

EL PASO



COUNTY

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PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT
CRAIG DOSSEY, EXECUTIVE DIRECTOR

Planning Commission (PC) Meeting
Tuesday, May 2, 2017
El Paso County Planning and Community Development Department
2880 International Circle, Hearing Room
Colorado Springs, Colorado 80910

PRESENT AND VOTING: TIM TROWBRIDGE, JERRY HANNIGAN, JIM EGBERT, ALLAN CREELEY, KEVIN CURRY, SABRINA RAINEY, BRIAN RISLEY, BOB NULL, AND TONY GIOIA

ABSENT: ANDREW WIMBERLY

STAFF PRESENT: CRAIG DOSSEY, MIKE HREBENAR, KARI PARSONS, RAIMERE FITZPATRICK, ELIZABETH NIJKAMP, GILBERT LAFORCE, JEFF RICE, GABE SEVIGNY, LEN KENDALL, EL PASO COUNTY ATTORNEYS COLE EMMONS AND LORI SEAGO, AND EL PASO COUNTY ENGINEER JENNIFER IRVINE

OTHERS PRESENT: WILLIAM GUMAN, MIKE BARTUSEK, SCOTT GRATRICK, DANNY MIENTKA, JIM HOUK, JOHN FRINK, JEFF HODSDON, KYLE CAMPBELL, JAMES BARISH, STEVE MULLIKEN

1. Report Items

- A. Planning and Community Development Department – Mr. Craig Dossey** gave an update of the Planning Commission agenda items and action taken by the Board of County Commissioners since the last Planning Commission meeting. He also introduced the new Planners that were hired, Mr. Gabe Sevigny and Mr. Len Kendall.

2. Consent Items

- A. Approval of the Minutes – April 18, 2017**
The minutes were approved as presented. (9-0)

Regular Items

ITEMS 3 AND 4 WERE CONTINUED FROM MARCH 21 AND APRIL 18, 2017 MEETINGS.

Ms. Lori Seago reminded the Planning Commission that the drainage issues are the only thing they are able to hear testimony on. One additional continuance is acceptable if needed.

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Ms. Kari Parsons gave an overview of the remaining concerns and asked **Ms. Elizabeth Nijkamp** to go into further detail on each of those outstanding issues.

3. SP-16-004

PARSONS

**PRELIMINARY PLAN
GLENEAGLE GOLF COURSE RESIDENTIAL INFILL DEVELOPMENT**

A request by Westbrook Capital Holdings, LLC, for approval of a preliminary plan to create 56 single-family residential lots. The property is zoned RR-5 (Residential Rural) and is located north of Northgate Road, south of Wuthering Heights Drive, and is bisected by Gleneagle Drive. (Parcel Nos. 62062-01-096, 62062-05-008, 62062-04-033, 62061-03-004)

DISCUSSION:

Mr. Egbert – What is freeboard and what is a prescriptive easement? Answer from **Ms. Nijkamp** – Freeboard is the amount of watertight surface between a given water source and the lowest possible entry point during flooding.

Ms. Seago – A prescriptive easement is an easement that is put in place where an easement is not already in place but is created by adverse flow. It's defined by how it's been used in the past. The developer doesn't feel that they have the right to go in and change that easement. The staff has suggested to the developer a couple of alternatives. The developer could work with the two lot owners that would give him a deeded easement to make those drainage changes or they could go to court and get the rights to change that prescriptive easement.

Ms. Rainey – The developer is planning on changing the flow, do they have the right to change that historic flow. Answer from **Ms. Nijkamp** -- They are diverting it to a different location; they are detaining it at another location. They will release that historic water over a period of time at a delayed rate of release.

Mr. Curry – The item addressing the first bullet of remaining concerns. Is the drainage report complete at this point? Answer from Ms. Nijkamp – In my opinion it is not meeting the criteria manual. Question for the Attorney – seems that if the developer has the prescriptive easement, and the developer says they have it but can't fix anything, that seems to conflict. Answer from Ms. Seago – There is no definitive document or court decree that defines the scope of this easement. The developer believes they do not have the right to change it, the County believes they may.

Mr. Null – Our duty is to approve or disapprove it, and since we can't disapprove it, why are we not still tabling this item? Answer from **Mr. Trowbridge** – We can still table the items until completion of the necessary reports.

Mr. William Guman gave his presentation to the Planning Commission and answered questions. His presentation is on permanent file.

Mr. Trowbridge – So am I correct to say that we are at a legal impasse with regards to making further changes to that prescriptive easement? Answer from **Mr. Guman** – It's not for lack of

trying, both property owners are not willing to have any changes made to their properties. We did however, decrease the flow and made the pond bigger.

Mr. Egbert – It seems like when we talked about this last time, there are two ponds. I understood that the golf course could move water from one pond to another to mitigate that flow, but can't now that the golf course is not in operation, is that where the problem lies?

Mr. Mike Bartusek explained that there is an irrigation pond as well as additional sump areas. If those areas became full because they have no outlet, they would have to pump the water to drain into other areas. The outfall from the irrigation pond has been rechanneled thus allowing for less flow between those properties.

Answers from **Mr. Bartusek**

Ms. Rainey – Where does the flow between lots 10 and 11 go then? Answer – It eventually goes down Struthers after it winding through some areas.

Mr. Egbert – Who will be damaged by this flow? Answer – We believe no one will be damaged.

Mr. Null – What protections or guarantees are in place to make sure the flow won't be more than your project? Answer– This existing pond has new diversions that weren't in place before; the flow is different.

Mr. Curry – Can you clarify why the discussion was between 9 and 10 and not 10 and 11 where the flow historically goes? Have you worked with property owners at 10 and 11 to increase that swale? Answer – With the location of the existing culvert between 9 and 10 we were going to install our outfall pipe. We wouldn't want any over lot flows. We talked to property owner 10 but not with 11 to increase that swale.

Mr. Scott Gratrix owner of the property wanted to give clarification on the prescriptive easement. We do not know if we have one or not. There has been no discussion with property owners from lots 10 and 11 to increase that swale. We don't see it as a problem. There was a rain event in 2013 that was said to exceed the 100 year rain. Many home owners experienced problems during that rain event. The golf course closed after that event and nothing has been done to address the issue. . At the request of the County, we met with the lot 9 and lot 10 owners and discussed putting a pipe in to take the water out of the detention area and take it to the pipe in Westchester. We didn't come to an agreement. We met then and looked at ways to address that area. We converted the irrigation pond to a detention pond and we reduced the flows significantly. Our goal has been to improve the area for all our residents.

Ms. Rainey – Is there any damage putting that extra cfs into that direction that used to go between lots 10 and 11? Answer from **Mr. Bartusek** – the plan is to have those flows be diverted into the detention pond and metering that flow out at a slower rate.

Mr. Curry – I think the County is saying that if they can get the 1' of freeboard then the issues can go away. Why do you think you should not pursue that? Answer from **Mr. Gratrix** -- We feel like we've improved the situation and also we are talking about more than just two lots. We already reduced the flows; we believe we've addressed the issue.

Mr. Egbert – because of the drainage changes you've made, will there be the same issues as before? Answer from Mr. Gratrix – No. Based on Mr. Bartusek's earlier comments, was it a **myth** that when the golf course was operating, they could move water around to reduce drainage problems? Answer from **Mr. Gratrix** - Yes

Mr. Trowbridge – The situation has changed so the proper question is did the drainage get worse after the golf course closed? Answer from **Mr. Gratrix** – No

Mr. Trowbridge – So you are saying you can do a 6 inch freeboard but can't go to a 12 inch freeboard that the County is asking for; is that correct: Answer from **Mr. Gratrix** – that's correct, without going onto someone's property or having that easement, we can't make those changes.

Mr. Null – Why is Mr. Johnson unhappy? Answer from **Mr. Gratrix** – because during that rain event in 2013, his property (basement) flooded.

Ms. Parsons reminded that staff handed out letters of support and opposition at the last meeting. An email from Randy and Mary Ann Johnson, lot 10's owners, was placed on the overhead for the Planning Commissioners to read detailing the lack of communication between the developer and him. With the preliminary plan request there are two waivers requested. A waiver for more than 25 lots on a dead end roadway and the other waiver is for water supply to be sufficient for 300 years. Mr. Cole Emmons did discuss this in detail at the March 21 meeting.

Questions were raised regarding the water waiver request. **Mr. Cole Emmons** revisited the information presented regarding how the Planning Commission should interpret the review criteria.

Mr. Curry – I still have concerns here. I am perplexed by a lack of attempt to go to lots 10 and 11 property owners to improve that swale. I do have a legal question relative to the drainage issue. Does our consideration change with regard to the prescriptive easement and the County saying it's in place and the developer not confirming that easement is in place. Answer from **Ms. Seago** – Section 8.4.5 paragraph G 2 of our LDC, "when a proposed drainage system will carry water across land outside the division of land, appropriate drainage rights and easements shall be secured." There is a difference of opinion, but we have been operating under the assumption that they were aware they had that easement.

Mr. Curry – My preference would be to table this again until the applicant has a chance to provide all the documentation. Otherwise, I don't think I can support this request.

Mr. Egbert – This is an infill situation, and there are drainage issues today as there have been for many years. I support the applicants' position and would approve this moving to the Board of County Commissioners. It's not the developer's responsibility to improve a couple of lots; they've done improvements that will make a difference.

Mr. Risley – I look at the approval criteria for waivers as well as the application, I find myself having a difficult time because it's not within the strict guidelines of the criteria. With that said, I agree with Mr. Egbert in that this is an infill development and the developer has done a lot to attempt to get as close as he can to those guidelines. Looking beyond some of the technical aspects, I look at whether there's a benefit to the entire community. I almost want to see a continuance so that we can see a resolution to some of these issues.

Mr. Creely – I agree that infill projects are never going to be easy; they come with issues that make it difficult to fix. I am okay with the waivers and this particular issue and changing the wording of the conditions. I would like to see this project get finished.

Mr. Hannigan – I have a perspective from both sides of this. We might have to say this is the best we can do with what we have. The prescriptive easement would burden all parties by being caught in court. While I agree, we have concerns meeting the criteria, the Code doesn't always get us where we need to be. We have a fair solution at this point and the waivers are good.

Mr. Dossey – With regard to this project, I'm not the reviewing staff; but I tend to see things from the 30,000 foot mark. We are at a technical impasse. The developer has now stated at this hearing that he doesn't believe he has a prescriptive easement, and the County has reviewed the submittal with the developer's previous statement that they do have a prescriptive easement. The BoCC will have to decide if they have done a good enough job addressing the drainage in an infill development. The challenges are there. I would recommend that you take an action so that we can get it to the BoCC to get a decision on these technical issues. I don't believe a continuance will do any good. We won't be able to get an easement in place before your next meeting. A policy decision needs to be made by the BoCC at this point. The developer and the staff have gone over all the options, and at this point, only the BoCC can make the final decision.

Mr. Trowbridge – There is a drainage problem. The outstanding issues involve the drainage report and we don't have the authority to make them go obtain those easements. Only the BoCC can do that.

Mr. Null left the meeting at 12:30 p.m. A quorum is still established.

PC ACTION: EGBERT MOVED/HANNIGAN SECONDED TO APPROVE REGULAR ITEM NO. 3, SP-16-004 FOR APPROVAL OF A PRELIMINARY PLAN UTILIZING RESOLUTION PAGE 25 (MORE PARTICULARLY DESCRIBED ON PAGE 17-017) WITH TWELVE (12) CONDITIONS AND ONE (1) NOTATION AND TWO (2) WAIVERS WITH A SUFFICIENCY OF WATER QUALITY, QUANTITY, AND DEPENDABILITY (based upon the waiver recommendation) AND THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS. THE MOTION WAS APPROVED (6-1). MR. CURRY VOTED NAY DUE TO THE INABILITY TO MEET THE CRITERIA REGARDING THE EASEMENT.

4. SF-16-010

PARSONS

**FINAL PLAT
GLENEAGLE GOLF COURSE RESIDENTIAL INFILL DEVELOPMENT**

A request by Westbrook Capital Holdings, LLC, for approval of a final plat to create 56 single-family residential lots. The property is zoned RR-5 (Residential Rural) and is located north of Northgate Road, south of Wuthering Heights Drive, and is bisected by Gleneagle Drive. (Parcel Nos. 62062-01-096, 62062-05-008, 62062-04-033, 62061-03-004)

PC ACTION: EGBERT MOVED/HANNIGAN SECONDED TO APPROVE REGULAR ITEM NO. 4, SF-16-010 FOR APPROVAL OF A FINAL PLAT UTILIZING RESOLUTION PAGE 19 (MORE PARTICULARLY DESCRIBED ON PAGE 17-018) WITH NINETEEN (19) CONDITIONS AND ONE (1) NOTATION WITH A SUFFICIENCY OF WATER QUALITY, QUANTITY, AND DEPENDABILITY (based upon the waiver recommendation with the preliminary plan) AND THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS. THE MOTION WAS APPROVED (6-1). MR. CURRY VOTED NAY.

5. PUD-16-005

FITZPATRICK

**MAP AMENDMENT (REZONE)
HILLCREST COMMERCIAL PARK**

A request by Standards Properties, LLC, Esteban Rodriguez, and Ben and Vira Pinello for approval of a map amendment (rezoning) of 44.23 acres from CS (Commercial Service), I-2 (Limited Industrial), and M (Industrial) to a commercial/industrial PUD (Planned Unit Development). The property is located at the southwest corner of the intersection of US State Highway 24 and Marksheffel Road. (Parcel Nos. 54080-01-052, 54080-01-051, 54080-01-032, 54080-01-050, 54080-01-033, 54080-01-041, 54080-01-034, 54080-01-042, 54080-01-008 and 54080-01-029)

Mr. Raimere Fitzpatrick went over the Criteria for Approval and the PUD Modification Criteria for a Planned Unit Development (PUD) zoning district. He introduced the applicant's representatives **Mr. Danny Mientka** and **Mr. Jim Houk** for their presentation.

Mr. Houk from Thomas and Thomas gave an overview of the project and request.

Mr. Risley – I noticed gas and electric services, but could you speak about water and wastewater? Answer from **Mr. Houk** – Those will be provided by Cherokee.

Mr. Danny Mientka from The Equity Group gave additional information regarding the land use proposed.

Mr. Curry – I have one concern regarding traffic. Can you talk more on the waivers you're looking for and why some of those things in the Traffic Impact Study may not be required because of the specific use. Answer from **Mr. Houk** – I believe because of the low impact use it does not take highest and best use into factor.

Mr. Egbert – I have this email from Mr. Crum and I'll ask one of his questions. Will there be an overall HOA for the multiple owners? Answer from **Mr. John Frink** – We will have a state of the art draining system that takes all those fluids out of the car. When the car is placed on the yard, it's clean of fluids or hazardous materials. We want to take care of the land and will run a professional business.

Mr. Trowbridge – What is the life cycle of a car on the lot? Answer from **Mr. Frink** – 45-60 days. We will process about 500 cars a month. Capacity is about 1400 cars for the lot.

Mr. Creely – You're dealing with a lot of fluids that are flammable? How do you handle that? Answer from **Mr. Frank** – Double wall tanks, secondary containment.

Mr. Risley – With regard to the screen wall, why was concrete proposed instead of opaque fencing? Acoustics seem to come in to play when you typically look at concrete; was that a consideration even though you're not immediately adjacent to residential properties? Answer from **Mr. Houk** – We felt that the concrete wall was more stable, wind resistant, and offer more solid screening. As far as the acoustics, it will shield other operational noises from our processes.

Mr. Jeff Hodsdon from LSC spoke on the traffic concerns. We used trip generation rates that are consistent with retail commercial. We analyzed worst case scenario. It may not develop as a full blown shopping center and come in at less impact based on the use proposed. We took a more conservative approach.

Mr. Gioia – If we do the rezone to PUD, what else are we opening up as far as specific uses for that property? Answer from **Mr. Fitzpatrick** – Service oriented uses such as automotive/vehicle repair shops, auto sales and storage, outdoor equipment and vehicle storage, retail sales, indoor storage and warehousing. No residential would be allowed.

Mr. Fitzpatrick then gave his presentation and answered questions from the Planning Commission.

Mr. Trowbridge – Regarding screening from Highway 24, can you give me more detail such as distances, etc.? Answer – 50' from the edge of pavement to the location of the parked cars. The landscape buffer is directly adjacent to the property line.

Mr. Curry – The Land Development Code states that with a PUD, 10% of the property will be kept as open space. Can you address that? Answer – A commercial PUD works a little different. Residential open space is for park space, etc. Commercial open space could include more buffering, drainage areas.

Mr. Gilbert LaForce, PCD Engineer, gave the drainage and transportation analysis.

Mr. Hannigan – Is that 60' of ROW on Air Lane adequate? Is there any anticipation of increased ROW in the MTCP? Answer from **Mr. LaForce** – Yes 60' is adequate and we would ask for a preservation ROW for future improvement.

Mr. Trowbridge – With the recycling yard, what would the surface be? Answer from **Mr. LaForce** – mainly gravel and drain to the southeast corner where there is a water quality pond.

IN FAVOR: None

IN OPPOSITION: None

Mr. Risley left the meeting at 2:15 p.m. A quorum is still established.

DISCUSSION:

Mr. Creely – Some time ago we discussed industrial property and how valuable that is. I am in favor of this project.

Mr. Gioia – I agree with my colleague. I just wanted to make sure that there wasn't a repurpose of the land to use as residential.

Mr. Curry – Ditto.

Ms. Rainey – I agree.

Mr. Trowbridge – I live out east and go by there and it is definitely a challenged property. I had concerns about parked cars, but I feel comfortable that the developer is going with a solid screening. I can support it.

PC ACTION: GIOIA MOVED/RAINEY SECONDED TO APPROVE REGULAR ITEM NO. 5, PUD-16-005 FOR APPROVAL OF A MAP AMENDMENT (REZONE) UTILIZING RESOLUTION PAGE 29 (MORE PARTICULARLY DESCRIBED ON PAGE 17-019) WITH TWELVE (12) CONDITIONS AND SIX (6) NOTATIONS AND THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS. THE MOTION WAS APPROVED (7-0).

Mr. Gioia left the meeting at 2:30 p.m. A quorum is still established.

6. SP-14-002

PARSONS

**PRELIMINARY PLAN
ACADEMY GATEWAY**

A request by Academy Gateway II, LLC, for approval of a preliminary plan to create 11 commercial lots. The property is zoned CS (Commercial Service) and is located on the west side of the intersection of Struthers Road and Gleneagle Drive. (Parcel No.72014-00-003)

Ms. Seago gave an overview of the approval criteria pertaining to the request.

Mr. Kyle Campbell with Classic Consulting and Engineers gave his presentation to the Planning Commission. His presentation is on permanent file.

Mr. Curry – I understand you're also asking for a waiver on the design speed of the road. Can you speak more to that? Answer – This site based on the proximity to the on ramp of I-25, the access points are a bit confined. There are safe design standards and we could not get anywhere close to the center line radiuses that are required.

Mr. Curry – What impact will there be from I-25 to Powers? Answer – I am not aware of any impacts.

Mr. Curry – With regard to the 300-year waiver, could you tell me why you are requesting this?

Mr. James Barish stated that Donala is a well-run organization. They have ample water to supply the development.

Mr. Egbert – I presume there is going to be some kind of association and they will be responsible for all the roads and stormwater. Is that correct? Answer from Mr. Campbell – Yes that is correct.

Mr. Hannigan – Can you tell me about the I-25 visual overlay and the impact of this property?
Answer from Mr. Campbell – Our proposed plan won't impact it greatly. We are utilizing topography there and travelers from the north will see the upper tier of the project.

Ms. Parsons gave her presentation and answered questions from the Planning Commission.

Mr. Curry – I have an issue with the 300-year waiver. The County adopted the 300-year rule and it seems that we will continue to see requests like this. Does Donala just get a pass now or are we to look at each case? If they had some non-economic reason why they can't meet the 300-year rule, then I would look at it differently. **Ms. Parsons** reiterated the County's reasons for adopting the 300-year rule.

Ms. Seago stated that if you accept the fact that Chapter 8 Review Criteria applies instead of the Chapter 7 criteria, it's a very different interpretation of the Code.

Mr. Jeff Rice gave an overview of the Engineering of the project and answered questions.

Mr. Steve Mulliken – This property was included in Donala back in 1985. It was part of that inclusion that brings us here today; they are our water provider. Donala is almost at buildout. They are buying renewable water responsibly. They will not abandon this project. We think the waiver is appropriate.

IN FAVOR: None

IN OPPOSITION: None

DISCUSSION:

Mr. Curry – I remain concerned about this 300-year waiver. When the staff package talks about the broad approval criteria, it correctly states the Planning Commission may recommend to the Board of County Commissioners, on a case by case basis, waive any or all of the requirements of this section with regards to a waiver application. The paragraph continues to say "however, the finding for sufficiency for quantity, quality and dependability for water supplies shall not be waived." I remained concerned about continuing to give waivers for the 300-year rule particularly for just one water supplier. With all that said, I am in support of this application. Given that the preponderance of the evidence says that we can waive it despite the language, I still have reservations.

Mr. Egbert – I am convinced that Donala's approach is that they don't want to spend the time on paperwork rather they prefer to spend their resources on securing water. I feel comfortable with supporting this.

Mr. Hannigan – I need to ask Ms. Parsons if this was even referred to the Tri-Lakes Land Committee because I never saw it. **Ms. Parsons** and **Mr. Dossey** both confirmed that it was sent but received no comments. NEPCO did send a response but had no objection.

Mr. Hannigan – The Tri-Lakes group point of view is that this property is part of the Tri-Lakes area. Land use isn't really a question here. The impact or relationship between this application and the Tri-Lakes plan is relatively minor. I don't think there is a concern there.

Mr. Trowbridge – I share Mr. Curry’s concerns about water and Donala, but I am somewhat comforted by the fact that it is commercial and relatively small. Their renewable supply is over 75% and growing. They seem to be very well managed. I will be in support of the waiver.

PC ACTION: HANNIGAN MOVED/CREELY SECONDED TO APPROVE REGULAR ITEM NO. 6, SP-14-002 FOR APPROVAL OF A PRELIMINARY PLAN UTILIZING RESOLUTION PAGE 25 (MORE PARTICULARLY DESCRIBED ON PAGE 17-020) WITH SIX (6) CONDITIONS AND THREE (3) NOTATIONS AND THREE (3) WAIVERS WITH A FINDING OF SUFFICIENCY FOR QUALITY, QUANTITY, AND DEPENDABILITY (BASED UPON THE WAIVER RECOMMENDATION) AND THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS. THE MOTION WAS APPROVED (6-0).

7. SF-16-018

PARSONS

**FINAL PLAT
ACADEMY GATEWAY**

A request by Academy Gateway II, LLC, for approval of a final plat to create 4 commercial lots. The property is zoned CS (Commercial Service) and is located on the west side of the intersection of Struthers Road and Gleneagle Drive. (Parcel No.72014-00-003)

IN FAVOR:

IN OPPOSITION:

DISCUSSION:

PC ACTION: HANNIGAN MOVED/RAINEY SECONDED TO APPROVE REGULAR ITEM NO. 7, SF-16-018 FOR APPROVAL OF A FINAL PLAT UTILIZING RESOLUTION PAGE 19 (MORE PARTICULARLY DESCRIBED ON PAGE 17-021) WITH FIFTEEN (15) CONDITIONS AND ONE (1) NOTATIONS WITH A FINDING OF SUFFICIENCY FOR WATER QUALITY, QUANTITY, AND DEPENDABILITY (BASED UPON THE WAIVER RECOMMENDATION WITH THE PRELIMINARY PLAN) AND THAT THIS ITEM BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS. THE MOTION WAS APPROVED (6-0).

Mr. Hannigan adjourned the meeting.

NOTE: For information regarding the Agenda item the Planning Commission is considering, call the Planning and Community Development Department for information (719-520-6300). Visit our Web site at www.elpasoco.com to view the agenda and other information about El Paso County. Results of the action taken by the Planning Commission will be published following the meeting. (The name to the right of the title indicates the Project Manager/ Planner processing the request.) If the meeting goes beyond noon, the Planning Commission may take a lunch break.

Approved as presented at the May 16, 2017 meeting.