to ensure that they could turn around and also enter the building to the interior loading area.

From Mary Tingerthal, an owner at Snakedance Condominiums: How will the Applicant address the difficult intersection of Sutton Place and the private entrance road near Snakedance and the Gondolita? Mr. Talty stated that Applicant was reducing the present grade, as well as removing the perpendicular parking presently in front of Mogul Medical to widen the effective roadway, and that snowmelt will be directed to a French drain. Applicant also anticipates that during most times there will be less traffic than at present because of the valet parking.

From Kent Forte: Can applicant address the present ski-in, ski-out arrangements? Mr. Talty stated that Applicant was not happy with the proposed parking area at the foot of Strawberry Hill, which was required by the Village. Mr. Pearson stated that skier access to Edelweiss and the Gondolita Plaza would be retained, but perhaps modified.

From Trudy DiLeo: Can fire engines get down the Allée Mayer? Mr. Pearson stated that they could, as could other emergency vehicles, with the removal of the bollards to allow that access.

PUBLIC HEARING:

Peter Talty spoke in favor of the project and stated that it would be beneficial for the Village.

Carl Pearson spoke in favor and emphasized that the Applicant was trying to achieve a balance between the need for new facilities while honoring the previous circumstances of the Village and the residents and honored citizens of the past.

Eduardo Sampere spoke in favor of the project. He said that he saw a real effort to honor the old HSB and the special place that it was for him, his family and others.

Lawrence Peterson, Construction Manager for Bradbury Stamm Construction, spoke in favor of the project. He stated that his company was enthusiastic about the project, which will employ hundreds of tradesmen, and his that they will use local workers and businesses during the construction process.

Anthony Rodman spoke in favor of the project. He said that it was essential to move forward with well-conceived projects like this to bring new life into the Village.

David Norden of TSVI spoke in favor of the project. He believes that the project preserves the heritage of the old HSB and helps to preserve the essence of the sport of skiing. He requested that the parking condition be removed to preserve the sledding hill and for aesthetic reasons, and stated that there was no need for it because of other available parking areas.

Chaz Rocky of TSVI spoke in favor of the project. The plans are well developed and reflect well on the

history of HSB. He also feels the added parking is not necessary.

Monique Mayer Jacobson spoke in favor of the project. She agrees with her late father that HSB and the ski mountain are inextricably linked in the history of Taos Ski Valley.

Bob Coroon spoke in favor of the project. He believes the project is important because right now there is a lack of night life and dining, and also for the tax revenues that will be produced.

Jay Lazarus, Glorieta Geoscience, spoke in favor of the project. There is plenty of water supply available; the problem is a faulty distribution system. The wetlands are not an issue because of prior approval of their delineation by the Corps of Engineers, and they have an approving letter from the Corps of Engineers. There not be any dredged or fill materials into a wetland.

Joseph Canepa, Canepa & Vidal P.A., spoke in favor of the project. He has skied on the mountain for almost 45 years and is pleased to see the way that the history and nature of the old HSB is being honored.

Andrea Heckman spoke in favor of the project. She was on Jean Mayer's staff for 44 years, and she agrees that the HSB is extremely important to the ski area. She agrees that no additional parking is needed and stated that deliveries are downloaded from larger trucks onto smaller ones that can be accommodated, and other issues can be resolved. The important thing is to get on with the project.

No one spoke against the project.

MOTION: To approve the CUP with further examination of the parking issue and that it be further addressed at a future time with the hope that the extra parking can be eliminated.

MOTION by Commissioner Nichols; **SECOND** by Commissioner Caldwell.

DISCUSSION:

Mr. Nicholson stated that the Planning Department also is not very happy about the parking solution proposed by the Applicant. The Village is aware that the water issue is a distribution issue. Corps of Engineers condition is because of the late submittal and lack of documentation from the Applicant. Commissioner Duffy stated that he thought the project was well done and well presented and he would support it. Commissioner Klinkmann inquired what would be necessary to resolve the issues with availability of water. Mr. Nicholson said that a great deal of work was needed to resolve problems with leaking pipes in the distribution system, which could take one to three years. Commissioner Klinkmann asked whether there was a traffic study done on the anticipated traffic increase due to the project. Mr. Nicholson stated that no such study was done. Commissioner Caldwell requested clarification whether the motion included elimination of all of the Planning Director's proposed conditions for approval. Commissioner Nichols said that she would like to eliminate the condition related to water supply. Mr. Nicholson inquired how the need for parking would be met if the additional parking area proposed by the Applicant was eliminated. Mr. Talty stated that the original parking plan as submitted in August 2022 included different provisions for designation of parking in other areas, similar to other businesses in the Village.

Mary Tingerthal stated that she generally supports the project but that now is the time to look at details and her primary concern is related to streetscape design and traffic management, and provisions for that are insufficient. There must be removable bollards on both ends of the Allée Mayer to avoid traffic entering and needing to back out. More time is needed for study. Trudy DiLeo stated that she agrees with everything Mr. Nicholson has said about a cautious approach to the project. She inquired why the public safety commission was no longer involved to make recommendations. Mr. Nicholson stated that it was a matter of timing and trying to accommodate the Applicant. Ms. DiLeo

asked whether there was enough water to start the building process. Mr. Nicholson stated that there appeared to be enough water for construction. Jay Lazarus added the water conditions if put in place would amount to a de facto moratorium on further building. Commissioner Caldwell observed that the water issue is a long-standing problem the significance of which has only become obvious recently. There is no lack of water; it just needs to be delivered to the appropriate places. He believes the problem can be resolved. He favors removing the conditions related to water supply and development fees—as proposed by Mr. Nicholson.

Commissioner Woodward stated that he would be inclined to approve the CUP without any conditions. Eduardo Sampere observed that there is more than one parking person per guest room, which appears to him to be more than sufficient.

Mr. Pearson clarified that there will be bollards on both ends of Allée Mayer. The civil engineers have used standard engineering programs to ensure that there will be an adequate turning radius for trucks. Mr. Lazarus added that water use during the construction period would be primarily during the off-season. Mr. Talty stated that the various landowners ought to be able to work out the parking and traffic issues by all sitting down together, and the Applicant was willing to do that, but it should not be a permit condition. TSVI is working with the Village to resolve the water supply issues, and is seeking \$5,000,000 funding from the State to help fund the necessary work. The contingencies proposed by the Village are a serious problem for the Applicant and could affect the construction schedule.

MOTION TO AMEND: Commissioner Nichols, to amend her motion to remove all conditions.

Commissioner Woodward stated that he would second the motion to amend. The amendment proposed by Commissioner Nichols did not get approval from the Second of the original motion.

MOTION WITHDRAWN: Commissioner Nichols was permitted to withdraw her original motion.

MOTION: To approve the conditional use plan without conditions.

MOTION by Commissioner Woodward; **SECOND** by Commissioner Duffy.

DISCUSSION:

Mr. Canepa requested that his Objections and Responses filed with the Commission on February 1, 2023 be entered as a part of the record. Permit from the Army Corps of Engineers is not necessary. Francie Parker stated that she was very disappointed in the proposal to summarily dismiss the recommendations of the staff. She believes Commissioner Caldwell is attempting to protect the Village with regard to the issues relating to availability of water. Water is a primary concern of many Village residents. The infrastructure problems should be addressed before an additional burden is added to the system. Ms. Tingerthal suggests that if the motion is adopted the Commission should at least go on record as proposing that the parties try to get together to resolve their differences.

Public Safety Officer Virgil Vigil stated that he was concerned about traffic safety due to the expected increase in pedestrians.

Commissioner Caldwell inquired whether issuance of a permit with no conditions amounted a “will serve” letter to the Applicant. The Chair advised that under those circumstances water was no longer an issue in the application.

Village Counsel Appel stated that in his view the Village has a general obligation to provide water to users within the Village, including this project and other potential projects. Mr. Nicholson recommended withdrawing the water availability question as a condition for this CUP.

Mr. Appel stated that the Village could potentially be held liable for damages if water was not supplied when it should have been available.

Village Administrator John Avila stated that he does have concerns about the traffic and safety issues.

Commissioner Klinkmann stated that she strongly agrees that safety concerns are a problem that needs to be addressed, and should be a part of the CUP process. Commissioner Woodward stated that he believes any traffic problems that may arise with this project can be addressed by TSVI. Mr. Talty pledged that TSVI was willing to sit down with other nearby property owners to address any potential problems and describe TSVI's proposed solutions. He also stated that the Applicant was willing to wait until the end of the project (certificate of occupancy stage) to address availability of adequate water. He believes the problem will be resolved in three years.

Jalmar Bowden, Village Building Inspector, asked about the status of proposed conditions and whether they would arise in later stages. Mr. Pearson summarized the proceedings of the meeting to this point. Francie Parker inquired whether a certificate of occupancy could be denied on the basis that there is an inadequate water supply to serve the new structure. Chair Wittman stated that a CO could be held back under those circumstances.

VOTE: A vote was initiated and the voice vote was unclear.

ROLL CALL VOTE:

Commission Caldwell: Nay

Commissioner Duffy: Aye

Commissioner Klinkmann: Nay

Commissioner Stagg: Aye

Commission Chair Wittman: Nay

Commissioner Woodward: Aye

Commissioner Nichols: Aye

NOTE: Commissioner Nichols was contacted by telephone because her Zoom connection had been unexpectedly disconnected. Her vote was audibly made and recorded.

PASSED by a vote of 4-3

VI. MISCELLANEOUS: There were no items under Miscellaneous.

VII. ANNOUNCEMENT OF THE DATE, TIME, AND PLACE OF THE NEXT MEETING

Clerk Wooldridge announced that the next regular meeting will be March 6, 2023, at 1:00 p.m.

VIII. ADJOURNMENT.

MOTION: To adjourn

MOTION: Commissioner Woodward **SECOND:** Commissioner Duffy **PASSED:** 7-0

Chair Wittman declared the meeting adjourned.

**BEFORE THE VILLAGE COUNCIL
OF THE VILLAGE OF TAOS SKI VALLEY**

**SPECIAL COUNCIL MEETING
MARCH 21, 2023, 2:00 P.M.**

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MOTION FOR PROTECTIVE ORDER PREVENTING
APPELLANT WEINGARTNER FROM CALLING
COUNCILOR CHRIS STAGG AS A WITNESS**

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Inc. for its Hotel St. Bernard Property*

APPELLEE TSVI'S SUPPLEMENTAL EXHIBIT LIST

Appellee Taos Ski Valley, Inc. ("TSVI") hereby lists the following new, additional exhibits (reserved under TSVI's Exhibit List filed March 14, 2023 as #9 - forthcoming IPRA productions by Village):

TSVI Exhibit 10: Email chain from Appellant Frances Parker, TSVNA Chair dated December 30, 2022 to certain Appellants and to Village Planning Officer Patrick Nicholson and Commissioner/Councilor Brent Knox and Commissioner/Councilor Henry Caldwell;

TSVI Exhibit 11: Email chain from Appellant Frances Parker, TSNVA Chair dated February 14, 2023 to certain Appellants and to Village Planning Officer Patrick Nicholson and to Commission/Councilor Brent Knox and Commissioner/Councilor Henry Caldwell;

TSVI Exhibit 12: Email chain from Appellant Frances Parker, TSNVA Chair dated February 18, 2023 to certain Appellants and to Village Planning Officer Patrick Nicholson and Commissioner/Councilor Brent Knox and Commissioner/Councilor Henry Caldwell, and,

TSVI Exhibit 13: Cell phone text chain to and from Frances Parker and Village

Planning Officer Patrick Nicholson, undated, but after February 6, 2023 P&Z hearing and decision.

CANEPA & VIDAL, P.A.

By: /s/ Joseph F. Canepa
Joseph F. Canepa
Attorney for Appellee/Applicant
Taos Ski Valley, Inc.
P.O. Box 8980
Santa Fe, NM 87540-8980
(505) 982-9229
jfcanepe@newmexico.com

I certify that on March 17, 2023, a copy of this Supplemental Exhibit List was emailed to the following:

Ann Marie Wooldridge, Village Clerk
awooldridge@vtsv.org

John Appel, Esq., Village Attorney
jappel@coppler.com

Tom Wittman, Village Mayor
topwit@aol.com

And sent by email to:

Named Appellants Paying Appeal Filing Fee:

J. Scott Hall and Chris Hall (shall@logosresourcesllc.com)
Felicia Weingartner and Tom Weingartner (fcw@weingartnerlaw.com)
Robert W. Leland and Robyn H. Leland (robertleland@me.com)

: /s/ Joseph F. Canepa

Canepa & Vidal, P.A.

From: Francie Parker <parker@newmexico.com>
Sent: Friday, December 30, 2022 6:15 PM
To: Courtney & Dave Dornburg; trevquest@hotmail.com; Dee Johnson; Peter Donahue; Gretchen Grogan; Michael Chandler; Susan McNeely; elliecollister@msn.com; Virginia Boyden; George; Paula Knepper; mike.blake@mcafeetaft.com; jrjustice@coxinet.net; jack justice; Brent Knox; Mary Tingerthal; consoderholm@hotmail.com; Lisa Teves; Lisa Teves; scott@c-interiors.net; Ingrid Gorham; Mala Htun; dwturner@agenda-global.com; bsperber1@me.com; Ben Cook; Jacquie Cook; Ryan Fellows Cold Smoke; Glenn Fellows; Geneie Everett; anne@vorenberg.com; Alan Vorenberg; dr.chrisspierdds@gmail.com; johnbrookecottam@gmail.com; Lori Cino; holmquist7@yahoo.com; brmswim@gmail.com; glg@psu.edu; Mike Fitzpatrick; Henry Caldwell; davespalding@me.com; jfdugan@sbcglobal.net; M Gallegos; Mickey Blake; Kerrie Pattison; Roger Pattison; Kathleen Sullivan; Taz Schurman; Risa Lehrer; chriswlong73@gmail.com; keith.dowell@evusa.com; Patrick Nicholson; Francie Parker
Subject: TSVNA Annual Meeting Jan 1, 4pm

Hello TSV Neighbors,

I hope you can all join us for our annual meeting. It will be held at my house, 45 Twining Rd., Sunday, January 1 at 4:00 PM. If you are unable to join us in person, you may attend via Zoom. The link is attached at the bottom of this email. I will do my best to facilitate this dual format meeting. It was a little awkward in July, but I think it is important that as many people as possible can attend. Please bare with me to resolve any technical issues that may arise.

Please contact me via email or phone if you would like to add an item to the agenda.

Mike Klinkman, our secretary, unfortunately is unable to attend this particular meeting. Is someone else willing to take notes for the meeting minutes on his behalf?

A quick reminder, I still am unable to send anything to the full group because of our continuing growing numbers and my personal email doesn't allow sending to large groups. If you reply to the email you receive from me, it will only go to a subset of the group. Feel free to forward this email to anyone you think would be interested in joining TSVNA.

Below is a letter from Mike Fitzpatrick, another member of TSVNA. He asked if I would please disseminate it to the group before our annual meeting.

Francie Parker, TSVNA Chair
parker@newmexico.com
505-692-9925

Fellow Village Residents:

My name is Mike Fitzpatrick. I have lived in Amizette since 1992. Prior to that I lived in Valdez since 1975.

As with many of you I was attracted to Taos by the mountains and the skiing. My first season was 1973 and so this is my 50th season here. I also taught skiing here for decades and was awarded the "King of the Ernie Blake Ski School" as well.

I have long been concerned by the lack of transparency regarding Village business. I am proposing a Referendum concerning the contemplated purchase of the firehouse annex from TSVI. The project seems to be surging ahead but we know neither the price nor the source of payment. The Village does not have funds necessary to complete this transaction. I am not opposed to this purchase but I hope that the Village gets the best possible deal and can truly afford it given its overly burdensome debt load.

Past performance does not paint a rosy picture for the efficient completion of this transaction. The Taos Mountain Lodge project began in similar circumstances. No concrete plan and no professional supervision. Purchased for \$800k in debt and another \$400k for upgrades, also debt. A recent analysis of the Taos Mountain Lodge property reveals that the Village has spent at least \$2.7 Million to date. Take a visit and see the travesty yourself. A recent appraisal placed the value of the Taos Mountain Lodge at \$1.2 Million!!!

The Waste Water Treatment Plant "Upgrade" has cost more than \$15 Million to date. However, it is only marginally functional and it is estimated that an additional \$2 Million will be required to "Fix" it. This project was based upon advice from ONE Engineering firm with no second opinions entertained, despite being offered! Some elected officials continue to proclaim that the total cost of the "Upgrade" is \$9 Million!!! The original estimate by the Engineering firm was \$7 million!!!

The TIDD is another story. The Village is legally obliged to pay 75% of incremental gross receipts tax collections and 75% of property tax increases over a base established in 2017. However, the base is not indexed for inflation. With rising costs due to inflation and greater demand for services this scenario will inevitably lead to the inability of the Village to pay for existing services in the future. Case in point is the long neglected water supply system that reportedly has so many leaks that almost half of the treated water does not make it to our taps!!!

Democracy cannot function when transparency is lacking. In addition, Democracy is not a Spectator Sport although with Zoom replays working residents can finally review what happens at the afternoon weekday meetings.

Let us start a tradition of transparency in the Village of Taos Ski Valley! Please sign up to the Petition and let the People Speak AFTER being informed fully! Whatever the outcome at least we will be informed and have our say!

If you decide to let things proceed as in the past the Village may fail and require a bailout. That bailout will probably be in the form of a PID run by the same group operating the TIDD (the PID threat still exists within the controversial Master Development Agreement).

Our property taxes and PID assessments would likely skyrocket and services to the majority of residents would not improve.

Please put us on the right track! Express your desire to know what is going on before it is too late. Please sign the Petition for the Referendum. As I mentioned hopefully this will be the beginning of greater participation by the Residents and Taxpayers of the Village of Taos Ski Valley.

In closing I think it was Brandeis who stated that "Sunlight is the best disinfectant".

In signing the Petition for a Referendum we will be following the advice of another Fitz who attended high school with one of my Great Uncles in Hackensack, New Jersey:

"Either you think, or else others have to think for you and take power from you..." F. Scott Fitzgerald.

Zoom link:

Topic: TSVNA Zoom Meeting

Time: Jan 1, 2023 04:00 PM Mountain Time (US and Canada)

Join Zoom Meeting

<https://us06web.zoom.us/j/86519698864?pwd=WExjUEZTZkNFUitrldOVnI4RUJIZz09>

Meeting ID: 865 1969 8864

Passcode: 008543

One tap mobile

+13462487799,,86519698864#,,,,*008543# US (Houston)

+16694449171,,86519698864#,,,,*008543# US

Dial by your location

+1 346 248 7799 US (Houston)

+1 669 444 9171 US

+1 669 900 6833 US (San Jose)

+1 719 359 4580 US

+1 253 205 0468 US

+1 253 215 8782 US (Tacoma)

+1 507 473 4847 US

+1 564 217 2000 US

+1 646 931 3860 US

+1 689 278 1000 US

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington DC)

+1 305 224 1968 US

+1 309 205 3325 US

+1 312 626 6799 US (Chicago)

+1 360 209 5623 US

+1 386 347 5053 US

Meeting ID: 865 1969 8864

Passcode: 008543

Find your local number: <https://us06web.zoom.us/j/kgjB7XUIY>

Canepa & Vidal, P.A.

From: Francie Parker <parker@newmexico.com>
Sent: Tuesday, February 14, 2023 9:49 AM
To: Susan McNeely; pmcneely@merikx.com; elliecollister@msn.com; Virginia Boyden; George; jcs@skitaos.org; mike.blake@mcafeetaft.com; jrjustice@coxinet.net; jack justice; Brent Knox; Mary Tingerthal; consoderholm@hotmail.com; Lisa Teves; Lisa Teves; scott@c-interiors.net; Ingrid Gorham; Mala Htun; dwturner@agenda-global.com; bsperber1@me.com; Ben Cook; Jacquie Cook; Ryan Fellows Cold Smoke; Glenn Fellows; Geneie Everett; ylafeuillade@yahoo.com; jodiemroth@gmail.com; anne@vorenberg.com; Alan Vorenberg; dr.chrisspierdds@gmail.com; johnbrookecottam@gmail.com; Lori Cino; holmquist7@yahoo.com; bmswim@gmail.com; glg@psu.edu; Mike Fitzpatrick; Henry Caldwell; davespalding@me.com; jfdugan@sbcglobal.net; M Gallegos; Mickey Blake; Kerrie Pattison; Roger Pattison; Kathleen Sullivan; Taz Schurman; Risa Lehrer; chriswlong73@gmail.com; keith.dowell@evusa.com; Patrick Nicholson; Francie Parker
Subject: TSVNA - Time Sensitive - Potential P&Z appeal
Attachments: Ord. 2022-70 P&Z Commission.pdf; Appeal Form.pdf

Hello Neighbors,

The Planning & Zoning Commission (P&Z) held a meeting Monday, February 6th. The main item on the agenda was a requested Conditional Use Permit (CUP) for the St. Bernard hotel. The Staff report recommended the CUP should be granted with 7 conditions. However, the P&Z passed the CUP with no conditions attached. Since then I have been contacted by multiple people asking me if we, as a neighborhood association can and should appeal the decision by the P&Z. I was asked to please send out a letter to the Neighborhood Association. The **deadline for filing an appeal is February 21, 2023**. There is a \$250 fee for an appeal and a Village form to submit an appeal. Please see the attached form.

During the meeting, no one spoke against building a new hotel, restaurant, bar, and spa on the site of the old St. B and Mogul Medical sites, but multiple people spoke in favor of the conditions attached to the CUP and against removing the conditions. No one I spoke to subsequently was against the development, but rather felt the village was irresponsible for not taking water, safety, and parking into account. Because of this, a number of village residents have suggested appealing the decision.

The TSV Inc's CUP request, VTSV's Staff Report, and the recorded P&Z Zoom meeting can all be found on the same page of the Village website under February 2023, using this link: <https://www.vtsv.org/village-government/planning-zoning/meetings-agendas-minutes/>

There are two main concerns regarding the P&Z vote. The first is a conflict of interest and the second is the removal of the conditions on the Conditional Use Permit. I have laid out the two concerns below.

1. Conflict of Interest.

The P&Z vote was 4 to 3 in favor of granting the CUP without conditions. Commissioners Chris Stagg, Susan Nichols, Richard Duffy, and Jim Woodard voted in favor of the Motion to approve the CUP without conditions, and Chairman Tom Wittman, and Commissioners Yvette Klinkmann and Henry Caldwell voted against the

Motion to approve the CUP without conditions. At the beginning of the meeting, Commissioner Klinkmann requested Commissioner Stagg recuse himself from the proceedings for conflict of interest. Chairman Wittman stated the topic of recusal was not open for discussion and Commissioner Stagg did not respond.

It was brought to my attention this week that Village Ordinance 2022-70, Section 4, G. Conflict of Interest, states:

A Commission member having any potential conflict of interest on any policy, decision, or determination before the Commission shall disclose to each of the other members the nature of his potential conflict as provided in the Government Conduct Act, NMSA 1978, Chapter 10, Article 16 as amended. A Commissioner with a conflict of interest shall abstain from voting. The Disclosure shall be recorded in the Commission's minutes. (See attached for complete ordinance.)

The New Mexico Government Conduct Act referenced above in the Village Ordinance, NMSA 1978, Chapter 10, Article 16, defines financial interest as including any employment of the individual or the individual's family.

Commissioner Chris Stagg is an employee and officer of the company who requested the Conditional Use Permit. Commissioner Stagg did not acknowledge the conflict of interest, did not address the issue when it was brought up in the meeting, and did not recuse himself. Without Commissioner Stagg's vote, the CUP without conditions would not have passed. This is a potential reason for an appeal.

2. Removal of Conditions from the CUP

There were multiple conditions Village Staff recommended be attached to the requested St. Bernard CUP, all of which were removed. These are the conditions that residents have expressed concerns about not being included as part of the CUP. There were other conditions of the CUP that the Village Staff recommended, which may also be a basis for an appeal. But those listed below are the conditions about which I have been approached.

Water Delivery System.

Staff initially recommended the condition of not providing a Will Serve Letter for water because they don't believe the water utility delivery service can be guaranteed at this time. Village Staff stated during the P&Z meeting the current water delivery system is not able to serve the new St. Bernard (See attached Zoom video for more details.) Many of you know about the problems with leaks throughout the system. There is currently no funding in place or a formal date by which the water delivery system could deliver water to the proposed St. Bernard. A rough estimate of 1-3 years for fixing the system was discussed. By eliminating this condition from the CUP, it was stated that water is not an issue. It was also stated that the Village could refuse to issue a Certificate of Occupancy if it was unable to deliver water to the proposed St. Bernard, however, it was pointed out by the Village attorney that the Village could be sued and forced to haul in water if the system could not deliver water. The fact that the Village is unable to guarantee the delivery of water to the new St. Bernard and is liable for delivering water if the system can't provide the water, is another reason for a potential appeal.

Off Site Parking.

Per Village Ordinance, there is required minimum parking for any new building in the Village. Because the St. Bernard was torn down, the new buildings must follow the ordinance or apply for a variance. In the P&Z meeting it was implied that parking requirements will not need to be followed since it was not a condition of

the CUP. Parking is a potential reason for an appeal, to ensure the Village follows the ordinance and there is adequate parking for the new St. Bernard.

Pedestrian Safety concerns.

Safety is a concern at this location, especially given most pedestrians are families with young children accessing the gondolita and the Rio Hondo Learning Center, AKA children's ski school. A condition of streetscape changes was requested by the Village to address this problem. No traffic study was provided for this project by TSV Inc. Director of Public Safety/Police Chief Vigil, Village Administrator Avila, and Commissioner Klinkmann all spoke against removing this condition during the P&Z meeting stating their concerns about pedestrian safety at this location. This is another reason for a potential appeal, to ensure the safety of our community.

Several TSVNA members have proposed appealing the decision. Does TSVNA want to appeal this decision?

Village of Taos Ski Valley Ordinances, Section 29, Appeals:

...Any person aggrieved by a decision or action of the Planning and Zoning Commission in carrying out the provisions of this ordinance may appeal the village council. Any such appeal must set forth in writing specifically wherein it is claimed there was an error or an abuse of discretion, or where the decision or action was not supported by the evidence in the matter.

Please reply to me as soon as possible, by 5:00 p.m. on Thursday, February 16, 2023 at the latest, advising whether you are in favor of filing a TSVNA appeal or against filing a TSVNA appeal. Whether or not TSVNA files an appeal does not affect your rights to file an individual appeal. Not responding will be considered an abstained vote.

There are neighbors who are considering filing an individual appeal. If you are interested in participating in an individual appeal please include that in your reply and I will put you in touch with those neighbors.

Francie Parker
TSVNA chair
parker@newmexico.com
505-692-9925

Ord 2022-70
P+Z Commission

VILLAGE OF TAOS SKI VALLEY
Village Council
Agenda Item

AGENDA ITEM TITLE: PUBLIC HEARING: Consideration of **Ordinance 2022-15**
Updating and Revising Ordinance 1997-15 Establishing the Planning and Zoning Commission
Membership, Selection, Appointment, Terms of Office and Removal from Office; Establishing
the Duties and Powers of the Commission.

DATE: June 28, 2022

PRESENTED BY: Patrick Nicholson, Director of Planning & Community Development

STATUS OF AGENDA ITEM: Old business

CAN THIS ITEM BE RESCHEDULED: Yes

BACKGROUND INFORMATION: At the request and initiative of Planning and Zoning
Commission Chairman, Tom Wittman, an update to Ordinance 1997-15 establishing the general
structure, powers, and duties of the Village Planning Commission was undertaken. Primary
revisions include reconstituting the Commission in 2022 to adjust and lengthen the terms of
office, establishing a selection committee to recommend appointments, and updating conflict of
interest provisions.

RECOMMENDATION: Staff recommends consideration of the proposed revisions to
Ordinance 1997-15 and a Public Hearing to discuss **Ordinance 2022-15**.

THE VILLAGE OF TAOS SKI VALLEY ORDINANCE 22-70

REVISION OF ORDINANCE 97-15, REVISING THE PLANNING AND ZONING COMMISSION MEMBERSHIP, SELECTION, APPOINTMENT, TERMS OF OFFICE AND REMOVAL FROM OFFICE; ESTABLISHING THE DUTIES AND POWERS OF THE COMMISSION

BE IT ORDAINED BY THE GOVERNING BODY OF THE VILLAGE OF
TAOS SKI VALLEY, NEW MEXICO:

SECTION 1. CREATION.

There is hereby created a Planning and Zoning Commission {hereinafter "Commission"} of the Village of Taos Ski Valley (hereinafter "Village")

**SECTION 2. MEMBERSHIP. APPOINTMENT. TERMS OF OFFICE AND
REMOVAL FROM OFFICE.**

- A. The Commission shall consist of seven (7) members who shall be appointed by the Mayor with the consent of the Village Council (hereinafter "Council"). Members shall be residents of the planning and platting jurisdiction of the Village, Administrative officials of the Village may be appointed ex-officio, non-voting members of the Commission.
- B. The Commission reconstituted in 2022 shall be composed of the existing members who will draw from a lottery to determine three (3) members afforded a four (4) year term and the remaining four members a six (6) year term. Each subsequent term of a member on the Commission shall be four (4) years or less in order to maintain the original staggering of terms of membership. A vacancy in the membership of the Commission shall be filled for the remainder of the unexpired term.

- C. When a vacancy occurs, the position will be advertised and a five {5} person Committee appointed by the Council will select the best qualified applicant and provide that name to the Mayor for appointment. The Mayor shall appoint the applicants with Council approval as set forth in NMSA Section 3-19-2. The Committee shall be composed of three {3} Commissioners, one {1} Councilor, and one (1) Village resident at large. The Council will determine the composition of this Committee after asking for volunteers from the respective bodies. The Mayor will appoint these Committee members for a four-year (4) term with approval of the Council.
- D. After a public hearing and for cause stated in writing and made part of the public record, the Mayor with the approval of the Village Council may remove a member of the Commission.

SECTION 3. POWERS AND DUTIES.

The Commission shall have such powers and duties as are necessary to:

- A. Fulfill and perform its functions, promote municipal planning, and carry out the purposes of Section 3-19-1 through 3-19-12 NMSA 1978 as amended, which Sections are hereby incorporated by reference and made part of this ordinance; and,
- B. Promulgate and enforce regulations governing the subdivision of land within the planning and platting jurisdiction of the Village as provided by Section 3-19-6 and Section 3-20-1 through 3-20-16 NMSA 1978, as amended, which Sections are hereby incorporated by reference and made part of this ordinance; and,
- C. To promulgate and enforce regulations governing zoning within the platting and planning jurisdiction of the Village as provided in Sections 3-21-1 through 3-21-11 NMSA 1978, as amended, which Sections are hereby incorporated by reference and made part of this ordinance; and,

- D. To serve as the Board of Appeals as required by Section IV articles A through F of Village Ordinance 2022-10 pertaining to the New Mexico Residential Building Code, Title 14.7.3 and the New Mexico Commercial Building Code, Title 14.7.2 ; and,
- E. Perform such other functions as the Village Council may from time-to-time grant to the Commission for the purpose of promoting health, safety, moral or general welfare of the Village.

SECTION 4. ORGANIZATION AND MEETINGS.

- A. OFFICERS: The Commission shall elect one (1) of its members as Chairman for a four(4) year term and create and fill any other offices as it may deem appropriate.
- B. CONDUCT OF BUSINESS: The Commission shall adopt and publish such rules and regulations for the conduct of business as it deems appropriate.
- C. MEETINGS: The Commission shall hold regularly scheduled meetings at least once a month or as required. All meetings shall be held in accordance with Village Resolution 2022-501 and as amended from time to time, pertaining to Open Meetings and Public Notice Act.
- D. QUORUM: A quorum of the Commission shall be a majority of its members.
- E. RECORDS: A public record shall be kept of all transactions, findings, resolutions, determinations and actions of the Commission. All public

records shall be open to inspection as provided by the Inspection of Public Records Act Sections 14-2-4 et. Seq. NMSA 1978

F. REPORTS; The Commission shall submit to the Village Council at its regular monthly meeting a report on the conduct of its monthly meeting.

G. CONFLICT OF INTEREST: A Commission member having any potential conflict of interest on any policy, decision, or determination before the Commission shall disclose to each of the other members the nature of his potential conflict as provided in the Government Conduct Act, NMSA 1978, Chapter 10, Article 16 as amended. A Commissioner with a conflict of interest shall abstain from voting. The Disclosure shall be recorded in the Commission's minutes.

H. PENALTY: Failure to disclose a conflict of interest shall be punishable by a fine not to exceed \$500.00 {five hundred dollars) or by imprisonment not to exceed ninety (90) days or both a fine and imprisonment.

SECTION 5. SEVERABILITY.

Should any section, paragraph, clause or provision of this ordinance, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

SECTION 6. REPEAL.

All ordinances or resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. The repealed shall not

be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

SECTION 7. EFFECTIVE DATE.

This Ordinance shall take effect July 29, 2022.

PASSED, APPROVED AND ADOPTED This 26th day of July, 2022.

Vote: For 4 Against 0

A handwritten signature in dark ink, appearing to read "Thomas P. Wittman", written over a horizontal line.

FOR Mayor NEAL KING
MAYOR PRO-TEM THOMAS P. WITTMAN

ATTEST:

Clerk Ann M. Wooldridge

Village of Taos Ski Valley
Planning & Community Development Department
Appeal Form



Ordinance 2022-30 Section 29:1-2 Any person aggrieved by an interpretation, decision or action of the Planning Officer in carrying out the provisions of this Ordinance may appeal such interpretation, decision, or action to the Planning and Zoning Commission as set forth herein. Any person aggrieved by a decision or action of the Planning and Zoning Commission in carrying out the provisions of this Ordinance may appeal to the Village Council. Any such appeal must set forth in writing specifically wherein it is claimed there was an error or an abuse of discretion, or where the decision or action was not supported by evidence in the matter. Any appeal not submitted within fifteen days after the decision, which is the subject of the appeal, shall not be considered.

Name and Address of Appellant: _____

Decision Being Appealed: _____

Appeal of interpretation, decision or action of the Planning Officer or Planning Commission (circle).

Date of Decision: _____

How Is Appellant Affected by the Decision? _____

Grounds for Appeal; please state clearly the error, abuse of discretion or other basis of appeal:
(Use additional sheets if necessary)

Signature of Appellant: _____ Date: _____

Received by: _____ (VTSV staff) Date: _____

Canepa & Vidal, P.A.

From: Francie Parker <parker@newmexico.com>
Sent: Saturday, February 18, 2023 9:20 PM
To: Francie Parker; jodiemroth@gmail.com; Henry Caldwell; davespalding@me.com; Alan Vorenberg; pmcneely@merikx.com; Mike Fitzpatrick; Susan McNeely; Ben Cook; Risa Lehrer; George; Mary Tingerthal; elliecollister@msn.com; mike.blake@mcafeetaft.com; Ingrid Gorham; holmquist7@yahoo.com; jrjustice@coxinet.net; Mala Htun; Roger Pattison; Geneie Everett; Lisa Teves; Mickey Blake; dwturner@agenda-global.com; bsperber1@me.com; dr.chrisspierdds@gmail.com; Kathleen Sullivan; Lori Cino; Glenn Fellows; anne@vorenberg.com; glg@psu.edu; Ryan Fellows Cold Smoke; Brent Knox; jfdugan@sbcglobal.net; Kerrie Pattison; consoderholm@hotmail.com; bmswim@gmail.com; Lisa Teves; Taz Schurman; Virginia Boyden; ylafeuillade@yahoo.com; johnbrookecottam@gmail.com; keith.dowell@evusa.com; scott@c-interiors.net; Patrick Nicholson; M Gallegos; chriswlong73@gmail.com; jack justice; jcs@skitaos.org; Jacquie Cook
Subject: Re: TSVNA - Time Sensitive - Potential P&Z appeal

Neighbors,

I was asked to please forward this response:

Hello neighbors,

Couple of thoughts about the latest controversy in TSV.

My first thought is about the elephant who's been in the room for decades. Chris Stagg has many fine qualities. And to his credit, he has done a lot of good work throughout the years for this village. He has been an elected official with the village since its legal inception. With TSV being mostly folks with second homes, Chris did a lot of work when there weren't many folks around to step up. He is, obviously, very knowledgeable about municipalities.

He also married Ernie Blake's daughter, Wendy, and worked with the family ski corporation most of his adult life. When the Blake family sold the business to Mr. Bacon, Chris was hired as a vice president of TSVI.

The inherent problem with this is that there are issues where the village and the ski corporation will have different points of view. There will, by nature, be different priorities and different thoughts on which entity should pay for different services, among other things.

None of this would be an issue if Chris would simply recuse himself when decisions need to be made by the Council or a committee that concerns TSVI, his other employer. Ethically, legally and morally, no one should have to ask him to step back on these votes. He should know that the New Mexico Government Conduct Act requires him to abstain from voting when a conflict of interest exists. When a citizen is forced to state the obvious and asks him to recuse himself, he simply does not reply to the request, and proceeds to vote on a TSVI issue. Chris Stagg just does what he wants, regardless of the law. The Mayor doesn't enforce the law and require him to recuse himself. Like the old saying goes, "he only does it 'cause he can". He gets away with it because no one calls him on it, or files a formal grievance.

The ethical and legal failings going into a vote tarnishes the public trust in the process of governing and calls into question the validity of the vote.

Much of this has been allowed to happen over the years because of the unique situation the VTSV was in during the "pre-Bacon" days and before COVID. Council meetings were held during the week during working hours. The same handful of residents ran for council and mayor over the years. Only a few residents could attend these in-person meetings. Correct protocol was not necessarily enforced by the other council members over the years. Information was not transferred to the general public in a timely fashion like we have today. Those days are like 'apples and oranges' to the present time. With zoom meetings, most of the residents can participate in the meetings or see a recorded video of the meeting. Transparency is present in some ways like it never was before. Life in TSV is 180 degrees different than it was in the Blake family days.

Louis Bacon is recreating TSV to his liking and that is his prerogative. Just like any other business, he has to deal with the VTSV governmental arm that is mandated to act on behalf of all the interests in the village.

The recent Planning and Zoning vote to grant a Conditional Use Permit for the building of the St. Bernard Hotel brought Chris Stagg's consistent behavior to a head. The village staff worked for months researching requirements and regulations for this massive village project. The TSVI staff worked in cooperation with the village staff and ended up only having 7 issues that were not yet resolved. Patrick Nicholson (Planning and Community Development) explained in quite some detail the conditions, and why they were included. This is his job and he is obliged to identify these issues on behalf of the village. Most projects of this size have at least a few conditions to meet for a CUP.

It may be that some of the commissioners voted for the CUP with NO conditions because they believed Peter Talty's assurances that all would be right by the time the project was completed. Even if someone's word is true, the problem is that anything can happen to anybody at anytime between now and project completion. That is why we write things down. I'm sorry our attorney didn't mention this during the discussion. If Peter is so convinced of his words, why was there hesitation to include the conditions?

I was shocked that the motion was made to grant the CUP with NO conditions if for no other reason, than what a slap in the face it was to our entire village staff. Everyone in the village office has worked for months on this project.....and for what? Just to have it all thrown out the window by 4 P & Z commissioners (including Chris Stagg). Including the 7 conditions would not have delayed the project. Including the 7 conditions would have protected the village from a potential lawsuit, or from having to transport tanks of water to the new hotel, if we don't have our water infrastructure repaired by the project's completion. Including the 7 conditions would have mandated safety concerns on Sutton Place that Public Safety Director Vigil recommended after conferring with the DOT, rather than trusting anyone's word.

This was just one more time that Chris voted on an important issue involving TSVI.

The village residents and businesses, including TSVI, deserve voting that is not questioned.

When ethical and legal standards are not met, interested parties will be deprived of honesty and transparency in the process.

The appeal of the CUP vote should move forward.

Respectfully, Trudy DiLeo

On Feb 17, 2023, at 10:10 AM, Francie Parker <parker@newmexico.com> wrote:

Hello Neighbors,

I'd like to thank everyone for their responses and thoughtful comments and discussions. 3/4 of the responses were in favor of TSVNA appealing the decision.

Upon further inspection of the TSVNA By-Laws, it appears there is a meeting and longer notice provision to the membership before the association can participate in a legal or quasi-legal proceeding. Amending our By-Laws to accomodate situations where the Village requires action within 15 days will be on the next agenda so TSVNA can comply with the Village rules and participate in the process where there is support for doing so.

There is, however, a group of people who are gathering together to file an appeal outside of TSVNA. If you are interested in joining that appeal, please let me know and I will get you the appropriate information.

Francie Parker

TSVNA chair
parker@newmexico.com
505-692-9925

Texts. Francie Polka

I hate to bother you on a long weekend. But I have a question about filing an appeal, and because of the short time frame, I don't think it can wait until Tuesday. I have one individual who wants to add on two more items to the appeal, but everyone else is signing a simpler version on the letter. If they don't match, do they need to be two different appeals? I don't want the main one thrown out because there is something else added onto another one. Right. Would the other individual be comfortable filing a separate appeal, including the \$250 fee?

In other words, they really ought to match.

Thanks

**BEFORE THE VILLAGE COUNCIL
OF THE VILLAGE OF TAOS SKI VALLEY**

**SPECIAL COUNCIL MEETING
MARCH 21, 2023, 2:00 P.M.**

*The Appeal of the Decision of the Village of Taos Ski Valley's Planning and Zoning Commission
(February 6, 2023) Granting a Conditional Use Permit (CUP) to the Appellee Taos Ski Valley,
Inc. for its Hotel St. Bernard Property*

APPELLEE TAOS SKI VALLEY, INC.'S SUPPLEMENTAL WITNESS LIST

Appellee Taos Ski Valley, Inc. hereby supplements its Witness List following receipt of Appellant Weingarten's filed Witness List indicating that she may call Councilor Chris Stagg as a witness at this hearing. In the event that the Presiding Officer allows (see, TSVI's Motion for Protective Order) Appellant Weingartner to call Councilor Chris Stagg as a witness, and he is called as a witness, Appellee may call Councilor Henry Caldwell as a rebuttal witness.

CANEPA & VIDAL, P.A.

By: /s/ Joseph F. Canepa
Joseph F. Canepa
Attorney for Appellee/Applicant
Taos Ski Valley, Inc.
P.O. Box 8980
Santa Fe, NM 87540-8980
(505) 982-9229
jfcanepa@newmexico.com

I certify that on March 17, 2023, a copy of this Supplemental Witness List was emailed to the following:

Ann Marie Wooldridge, Village Clerk
awooldridge@vtsv.org

John Appel, Esq., Village Attorney
jappel@coppler.com

Tom Wittman, Village Mayor
topwit@aol.com

And sent by email to:

Named Appellants Paying Appeal Filing Fee:

J. Scott Hall and Chris Hall (shall@logosresourcesllc.com)

Felicia Weingartner and Tom Weingartner (fcw@weingartnerlaw.com)

Robert W. Leland and Robyn H. Leland (robertleland@me.com)

: /s/ Joseph F. Canepa

REQUESTS TO NOT APPEAR

From: John Appel <jappel@coppler.com>

Sent: Tuesday, March 14, 2023 12:20 PM

To: parker@newmexico.com

Cc: John Avila <javila@vtsv.org>; topwit <topwit@aol.com>; Patrick Nicholson <pnicholson@vtsv.org>; Ann Marie Wooldridge <awooldridge@vtsv.org>

Subject: Village of Taos Ski Valley - Appeal to Village Council from P&Z Comm'n decision approving Conditional Use Permit

Dear Ms. Parker,

As general counsel for the Village of Taos Ski Valley, I am responding to your request made to Planning Director Nicholson on March 14, 2023, in which you inquired whether appellants who could not attend the hearing on March 21, 2023, could "sign something that says they adopt what other have said without being there themselves."

The Presiding Officer, the Mayor Pro Tem of the Village, has determined that appellants who cannot attend the meeting may submit notice that they concur in the presentation of the case that will be made by another party at the meeting, and they will not lose their status as an appellant by doing so.

We request that the notice be submitted in writing to the Village Clerk no later than 12:00 noon on Monday, March 20, 2023. The notice should clearly identify the party or parties who will not be appearing at the meeting, and the party whose presentation at the meeting is being adopted by the absent party or parties.

We would note also that if any party will be represented by a New Mexico licensed attorney at the meeting, no prior notice is required and the attorney may identify herself or himself as counsel for that party at the meeting.

Please let us know if there are any further questions.

John L. Appel

Coppler Law Firm, P.C.

645 Don Gaspar Avenue

Santa Fe, New Mexico 87505

505-988-5656

Fax: 505-988-5704

16 March 2023

MEMORANDUM FOR Village of Taos Ski Valley: Attn: Mayor Pro Tem Tom Wittman and Planning Director Patrick Nicholson

FROM: Michael Klinkmann 1 Coyote Lane Taos Ski Valley

SUBJECT: TSVNA Appeal to Village Council Meeting, 21 March 2023

1. As per email sent to Francie Parker, TSVNA President from John Appel, Copper Law Firm P.C., Counsel for VTSV on 14 March 2023, ref: Absence from meeting on 21 March 2023
2. I am a party to the TSVNA Appeal to the decision that the VTSV Planning and Zoning Commission made in regards to the Conditional Use Permit for the St Bernard Hotel to be rebuilt by Taos Ski Valley Incorporated.
3. I, Michael K. Klinkmann, will not be able to attend the meeting since I will be out of the country. I would like to let those parties that are involved that I concur in the presentation of the case that will be made by TSVNA at the meeting.
4. As a result, I respectfully request that I continue my status as an appellant to this appeal.



Michael K. Klinkmann