



Agenda

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ARCHAEOLOGICAL REVIEW COMMITTEE HEARING

THURSDAY, December 3, 2015 at 4:30 PM

CITY COUNCILORS CONFERENCE ROOM

CITY HALL - 200 LINCOLN AVENUE, SANTA FE, NM

- A. CALL TO ORDER
- B. ROLL CALL
- C. APPROVAL OF AGENDA
- D. APPROVAL OF MINUTES: October 1, 2015
- E. MATTERS FROM THE FLOOR
- F. ACTION ITEMS
 - 1. Case#AR-33-2015. Shannon L. Papin requests to be included on the City of Santa Fe list of approved historians. (David Rasch)
 - 2. Case #AR-34-2015. 1204 Vallecita Drive. Suburban Archaeological Review District. Ron Winters, agent for Ruskin Blankenship, owner, requests approval of an Archaeological Reconnaissance Report for 10.731 acres for proposed development. (David Rasch)
- G. DISCUSSION ITEMS
 - 1. Discussion of the Santa Fe Archaeological Review Districts Overlay Zoning Ordinance Draft (Section 14-3.13).
- H. MATTERS FROM THE COMMITTEE
- I. ADMINISTRATIVE MATTERS AND COMMUNICATIONS
- J. ADJOURNMENT

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Thursday, December 3, 2015**

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**MINUTES OF THE
CITY OF SANTA FE
ARCHAEOLOGICAL REVIEW COMMITTEE HEARING
City Councilors Conference Room
December 3, 2015**

A. CALL TO ORDER

The Archaeological Review Committee Hearing was called to order by David Eck, Chair, at approximately 4:30 p.m., on December 3, 2015, in the Historic Preservation Conference Room, City Hall, Santa Fe, New Mexico.

B. ROLL CALL

Members Present

David Eck, Chair
Tess Monahan, Vice-Chair
Derek Pierce
Gary Funkhouser

Members Excused

James Edward Ivey

Others Present

Lani McCulley, Administrative Secretary, Historic Preservation Division.
Zachary Shandler, Assistant City Attorney
Melessia Helberg, Stenographer

NOTE: All items in the Committee packet for all agenda items are incorporated herewith to these minutes by reference, and the original Committee packet is on file in, and may be obtained from, the City of Santa Fe Historic Preservation Division.

C. APPROVAL OF AGENDA

Ms. McCulley said the October 1, 2015 minutes previously were approved, and need to be removed from the Agenda for consideration.

MOTION: Gary Funkhouser moved, seconded by Derek Pierce, to approve the Agenda as amended.

VOTE: The motion was approved unanimously on a voice vote.

D. APPROVAL OF MINUTES: OCTOBER 1, 2015

These minutes were approved previously, and this item was removed from the Agenda for consideration by the Committee.

E. MATTERS FROM THE FLOOR

A copy of a Memorandum dated November 10, 2015, with attachments, from Gregory T. Smith, Current Planning Division Director, to Christopher Martinez, regarding redline comments Garcia LLA 2015-104, submitted for the record by Michael Hurlocker, is incorporated herewith to these minutes as Exhibit "1."

A copy of a Memorandum dated December 3, 2015, with attached color aerial photograph of the site, from Gregory T. Smith, Director Current Planning Division, to Zachary A. Shandler, Assistant City Attorney, regarding *Practice of requiring plats to show easements for acequias*, is incorporated herewith to these minutes as Exhibit "2."

A copy of a plat of Lot Split and Lot Line Adjustment for Padilla Family, Rudy A. and Eloyda R. Garcia and Zoila Rivera and Matias Rivera, filed in the records of Santa Fe County as Instrument No. 1707248 on May 30, 2013, in Book 758, page 20, is incorporated herewith to these minutes as Exhibit "3."

Ms. McCulley said this is in reference to 0.4 acres at 1510 Canyon Road, owned by Michael Hurlocker. She said there is a small issue. Mr. Hurlocker is trying to do a lot line adjustment. The property is in the River and Trails Archaeological District. The property at 0.4 acres is under the threshold, but there are two acequias marked on the property, as you can see on the plat. She said the acequia in the middle of the property is no longer active. The acequia at the south end of the property line is an active acequia.

Ms. Monahan asked if that means it has an Association and a Mayordomo and Ms. McCulley said yes.

Ms. McCulley said Mr. Hurlocker is having issues in getting the lot line adjustment. She said Greg Smith in the Land Use Department feels Mr. Hurlocker needs to have an easement on the acequia at the south property line. She said they have talked about the possibility of vacating the acequia in the middle and documenting it, but Mr. Hurlocker has some issues with that.

Michael Hurlocker said, "In a nutshell, I don't own the property yet. I have been in escrow to buy the property for almost a year. And, in the Lot Line Adjustment, the redlines for the lot line move came back from Gregg Smith in Land Use, and the first page is the letter from Greg [Exhibit "1"] for the conditions of the Lot Line Adjustment. One is to agree on a driveway, we've taken care of number one. We've taken care of number three. Number two regards the two acequias, actually one acequia on the property, but two as shown on the existing Plat of record as it stands. It's about a 0.4 acre piece."

Mr. Hurlocker continued, "And the problem, and I'm really asking for the ARC's opinion on the matter, and I'll just give a brief history on it. There are two acequias shown on the existing plat of record, which is, I think the large Plat passed out to you from Lani. So if you look at that, you can see my parcel, Tract B, the one right in the middle of the 3 Tracts. And there is a line going through the middle and it's noted in small print there that it is part of the Acequia de Armenta off the 1914 hydrographic survey map. And then you'll see on the south end of the property, there is a line that is the existing live Acequia del Llano, shows up on the 1914 hydrographic as well as the 1977 hydrographic mapping. And it's a formal association. I'm second to the end on the line. It goes across the adjoining property Tract C and then down into the arroyo. It flows every year."

Mr. Hurlocker continued, "So the redlines or Comment #2 from Greg Smith says, '*Provide easements for the two existing ditches on the property or obtain approval from the ARC and Ditch Association for other appropriate treatment*,' hence why I'm here. I think we have resolved the middle acequia on the Armenta, because the Armenta doesn't exist anymore. It is a defunct association, it is a defunct ditch, when Canyon Road cut it off and like, but it's on the existing Plat of record, because Sierra Surveys David Cooper placed it there. And I called him and asked him, and he said they get spanked a lot for putting things on plats that shouldn't be and vice versa. And he put it on there because it showed up on the hydrographic survey. It doesn't exist physically on the ground, so I asked him why he put it there, it's causing problems, and he said because it showed up as a historical note of record, and so here I am."

Mr. Hurlocker continued, "I talked to Richard Ellenberg, and I think we have that one resolved, if it is fine by the ARC. It is fine by Greg. I am getting, believe it or not, a quitclaim deed from the Ditch Commission, Richard Ellenberg. I talked to him today and I've included a copy of the Quitclaim Deed and his notes in the package [Exhibit "1"], and it quitclaims everything on the property except for the Acequia del Llano, the existing ditch on the south end of the property. So that is one way to kind of vacate it. David Cooper, the Surveyor, also said he will write a letter saying that since he can't just read you the plat, that it shouldn't have been on there in the first place, and there is no need, and that it physically doesn't exist on the ground. What it is, is a remnant of a ditch, and you can see on the 1977 hydrographic survey, that the lands on the north side, i.e. adjacent to Canyon Road, and it states in the 1977 hydrographic survey '*these lands now irrigated by the Acequia del Llano*, not the Acequia de Armenta which doesn't exist any more. So it got cut off when Canyon Road was extended through. Anyway, he picked it up off an old plat, and so there it is."

Mr. Hurlocker continued, "You can also see in the little package [Exhibit "1"], I've included with a map like this, it's an aerial photograph. I put a wavy red line on the back on the south end of property away from Canyon Road. That's the existing real ditch del Llano, and the two red lines going through the middle of the parcel are two different versions, I believe, of that 1914 hydrographic Acequia de Armenta property."

But that's what shows up on the City's GIS, and both of them are non-existent. There never were 2 ditches there, there was one, so I think it's both meant to be the de Armenta ditch."

Mr. Hurlocker continued, "In any case, the water rights for these three properties, which are an estate, Matias Rivera, or the Rivera Estate, was broken up 2½ years ago, and that is the existing Plat of record. And you can see on this aerial photo that the two lines run right through the middle of the house adjoining, hence they don't exist because there is no acequia going through the house. And the house was built after the ditch was abandoned, but those lines remain."

Mr. Hurlocker continued, "So this brings me to the actual Acequia del Llano, and the City's request to easement that ditch. I do not want to easement the ditch for a number of reasons. One, there is no requirement for me to easement the ditch either in City Code, or in any State law. It's become a convention of the City to request easementing of acequias so that.... quite frankly, I had a discussion with Greg this afternoon.... builders that might be unaware that it is an acequia might fill it. I don't know how they would do that since it actually runs, or encroaches on the ditch."

Mr. Hurlocker continued, "I talked to Phil Bové, who is a Commissioner on the Acequia Madre, and Mr. Acequia, forever. And sometimes on the Acequia Madre ditch of 7 miles of length, some land splits and subdivisions have easemented the ditch; it's become more frequent. But, it's not required. Phil is ambivalent about it, and Richard Ellenberg, a Commissioner on my ditch, does not want an easement on it, for the following reasons, and he's right. One, ditches can move locations slightly, and then it would be out of the easement. You do not need to provide a formal easement on the ditch because it's granted by State law. It's a proscriptive easement."

Mr. Hurlocker continued, "The second page in your package [Exhibit "1"], I have copies of the State Acequia Act, §§73-2-1 through 73-2-68. There are 3 pertinent portions and I highlighted them and gave you copies. The first one is §73-2-4, preventing buildings from being built on the acequia. This is a State law, so that can't happen. The second page is the annotated portion of §73-2-5, and that's the important one. *Ditch over land of another.* It's an easement, and it states right there, I highlighted it. And in Section A it says, '*Hereinafter in all cases where there has been a continuous use of a ditch for the purposes of irrigation for 5 years [this was established about 1907, so we meet that] it shall be conclusively presumed between the parties, the grant has been made, and, upon which such ditch is located, for the use of the same, and it is unlawful to interfere with that easement or prevent access to the ditch by the owner of the dominant estate as provided by law.*'"

Mr. Hurlocker continued, "The next sentence after the semicolon is pretty important, too, and it says, '*Provided that nothing herein contained shall be construed to prevent the owner of a serviant estate from making alterations or changes in the location of a ditch.*' So, if I stick this in a formal easement, and I want to move the acequia, which is allowed on the property as long as I don't change the down stream flow, quantity, impoundment or damming, I have to then go void the easement and establish a new one, which means hiring a surveyor and spending thousands of dollars. And I don't think the City has the right to require someone to spend that kind of money and make an economic imposition when State law already covers it completely."

Mr. Hurlocker continued, "The next section, and this provides also for the right of ditch associations to access it for maintenance, for clearing the ditch and doing everything that is necessary to maintain it, and that is irrespective of whether it is in a formal easement on a plat or not. And then the last section I wanted to highlight for you is §73-2-56, and it talks about change in location. The Commissioners of any ditch have the right to go in and change the location of an acequia. How are they going to do that if it's in an easement – require the land owner to pay for ditch relocation that they themselves want to do on the property. Ellenberg is opposed to it, not so much for the legal aspect of this, because this would probably, in a highly populated area like Acequia Madre or Canyon Road, never be used. But more so for the fact that ditches can move locations on their own if they're unlined. And then if you're out of the easement, then what. Then you've got a duplicitous easement. You've got one for where it really exists in the old easement that you the can't utilize the land for it where it used to exist."

Mr. Hurlocker continued, "Anyway, the ditch is incredibly protected by convention by Santa Fe history. No one would ever get away with filling in a speck of dirt on any of these acequias, and it's all covered by State law. If it is on the property line there would be setbacks for any house I'm going to build on it.....will keep it away from the acequia. And so, for those reasons, I don't want to easement the acequia. So what I offered to Greg, since he's worried about the City getting sued if someone can't do something because it's not in an easement. I offered to expand the font size on my new Lot Split Plat which is the last page in your package so it's gigantic, so it can't be missed and can be read. I highlighted it. I put a little red line under it. And then the very last page, I did a blow up of it, my Lot Line Adjustment Plan, I just put a yellow highlight over the current verbiage which says, '*The Acequia runs along property lines.*' But I would blow that up so it is as big as the lettering that states Canyon Road, or Tract D, and then cite the section of the State Acequia Act, that says that it's an easement, which I already gave you a copy of on one of the first pages [Exhibit "1"]."

Mr. Hurlocker said, "I would like the ARC's opinion, if you guys want a proper one, as to what I proposed."

Chair Eck asked who is the Greg he is talking about.

Ms. McCulley said Greg Smith is the Director of the Current Planning Division, downstairs in Planning.

Ms. Monahan said it is her understanding that City ordinance can be more restrictive than the State but not less restrictive, as a general principle.

Mr. Shandler said, "General principle, yes."

Ms. Monahan said so it's not entirely inconsistent for the City to be able to be more restrictive than State law would allow. She said, "The other thing I'm trouble by, is that we've seen this twice before since I've been on this Committee, where people had an easement and blithely gone forward and did whatever they wanted, and there were dire consequences. We had another, more recent case, where there was a dispute about the survey, about where the acequia lay. And in fact, there were two surveys and the surveyor had simply changed it so as to get a building permit. That was catastrophic, because the

consultant who was hired was incompetent and that stopped that whole development. I remember walking the land with the whole Committee, getting an opinion about this with Phil Bové. There is too much vagary and unspecific information here for me to have an opinion, except I think you can guess where 'm going."

Ms. McCulley said, "As a notation, our general practice in the Land Use Department is to place easements on acequias."

Ms. Monahan said, "Right, I know that. And these other two acequias were destroyed and could not be recovered. And there was historic information that was lost. And Mr. Bové also had a strong opinion about it."

Mr. Hurlocker asked if they were active acequias.

Ms. Monahan said, "I'm telling you what our experience was and there was not...."

Mr. Hurlocker interrupted Ms. Monahan and asked if it was an active acequia with water flowing through it.

Ms. Monahan said, "You would have to go back to the record, but it's my recollection that these were inactive, and indeed they needed to be preserved and documented. If not preserved, absolutely and thoroughly documented. And I don't trust surveys anymore."

Chair Eck asked if staff had the opportunity to go back to the case in its original presentation to the ARC, whenever that was, and enlighten us.

Ms. McCulley said, "I did not have a chance to pull the ARC case on it."

Chair Eck asked, "For this existing lot."

Ms. McCulley said, "From the plats that Greg Smith offered with us, the most recent and the one prior to it, both still show both acequias, but I don't know that there was an ARC case."

Chair Eck said he thought the last time we talked about this situation, it was indicated that there had been an ARC hearing on this *[inaudible]* and considered the acequia."

Mr. Pierce said that predates his time on the Board.

Chair Eck said, "Your statement about the acreage of the tract and therefore it did or didn't so something. Can you reiterate what you said and then perhaps embellish."

Ms. McCulley said, "It is in the River & Trails Archaeological District and it is 0.4 acres so it doesn't meet threshold for doing archaeological clearance."

Mr. Winters said, "In River & Trails we've had Santa Fe Trail segments on or near properties that got surveyed even though they were under the threshold. So it doesn't always have to be the threshold if, in fact there are properties with an Old Santa Fe Trail rut, it is still required."

Mr. Hurlocker said, "The Old Santa Fe Trail ruts are a special provision in the ARC."

Mr. Winters said he is just wondering, in terms of acequias, if that applies like it does with trail segments.

Mr. Shandler said, "I heard about this at 1:30 p.m. today. I don't have enough information to give you good advice."

Chair Eck said those members were present at the last meeting when we talked about, I think, this very same piece of property this same situation. He said, "Am I dreaming, or was it not stated that there was an easement on this acequia, the one that is in question, not the one that is over on the property line which no one has talked about before tonight."

Tess Monahan

Ms. Monahan said, "It is my recollection that there was an easement, and there were two separate depictions on the plat that were different. And there was a dispute about which was the recorded plat of record and a discussion that that would be the prevailing document, and that other changes would not have any standing."

Chair Eck said, "Now you understand my quandary."

Ms. Monahan said, "And so when we had this discussion about two different plats, I remember that on another occasion. And it was deceptive, skirted the issue and not documented properly."

John Granito III, Buena Vista Properties, said he is the listing realtor for this property. Mr. Granito said, "I was involved in the Lot Split and Lot Line Adjustments that took place in 2013. It took over a year to accomplish through the City Zoning and Planning Office. During this time we had many issues to come up, and nothing was mentioned about easements, any acequia and requirements for this Lot Split and Lot Line Adjustment. You can go back to the record on that. There were no requirements. And they approved it, and these lots are legal lots of record as a result."

Ms. Monahan said, "What we're referring to, is what was presented to us two weeks ago."

Mr. Granito said, "Exactly, but it was not presented when the Lot Split took place creating these lots as legal lots of record in 2013."

Ms. Monahan said, "And so, this Committee was deliberately avoided."

Mr. Granito said, "I do not know what happened with that. That was handled by Dave Cooper and Richard Horcasitas, and I assume and believe that they did a competent job. Tamara Baer, who is no longer with the staff, and Bill Lamboy were in charge of it, and I believe they did a competent, thorough job. This easement business never came up and it's quite surprising to [inaudible] at this point."

Ms. Monahan said, "I think if there were a record before this Committee, it would be in 2013, and we should try to find it."

Mr. Granito said, "Yes. It will be on that lot split. It went before the Summary Committee."

Chair Eck said, "Clearly, we need that to even approach reaching an opinion."

Gary Funkhouser

Gary Funkhouser said he has no comment.

Derek Pierce

Mr. Pierce said, "I don't think I have any further comment until we have the research in front of us to be able to render a more informed opinion."

Ms. Monahan said, "No. We can't give you any guidance right now."

Chair Eck

Chair Eck said, "I really think we need to have all of the various plats that are applicable, presented in their historical sequence, so that we can see when anything changed. But right now, I'm unsure when any of this happened. And not having seen the earlier plats that have been talked about quite a bit, but we've never actually seen them, I really think the Committee is in the dark. Meanwhile, we have a situation where there is a historic property which may or may not have been recorded and documented to any acceptable level, that crosses the piece of property in question. And regardless of what ultimately shakes out in terms of Lot Line Adjustments, Plats and Easements that the City does or does not believe exist, we still have this thing known as an Acequia which is a historic property that we need to think about, because that is what this Committee is here for. If, by definition and fiat, we are cut out of the equation that would be one thing. But this, we are not cut out of the equation, and we're looking at a very different situation, akin to what we thought we were talking about last time."

Ms. Monahan said the information we had two weeks ago was different.

Ms. McCulley said that was a different property.

Chair Eck asked, "What property are you talking about."

Ms. McCulley said the one two weeks ago was Gabriel Browne, it's a different property.

Ms. Monahan said, "Same issues."

Mr. Funkhouser said, "Okay, that's the first I knew that. Is it a different tract within the same subdivision, or a totally separate property."

Ms. McCulley said it is on Canyon Road also.

Mr. Winters said no, it's at 1117 Alameda, actually in Calle Bonita.

Chair Eck said, "Then I guess I know less than I thought I did when I walked in the door. We need more information and more documentation so we actually can understand what the situation is, what the historical sequence of events might have been, and whether or not an easement ever existed on a Plat of record from the viewpoint of the City, so a history of the property. I get plats every day, and unless they came to me via a pathway that I can follow, I cannot say where they came from or if they are of the record."

Mr. Granito said, "All the notes, which were extensive, are on that plat. The plat that makes those lots legal."

Chair Eck said, "There could well be 1-10 earlier plats that will be highly informative in this situation. Until presented the information, we're in the dark. And I need to read all of this.

Mr. Shandler said, "I will volunteer on behalf of the City Attorney's Office to take the lead on this on the private properties, and not spend any more money than we need to right now. We have access to all the plats. I think there are two policy decisions that need to be worked out, now that Santa Fe is coming out of the great recession and there is more development, how to mark on property the current water and also how to mark on property things that are now gone away. And that was the discussion last time, and it is the discussion this time. And maybe we also, as part of the Code changes, maybe this Committee could talk about that as well in the next two weeks. I will take the lead and try to acquire some more information by the next meeting."

Responding to a question about the date of the next meeting, Chair Eck said it is on January 3, 2016.

Chair Eck said, "Due to the lack of information, we have no opinion at this time."

Chair Eck asked Mr. Winters if he has matters from the floor.

Mr. Winters said he has questions, regarding the acequia the Committee discussed two weeks ago, which was presented by Elizabeth Oester.

Ms. Monahan said that's what we thought we were talking about.

Mr. Winters said he called the Chair to find out about the minutes, which aren't available, but he wanted to know what was discussed and what was being required or asked by the Committee, because he was contacted by Gabriel Browne, the architect. He said it is his understanding that the acequia has been misplotted on the Plat of record, and asked if that is correct.

Ms. Monahan said it is recorded on the Plat of record, and the subsequent survey has been presented that was not recorded, and they were trying to get an exemption based on the new survey, but it's not recorded.

Mr. Winters said there was an easement placed on it, commenting he believes David Snow did the original survey on the property and there was an easement on the Plat that he was shown. He said Mr. Browne wanted to vacate the easement.

Mr. Winters said, "One of the cases you were talking about, this is the report for 540 East Palace, and you were aware of the other project which I also worked on where the acequia segment either was misplotted and destroyed or was landscaped in this case. And so we did data recovery on both of those properties. I think that Mr. Browne misunderstood what you were requiring of them. His comment to me is that my estimate was 5 times what he had in hand, and he had gotten the impression it was going to be an easy and inexpensive process to vacate the easement. It's not an active acequia, but it was placed in an easement, Ditch #8, I believe is it's number. So, when I've done this in the past, and what I explained to him and I wanted your feedback, I brought in Stephen Hall, a geomorphologist. So I not only photographed it and exposed the profiles in multiple places, but also did the geomorphology so we can understand the low and sediments. We took soil, pollen and C-14 samples. So pretty extensive, because I knew if these were no longer to exist, I wanted as much documentation as possible. And I'm happy to pass this around. This is the Final Report on East Palace. So all I was asking was what was discussed at the meeting and what your opinion is. I know you don't take it lightly, vacating easements."

Chair Eck said, "The discussion two weeks ago about the other easement led to a lot of concern for vacating an easement without serious data recovery to mitigate the loss of the resource. Because the whole point of putting an easement on it in the first place, is to protect the resource. And we can accept that, as the Committee which is supposed to rule on behalf of the City in terms of the significance of properties and what is exemptable."

Chair Eck continued, "While we characterized [it] as probably not that hard and probably not that expensive, I have no idea what the difference between the client's perception of 'not that expensive,' and what the Archaeologist's might have been. We are not part of that of course. Your description of what we did sounds very reasonable."

Mr. Winters said, "I don't have this project. I don't know that they're going to use me. And I think Gabriel was surprised, but he didn't push back and he wanted to understand. And I told him I based it on projects I've done before. When they say abandoned... Phil Bové, from his mouth, it is never abandoned

according to him. And just because they're not in use, they're not abandoned, because there's always the potential that they could flow again."

Mr. Granito said it does not exist on the ground and the surveyor is willing to write a letter about that.

Ms. Monahan said it doesn't matter.

Chair Eck said, "The surveyor may or may not be aware of anything that has to do with determining whether or not there is a physical manifestation of cultural property on the ground. He's not qualified."

Mr. Granito said, "I'm so incredulous that there was an issue about easements that never came up with the extensive over year long process or making these lots legal. And this is an old, historic Santa Fe family, the oldest family on there, this parcel is one of the oldest parcels, and you're putting an undue burden on this family."

Chair Eck said, "We haven't put a burden on anybody as yet. We don't have a way of offering an opinion."

Mr. Granito said, "Please don't. Please don't."

Chair Eck said, "We need information and then we will do our level best not to put an undue burden on anybody, them or you or the next guy that comes in the door."

Mr. Hurlocker asked if he will be placed on the next agenda, asking what is next.

Chair Eck said, "We don't have a matter that you can bring to us as a case. It's going to have to come from the floor again."

Chair Eck said Mr. Hurlocker has brought us an interesting situation.

Mr. Hurlocker thanked the Committee and he and Mr. Granito departed the meeting.

F. ACTION ITEMS

MOTION: Gary Funkhouser moved, seconded by Tess Monahan, to reconsider the previous approval of the Agenda.

VOTE: The motion was approved unanimously on a voice vote.

MOTION: Tess Monahan moved, seconded by Derek Pierce, to consider Item #F(2) next on the agenda, and to approve the agenda as amended.

VOTE: The motion was approved unanimously on a voice vote.

2) CASE #AR-34-15. 1204 VALLECITA DRIVE, SUBURBAN ARCHAEOLOGICAL REVIEW DISTRICT. RON WINTERS, AGENT FOR RUSKIN BLANKENSHIP, OWNER, REQUESTS APPROVAL OF AN ARCHAEOLOGICAL RECONNAISSANCE REPORT FOR 10.731 ACRES FOR PROPOSED DEVELOPMENT. (DAVID RASCH)

Ms. McCulley said there is no staff report and she has no additional remarks.

Mr. Winters said he wishes he had more information about what the development was going to be, noting he was dealing through JenkinsGavin, the planners for the client and he never had contact with the client who lives on Valley Drive.

Chair Eck said he was in this general area about 4 years ago, just across the road to the west, searching for any remnants of an historic cemetery. They found the place that was described but didn't see anything.

Tess Monahan

Ms. Monahan had no comment.

Gary Funkhouser

Mr. Funkhouser had no comment.

Derek Pierce

Mr. Pierce said the Chair "stole my thunder," and that was his only comment.

Chair Eck

Chair Eck besides editorial things he saw here and there, he has nothing to offer, noting he failed to put a sticky note flag on it and can't find it again, so "never mind."

MOTION: Tess Monahan moved, seconded by Gary Funkhouser, with respect to Case #AR-34-2015, to approve the Archaeological Reconnaissance Report for 1204 Vallecita Drive, Suburban Archaeological Review District, as submitted as requested by Ron Winters, agent for Ruskin Blankenship, owner, for 10.731 acres for proposed development.

VOTE: The motion was approved unanimously on a voice vote.

1) **CASE #AR-33-15. SHANNON L. PAPIN REQUESTS TO BE INCLUDED ON THE CITY OF SANTA FE LIST OF APPROVED HISTORIANS. (DAVID RASCH)**

Ms. McCulley said she would only note Ms. Papin recently has been placed on the State Historic list as well.

Mr. Pierce said that surprises him.

Ms. Monahan said, "Based on my previous experience on this Board, what has been presented to us is completely inadequate to conform with the requirement of the Ordinance. There is no depiction of how many hours she was a leader in historic research, the author of any historic documents reporting on her findings, and she is not here for us to ask questions, so I propose we move this to another night."

Derek Pierce

Mr. Pierce said, "I want to make note of one thing. I believe on the first or second page, anyway it's labeled number 2, she states that she meets the Secretary of the Interior Professional Qualifications Standards, both history and architectural history. Based on what little she has presented here, I do not believe that to be true. The Secretary of Interior Standards require either a Masters Degree in history or historic architecture, or a bachelor's degree and considerable experience. Shannon certainly has the experience, but does not have the degree, not even a Bachelor's degree, and the Code allows us to make that exception, but I believe it would be the first time we're ever done that for someone who does not have a Bachelor's. I would like Shannon to clarify how she meets the Secretary of Interior Standards, because by my reading, it's problematic.

Chair Eck said we can postpone this case, if it is the Committee's desire and communicate with her in regards to, please provide more information and the chart of experience is something we typically make use of. And it seems if an application was made to the State for listing, such a chart would have been necessary for them, noting he would be happy to receive that same chart rather than asking her to create a new one.

Ms. Monahan said Ms. Papin needs to be here to answer any questions.

Mr. Pierce said earlier he said he was surprised, because he doesn't think that the CPRC has the same latitude, and doesn't think they can grant an exception without a Bachelor's Degree.

Chair Eck said there is an overall escape clause in the regulation that allows them to do whatever they want, but they are very reluctant to take those extreme measures. He said in the interim he will do research to see if listing without stipulation has actually occurred.

MOTION: Tess Monahan moved, seconded by Gary Funkhouser, to postpone this case to the next meeting of the Committee on January 3, 2016, and that staff notify Ms. Papin that her presence will be required along with more documentation/information on her qualifications.

DISCUSSION: Mr. Funkhouser said, with regard to the case of Jeff Boyer some time ago, he doesn't think the Committee set a time specifically for him to come back, but he was to appear at some time.

Chair Eck said we didn't set a specific time in that case, and we never heard another word about the matter. In this case, we have a specific date, and staff understands what we expect and communication will occur.

Ms. McCulley said yes.

VOTE: The motion was approved unanimously on a voice vote.

G. DISCUSSION ITEMS

1) DISCUSSION OF THE SANTA FE ARCHAEOLOGICAL REVIEW DISTRICTS OVERLAY ZONING ORDINANCE. (SECTION 14-3.13).

Chair Eck asked if the draft incorporates changes made since the last discussion.

Mr. Shandler said it is identical but he is about ready to provide an all-inclusive draft.

Ms. Monahan asked if we can postpone consideration until we have another draft, or do you want to proceed.

Mr. Pierce said he recalls we got bogged down on the exemptions last time, and decided we would skip to something else. So if we do not postpone, he would favor going to a different section, but would entertain either option.

Mr. Funkhouser said he is of the opinion that the subcommittee has done an excellent job in going through, but he is unsure we're not undoing some parsimony that has been added to the Ordinance. He wonders if we can just trust the subcommittee, unless we have things come up, such as the acequia issue which he thinks is worthy of discussion.

Ms. Monahan said she agrees. She said she expressed her concerns at the last meeting with the exemption section. She does trust the subcommittee. She is not adverse to moving forward.

Mr. Funkhouser said he isn't inclined to look over the subcommittee's shoulder for every line, and is unsure that is productive.

Mr. Shandler said, "One of the major developments has been the amount of utilities, so if I could have a little of your time on page 12 of the draft which is Section H. This is a new section that creates its own stand alone for utilities and also requests for alternative means of compliance. So maybe just take a minute or two and see if there is anything in here that you would like to talk about, or whether you're satisfied."

Mr. Pierce noted in H(3) it is the "Archaeological Review Committee," not the "Architectural Review Committee."

Mr. Pierce said he likes the language about boring and Ms. Monahan agreed.

Mr. Pierce said he doesn't need to call out specifically the Historic Downtown, and thinks it should read, "...utility boring should be minimized ~~in the Historic Downtown District.~~"

Chair Eck agreed, saying all the practical reason for not liking it, in terms of historic preservation applies, regardless of where you are. It's just that the danger is heightened downtown.

Mr. Pierce said he recalls the case where someone was requesting to do 2,000 feet of boring along St. Francis, so he thinks just leaving it case by case is appropriate, although we may grant greater latitude outside of the Historic Downtown.

Ms. McCulley said in Section (a) on page 13, where it says Monitoring Plan, it does not state that it has to come to the ARC, where it does in Section (b).

Chair Eck said under H(3) Request for Archaeological Monitoring, it directs that they shall request to be on our agenda, so that would apply for (a), (b) and (c).

Mr. Pierce said then it needs to be added to (a), or struck from (b) and (c).

Chair Eck said Mr. Shandler feels it best, for consistency, and the premise we're operating on, to put language everywhere so that if someone zeroed in and read one paragraph they wouldn't be misled for lack of context.

Mr. Funkhouser suggested putting the last two lines under (b) in (a) that this Committee must approve the monitoring plan.

Chair Eck said Ms. McCulley's point is that both (b) and (c) talk about the plan coming to the Committee and we approve or whatever, and it doesn't say that under (a), so that is where the inconsistency arises.

Ms. Monahan suggested adding language to the end of the last sentence under (a) as follows: *'and submitted to the Archaeological Review Committee for review and approval.'*

Chair Eck agreed, saying we are cloning that portion of the sentence in the following paragraph.

Mr. Pierce suggested in Section (c)(iii), on line 33, add "shall" between "Committee," and "vote," and the Chair, Ms. Monahan and Mr. Funkhouser agreed.

Mr. Pierce said apart from the suggested corrections he is happy with Section H.

Chair Eck said on page 13, line 36, it should be (4), instead of (3).

Mr. Pierce said on page 13, line 39, delete the word "scheduling," which seems to be unnecessary.

Mr. Shandler said he will look into that. He said he is presuming that Lisa Roach put in External Policy 3 verbatim, but he will research that.

Mr. Pierce said it sounds like we're deciding on alternatives to when it should be done, not what should be done, but we need to clear up that language.

Chair Eck said it is kind of a win, because when you get to Paragraph I, it says, *'At least one percent of the lot must be test excavated prior to the request being made...'* He said it is just giving the option of using the actual construction trenches as essentially the remainder of the testing.

Mr. Funkhouser said he is unsure the scheduling part fits, because that assumes that "if you're already doing 1%, come back for it, that's implicit I think."

Chair Eck said then the word scheduling might be superfluous or inappropriate.

Mr. Pierce asked, for clarification, in the next subsection talking about the 1%, what are we requiring beyond that. Are we saying there must be further testing. He said it's very different to say they're going to monitor construction to get to the 2%, versus that they're actually going to do stratigraphic excavations as part of it.

Chair Eck said he would think it would be viewed as backup trenching, the hand excavation plus some backhoe trenching approximating 1% of the lot, and then a request be made to utilize the construction trenches for the rest of the 2% testing.

Mr. Pierce said so we're talking about monitoring mechanical excavation of the trench, or digging up a foundation or such.

Chair Eck said we need the same level of documentation for those trenches as we would for the test trench that would have been done otherwise.

Mr. Pierce said it seems to him it is a chicken and egg kind of thing. Because once they've done the 1%, they've requested the alternative means of compliance, they get their permit. And then at some point, weeks or months later, excavation begins, and it has to be monitored to get the remaining 1%, but that's all after the permit has been issued. He asked if it is a permit with stipulations, and how does that work.

Chair Eck said it sounds like a permit stipulation, and asked Mr. Shandler to comment. He said, "We just got ourselves in a sort of a cul de sac here, because this section says, number 4(a)(1), if in the event somebody asks for this alternative, and they've done 1% of the normal excavation that would be expected, and we approve them to do the other percent in a monitoring mode of the construction trenches, after the fact, that implies that we would approve the permit. The permit is in hand, signed, sealed and delivered, do we put stipulations on permits."

Mr. Pierce said he isn't opposed to the alternative means, commenting he actually kind of likes it, because there may be scenarios on a small lot where you just can't get to 2% before you do construction.

Mr. Funkhouser said, "Or you're constrained somehow by what's there."

Mr. Pierce said he wants to make sure we have some teeth in here that actually requires the applicant to do the monitoring after the permit.

Chair Eck said it says at least 1%, which means it can't go all the way toward monitoring.

Mr. Funkhouser said he would think this would have to be a quick turnaround, because somebody is already in the process of doing this.

Chair Eck said it's something for staff to monitor. It's another one of the balls in the air we would like to avoid.

Mr. Shandler said, "It seems to be explicit to the Downtown Historic District, and they have certain, additional restrictions. One of them is that if you're going to do some ground disturbance, you are going to do the 2% testing. So I say they've gone down that path a little bit and they realize, boy I need an alternative. Maybe it's too cost prohibitive or something like that. So they've done at least 1%, then they come to you and ask, as an alternative, if they can do a monitoring process."

Mr. Funkhouser said that can be as part of the construction to make up the remaining 1%.

Mr. Shandler said, "So, if I was Elizabeth Oester and I came to you, what I would say is do I need to do a monitoring plan and then come back with a monitoring report, or how.... that would be a couple of meetings, and I'd be delayed and I'd give you the same guilt trip that gentleman gave you earlier this evening. How is that. I don't know factually how it works."

Mr. Pierce said what we're talking about is monitoring the actual construction of the house, trench, or whatever, to make up the missing testing, but all that occurs after the permit has been issued and the construction has been approved. So how do we ensure we get the results of that monitoring back. He asked if this means the monitoring plan comes after construction, as opposed to the normal 2% testing, and what authority do we have to require that.

Ms. McCulley said, "We have a problem in Historic, where Zoning will put stipulations on permits, and it's a disaster every time, and it never gets fixed. So I don't think we should try and do something like that."

Mr. Shandler asked for an example of a stipulation on a permit.

Ms. McCulley said, "I'm not really in with that, because they all have to do with zoning. But for some reason they like to allow them to go to the H-Board for a design, and then say that as long as they meet the site triangle for the driveway. The problem with that, if it's not in the design, H-Board doesn't accept it, and then they have to come back later for alterations. So it doubles the work for one permit, rather than get all the permissions beforehand."

Mr. Shandler said, "Well I will volunteer to flag this with David Rasch and Lani, and then try to figure out if it's the chicken and the egg, and then present an additional set of clarifiers."

Mr. Funkhouser said he thinks we're actually trying to make some flexibility in the mandatory amount, given the nature of downtown development, what's paved, or whatever.

Mr. Pierce said it may be really difficult to do 2% testing without destroying the infrastructure somehow – tearing up sidewalks, landscaping or something like that. He said he can foresee some areas where this definitely would benefit the applicant and would be reasonable, but in exchange for that concession, we need to be assured that we'll actually get something for that remaining 1%, that a report will be issued at some point.

Chair Eck said researching that with David will be wonderful. He said one suggestion is that we could expand this paragraph (a) to specify how one makes that request by providing a report of activities for the 1%, plus the monitoring plan for the remaining percent, and approve that whole thing, it would be analogous to the utilities. We would get the report later because the archaeologist is actually on the hook for that and not the client.

Chair Eck said, "So actually where that embellishment about how one does it, it could be in (a) and it could be in subparagraph (l), wherever it makes the most sense. It might just be one more sentence in there."

Mr. Pierce said he would suggest we have made progress on the monitoring part of this, and would also suggest that perhaps the subcommittee might want to begin to think about acequia easements, because there clearly is a glaring omission in the Code. He said that's something we might have "to come up with from scratch." He said we should take the opportunity to clarify it if we can.

Ms. Monahan said then we are going to have to contact Phil Bové.

Mr. Pierce said he isn't suggesting requiring preservation of every single *[inaudible]*.

Chair Eck asked the Committee if they feel we have done everything we can on Item G.

Ms. Monahan asked if there is a way to incorporate those changes without having to go through it line by line and page by page.

Chair Eck said that means that someone who has things to say would need to sit and do that, and we would have to provide a copy of that for attachments to the minutes – editorial changes.

Mr. Shandler said he would suggest if you just have typos, to email staff directly, and staff will work with the applicants to get those, and asked staff to print those, bring them to the meeting, and label them Exhibit A.

Mr. Pierce said there are a significant number of cases where all the changes are grammatical.

Ms. Monahan said when something changes the meaning of a sentence, that has to be brought up.

Chair Eck wants any proposed changes to be submitted timely for the Committee packet.

H. MATTERS FROM THE COMMITTEE

There were no matters from the Committee.

I. ADMINISTRATIVE MATTERS AND COMMUNICATIONS

Ms. McCulley said the Land Use Department would like to know if it would be acceptable for the Committee to start at 4:00 p.m., and end absolutely by 6:00 p.m., to avoid the conflict with the stenographer and Counsel needing to go elsewhere.

Ms. Helberg said there won't be a stenographer conflict, because she is no longer doing Planning.

Chair Eck said the Committee will discuss this and Mr. Shandler will hear whatever we decide later. He said, personally, he could start at 4:00 p.m., but there are conflicts with his job because he would have to leave work at 3:30 p.m.

Mr. Shandler departed the meeting for another meeting

Mr. Funkhouser said it is a matter of him being in the field and racing back to town by 4:30 p.m., and, for example, if you are in Gallup, you have to cut things early to get here.

Mr. Pierce asked if we are considering this as a once a month meeting.

Ms. McCulley said staff would like a permanent change to go to once a month meetings, noting they don't want to conflict with peoples' employment.

Ms. Monahan said if we're only having one meeting a month, we can't possibly address all of the matters that come before the Committee in two hours once a month. She said if this means the City is not going to fund this, then that means we're going to be here until 8:00 p.m., to get the work done.

Mr. Funkhouser said as the recession ends and the development increases, there will be more cases than we normally have.

Mr. Pierce said on an average night it could be done in two hours, but there will be times when we cannot finish when we get a data recovery report or something in Matters from the Floor that takes a half hour. He said, "Yes, it would be problematic. I'm less concerned about starting early, than I am about being constrained to two hours."

Chair Eck said what if we said we are amenable to starting at 4:00 p.m., but the City has to be fully prepared to automatically postpone everything that isn't dealt with before 6:00 p.m., in every instance, every time we meet.

Ms. Monahan said, "No matter who it is or what is the urgency." She said the City is going to have to fund this or not, period.

Ms. McCulley said, then it is the preference of the Committee to go ahead and continue to meet twice a month, if at all possible.

Chair Eck said that is correct.

Ms. McCulley asked, "And if we do it twice a month, is 4:00 p.m. too early, because you're going to have to take additional time off."

Ms. Monahan said she is flexible.

Chair Eck said he can make it work.

Mr. Funkhouser said he thinks he can make it work, but he really hasn't thought about it.

Ms. Monahan said we can still have a quorum if we have 3 members.

Mr. Pierce said he isn't coming from the field.

Mr. Funkhouser said he isn't either, but he is being called out occasionally, but he thinks he will get used to it after a while.

Responding to a question from the Committee, Ms. McCulley said part of the reason is there are issues with the stenographer and counsel having to leave for Planning. The twice a month meeting has to do with staffing issues. She said what they have discovered is that the vacant position isn't given an opportunity for a holiday, and has a hearing every week of every month, which they think may be part of the reason for the burnout. She said they want to give ample time for the Committee to complete the vast majority of its business. She said right now, we're usually meeting 4:30 p.m. to 6:00 p.m.

Mr. Funkhouser said people need to be informed that they're not likely to get on the agenda as soon as they would like.

Ms. Monahan said that is a staff scheduling problem.

Mr. Funkhouser thinks also it would be a real inconvenience for people to sit here until 5:50 p.m., and find out their case isn't going to be heard, and that they have to come back for the next meeting.

Ms. McCulley said she will speak with Lisa Martinez and David Rasch about the concerns expressed by the Committee and see what can be worked out.

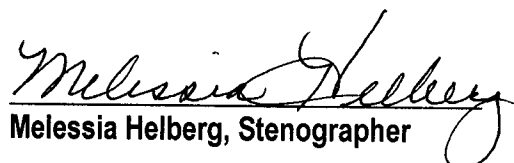
I. ADJOURNMENT

There was no further business to come before the Committee.

MOTION: Tess Monahan moved, seconded by Gary Funkhouser, to adjourn the meeting.

VOTE: The motion was approved unanimously on a voice vote, and the Committee was adjourned at approximately 6:00 p.m.

 21 January 2016
David Eck, Chair


Melessia Helberg, Stenographer