



Agenda

REGULAR MEETING OF
THE GOVERNING BODY
AUGUST 12, 2009
CITY COUNCIL CHAMBERS

AFTERNOON SESSION – 5:00 P.M.

CITY CLERK'S OFFICE

DATE 8-7-09 TIME 2:00pm

SERVED BY _____

RECEIVED BY Indomenguez

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. SALUTE TO THE NEW MEXICO FLAG
4. INVOCATION
5. ROLL CALL
6. APPROVAL OF AGENDA
7. APPROVAL OF CONSENT CALENDAR
8. APPROVAL OF MINUTES: Reg. City Council Meeting – July 29, 2009
9. PRESENTATIONS
 - a) Employee of the Month for August 2009 – Norma Perez, Library Technician. (5 minutes)
 - b) Santa Fe 400th Anniversary; ¡Viva! Santa Fe! Presentation. (Maurice Bonal, Chair) (5 minutes)
10. CONSENT CALENDAR
 - a) Bid No. 09/22/B – Canyon Road Water Treatment Plant Residuals Modifications and Improvements and Agreements Between Owner and Contractor for Water Division. (Brian Snyder)
 - 1) Bid No. 2 – The Parkson Corporation
 - 2) Bid No. 3 – WesTech Engineering, Inc.
 - 3) Bid No. 4 – James, Cooke and Hobson, Inc.
 - 4) Bid No. 5 – Siemens, Inc.
 - 5) Bid No. 6 – Andritz
 - 6) Bid No. 7 – JDV Equipment Corporation, Inc.
 - 7) Bid No. 8 & 9 – Triad Builders, Inc.
 - 8) Bid No. 10 – Bogan Brothers
 - 9) Bid No. 11 & 12 – McDade-Woodcock, Inc.
 - 10) Bid No. 13 – RL Leeder



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- b) Bid No. 09/38/B – East Apron Reconstruction at Santa Fe Municipal Airport; Albuquerque Asphalt, Inc. (Jim Montman)
 - 1) Request for Approval of Grant Application – Federal Airport Improvement Program for Reconstruction of East Apron; Federal Aviation Administration.
 - 2) Request for Approval of Grant Award – Reconstruction of East Apron at Santa Fe Municipal Airport; Federal Aviation Administration.
- c) Bid No. 09/40/B – Santa Fe Wayfinding Signage Project and Construction Agreement; AAC Construction, LLC. (Rick Devine)
 - 1) Request for Approval of Budget Increase – Project Fund.
- d) Request for Approval of Procurement Under Federal Price Agreement – Automated Refuse Carts for Solid Waste Management Division; Toter, Inc. (Bill DeGrande)
- e) Request for Approval of Grant Application and Award – Construction and Construction Engineering for Runway 2-20 Striping at Santa Fe Municipal Airport; New Mexico Department of Transportation Aviation Division. (Jim Montman)
- f) Request for Approval of Procurement Under State Price Agreement – Municipal Court Renovations; Creative Interiors, Inc. (Chip Lilienthal)
- g) Request for Approval of Professional Services Agreement – Master Plan/Financial Feasibility Analysis for Siler Road Property and Downtown City Hall Area (RFP #09/20/P); Autotroph. (Martin Valdez)
 - 1) Request for Approval of Budget Adjustment – WIP Design/Construction Funds.
- h) Request for Approval of Amendment No. 5 to Professional Services Agreement – 2009 Legislative Appropriation for 400th Anniversary Opening Event ¡Viva! Santa Fe; Santa Fe 400th Anniversary. (Darlene Griego)
 - 1) Request for Approval of Budget Increase – 400th Anniversary Fund.



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- i) Request for Approval of Reallocation of CDBG Funds and Amendment to Consideration of 2009/2010 Annual Action Plan. (Melisa Dailey)
- j) Request for Approval of Professional Services Agreement – Administrative Services to Enterprise Foundation for Affordable Housing Roundtable; Enterprise Community Partners. (Ted Swisher)
- k) Request for Approval of Sale of Real Estate and Vacation of Right-of-Way Designation – Property Located at 644 W. San Francisco St.; James A. Sleeper. (Edward Vigil)
- l) Request for Approval of Amendment No. 1 to Sub Lease Agreement – Configuration of Leased Parcel Designated for a Surface Parking Lot at Railyard; Santa Fe Railyard Community Corporation. (Edward Vigil)
- m) Request for Approval of Contract – Lease the Use of San Juan-Chama Project Water; U.S. Department of Interior Bureau of Reclamation. (Claudia Borchert)
- n) Request for Approval of Agreement – Juvenile Services for Community Services Division; New Mexico Children Youth and Families Department. (Richard DeMella)
- o) Request for Approval of Memorandum of Understanding – Paratransit Services for Eligible Santa Fe County Residents; County of Santa Fe. (Jon Bulhuis)
- p) CONSIDERATION OF RESOLUTION NO. 2009-_____. (Councilor Dominguez)
A Resolution Directing Staff to Conduct the Necessary Traffic Study to Determine if Mid-Block Crosswalks are Appropriate on Calle Atajo and if so, Determine the Appropriate Funding and Install the Crosswalks as per Traffic Engineering Standards. (Chris Ortega)
- q) CONSIDERATION OF RESOLUTION NO. 2009-_____. (Councilor Ortiz, Mayor Coss, Councilor Wurzbarger and Councilor Dominguez)
A Resolution Declaring Support for Passage of Local Financing and Economic Development Options that Allow Public-Private Partnerships. (Fabian Trujillo)



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- r) CONSIDERATION OF RESOLUTION NO. 2009-____. (Mayor Coss)
A Resolution Supporting the City of Santa Fe Fire Department and its Efforts in Preparing for the Opening of the City of Santa Fe Firefighter History Museum. (Barbara Salas)
 - s) Request for Approval to Publish Notice of Public Hearing on September 9, 2009:

Bill No. 2009-42: An Ordinance Amending Section 9-2.9 SFCC 1987 Specifying What Campaign Contributions Shall Not be Used For; and Amending Section 9-2.14 SFCC 1987 Establishing Campaign Contribution Limits. (Councilor Romero, Mayor Coss and Councilor Calvert) (Yolanda Vigil)
 - t) Request for Consideration on Action Related to Vacant Positions in FY 09/10 Budget. (Kristine Kuebli)
 - u) Request for Amendment No. 4 to Grant 2007 General Fund Agreement – Indoor Arts Market Facility; State of New Mexico Department of Finance and Administration Local Government Division. (David Chapman)
 - 1) Request for Approval of Budget Decrease – Grant Fund.
 - v) CONSIDERATION OF RESOLUTION NO. 2009-____.
A Resolution Authorizing and Approving Submission of a Completed Application for Financial Assistance and Project Approval to the New Mexico Finance Authority.
11. Review of Revisions to Lease with Santa Fe Higher Education, LLC Incorporating Changes from Governing Body. (Kelley Brennan)
12. MATTERS FROM THE CITY MANAGER
13. MATTERS FROM THE CITY ATTORNEY
- EXECUTIVE SESSION:
- a) Bringing an Action to Quiet Title to Certain Real Property of the City of Santa Fe; Pursuant to §10-15-1 (H) (7) NMSA 1978.



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- b) Discussion of Contract Regarding the Internet Hotel Intermediaries Lawsuit; Pursuant to §10-15-1 (H) (7) NMSA 1978
- 14. Authorization to Bring an Action to Quiet Title to Certain Real Property of the City of Santa Fe. (William Cassel and Marcos Martinez)
- 15. Action Regarding the Contract for Internet Hotel Intermediaries. (Frank Katz)
- 16. MATTERS FROM THE CITY CLERK
- 17. COMMUNICATIONS FROM THE GOVERNING BODY

EVENING SESSION – 7:00 P.M.

- A. CALL TO ORDER
- B. PLEDGE OF ALLEGIANCE
- C. SALUTE TO THE NEW MEXICO FLAG
- D. INVOCATION
- E. ROLL CALL
- F. PETITIONS FROM THE FLOOR
- G. APPOINTMENTS
- H. PUBLIC HEARINGS:
 - 1) Request from JEMA, LLC for a Restaurant (Beer & Wine On-Premise Consumption Only) Liquor License to be located at Restaurant Martin, 526 Galisteo Street. (Tina Y. Dominguez)
 - 2) Request from Santa Fe 400th Anniversary Inc. to Allow the Sale/Consumption of Alcoholic beverages (Beer and Wine Only) for ¡VIVA! Santa Fe's Concerts to be held at Ft. Marcy Park which is City Property at 490 Washington Avenue. This Event is to be held on Saturday, September 5, 2009 from 4:00 p.m. to 9:00 p.m., and on Sunday, September 6, 2009 from 4:00 p.m. to 9:00 p.m. (Libby Dover and Tina Y. Dominguez)



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- 3) CONSIDERATION OF BILL NO. 2009-37: ADOPTION OF ORDINANCE NO. 2009-_____. (Councilor Wurzburger)
An Ordinance Amending Section 14-4.3(I) SFCC 1987 Regarding the Purpose and Requirements of PRC Planned Residential Community Districts. (Jeanne Price) **(Postponed at July 29, 2009 City Council Meeting)**
- 4) CONSIDERATION OF BILL NO. 2009-38: ADOPTION OF ORDINANCE NO. 2009-_____. (Councilor Ortiz)
An Ordinance Amending Chapter 14 Land Development Laws and Chapter 26 Affordable Housing SFCC 1987 Relating To Appeals. (Greg Smith) **(Postponed at July 29, 2009 City Council Meeting)**
- 5) **Case #A 2009-03.** Plaza Pinones Final Development Plan Appeal. Casas del Cerros Neighborhood Association Appeals the Planning Commission Decision of April 16, 2009 to Approve Case #M 2009-07, Final Development Plan for 40 Town Homes on 7.44± Acres. The Property is Zoned R-5 (Residential, 5 Dwelling Units Per Acre) and is Located East of Fifth Street and South of St. Michael's Drive. (Donna Wynant)
- 6) CONSIDERATION OF BILL NO. 2009-29: ADOPTION OF ORDINANCE NO. 2009-_____. (Councilor Wurzburger)
An Ordinance Repealing Sections 14-8.11(G)(3), 14-8.13, 14-8.16 and 14-8.17 SFCC 1987 Regarding Annual Water Budget, Water Rights Transfer Requirements and Water Banking; Creating a New Section 14-8.13 SFCC 1987 Regarding Development Water Budget Requirements, a New Article 25-9 SFCC 1987 Regarding The City Water Budget, a New Article 25-10 SFCC 1987 Regarding The City Water Bank, a New Article 25-11 SFCC 1987 Regarding The Water Rights Transfer Program, and a New Article 25-12 SFCC 1987 Regarding the Water Conservation Credit Program; Making Such Other Related Changes as are Necessary. (Frank Katz) **(Postponed at July 29, 2009 City Council Meeting)**
- 7) **Case # H-09-014.** Appeal of the Historic Design Review Board's Decision on May 12, 2009, Concerning Vacant Property Located at 502 Old Santa Fe Trail in the Downtown & Eastside Historic District. Sommer, Karnes & Associates, LLC, Agent for Dos Caminos, LLC, Requests that the Governing Body Rescind the Denial to Construct an Outdoor Flea Market. (David Rasch) **(Postponed at July 8, 2009 City Council Meeting)**



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- 8) **Case #AB-2009-05:** 604 1/2 Galisteo Appeal. Stefanie Beninato Appeals the April 30, 2009 Board of Adjustment Decision to Deny Case Number V-2009-9 Variance Request From Section 14-7.1(B)(g)(5)(ii)(C) (Minimum Setback Standards for Second Stories) to Allow a Second Story Side Yard Setback Less Than 10 Feet. The Property is Zoned RM1 and Located Within the Don Gasper Historic Overlay District and Historic Downtown Archaeological Review District. (Daniel Esquibel) **(Postponed at July 29, 2009 City Council Meeting)**

I. ADJOURN

Pursuant to the Governing Body Procedural Rules, in the event any agenda items have not been addressed, the meeting should be reconvened at 7:00 p.m., the following day and shall be adjourned not later than 12:00 a.m. Agenda items, not considered prior to 11:30 p.m., shall be considered when the meeting is reconvened or tabled for a subsequent meeting.

NOTE: New Mexico law requires the following administrative procedures be followed when conducting "quasi-judicial" hearings. In a "quasi-judicial" hearing all witnesses must be sworn in, under oath, prior to testimony and will be subject to reasonable cross-examination. Witnesses have the right to have an attorney present at the hearing.

Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6520, five (5) days prior to meeting date.

**SUMMARY INDEX
SANTA FE CITY COUNCIL MEETING
August 12, 2009**

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APPROVAL OF CONSENT CALENDAR	Approved [amended]	2
CONSENT CALENDAR LISTING		2-4
APPROVAL OF MINUTES: REGULAR CITY COUNCIL MEETING – JULY 29, 2009	Approved	5
<u>PRESENTATIONS</u>		
EMPLOYEE OF THE MONTH FOR AUGUST 2009 – NORMA PEREZ, LIBRARY TECHNICIAN		5
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<u>CONSENT CALENDAR DISCUSSION</u>		
REQUEST FOR APPROVAL OF CONTRACT – LEASE THE USE OF SAN JUAN-CHAMA PROJECT WATER; U.S. DEPARTMENT OF INTERIOR, BUREAU OF RECLAMATION	Approved	7-8
CONSIDERATION OF RESOLUTION NO. 2009- 82. A RESOLUTION DECLARING SUPPORT FOR PASSAGE OF LOCAL FINANCING AND ECONOMIC DEVELOPMENT OPTIONS THAT ALLOW PUBLIC- PRIVATE PARTNERSHIPS	Approved	8-9
REQUEST FOR CONSIDERATION ON ACTION RELATED TO VACANT POSITIONS IN FY 09/10 BUDGET	Approved	9-10

END OF CONSENT CALENDAR DISCUSSION		

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
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<u>EVENING SESSION</u>		
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<u>APPOINTMENTS</u> Library Board	Approved	14-15
<u>PUBLIC HEARINGS</u>		
REQUEST FROM JEMA, LLC, FOR A RESTAURANT (BEER & WINE ON-PREMISE CONSUMPTION ONLY) LIQUOR LICENSE TO BE LOCATED AT RESTAURANT MARTIN, 526 GALISTEO STREET	Approved	15
REQUEST FROM SANTA FE 400 TH ANNIVERSARY, INC., TO ALLOW THE SALE/ CONSUMPTION OF ALCOHOLIC BEVERAGES (BEER AND WINE ONLY) FOR ¡VIVS! SANTA FE'S CONCERTS TO BE HELD AT FT. MARCY PARK WHICH IS CITY PROPERTY AT 490 WASHINGTON AVENUE. THIS EVENT IS TO BE HELD ON SATURDAY, SEPTEMBER 5, 2009, FROM 4:00 P.M. TO 9:00 P.M., AND ON SUNDAY, SEPTEMBER 6, 2009, FROM 4:00 P.M. TO 9:00 P.M.	Approved	16-24

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
CONSIDERATION OF BILL NO. 2009-37: ADOPTION OF ORDINANCE NO. 2009- 37. AN ORDINANCE AMENDING SECTION 14-4.3(l) SFCC 1987 REGARDING THE PURPOSE AND REQUIREMENTS OF PRC PLANNED RESIDENTIAL COMMUNITY DISTRICTS	Approved	24-26
CONSIDERATION OF BILL NO. 2009-38; ADOPTION OF ORDINANCE NO. 2009-____. AN ORDINANCE AMENDING CHAPTER 14 LAND DEVELOPMENT LAWS AND CHAPTER 26 AFFORDABLE HOUSING SFCC 1987 RELATING TO APPEALS	Postponed to 08/26/09	27
<u>CASE #A 2009-03. PLAZA PINONES FINAL DEVELOPMENT PLAN APPEAL. CASAS DEL CERROS NEIGHBORHOOD ASSOCIATION APPEALS THE PLANNING COMMISSION DECISION OF APRIL 16, 2009, TO APPROVE CASE #M-2009-07, FINAL DEVELOPMENT PLAN FOR 40 TOWN HOMES ON 7.44± ACRES. THE PROPERTY IS ZONED 4-5 (RESIDENTIAL, 5 DWELLING UNITS PER ACRE) AND IS LOCATED EAST OF FIFTH STREET AND SOUTH OF ST. MICHAEL'S DRIVE</u>	Approved [amended]	27-35
CONSIDERATION OF BILL NO. 2009-29; ADOPTION OF ORDINANCE NO. 2009-38. AN ORDINANCE . REPEALING SECTIONS 14-8.11(G)(3), 14-8.13, 14-8.16 AND 14-8.17 SFCC 1987, REGARDING ANNUAL WATER BUDGET, WATER RIGHTS TRANSFER REQUIREMENTS AND WATER BANKING; CREATING A NEW SECTION 14-8.13 SFCC 1987, REGARDING DEVELOPMENT WATER BUDGET REQUIREMENTS, A NEW ARTICLE 25-9 SFCC 1987, REGARDING THE CITY WATER BUDGET, A NEW ARTICLE 25-10 SFCC 1987 REGARDING THE CITY WATER BANK, A NEW ARTICLE 25-11 SFCC 1987 REGARDING THE WATER RIGHTS TRANSFER PROGRAM. AND A NEW ARTICLE 25-12 SFCC 1987 REGARDING THE WATER CONSERVATION CREDIT PROGRAM; MAKING SUCH OTHER RELATED CHANGES AS ARE NECESSARY	Approved [amended]	35-48

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
CASE #H-09-014. APPEAL OF THE HISTORIC DESIGN REVIEW BOARD'S DECISION ON MAY 12, 2009, CONCERNING VACANT PROPERTY LOCATED AT 502 OLD SANTA FE TRAIL IN THE DOWNTOWN & EASTSIDE HISTORIC DISTRICT. SOMMER, KARNES & ASSOCIATES, LLC, AGENT FOR DOS CAMINOS, LLC, REQUESTS THAT THE GOVERNING BODY RESCIND THE DENIAL TO CONSTRUCT AN OUTDOOR FLEA MARKET	Appeal denied	49-61
CASE #AB-2009-05: 604 ½ GALISTEO APPEAL. STEFANIE BENINATO APPEALS THE APRIL 30, 2009 BOARD OF ADJUSTMENT DECISION TO DENY CASE NUMBER V-2009-9 VARIANCE REQUEST FROM SECTION 14-7.1(B)(g)(ii)(C) (MINIMUM SETBACK STANDARDS FOR SECOND STORIES) TO ALLOW A SECOND STORY SIDE YARD SETBACK LESS THAN 10 FEET. THE PROPERTY IS ZONED RM1 AND LOCATED WITHIN THE DON GASPAR HISTORIC OVERLAY DISTRICT AND HISTORIC DOWNTOWN ARCHAEOLOGICAL REVIEW DISTRICT	Postponed to 08/26/09	61-62
PETITIONS FROM THE FLOOR		62-63
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ADJOURN		

**MINUTES OF THE
REGULAR MEETING OF THE
GOVERNING BODY
Santa Fe, New Mexico
July 29, 2009**

AFTERNOON SESSION

A regular meeting of the Governing Body of the City of Santa Fe, New Mexico, was called to order by Mayor David Coss, on August 12, 2009, at approximately 5:00 p.m., in the City Hall Council Chambers. Following the Pledge of Allegiance, Salute to the New Mexico flag, and the Invocation, roll call indicated the presence of a quorum, as follows:

Members Present

Mayor David Coss
Councilor Rebecca Wurzburger, Mayor Pro-Tem
Councilor Patti J. Bushee
Councilor Christopher Calvert
Councilor Miguel Chavez,
Councilor Carmichael A. Dominguez
Councilor Matthew E. Ortiz
Councilor Rosemary Romero
Councilor Ronald S. Trujillo

Others Attending

Galen Buller, City Manager
Frank Katz, City Attorney
Yolanda Y. Vigil, City Clerk
Melessia Helberg, Council Stenographer

6. APPROVAL OF AGENDA

Mr. Buller said staff has requested that Item H(4) on the evening agenda be postponed to September 9, 2009, because Jeanne Price was called out of town.

MOTION: Councilor Bushee moved, seconded by Councilor Calvert, to approve the agenda as amended.

VOTE: The motion was approved on a voice vote with Councilors Bushee, Chavez, Dominguez, Ortiz, Romero, Trujillo and Councilor Wurzburger voting for the motion, none against and Councilor Calvert absent.

7. APPROVAL OF CONSENT CALENDAR

MOTION: Councilor Romero moved, seconded by Councilor Wurzburger, to approve the following Consent Calendar, as amended.

VOTE: The motion was approved on the following Roll Call vote:

For: Councilor Bushee, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo and Councilor Wurzburger.

Against: None.

Absent: Councilor Calvert.

- a) **BID NO. 09/22/B – CANYON ROAD WATER TREATMENT PLANT RESIDUALS, MODIFICATIONS AND IMPROVEMENTS AND AGREEMENTS BETWEEN OWNER AND CONTRACTOR FOR WATER DIVISION. (BRIAN SNYDER)**
- 1) **BID NO. 2 – THE PARKINSON CORPORATION**
 - 2) **BID NO. 3 – WES TECH ENGINEERING, INC.**
 - 3) **BID NO. 4 – JAMES, COOKE AND HOBSON, INC.**
 - 4) **BID NO. 5 – SIEMENS, INC.**
 - 5) **BID NO. 6 – ANDRITZ**
 - 6) **BID NO. 7 – JDV EQUIPMENT CORPORATION, INC.**
 - 7) **BID NO. 8 & 9 – TRIAD BUILDERS, INC.**
 - 8) **BID NO. 10 – BOGAN BROTHERS**
 - 9) **BID NO. 11 & 12 – McDADE-WOODCOCK, INC.**
 - 10) **BID NO. 13 – RL LEEDER**
- b) **BID NO. 09/38/B – EAST APRON RECONSTRUCTION AT SANTA FE MUNICIPAL AIRPORT; ALBUQUERQUE ASPHALT, INC. (JIM MONTMAN)**
- 1) **REQUEST FOR APPROVAL OF GRANT APPLICATION –FEDERAL AIRPORT IMPROVEMENT PROGRAM FOR RECONSTRUCTION OF EAST APRON; FEDERAL AVIATION ADMINISTRATION.**
 - 2) **REQUEST FOR APPROVAL OF GRANT AWARD – RECONSTRUCTION OF EAST APRON AT SANTA FE MUNICIPAL AIRPORT; FEDERAL AVIATION ADMINISTRATION.**
- c) **BID NO. 09/40/B – SANTA FE WAYFINDING SIGNAGE PROJECT AND CONSTRUCTION AGREEMENT; AAC CONSTRUCTION, LLC. (RICK DEVINE)**
- 1) **REQUEST FOR APPROVAL OF BUDGET INCREASE – PROJECT FUND.**

- d) **REQUEST FOR APPROVAL OF PROCUREMENT UNDER FEDERAL PRICE AGREEMENT – AUTOMATED REFUSE CARTS FOR SOLID WASTE MANAGEMENT DIVISION; TOTER, INC. (BILL DeGRANDE)**
- e) **REQUEST FOR APPROVAL OF GRANT APPLICATION AND AWARD – CONSTRUCTION AND CONSTRUCTION ENGINEERING FOR RUNWAY 2-20 STRIPING AT SANTA FE MUNICIPAL AIRPORT; NEW MEXICO DEPARTMENT OF TRANSPORTATION AVIATION DIVISION. (JIM MONTMAN)**
- f) **REQUEST FOR APPROVAL OF PROCUREMENT UNDER STATE PRICE AGREEMENT – MUNICIPAL COURT RENOVATIONS; CREATIVE INTERIORS, INC. (CHIP LILIENTHAL)**
- g) **REQUEST FOR APPROVAL OF PROFESSIONAL SERVICES AGREEMENT – MASTER PLAN/FINANCIAL FEASIBILITY ANALYSIS FOR SILER ROAD PROPERTY AND DOWNTOWN CITY HALL AREA (RFP #09/20/P); AUTOTROPH. (MARTIN VALDEZ)**
 - 1) **REQUEST FOR APPROVAL OF BUDGET ADJUSTMENT – WIP DESIGN/ CONSTRUCTION FUNDS.**
- h) **REQUEST FOR APPROVAL OF AMENDMENT NO. 5 TO PROFESSIONAL SERVICES AGREEMENT – 2009 LEGISLATIVE APPROPRIATION FOR 400TH ANNIVERSARY OPENING EVENT ¡VIVA! SANTA FE; SANTA FE 400TH ANNIVERSARY. (DARLENE GRIEGO)**
 - 1) **REQUEST FOR APPROVAL OF BUDGET INCREASE – 400TH ANNIVERSARY FUND.**
- i) **REQUEST FOR APPROVAL OF REALLOCATION OF CDBG FUNDS AND AMENDMENT TO CONSIDERATION OF 2009/2010 ANNUAL ACTION PLAN. (MELISA DAILEY)**
- j) **REQUEST FOR APPROVAL OF PROFESSIONAL SERVICES AGREEMENT – ADMINISTRATIVE SERVICES TO ENTERPRISE FOUNDATION FOR AFFORDABLE HOUSING ROUNDTABLE; ENTERPRISE COMMUNITY PARTNERS. (TED SWISHER)**
- k) **REQUEST FOR APPROVAL OF SALE OF REAL ESTATE AND VACATION OF RIGHT-OF-WAY DESIGNATION – PROPERTY LOCATED AT 644 W. SAN FRANCISCO ST.; JAMES A. SLEEPER. (EDWARD VIGIL)**
- l) **REQUEST FOR APPROVAL OF AMENDMENT NO. 1 TO SUB LEASE AGREEMENT – CONFIGURATION OF LEASED PARCEL DESIGNATED FOR A SURFACE PARKING LOT AT RAILYARD; SANTA FE RAILYARD COMMUNITY CORPORATION. (EDWARD VIGIL)**

- m) *[Removed for discussion by Councilor Bushee]*
- n) **REQUEST FOR APPROVAL OF AGREEMENT – JUVENILE SERVICES FOR COMMUNITY SERVICES DIVISION; NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT. (RICHARD DeMELLA)**
- o) **REQUEST FOR APPROVAL OF MEMORANDUM OF UNDERSTANDING – PARATRANSIT SERVICES FOR ELIGIBLE SANTA FE COUNTY RESIDENTS; COUNTY OF SANTA FE. (JON BULTHUIS)**
- p) **CONSIDERATION OF RESOLUTION NO. 2009-79 (COUNCILOR DOMINGUEZ). A RESOLUTION DIRECTING STAFF TO CONDUCT THE NECESSARY TRAFFIC STUDY TO DETERMINE IF MID-BLOCK CROSSWALKS ARE APPROPRIATE ON CALLE ATAJO AND IF SO, DETERMINE THE APPROPRIATE FUNDING AND INSTALL THE CROSSWALKS AS PER TRAFFIC ENGINEERING STANDARDS. (CHRIS ORTEGA)**
- q) *[Removed for discussion by Councilors Bushee and Chavez]*
- r) **CONSIDERATION OF RESOLUTION NO. 2009-8- (MAYOR COSS). A RESOLUTION SUPPORTING THE CITY OF SANTA FE FIRE DEPARTMENT AND ITS EFFORTS IN PREPARING FOR THE OPENING OF THE CITY OF SANTA FE FIREFIGHTER HISTORY MUSEUM. (BARBARA SALAS)**
- s) **REQUEST FOR APPROVAL TO PUBLISH NOTICE OF PUBLIC HEARING ON SEPTEMBER 9, 2009: BILL NO. 2009-42: AN ORDINANCE AMENDING SECTION 9-2-9 SFCC 1987, SPECIFYING WHAT CAMPAIGN CONTRIBUTIONS SHALL NOT BE USED FOR; AND AMENDING SECTION 9-2.14 SFCC 1987 ESTABLISHING CAMPAIGN CONTRIBUTION LIMITS (COUNCILOR ROMERO, MAYOR COSS AND COUNCILOR CALVERT). (YOLANDA VIGIL)**
- t) *[Removed for discussion by Councilor Bushee]*
- u) **REQUEST FOR AMENDMENT NO. 4 TO GRANT 2007 GENERAL FUND AGREEMENT – INDOOR ARTS MARKET FACILITY; STATE OF NEW MEXICO, DEPARTMENT OF FINANCE AND ADMINISTRATION, LOCAL GOVERNMENT DIVISION. (DAVID CHAPMAN)**
 - 1) **REQUEST FOR APPROVAL OF BUDGET DECREASE – GRANT FUND.**
- v) **CONSIDERATION OF RESOLUTION NO. 2009-81. A RESOLUTION AUTHORIZING AND APPROVING SUBMISSION OF A COMPLETED APPLICATION FOR FINANCIAL ASSISTANCE AND PROJECT APPROVAL TO THE NEW MEXICO FINANCE AUTHORITY.**

8. APPROVAL OF MINUTES: REGULAR CITY COUNCIL MEETING – JULY 29, 2009

MOTION: Councilor Bushee moved, seconded by Councilor Dominguez, to approve the minutes of the Regular City Council meeting of July 29, 2009, as presented.

VOTE: The motion was approved on a voice vote with Councilors Bushee, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzbarger voting for the motion, none against and Councilor Calvert absent.

9. PRESENTATIONS

a) EMPLOYEE OF THE MONTH FOR AUGUST 2009 – NORMA PEREZ, LIBRARY TECHNICIAN.

Mayor Coss read the letter of nomination into the record. He thanked Ms. Perez for her exemplary service to the City in saving the life of a patron who was choking by applying the heimlich maneuver. He presented her with a plaque and check for \$200 from the Employee Benefits Committee.

Ms. Perez thanked the City and Pat Hodapp and coworkers, saying she really loves her job with the City. Ms. Perez introduced her family including her two sets of twins.

b) SANTA FE 400TH ANNIVERSARY; ¡VIVA! SANTA FE! PRESENTATION. (MAURICE BONAL, CHAIR)

A copy of the brochure for Santa Fe 400th Anniversary Opening Weekend is incorporated herewith to these minutes as Exhibit "1."

Maurice Bonal introduced Libby Dover, Executive Director of the 400th Anniversary nonprofit.

Ms. Dover reviewed the schedule for the opening weekend events. She invited the Invited Mayor and Council to attend the kickoff on September 5-6, 2009, at Ft. Marcy Park. Ms. Dover said after they made budget cuts, program partners from around the City really came forth with support. She is working with more than 25 organizations to produce the festival, including Jamey Lindfesty of Sandman Productions who is paying ½ of front costs to promote and produce the evening concerts in Ft. Marcy Ballpark.

Ms. Dover introduced Maris Segal and Ken Ashby, of Prosody Creative Services.

Ms. Segal thanked the Mayor and Council for this opportunity to bring alive the 400th Anniversary Celebration. They have been working with many local organizations to make this happen which truly is a community event, and described the various activities during the kickoff weekend.

Mr. Ashby talked about the events, including various artisans who will be conducting workshops with the public and the 235 volunteers. They are looking for a crowd of about 20,000, noting there is 23,000 sq. ft. of tenting on Majors Field and a lot of security. He appreciates all of the City services and divisions who have assisted them in this effort.

Mr. Ashby said on Sunday, he would like the Mayor and Council to put in some of the first items which will go into the 400th Legacy Time Capsule, noting items will be placed in it throughout the celebration.

Councilor Chavez disclosed he has volunteered his time to work with the Committee to organize the Legacy Arts, and some traditional art forms. There will be several groups of art forms, including tinwork, furniture making and weaving. He said all were done on a volunteer basis and all participating artisans are contributing their time. He hopes this will be a showcase for the weekend.

Mr. Bonal said they will be videotaping everything and that will go into the time capsule.

Councilor Wurzbarger asked if the artisans will be there for two full days. She would like a list of the artisans who will be performing in the demonstration areas, and Ms. Dover said she will provide that.

Mr. Bonal thanked the City for its cooperative efforts in the planning and administration of the weekend's activities.

Councilor Romero said Ms. Dover stepped into a huge job and did an incredible job in the face of the economic downturn and there has been an amazing synthesis.

Libby Dover said she has an incredible team, noting there are now 5 full time employees and volunteers 30 hours a week. She thanked everyone at the City.

Councilor Dominguez said we've come a long way. He thanked Chair Bonal and Ms. Dover for recognizing the economic downturn and "toning" it down. He is impressed with the Viva Kids section, which is really great and this is proof that our community values its young people. He thanked everyone who worked hard to make this happen.

Councilor Bushee thanked the Committee, saying everything looks great, including the presentation of the brochure. She asked if there is a date for meeting with the surrounding neighbors about the activities.

Ms. Dover said a date hasn't been settled, but they have settled on the place, and she is getting clearance to hold the meeting in the ballpark in the bleachers.

Councilor Bushee suggested the meeting could also be done at the fire station. She asked what kind of outreach has been done, such as the Farmer's Market where tickets are sold.

Ms. Dover said the sponsoring banks have agreed to sell tickets at the branches. She said the more outlets the better, and she will work on the additional sites suggested for ticket sales.

Councilor Bushee asked to be notified of the meeting with the neighborhood, saying she will attend that meeting.

Responding to Councilor Chavez, Ms. Dover said she has met with Joe Abeyta and Maria Clokey with regard to using the City's radio and tv access, and said they will be making it the 400 Channel for the weekend, and will be doing interviews. There will be a tent set up on site, and she will continue to feed them information from now until the event. She said the information is on the City's website.

Councilor Dominguez suggested/recommended that tickets be made more available to people who live on the South Side and don't necessarily come downtown, and suggested ticket sales at Plaza Contenta, Mikos' Coffee House and the Southside Library.

Councilor Trujillo congratulated Maurice Bonal and Libby Dover, saying this is a delightful and wonderful program. He noted his brother-in-law is a member of the Ozomatli group which puts on a great concert. He said his brother-in-law said the group particularly likes to play in Santa Fe.

CONSENT CALENDAR DISCUSSION

10 (m) REQUEST FOR APPROVAL OF CONTRACT – LEASE THE USE OF SAN JUAN-CHAMA PROJECT WATER; U.S. DEPARTMENT OF INTERIOR, BUREAU OF RECLAMATION. (CLAUDIA BORCHERT)

Responding to Councilor Bushee, Ms. Borchert said the \$51 a fy is the price which the Bureau of Reclamation offers, it is the price the City paid for the water, and this is the O&M cost of that water.

MOTION: Councilor Bushee moved, seconded by Councilor Trujillo, to approve this request.

DISCUSSION: Councilor Chavez asked if we are sure that the O&M costs are current, noting this is the second time we've done this contract in the past two years. He asked if the consumer price index is factored into the price.

Ms. Borchert said the O&M costs change somewhat yearly depending on the work which is being done, and this reflects the actual O&M costs for the 2008 water. Responding to Councilor Chavez, Ms. Borchert said this is the fourth lease in the past 6 years, and at this point it is year-to-year depending on the storage situation.

VOTE: The motion was approved on the following Roll Call vote:

For: Councilor Bushee, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo and Councilor Wurzburger.

Against: None.

Absent: Councilor Calvert

Mayor Coss said Councilor Calvert asked him to inquire if the amendments from Finance are included in item 9(o), and staff said those are included in the packet.

Councilor Bushee said the Mayor is out of order.

The Mayor responded, "I'm way out of order, but I'm the Mayor."

10 (q) CONSIDERATION OF RESOLUTION NO. 2009- 82(COUNCILOR ORTIZ, MAYOR COSS, COUNCILOR WURZBURGER AND COUNCILOR DOMINGUEZ). A RESOLUTION DECLARING SUPPORT FOR PASSAGE OF LOCAL FINANCING AND ECONOMIC DEVELOPMENT OPTIONS THAT ALLOW PUBLIC-PRIVATE PARTNERSHIPS. (FABIAN TRUJILLO)

Councilor Bushee said she pulled this item in order to vote against it. She does not believe the City should be involved in private ventures, or paying for, or assisting in, the development of movie theaters. She said we could use funds to support other things, such as the County's bond funding of a loan pool for solar energy.

MOTION: Councilor Bushee moved to deny this request. **THE MOTION DIED FOR LACK OF A SECOND.**

MOTION: Councilor Ortiz moved, seconded by Councilor Wurzburger, to approve this request.

DISCUSSION: Councilor Chavez said he also pulled this for discussion and he has similar concerns about public/private partnerships. We need to be very careful in moving forward with these. He said with public/private partnerships it usually means the City is on the hook for something, whether \$1 a year lease for space, or whatever. He said we shouldn't spread ourselves too thin. He said what we do shouldn't be site specific and should support economic development and economic opportunities in the broadest sense. He questions how much longer we can depend on the State assistance as a source. He will support the motion.

Mayor Coss appreciates the sentiments. He supports this, not because it is for a movie theater, but

because it helps to finish the Railyard project, and will give us more tools to grow a strong economy. He said we have to do projects which make sense, where the risks are balanced and the process is transparent for the public. He thanked Councilor Ortiz for bringing this forward.

Councilor Chavez said we are in this position because some of the promises weren't realized with the Railyard, and in some cases we're picking up the slack, and we're going to have to depend on the State Legislature for funds to do this, because we can't do it on our own. It will be a while before we realize the return on the Railyard investment.

Councilor Calvert arrived at the meeting

Councilor Bushee said she isn't trying to pick on movie theaters, but she is uncertain we should have required a movie theater, and that may be part of a reexamination we have to have on the Railyard. She had the same concerns with, and struggled on, the College of Santa Fe vote. However, given the public purpose, she felt more comfortable, especially with the learning aspects. She said, although this has to go through the Legislature, she is concerned with the signal that would send. She believes we have to be much more modest and conservative on bonding,. She is not encouraged by this policy effort and will vote against it.

VOTE: The motion was approved on the following Roll Call vote:

For: Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo and Councilor Wurzburger.

Against: Councilor Bushee.

Explaining his vote: Councilor Chavez said this is a resolution and sometimes those go somewhere and sometimes not, so he is going to support this one to see where it goes.

10 (t) REQUEST FOR CONSIDERATION ON ACTION RELATED TO VACANT POSITIONS IN FY 09/10 BUDGET. (KRISTINE KUEBLI)

Councilor Bushee asked the process to fill vacancies in the future.

Councilor Ortiz said the way the budget was approved, once we approve this list, the vacancies are filled pursuant to the City's policy. He said any positions not on this list will have to come back to the Council for approval.

MOTION: Councilor Bushee moved, seconded by Councilor Chavez, to approve this request.

VOTE: The motion was approved on the following Roll Call vote:

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo and Councilor Wurzbarger.

Against: None.

END OF CONSENT CALENDAR DISCUSSION

11. REVIEW OF MODIFICATION OF LAUREATE EDUCATION, INC., LEASE INCORPORATING CHANGES FROM GOVERNING BODY. (KELLY BRENNAN)

Kelly Brennan said a single amendment was proposed where there was some "play." The Council agreed, as long as the words College of Santa Fe or Santa Fe College were used, there could be other words added such as College of Creativity in Santa Fe. She said Laureate would like to use "university" as well as "college," so the title would always be College or University and Santa Fe with any other titles – University of Santa Fe of Art and Design, or College of Santa Fe of Art and Design, or any combination. She said the Council has already said this can be done, and the single change proposed is to be able to use "university" instead of "college," and only if "College of Santa Fe," tends to have negative connotations after six months. She said Laureate does seem to be committed to keeping the name, but are concerned about negative connotations which could affect enrollment. She said they would give 60 days advance notice of any change.

Councilor Bushee said "University," is usually at a State level, and asked the distinction between "college" and "university."

Ms. Brennan said the distinction typically is that "university" offers more graduate school programs, such as The Kennedy School of Government at Harvard University. She said Laureate would anticipate using "university" in that case, and are thinking of offering some graduate programs. She believes the only situation where that would be done is if there is a negative connotation. She said Laureate's marketing has told them that "university" is a more enticing word. Responding to Councilor Bushee, Ms. Brennan said it has nothing to do with accreditation.

Responding to Councilor Dominguez, Ms. Brennan said they haven't said they want to make this name change right now, and believes they mean it when they say they want to keep the name, and reiterated the issues regarding negative connotations.

Councilor Chavez asked the process of people being considered for the governing board.

Ms. Brennan said she is unsure, but the City can suggest names and Laureate will make every effort to choose from those names. Ms. Brennan said it makes sense at this point to make the City Manager's Office the contact point until we resolve who is doing what. She said the Mayor and Council can devise whatever method it wants for suggesting names.

Councilor Chavez suggested Mr. Buller should develop guidelines so the process is clear.

Councilor Chavez asked if the uses language changed and Ms. Brennan said no, and those courses will continue during transition and until Laureate assume control.

Councilor Trujillo said he too thought a university was run by the State, and said he thought the name was being retained for graduates of the College of Santa Fe.

Ms. Brennan said he is correct about "College of Santa Fe," and Laureate hasn't proposed to eliminate that from the name, and reiterated again there is a strong commitment to keep the name and the issues. She said the large universities are associated with states, but there are many private smaller universities, and "university" embraces a spectrum, reiterating the offering of graduate programs is in large part the trigger for that name.

Councilor Chavez said he can't find the permitted uses in the Lease.

Ms. Brennan quoted from page 1, Section 1.05 of the Lease which provides, " The premises may be used solely for the following, in each case, to the extent such use is permitted under applicable Laws and Requirements: (i) an accredited four-year graduate and undergraduate degree granting liberal arts college offering full-time, part-time and night and weekend continuing education programs..."

MOTION: Councilor Wurzbarger moved, seconded by Councilor Romero, to approve the revisions to the lease as presented.

VOTE: The motion was approved on the following Roll Call vote:

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo and Councilor Wurzbarger.

Against: None.

12. MATTERS FROM THE CITY MANAGER

There were no matters from the City Manager.

13. MATTERS FROM THE CITY ATTORNEY

EXECUTIVE SESSION:

- a) **BRINGING AN ACTION TO QUIET TITLE TO CERTAIN REAL PROPERTY OF THE CITY OF SANTA FE; PURSUANT TO §10-15-1(H)(7) NMSA 1978.**
- b) **DISCUSSION OF CONTRACT REGARDING THE INTERNET HOTEL INTERMEDIARIES LAWSUIT; PURSUANT TO §10-15-1(H)(7) NMSA 1978**

MOTION: Councilor Calvert moved, seconded by Councilor Chavez, that the Council go into Executive Session for the purpose of discussions on the action to quiet title to certain real property of the City of Santa Fe and the Internet Hotel intermediaries lawsuit, pursuant to §10-15-1(H)(7).

VOTE: The motion was approved on the following roll call vote:

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo and Councilor Wurzburger.

Against: None.

The Council went into Executive Session at 6:10 p.m.

MOTION TO COME OUT OF EXECUTIVE SESSION

MOTION: At 7:15 p.m. Councilor Wurzburger moved, seconded by Councilor Calvert, that the City Council come out of Executive Session and stated that the only items which were discussed in executive session were those items which were on the agenda, and no action was taken.

VOTE: The motion was approved unanimously on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzburger voting for the motion and no one voting against.

14. AUTHORIZATION TO BRING AN ACTION TO QUIET TITLE TO CERTAIN REAL PROPERTY OF THE CITY OF SANTA FE. (WILLIAM CASSEL AND MARCOS MARTINEZ)

MOTION: Councilor Calvert moved, seconded by Councilor Romero, to approve this request.

VOTE: The motion was approved on the following roll call vote:

For: Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo and Councilor Wurzburger.

Against: None.

Absent: Councilor Bushee.

15. ACTION REGARDING THE CONTRACT FOR INTERNET HOTEL INTERMEDIARIES. (FRANK KATZ)

MOTION: Councilor Calvert moved, seconded by Councilor Romero, to approve this request.

VOTE: The motion was approved on the following roll call vote:

For: Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo and Councilor Wurzburger.

Against: None

Absent: Councilor Bushee

END OF AFTERNOON SESSION AT 7:20 P.M.

EVENING SESSION

A. CALL TO ORDER AND ROLL CALL

The Evening Session was called to order by Mayor David Coss, at approximately 7:20 p.m. Following the Pledge of Allegiance, salute to the New Mexico Flag, and Invocation, Roll Call indicated the presence of a quorum as follows:

Members Present

Mayor David Coss
Councilor Rebecca Wurzbarger, Mayor Pro-Tem
Councilor Patti J. Bushee
Councilor Christopher Calvert
Councilor Miguel Chavez,
Councilor Carmichael A. Dominguez
Councilor Matthew E. Ortiz
Councilor Rosemary Romero
Councilor Ronald S. Trujillo

Others Attending

Galen Buller, City Manager
Frank Katz, City Attorney
Yolanda Y. Vigil, City Clerk
Melessia Helberg, Council Stenographer

F. PETITIONS FROM THE FLOOR

There were no petitions from the floor at this time. However, later in the evening session, after the Public Hearing, Mayor Coss allowed further petitions from the floor.

G. APPOINTMENTS

Library Board

Mayor Coss made the following appointments to the Library Board:

Jan Duggan – term ending 07/2012; and
Angela Matzelle – term ending 07/2012.

MOTION: Councilor Calvert moved, seconded by Councilor Wurzbarger, to approve these appointments.

VOTE: The motion was approved on the following Roll Call vote:

For: Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo and Councilor Wurzburger.

Against: None

Absent: Councilor Bushee.

H. PUBLIC HEARINGS

1) REQUEST FROM JEMA, LLC, FOR A RESTAURANT (BEER & WINE ON-PREMISE CONSUMPTION ONLY) LIQUOR LICENSE TO BE LOCATED AT RESTAURANT MARTIN, 526 GALISTEO STREET. (TINA Y. DOMINGUEZ)

The staff report was given by Tina Y. Dominguez, noting that the license is not within 300 feet of a church or school, and staff requests that this business be required to comply with all City ordinances as a condition of approval.

Public Hearing

There was no one speaking for or against this request.

The Public Hearing was closed

MOTION: Councilor Wurzburger moved, seconded by Councilor Romero, to approve the request from Jema, LLC, for a Restaurant (Beer & Wine on-premise consumption only) Liquor License, to be located at Restaurant Martin, 526 Galisteo Street.

VOTE: The motion was approved on the following roll call vote:

For: Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo, and Councilor Wurzburger.

Against: None.

Absent: Councilor Bushee.

- 2) **REQUEST FROM SANTA FE 400TH ANNIVERSARY, INC., TO ALLOW THE SALE/ CONSUMPTION OF ALCOHOLIC BEVERAGES (BEER AND WINE ONLY) FOR ¡VIVOS! SANTA FE'S CONCERTS TO BE HELD AT FT. MARCY PARK WHICH IS CITY PROPERTY AT 490 WASHINGTON AVENUE. THIS EVENT IS TO BE HELD ON SATURDAY, SEPTEMBER 5, 2009, FROM 4:00 P.M. TO 9:00 P.M., AND ON SUNDAY, SEPTEMBER 6, 2009, FROM 4:00 P.M. TO 9:00 P.M. (LIBBY DOVER AND TINA Y. DOMINGUEZ)**

The staff report was given by Tina Y. Dominguez, noting that the site is not within 300 feet of a church or school. The Beer and Wine Garden will be 132 feet x 62 feet with a capacity of 500 persons. The alcohol vendor is Blue Corn Café and Brewery and Chavez Security has been retained for these events.

Councilor Bushee arrived at the meeting

Public Hearing

Presentation by the Applicant

Libby Dover, Executive Director, presented information on the site using an overhead projection of the map. She said in the left corner there is a 132 ft. x 62 ft. Beer Garden, and the white lines at the front represents a 4 ft. white lattice fence. She said there is a 10 foot moat between the lines which stops people from handing drinks over the fence. She said Chavez Security will be checking IDs and no one can take a drink outside this perimeter, and will be checking all bags going into the venue as well. Ms. Dover said beer is \$5 and wine will be \$6. She stressed this is not on a major scale and is not for the free festival and is for paid ticketed concerts in the ball field. She said they are asking to do this for much the same reason as you would see this at Balloon Fiesta or the Isotopes game. She said it helps with revenue, ticket sales. She said people see this as a comfortable, relaxing atmosphere, and it goes with that. She said it drives revenue. More people are likely to buy tickets to the show, food, merchandise and such. She said there will be 10 private security posted at the Beer Garden, two at each entrance and exits, and 3 on the perimeter to be sure nobody can jump the fence, and some roving as well.

Responding to Councilor Wurzbarger, Ms. Dover said the capacity of the entire ball park is 5,000 people, with 400-500 people in the beer garden at any given time. She said the capacity is up to the Fire Marshal.

Responding to Councilor Chavez, Ms. Dover said they will start serving at 4:00, probably 4:30 p.m. due to sound checks, with last call at 9:00 p.m., and by the time people exit and walk downtown it will be about 10:30 p.m. She said the Beer Garden is heavily, heavily monitored, and they will work closely with Blue Corn and its wait staff, and there is no benefit to anyone to over-serve, and they take this very seriously.

Shelley Mann-Lev, Chair of the Underage Drinking Prevention Alliance, was sworn. Ms. Mann-Lev said she is here first as a parent, second as a citizen, and cares deeply and has dedicated much of her professional and personal life in dealing with issues of health and well being of the community. She has also been involved in the recent efforts which the City and County will address tomorrow night, in terms of alcohol abuse in the community. She said she knows the 400th Anniversary Committee is doing its best job to do something wonderful for the community by hosting these events and these concerts. This is an opportunity for our City to celebrate itself. One of the deep challenges as a community we have is that we correlate and tie-together celebrations with alcohol. This is on City property and is a City sponsored event. She said, "I would deeply encourage, just as we have found with Fiesta... we don't have a beer garden at Fiesta, that is a family event. We want to encourage safety. We want to encourage celebrations. And I have significant concerns... this is a... you know... the math is still not up there. That is 500 people in a large area who are partaking of alcohol and that is a significant part of the celebration. We are not... I am not somebody who is a prohibitionist. This is not about moderation... use of alcohol has its place."

Ms. Mann-Lev continued, "But, I really want to challenge the City Council to think about, as you take a leadership role in addressing alcohol abuse in this community, what kind of message... what message we want to send to our community about what it means to celebrate. And so, as much as I respect that there's an issue of revenue, I would imagine for the 400th anniversary community, I believe that the conscious... the events that they're planning, the opportunity to sell food and other kinds of items, will attract people to that celebration. And I have to say there's also a cost issue for the City that you, that in addition to the security, that they're providing. The City police will need to provide additional security in order to make sure that there's a safe event as well as a safe leaving, so that there will be a City incurred additional expense. And I think if you were to ask your police force that relates to enforcement when alcohol is present. So I would like, and I'd be happy to answer questions as well, to encourage the Mayor and the Councilors to consider the message and the impact that we're giving by accepting approving this temporary license."

Stephanie Beninato was sworn. Ms. Beninato said she agrees with the previous speaker. She believes it sends a bad message to the community... the correlation between drinking and celebration, particularly on the City grounds. She appreciates the need for revenue, but believes there are other ways to do this, and hopes the Governing Body considers that side of the issue as well.

Lisa Grace was sworn. Ms. Grace said she is a member of the Santa Fe Underage Drinking Prevention Alliance, also directs the Responsible Retailing Forum of Santa Fe, and is a resident and a parent. She said with the recent losses which have impacted our community so severely, and the outcry and the actual conversation where people ask that alcohol be addressed, this is the perfect opportunity for the Council to stand up and say it's really not necessary for us to have alcohol at an event.

Jamey Linfesty, Fan Man Productions, was sworn. Mr. Linfesty said he is involved in the event production for both concert series on Saturday and Sunday. He is also the only one who's done a Beer Garden at Ft. Marcy – four years ago for the 4th of July with Los Lobos. They did not have beer at the

event and sold 2,500 tickets and everyone had a great time. At the end of that event, the grounds of Ft. Marcy were littered with shot bottles and such. There was a lot of evidence of people smuggling alcohol into the even. He said the next year, when they did a Beer Garden, there were 3,500 people, noting it almost doubled the attendance to have the Beer Garden. He said at the end of the even there was "none of that." He thinks the Beer Garden allows for responsible drinking, controlled drinking done in a way that is monitored. The police are aware of it and everybody's aware of it. He said where we get into sending the wrong message is where people are driven to smuggle alcohol. He said they will do everything in their power to stop that, saying there is security to do bag searches. He said people have ways of getting harder alcohol into events and that is where we get into the difficult issue of uncontrolled drinking of hard alcohol which he believes to be more dangerous than beer at these thing. He said also, the idea of the Beer Garden is not to have people camp out there all day. It is to allow people to have a beer, go sit with their family, enjoy the music and come and go throughout the course of events. He said they are in no way trying to send the message that drinking is part of the festival. However, from personal experience, it is something that makes the whole event feel like an event. He strongly urges the Governing Body to consider this in its vote.

The Public Hearing was closed

Councilor Bushee how they will be screening people.

Ms. Dover said there will be two security guards at each entrance, 3 on the perimeter, and 2 roving throughout the Beer Garden.

Councilor Bushee said she was speaking of the serving of alcohol.

Ms. Dover introduced John from Santa Fe Dining who will be running the serving.

Councilor Bushee said she wished this had been after the neighborhood meeting, because she would like to hear from the surrounding neighbors when there was a beer garden.

John Guzigian was sworn. Mr. Guzigian said all of his staff who will be working this event are certified by the State through the Server Alcohol Certification Program. He said they are the best servers out there, and they will give them even more training going into this event, because they recognize the sensitivity of the issue at this point in time. He said his servers are well versed in the service of alcohol, recognizing the signs of intoxication, knowing when to slow people down and when to cut people off. He said the level of security of this event is unique and will take the issue of underage drinking off the table. He said you can't get into the area unless you are over 21, and once in, then you are in our hands. He said they have people who are trained in serving alcoholic beverage, noting only beer and wine will be served, not hard alcohol. He said as Mr. Linfesty and Mr. Dover said, we want this to be a family event, and want it to be easy for people to come in, enjoy a beer and then go back with their family. This isn't meant to be a raucous free for all. As Mr. Linfesty said, a concert and event of this kind isn't just one

element – it's not just the music, the food, the celebration of the 400th – it's all of these components. He believes they can be a good part of that.

Councilor Bushee asked Mr. Katz what would be the City's liability for this event.

Frank Katz said he believes the liability will be with the company serving the liquor and it will indemnify the City for problems.

Councilor Bushee said then it's not likely if someone "fell through the cracks," and this doesn't work in the way it is anticipated, and there is an incident, the City would not be a named party.

Mr. Katz said, "I can't promise you that. If I were the person representing that person, I would name everybody I could possibly think of. But, I think that we would have the indemnity from the server that would protect us from liability. I can't promise you that we wouldn't be named. That's in the control of the lawyer who might sue."

Council Dominguez said he is not so much concerned about responsible people who will follow the rules and use the Beer Garden as it's intended and to have a good time. He has worked security at concerts where alcohol was and was not allowed. He said the speaker is right, and lots of people have ways to smuggle in the alcohol. His concern are those who start at the Beer Garden and then go to places other than the Beer Garden and indulge in more alcohol. He asked, give that people will smuggle alcohol in, how we will ensure that those who enter the Beer Garden are not at their limit beyond the Beer Garden .

Mr. Guzigian said the purpose of the security at the entrance and also having certified servers inside is to recognize those signs.

Councilor Dominguez asked if we are relying on the security guards at the entrance to search for alcohol before people even go into the park.

Ms. Dover said there is a whole different team at each one of the gates and the entrances to search bags, open lawn chairs and such before entering through the gate.

Councilor Dominguez said, just as the gentleman from Fan Man said, there is no guarantee that we will get everyone, because there are many opportunities for people to smuggle alcohol in, aside from the checks.

Ms. Dover said, as the producer, she believes they are doing their very best to mitigate those concerns, but obviously it is up to personal responsibility and what a person will do.

Councilor Dominguez asked what is being done in terms of alcohol education are they going to do to send the message to the patrons that anything beyond this is prohibited. He asked Ms. Dover what she

is going to be doing to educate people that it's not okay to drink and drive, and abuse alcohol and abuse the opportunities they have to participate.

Ms. Dover said at the entrance to the park there will be signage. She said all private security and servers are trained to have a zero tolerance for over-consumption. So, it wouldn't be tolerated to allow someone into the park who has had too much to drink. She said the Rail Runner is running and one of the main reasons they will stop serving one full hour before the concert ends, is because people will then have to walk downtown. They are encouraging people to eat within the Beer Garden.

Councilor Dominguez asked if there is an organized campaign to encourage people not to abuse, within the event and in the marketing campaign.

Ms. Dover said that hasn't been determined for the marketing campaign, but as the producers of the event it is something that they take care of – to mitigate the concerns.

Councilor Chavez said Ms. Dover is getting the message that there is some reluctance to move in this direction because we know that some people just can't maintain, and they spoil it for everyone else. He said this is a perennial issue every year for some event or another. In the event there is a patron who has had too much to drink before and during the event, we do need to be able to remove that person from the event. He asked if we can provide a safe ride program for people.

Ms. Dover said it is something they can look into. Unfortunately, because the concerts are so large they have to consider what it would look like and what would be the cost. She said they looked at this much the same way as the other events, such as Fiesta or Isotopes games. She said to speak to the issue of alcohol and celebration, it does in a way go hand and hand and she completely respects "where the last speaker was coming from." She said it does seem to go hand in hand for weddings, religious ceremonies or any of those events. She said if it's not something the community wants or is ready for, that's something they'll be fine with. She said they would be fine with putting limits on how many drinks each person can have. She said they are very much concerned about drinking responsibly and appreciate all the comments.

Councilor Calvert said he would like to know if each person could be limited to no more than two drinks in the Beer Garden, which he believes is a reasonable number and we don't have people hanging out there all evening long. He said if we set a two drink maximum, that will cover the area. Then you can do security for the general area, noting there is only so much you can do. He would be much more comfortable with this with a two drink maximum in the Beer Garden.

Ms. Dover said she discussed this with Santa Fe Dining, and they said a 2-3 drink limit is something we could consider.

MOTION: Councilor Calvert moved, seconded by Councilor Romero, to approve the request from the Santa Fe 400th Anniversary, Inc., to allow the sale/consumption of alcoholic beverages (beer and wine

only) for ¡Viva! Santa Fe's concerts to be held at Ft. Marcy Park, which is City property, 490 Washington Avenue, on Saturday September 4, 2009 from 4:00 p.m. to 9:00 p.m., and on Sunday, September 6, 2009, from 4:00 p.m. to 9:00 p.m., with the condition that there is a two drink limit for each person in the Beer Garden.

DISCUSSION: Councilor Trujillo asked if people are caught trying to smuggle alcohol in, what will happen, and Ms. Dover said they will be removed off grounds.

Councilor Trujillo asked if there will be an officer on site to arrest the person or just escort them off the grounds, and Ms. Dover said she believes it would be appropriate to escort them off grounds.

Deputy Chief Abram Anaya said, "First off, the Police Department does not endorse the Beer Garden for numerous reasons. Primarily, with the introduction of alcohol to this event, it's going to increase our staffing responsibilities about 7 officers per event. As it is, this event is going to strain our budget to the tune of about \$17,000, and with the addition of these 7 officers per concert, we're going to be going well over \$20,000 in just staffing issues."

Councilor Trujillo asked Chief Anaya if someone is caught smuggling alcohol into the event, if there will be a police officer to escort them from the premises, and Chief Anaya said that is correct, and they will be trespassed from the event.

Councilor Trujillo clarified that they will stop serving alcohol at 9:00 p.m., and asked how long it takes someone who is intoxicated to sober up. He is concerned that they have only one hour to sober up before getting into a car. He asked if there is a possibility of stopping service at the Beer Garden earlier.

Ms. Dover said at some point, they will have to evaluate whether or not they want to have a Beer Garden if they have to stop earlier and there is a two drink person. She said how long it takes to sober up depends on a person's weight and such.

Councilor Romero said she is trying to understand the need for additional police officers, when Chavez Security will be doing security from 4:00 to 9:00 p.m., checking IDs, working the perimeter, roving in the Beer Garden. She asked where no legal alcohol served, would there be a difference in police officers on the premises.

Chief Anaya said, "The reason for the increase in officers is very simple. Whenever you add alcohol to an event, such as this, there becomes a heightened aggressiveness and that's a fact. With that, you need more security on scene, police officers on scene, to deal with these subjects that are going to be intoxicated. They tend to grow beer muscles, get a little liquid encouragement and do things that they otherwise wouldn't. So, we need additional officers on scene to deal with the crowd in that state."

Councilor Romero asked if there were additional police officers for the Railyard event and grand opening of the Railyard, which is a similar event where alcohol was served.

Chief Anaya said he doesn't have those numbers.

Councilor Romero said it is hard to imagine people getting that rowdy for the opening of the Farmer's Market, and doesn't recall people getting that rowdy.

Chief Anaya said it happens, and when you get a large group of people together, especially in a concert venue, and you give them alcohol, it will be a bit more raucous than otherwise.

Councilor Romero said her recent experience has been with the Sandia events for music, and on Sunday the Isotopes games which is very controlled, so her experience has been quite different than what Chief Anaya describes. She said there is real control at Isotopes games, noting they even search diaper bags. She doesn't see people acting badly at a baseball game.

Chief Anaya said a baseball game and a concert are two very different venues. He said, "Our main concern, being as this is a public sanctioned event and it's supposed to be a family event, we want to make sure that public safety is at its best and it's safe for everybody, and that is why we'll have a heightened amount of officers on scene if alcohol is to be served."

Councilor Bushee said her concern is the size, along the lines of Zozobra, and that they're expecting 20,000 people.

Ms. Dover said only 5,000 people are expected each night for the concerts, and the 20,000 people is for the festival which is on the other field.

Councilor Bushee asked how they will limit people to two drinks, and if the motion passes for a two drink limit if they will want to proceed.

Ms. Dover said they will discuss it. She believes the way they will do it is to wristband everyone coming in and punch the wristband each time they buy a drink.

Councilor Bushee asked if the two drink limit "will not make it for you financially."

Ms. Dover believes two drinks would work, but she would need to look at hard numbers with Santa Fe Dining and Blue Corn.

VOTE: The motion was approved on the following roll call vote:

For: Councilor Chavez, Councilor Calvert, Councilor Romero and Councilor Wurzbarger.

Against: Councilor Dominguez, Councilor Ortiz, Councilor Trujillo and Councilor Bushee.

The resulting vote was a tie, and Mayor Coss voted in favor of the motion.

Explaining his vote: Councilor Chavez said he will vote yes with the two drink limit.

Explaining his vote: Councilor Dominguez said, "I have the utmost confidence that the organization will do the responsible thing and those associated with them will do their best and go above and beyond what they're required to do to make sure this is a safe event. I have no doubts about that at all. Right now, for me, this is one of the difficult ones to support, given the circumstances that our community is under. And not necessarily to be reactive, but to give this community a change to gather more information and educate themselves really about what alcohol abuse does to a community. It would be difficult for me to support this. And I have to say that this is pretty consistent with my previous votes in not supporting beer at the hockey games at the Chavez Center and not supporting package liquor sales along Airport Road at Walgreens. And I think that a lot of responsible people will be there, but this is a really difficult message to deliver now, so I'm going to vote no."

Explaining his vote: Councilor Trujillo said, "Over the last four months, I won't speak for Councilor Dominguez, we've been the face of the City for the community's underage drinking. And, this community has gone through some tragedies in recent months. And I've got the same opinions Councilor Dominguez. Right now, this isn't the message. This is a family event. You know, we talked about the Railyard, you know, I think when we have these other things which address more of an adult theme, we didn't have a big concert at these event. I just think it's going to be a family event, and you can have a good time at an event without alcohol, and because of that, I'm going to vote no as well."

Explaining her vote: Councilor Wurzbarger said, "I'm going to vote yes because I truly believe that the message we need to send as a community is how do you properly drink as adults and how you control it. I think it's the same kind of argument that can be made with respect for not having sex at whatever age. But, I'm really concerned that we're assuming an unrealistic expectation when you say people are not going to be drinking. And anybody who's been to Zozobra or any other event at Ft. Marcy, and this was mentioned by... Jamey... you're going to find those bottles there. So, I feel much more comfortable, and I feel that our community is safer if we have this kind of controlled environment, and I hope that's correct."

Explaining her vote: Councilor Bushee said, "You know, it's better that there's a limit and that there are all these controls built in, but I have to say I'm also trying to be consistent. I did not want to see alcohol at the Scorpion hockey events. They are family events and I hope that this will be too, so I'm going to vote no."

Explaining his vote: Mayor Coss said, "I want to explain my vote too then, because you know I've worked a lot with Shelley and with Cynthia. And, the motto that they use is, 'Where no one under the age of 21 drinks alcohol and those over the age of 21 model responsible use.' And I think what these folks have set up is a model of responsible use. We're not going to be prohibitionists in town. We're going to have more illegal drinking the more we clamp down on legal, controlled,

modeled use of alcohol in our community. And so, I think accepting the two drink limit, with all the other precautions they've put in, we're modeling use of alcohol by adults in a responsible fashion, and I think it's a good step, rather than a bad step, so I vote yes."

Mayor Coss asked Mayor Pro-Tem Wurzburger to preside over the next public hearing.

3) CONSIDERATION OF BILL NO. 2009-37; ADOPTION OF ORDINANCE NO. 2009-37 (COUNCILOR WURZBURGER). AN ORDINANCE AMENDING SECTION 14-4.3(I) SFCC 1987 REGARDING THE PURPOSE AND REQUIREMENTS OF PRC PLANNED RESIDENTIAL COMMUNITY DISTRICTS. (JEANNE PRICE). (Postponed at July 29, 2009 City Council meeting)

A copy of a letter dated August 12, 2009, to Greg Smith, Division Director, from David R. Thomas, P.E., Project Engineer, regarding Bill No. 2009-37, provision for mixed use development in PRC Zoning, indicating support for the bill, is incorporated herewith to these minutes as Exhibit "2."

Greg Smith presented information regarding this matter to the Governing Body. He said the Planned Residential Community Zoning District was created to allow the master planning of the uses and other aspects of large residential development. As drafted and implemented, the PRCD ordinance allows primarily residential uses, including single family development, subdivisions, apartments, condominiums, various densities of residential zoning. As drafted, it also allows a small amount of neighborhood commercial development. He said there are existing master planned communities with PRC zoning in the City limits – Tierra Contenta, Las Estrellas, Santa Fe Estates, Nava Adé and Estancia Primera. Of these, only the Tierra Contenta development has a plan that includes, at this point, some neighborhood commercial uses.

Mr. Smith said the amendment to the PRC regulations before the Council tonight, would allow, within the PRC Districts, in addition to the various densities of residential development in addition to the neighborhood center development that's allowed, would also allow the mixed use type of development which was added to our zoning regulations four years ago. The Code amendment would not apply immediately to any existing or pending applications for a planned residential community. The reason this particular amendment is before the Council at this time, apart from the Chapter 14 update program, is because it was part of the application that has been filed for the Northwest Quadrant project. The Northwest Quadrant project is related to the timing of this amendment, but not, in staff's view, to the content of the amendment. He said the Community Services Department, Planning and Land Use Department and Legal Department have agreed this is an appropriate amendment to the Code, regardless of when it is first applied in a planned residential community, whichever one that might be.

Mr. Smith noted there is a letter before the Council from Dave Thomas, which was distributed prior to the meeting [Exhibit "2"]. Mr. Thomas is the engineer and one of the main development forces in the Tierra Contenta development, and Mr. Thomas, in his letter, agrees this would be an appropriate flexible

tool to add to the planned residential community. He said we're not indicating that Tierra Contenta will or not be taking advantage of the mixed use in that Phase 4, but the letter indicates it would be appropriate to add to the planned residential community district.

Mr. Smith said the Planning Commission recommended approval, and the Public Works Committee recommended denial. The Finance Committee did not have a quorum in its consideration of this bill. He noted in the Staff Report, the mixed use regulations as applied outside of the planned residential community and they would apply within the planned residential community would have a mandatory requirement of 50-80% of any development be residential uses. He said this will not create commercial districts within a PRC and will allow a mixture of commercial and residential uses, including presumably, primarily live/work types of development in those sections where it is eventually applied by approval of first, the master plan and second, a development plan.

Councilor Chavez asked if Mr. Thomas would also encourage changing the master plan for Tierra Contenta to encourage more mixed use.

Mr. Smith said he isn't in a position to speak for Mr. Thomas beyond what he's represented in the letter, and doesn't know whether Tierra Contenta would or not plan to use the mixed use in its Phase 4.

Councilor Chavez said Mr. Smith did say Tierra Contenta did have a phase left that might be conducive to mixed use.

Mr. Smith said he only meant to suggest it is possible that this would be applied in that context. He doesn't want the Council to get the impression that any of the Tierra Contenta representatives have stated that they would or would not, might or might not, take advantage of the flexibility if it is available. Tierra Contenta does have the bulk of the residential development that is to be allowed within Tierra Contenta will be in their Phase 4. He said he can't even speculate on whether they will use the mixed use flexibility.

Councilor Chavez said they have always had the option and the commercial center and the neighborhood center as part of their planned residential community to provide amenities and services that are within walking distance. He said that was 20 years ago, and the residents of Tierra Contenta are still waiting for the business center to come to full buildout. He said the market will dictate when those amenities are profitable and they won't be in place for the benefit of the residents until the economic conditions are right.

Public Hearing

Rick Martinez, 725 Mesilla Road, said the Northwest Quadrant is reducing its commercial, and asked why this is needed.

The Public Hearing was closed

MOTION: Councilor Wurzbarger moved, seconded by Councilor Ortiz, to adopt Ordinance No. 2009-37.

DISCUSSION: Councilor Bushee said she is voting against this. It is done solely and seemingly in a more rushed manner just to facilitate the commercial development in the Northwest Quadrant when we have a thorough and over-exhausting review of Chapter 14 and any changes that would have been called forth would have come from that. This is on a separate track. It is only fair that a decision that adds more commercial that we have no real way of monitoring and enforcing, be reviewed in the whole context of Chapter 14. She noted this was not approved by the Public Works Committee for some of the same reasons.

VOTE: The motion was approved on the following Roll Call Vote:

For: Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo, and Councilor Wurzbarger.

Against: Councilor Bushee, Councilor Calvert and Councilor Chavez.

Explaining her vote: Councilor Romero voted yes, and commented that she thinks Mr. Thomas's letter really goes beyond the Northwest Quadrant. She thinks this focus is about the perspective that this will affect all master planned communities.

Explaining her vote: Councilor Wurzbarger said, for the record since she is the sponsor in conjunction with staff who brought this to her, she will publicly say this was not done for the Northwest Quadrant and includes larger projects such as Las Soleras, etc.

Explaining his vote: Councilor Chavez said the letter from Dave Thomas is his opinion, although it may be an educated opinion. However, he doesn't believe he should be speaking for the residents of Tierra Contenta, noting and that master plan means a lot to the residents. He said to just say that he supports it is one thing, but then you have to consider what the impact might be to a neighborhood such Contenta if the mixed use was increased. He said he can't support this right now and votes no.

Explaining her vote: Councilor Bushee said Las Soleras is not seeking a PRC zoning category, and Councilor Wurzbarger said the reference was made to the type of project, rather than specific and this was her example. Councilor Bushee said the Affordable Housing staff mentioned that they needed this zoning category in order to be able to have the commercial development in the Northwest Quadrant. So, out of context, she doesn't believe this is a good way to review or make policy and voted no.

- 4) **CONSIDERATION OF BILL NO. 2009-38; ADOPTION OF ORDINANCE NO. 2009-____ (COUNCILOR ORTIZ). AN ORDINANCE AMENDING CHAPTER 14 LAND DEVELOPMENT LAWS AND CHAPTER 26 AFFORDABLE HOUSING SFCC 1987 RELATING TO APPEALS. (GREG SMITH) (Postponed at July 29, 2009 City Council Meeting)**

This item was postponed to the meeting of September 9, 2009.

- 5) **CASE #A 2009-03. PLAZA PINONES FINAL DEVELOPMENT PLAN APPEAL. CASAS DEL CERROS NEIGHBORHOOD ASSOCIATION APPEALS THE PLANNING COMMISSION DECISION OF APRIL 16, 2009, TO APPROVE CASE #M-2009-07, FINAL DEVELOPMENT PLAN FOR 40 TOWN HOMES ON 7.44± ACRES. THE PROPERTY IS ZONED 4-5 (RESIDENTIAL, 5 DWELLING UNITS PER ACRE) AND IS LOCATED EAST OF FIFTH STREET AND SOUTH OF ST. MICHAEL'S DRIVE. (DONNA WYNANT)**

Memorandum prepared August 6, 2009 for the August 12, 2009, City Council meeting, with attachments, to the Mayor and City Council, from Tamara Baer, Planning Manager, Current Planning Division, is incorporated herewith to these minutes as Exhibit "3."

A copy of a "Joint Request for Resolution of Plaza Pinones Appeal Case No. A-2009-03," entered for the record by Robert Hake, is incorporated herewith to these minutes as Exhibit "4."

Tamara Baer presented the Staff Report which is contained in Exhibit "3." She said the parties have come to an agreement, and they are here this evening to ask for your concurrence with that agreement. If you concur, the agreement will allow the development to be finalized and recorded, and for the project to move forward.

Ms. Baer said on August 3, 2009, staff including the City Attorney, the Assistant City Attorney and herself met with Robert Hake, the president of the Neighborhood association and the owner's representative Jennifer Jenkins to review a proposed settlement. The terms of that settlement are relayed and memorialized in a letter dated August 10, 2009, which was emailed to the Governing Body two days ago [Exhibit "4"]

Ms. Baer said the settlement includes a number of design modifications that were also part of the Planning Commission approval, and settles the single outstanding issue which was resolved at the Planning Commission, but not to the satisfaction of the neighborhood association, and that is the question of access on 5th Street. The Planning Commission approval was for right out only, and the settlement agreement between the parties approves a right in and a right out. The agreement also has the approval and concurrence of the Fire Marshal, the City Engineer for Land Use as well as the Traffic Engineer.

Ms. Baer said the Appellant essentially withdraws all other issues in the appeal with this agreement. Ms. Baer introduced Robert Hake.

Public Hearing

Robert Hake, 2068 Calle Sombra, was sworn. Mr. Hake said, "This agreement was formulated in order to provide a solution to a problem, rather than keep it going. We have put conditions into this agreement that protect Stella's setback [Stella Martinez a 90-year old woman who couldn't attend this evening], and to make single family dwelling units along our southern border. The developer has agreed to move parking. The most important thing though in this whole struggle for 3½ years has been to provide protection for the inhabitants of the neighborhood – Camino Lado, Calle Sombra. Calle Sombra, a street that has no traffic now, is now going to be subjected to 300 car trips a day with right out only. That was not acceptable. That was the minimum amount and we're lucky that the developer and everybody concerned agreed making a right in and right out option on 5th street would mitigate the traffic. And people going north out of this development would be able to go their way on 5th street. And I ask that you concur with the parties that this is out best solution to the impact of traffic for this particular instance. It's been hard to accept this. We like the piece of land a lot and we're hoping that the developer shows good faith and continues to show care and concern for the neighborhood. Their choices of the conditions that allow to have a setback and single family dwellings, a three-way stop, moving the parking and allowing right in and right out on their property is a sign of good faith and we appreciate it very much."

Mr. Hake continued, "Just one piece of history that you should be informed of, or know about, you really do know about, is that there have been 14 or 15 meetings over 3½ years to solve this problem, and I would thank GavinsJenkins for letting us be part of a process and thank them for staying with us. Because I didn't know, in informing the neighborhood association, that it represents compromise rather than winning, and solutions don't look like winning from both sides, but the solution presented here with your legal staff and the staff of your City is something that's workable for us, with having right in and right out. I would think that you would vote to concur with this and join us in trying to go forward. We hope that this example for the community will allow the developer and this neighborhood to go forward with the development of St. Mike's and any other issues that are being brought forward because of this. Please concur. One thing I would ask that the neighborhood association represents... I'm representing them and I concur with this agreement. I would also ask that you allow the members of the neighborhood to speak shortly and to simply, in a public hearing, to say what they'd like to say. They've asked me for that opportunity and I certainly can't speak for every member of the community or my neighborhood, but I speak for the majority."

Jennifer Jenkins, JenkinsGavin Development, was sworn. Ms. Jenkins said she here on behalf of Sonar LLC this evening, and would echo what Mr. Hake said. She said this has been a long, laborious process, but they worked hard to create something that is workable for everyone. She said they have a solution before the Governing Body that we are asking you to bless.

Mr. Hake said he would like to allow the members of the neighborhood who are in support of the

right in/right out option to raise their hands and to see that there is support for this from the neighborhood. [STENOGRAPHER'S NOTE: There was no tally of the show of hands.]

Paul Sena, 2070 Calle Sombra, was sworn, said he is here to express his concerns with this proposal and to state objections. He understands that "our association, the developer and City staff have to come to some type of compromise and agreement on this project. This is promising. However, since day one I have had my concerns about this project. I want to stress that I do not oppose the concept and visions of a new subdivision in our neighborhood, and in general, I do not oppose most developments. The truth is I support smart, well thought-out and properly planned development. In fact, I am in favor of a settlement, because I feel there has to be some agreement made and the progress needs to continue. Ultimately, I hope all these discussions will lead to some kind of consensus so that all sides will be heard and will be happy. Nonetheless, having said that, all I want you to know is that I have lived in this neighborhood and on this street with my wife and family for over 30 years, and although I support most of this project, I still have many concerns and objections. Specifically, allowing the project to include opening Calle Sombra Street to drive-through traffic. Our tiny, humble and quiet street has always been closed off, a cul-de-sac, dead-end, whatever you would like to call it. We call it home. Our street is not very big, only about 6 houses aligned on the side, and it has always been very safe. I have always felt comfortable allowing both my children and grandchildren playing there. Having visitors and family come to my home and park their vehicles there with ease and have spent many time meeting and congregating and living with all my neighbors. I know that if you open up the street, all this will change."

Mr. Sena continued, "To me, this is not a zoning issue, a density issue, a drainage issue or even a traffic issue. It is a safety issue and a quality of life issue. I urge you, the members of the Council, to see both sides and support the development plan, but support the people and stop the opening of Calle Sombra Street."

Eliza Castellano, was sworn. Ms. Castellano said , "I agree with what Mr. Sena has said. I am not in opposition to the development, I am in opposition to the opening of Calle Sombra, increased traffic hazards to the new community, of the new community as well as the existing neighborhood. One recommendation that the neighborhood association had discussed with the developers, was to seek agreement with property owners on the north side of Warner Street. However, at the time, that property was having legal issues. I'm happy to report those legal issues have been resolved. There is now a posted sign that the property is for sale. What this means is that the developers now have the opportunity to seek private entry/exit for the residents of their new community directly onto Warner Street and St. Michael's Drive or 5th Street. To me, this is a valid issue that can be reviewed. And, this has come to light since the agreement was signed. The realty company is Old Santa Fe Realty at 983-9265, Cynthia Montoya is the realtor with a phone number of 577-0905. This is a viable alternative to opening up Calle Sombra and it enables the new community exclusive entry/exit without additional traffic from Siringo, 5th Street and Calle Sombra and Camino Lado."

Greg White was sworn. Mr. White said, "I've been before you since the very beginning. I've attended every single meeting, with the exception of one when I was out town and not able to attend. I've

been involved in every Early Neighborhood Notification Meeting, every Planning Commission Meeting and every Neighborhood Association Meeting. This proposal before you represents the only possible solution to this development's constraints. We've worked hard with the neighborhood association, condominium association and the developer to find solutions. We've worked with the City Traffic Engineer, we've worked with the City's attorneys, we've worked with the City's planning staff. I promised the developer that if they would come in and put forth a proposal of single family homes and a good street layout, I would support them. I'm here to support them."

The Public Hearing was closed

Councilor Trujillo said he has the same concerns with Calle Sombra and the traffic that will be created. He said it is a long process to get speed humps on streets. He said he would like to see speed humps or something that curbs the speed on those streets if it is viable to the residents who have brought up these issues. He asked if there is a possibility of putting in speed humps and if we would have to go through a rigorous process, or speed humps can be put there by the developer.

John Romero said there is a Council adopted process for placing speed humps, which includes an evaluation that determines the amount of cut-through traffic, speeding, total traffic and other factors. If they total a certain number which exceeds a certain threshold, then it's eligible for speed humps. Once that threshold is met, then the neighborhood is polled. If a certain people want speed humps, then they are implemented. He said in the past with other developments, a condition has been placed on the developer to contribute money toward traffic calming, with the understanding that money may not be used in that area. It can if it is petitioned by the neighborhood and meets all criteria. If not, the funds would not be used for that specific traffic calming and it would be placed in the general traffic calming budget for something else.

Councilor Trujillo asked Mr. Sena if he would like speed humps to slow traffic. He said the two openings are because of fire and emergency vehicles.

Mr. Sena understands the situation, noting the neighbors have to park in the street. He said there is an safety issue regarding traffic and that needs to be considered, because it intersects two neighborhood streets.

Councilor Trujillo would like to impose as a condition of approval that speed humps be put there, and he doesn't want to have to poll the neighborhood. He said he has been trying get speed humps in other places in District 4, and "it's like pulling teeth." He is here to protect children and families.

John Romero said his understanding is that it is part of an adopted policy and he would have to consult with legal to see if we can legally deviate from that policy.

Mr. Katz said the Council set the policy and can change it in a particular situation. He said his concern is that the current policy takes into consideration the wishes of the neighbors, and you've heard

the wishes of 1-2 neighbors, and it would be a shame to change the policy and the neighbors not want to have it.

Councilor Trujillo is concerned about the hoops we have to jump through. So, if it doesn't warrant it, then you'll tell the neighbors if it doesn't warrant it, and no vote will be taken. He wants a vote taken. He wants the neighbors to be polled, even if it doesn't warrant it.

Mr. Romero said he would that would require an amendment to the adopted policy, and then staff could implement it. However, the policy directs staff to do what we do. He said staff doesn't set policy they just enforce it.

Councilor Romero said she would hesitate on this. She said we have a fair policy in place and the fairness of the policy is that neighborhoods go through a process where they vote, so it's not 1 or 2 people or families saying no to traffic calming. She said when traffic calming happens, it is because it is absolutely needed in an area. She hopes we don't change the policy, so one neighbor is pitted against another. She said there isn't much money in the traffic calming money, and projects are weighted. She would discourage placing this kind of condition on this particular issue, when it's something we can encourage the neighborhood to do.

Councilor Romero said Camino Atajo is one where the neighbors came to us, and we're going through a traffic analysis to see what kind of traffic calming would be appropriate for a neighborhood, so it's not just one set kind of traffic calming that we are dictating. It's what the neighbors and the neighborhood want. She said our current policy is consistent, consistently applied and fair. If the neighbors want traffic calming it is their option, but not as part of this development. It's part of what goes back to the neighborhood to decide what happens. She encourages the Council to stick with our set policy.

Councilor Ortiz asked Mr. Romero if there is a prohibition from the Council putting speed humps on the proposed development, and having speed humps right before it reaches Calle Sombra as a traffic measure.

Mr. Romero said no, this doesn't violate the policy.

Councilor Ortiz said for about 30 years, Calle Sombra has been effectively a cul-de-sac. To protect the current character of the neighborhood, we could impose a condition of approval, adding a condition in Paragraph 5, in accepting this agreement which was hard fought by the neighborhood and worked out in good faith by the developers, asking the developer to install traffic calming barriers on their property right as it exits onto Calle Sombra as a safety measure to do the things we heard from the neighborhood. And this wouldn't violate the policy Councilor Romero things is fair to neighborhoods and doesn't pit neighbors against neighbors.

Mr. Romero said yes, and traffic calming is encouraged in Chapter 14 on proposed streets.

Councilor Ortiz said in granting approval to other developments we require them to put in traffic calming as a condition, noting we did this with Nava Adé and other neighborhoods on the east side of town. It's a standard condition in terms of one of the things we can do in accepting these kinds of developments, and Mr. Romero said this is correct.

Councilor Trujillo would like a condition of approval that traffic calming be placed in the subdivision which is going to be built, prior to getting to Calle Sombra.

Ms. Jenkins said they agreed to a condition of approval prior to going to the Planning Commission which had similar concerns. She said they requested a three-way stop, which is noted on page 3. She said a three-way stop and a speed hump in that location, from a traffic engineering standpoint, is redundant. She said there is a measure which was negotiated to address the very concern you are discussing.

Councilor Trujillo said not everyone stops at a stop sign.

Ms. Jenkins said, in working through a traffic calming measure at that intersection, they would want to use good engineering practices. She wants to be smart and do something that's appropriately engineered to calm the traffic. If speed humps work appropriately, maybe a stop sign isn't an appropriate measure in addition to the speed humps. She wants the opportunity to do it smart.

Councilor Trujillo said what he wants, as soon as this development is done, is that the City check Calle Sombra and it goes through the process to get that done as soon as possible. He appreciates the three-way stop, but he wants to look out for the neighborhood. It was just a cul-de-sac and now we're putting traffic through there.

Councilor Chavez suggested the developer could make a contribution and if it is determined that the evaluation for this neighborhood is right and traffic calming is needed, the money from the developer could be used there, if not it would be used in other parts of town which still have a need. He asked the developer if they would be willing to do that.

Ms. Jenkins said her preference would be that if there was to be a contribution that it would be used in this area, and if it's not warranted or advisable based on City policy, it could be returned. This is her preference, but they would agree to a contribution if that were the pleasure of the Council.

Councilor Chavez said then Ms. Jenkins is willing to do something on the applicant's part to help mitigate the traffic, and he is asking her to take that extra step, and said, "Yes the money should be spent there, and that would be my hope. But, the point is that we acknowledge the neighborhood and the issues around safety and traffic. We could change the policy, but if there is no funding to follow through, it doesn't do any good. The message we want to send is that we're serious about traffic calming and we, you and the neighborhood are going to make a commitment to try to make that work."

Ms. Jenkins said, "Yes, we would be willing to do that."

Councilor Chavez said it could be a fair pro rata share and work with staff, and continue to work with the neighborhood so we're not designing that from the top down. That design needs to come from the bottom up, but we need the commitment and the resources to implement it.

MOTION: Councilor Ortiz moved, seconded by Councilor Chavez, to accept the Appeal Resolution dated August 10, 2009, and to add an amendment in Paragraph 5, "As an additional traffic calming measure, the developer agrees to provide raised crosswalks at the three-way stop, or other traffic calming measures on their property as the access enters onto Calle Sombra, with the contribution from the developer as mentioned by Councilor Chavez.

DISCUSSION: Councilor Chavez asked Councilor Ortiz would be comfortable with language that would let the evaluation run its course.

FRIENDLY AMENDMENT: Councilor Ortiz proposed to amend his motion to provide that it is dependent upon an evaluation of what additional traffic calming measures are appropriate and needed. **THE AMENDMENT WAS FRIENDLY TO THE SECOND AND THERE WERE NO OBJECTIONS BY THE OTHER COUNCILORS.**

Councilor Dominguez asked if we are going to require the raised crosswalk at the intersection on behalf of the applicant, and he was advised yes. He said then the evaluation just pertains to the contribution for Calle Sombra.

Councilor Dominguez wants to be sure we have for the record that other alternatives were looked at in terms of access to the property and the project. Councilor Dominguez asked what options have been explored, and asked for a summary.

Ms. Jenkins said early on they explored the possibility of obtaining an easement or buying property which is part of the Warner Circle Commercial project which is northwest of the subject property. They met with some property owners there, but couldn't come to an agreement. She said Warner Circle is problematic in a matter of ways and is incredibly substandard. It is very narrow and it is a private loop. She said, unless they owned a piece of real estate, Plaza Pinones wouldn't have right of access. She said Frank Herdman, counsel for Plaza Pinones also represents some property owners on Warner Circle and can speak to the conditions of that more specifically than she can. She said they explored a lot of different options, and the two points as currently proposed appear to be the only points of access.

Councilor Dominguez asked, with improvements to Warner Circle you could potentially get onto site.

Ms. Jenkins said there isn't enough space physically, and they would be encroaching onto private lots.

Councilor Dominguez asked if this could be done with purchase of property and right-of-way – is there physically the ability to do that.

Ms. Jenkins said there is only about 20 feet of space available, and the road is substandard, and the analysis they did indicated it wasn't feasible.

Councilor Romero referred to the ENN sign-in sheet, saying at the ENN meeting they had the opportunity to talk through a variety of opportunities about traffic calming, including bulb-outs as one mechanism for slowing traffic as well as the three-way stop. She knows a majority of neighbors didn't attend, but there were other mechanisms to get the words to others about what they were proposing, and asked Ms. Jenkins to speak to this.

Ms. Jenkins said there have been a variety of ENNs, and there were discussions about possible traffic calming measures, but a consensus wasn't reached to do anything, and the only consensus reached was the three-way stop approach which they think is a viable option. She said one traffic calming measure that happens organically is on-street parking. There are a lot of streets designed purposely with on-street parking because they slow down cars. She said Calle Sombra has 30 feet of payment which is generous, and the fact that there is on-street parking actually serves as a traffic calming measure. She said there is another stop sign at the first intersection.

Councilor Romero lives in a similar neighborhood and many people park on the street. Some like traffic calming with speed humps, others don't. There are a variety of mechanisms to slow cars. She hesitates to say what your remedy should be for your neighborhood. She said some neighborhoods are better organized than others and get people out. However, traffic calming gets people to turn out, and you may get more than you want. She said it is always to have a discussion, and not here where we think we know your neighborhood better than you do. She encouraged the neighborhood to decide what is most appropriate, and not what we think is appropriate. She hesitates to think that we would be focusing our attention on a few people, when there is a majority who have worked with the builder. She thinks a lot of work has been done to reach consensus, and she doesn't think it is up to this Council to unwind the consensus that's been reached. She encouraged the neighbors to continue to work on the appropriate traffic calming issues which are appropriate for your neighborhood.

VOTE: The motion, as amended, was approved on the following Roll Call Vote:

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Trujillo, and Councilor Wurzbarger.

Against: Councilor Romero, after a restatement of the motion, voted no.

Explaining his vote: Councilor Chavez congratulated the neighborhood and planners. He said when this was before the Council a year or so ago, someone made the comment that this was like fitting a square peg into a round hole, which he does all the time. He knew it was only a matter of

time until something was done with this parcel. This is an example of how a neighborhood can work with a developer to try to make it better. It's not always going to be the best, but we can make it better than it was before. This is an example for all neighborhoods in dealing with crisis situations as well as to look long term and develop neighborhood plans so we're not always in a reactive mode and we are more pro-active. He senses they are heading in that direction and hopes they can keep that together and make this project a model project, so he votes yes.

- 6) **CONSIDERATION OF BILL NO. 2009-29; ADOPTION OF ORDINANCE NO. 2009-38 (COUNCILOR WURZBURGER). AN ORDINANCE REPEALING SECTIONS 14-8.11(G)(3), 14-8.13, 14-8.16 AND 14-8.17 SFCC 1987, REGARDING ANNUAL WATER BUDGET, WATER RIGHTS TRANSFER REQUIREMENTS AND WATER BANKING; CREATING A NEW SECTION 14-8.13 SFCC 1987, REGARDING DEVELOPMENT WATER BUDGET REQUIREMENTS, A NEW ARTICLE 25-9 SFCC 1987, REGARDING THE CITY WATER BUDGET, A NEW ARTICLE 25-10 SFCC 1987 REGARDING THE CITY WATER BANK, A NEW ARTICLE 25-11 SFCC 1987 REGARDING THE WATER RIGHTS TRANSFER PROGRAM. AND A NEW ARTICLE 25-12 SFCC 1987 REGARDING THE WATER CONSERVATION CREDIT PROGRAM; MAKING SUCH OTHER RELATED CHANGES AS ARE NECESSARY. (FRANK KATZ) (Postponed at July 29, 2009 City Council Meeting)**

A packet of amendments proposed to the bill is incorporated herewith to these minutes as Exhibit "5."

Bryan Snyder presented information regarding this matter to the Governing Body, detailing the major changes to the ordinance.

Public Hearing

Rick Martinez, 725 Mesilla Road, said all he sees in the bill is a development water budget plan, and the word development appears 116 times, while affordable housing is mentioned in the bill only 9 times. He would like a better title for the bill such as, Community Water Budget bill, so we can conserve for those houses. He said we are allowing people to sell their water rights to a developer, or hopefully, it can be put back in the river. He said there is no mention of the river in the ordinance and it should be. He said if we are going to start trading water rights, let's put some of it in the river or to community gardens and such. He thinks this needs to be done at this time. He said, however, it just sounds like a development water budget..

Merrit Brown, 2905 Rode Park Drive East, said as a builder-developer he spent a lot of time working with the staff, and applauds their time and efforts to make this a much more workable document from "their side of the fence." He said they still have additional points they would like the Council to consider before adopting the ordinance. One deals with when we get to the point of having water rights

that the City has accepted and we have made application to the State Engineer to transfer, which can be a two year process. He said as currently written, if we want to try to pull a building permit prior to the actual transfer of those rights back to the City, developers have to post a bond of 150% of the value of that water. He said we have to bond for all public improvements — curb, gutter, sidewalk, asphalt, sewer work — and the dollar value is estimated by independent engineers and we have to get a letter of credit for that amount. Now you are asking us to do 150% of that value for this water. The way the process has been working, when he finds water rights he has to pay up front before they are transferred to the State Engineer, for example at \$1 million. So he spends \$1 million for the water. Then, the he and the City file a joint application with the State Engineer. If he tries to get a building permit while that is in process, he has to get a letter of credit or a bond for another \$1.5 million, so he ties up \$2.5 million of cash and credit. He understands having to bond for the value of something the City doesn't yet have, but he would like that to be at 100%, just like everything else they have to do, versus the 150%.

Mr. Brown said the second point of concern is when they create the water budget for the projects, they are asked to accommodate future line loss within the water system of another 10%. He said this is an historic figure the City has been getting, "I think it's 9 maybe 8.9%, something to that effect." He said when we build a new project it is a brand new system. The chances of the line loss out of that over the first 10-15 years are minimal. He wants the Council to understand that they are paying for the water that we're bringing to the project, and then we're asked to bring another 10% on top of that. Whereas, the City who owns the transferred water, will get all the value of that — all the return flow credit possibilities. He said not every drop of water is consumed that goes through that system through a meter, and it goes back into the sewer system. There will be some benefit for that. He would like to see the "line loss number pulled back" so that we can create a water budget and that's the amount of water we need to bring, and not "bump it by another 10%."

Rick Borrego, 3056 Agua Fria, commended staff for working with them. He said they spent a lot of hours going back and forth in redlines. This ordinance is much improved. However, there are a couple of points that they still would like to bring forward for consideration. He said a major point is the cost of the transfers. He said under the current ordinance, the cost of bringing the water rights to the State Engineer is being split between the developer and the City, and the water rights eventually are turned over to the City. The new ordinance requires the developers/builders to pay 100% of the cost. He said that cost can be substantial, and the process can be prolonged. He understands the City currently is in a budget crisis, but developers are also in a budget crisis — we're all in the same boat. He said, however, this ordinance will go far into the future and will remain in place even after the budget crisis diminishes. He would like the ordinance to stay as previously, where the cost of the transfers are split between the builder/developer and the City. He said even though the City is in a budget crisis, he doesn't think this will impact them anyway, because he doesn't see any developers/builders coming forward with a new project right now and starting this water transfer process. He said almost everyone he knows has shelved any expansion plans until the economy picks up. He would like the Council to consider keeping this as is, in terms of the City and the developer splitting the cost.

Mr. Borrego said, with regard to the line loss provision, they would contend that when a developer puts in a new water system, there is no line loss which typically is the case. They acknowledge that over time there could be losses. He said they also contend that the developer has to purchase the water rights, pay for the transfer, build the infrastructure and give it to the City. They then have to pay for the meters, the expansion charges associated with the water use, and then the City starts charging the customer for using that same water. He said, coupled with that, the City benefits from all of the return flow credit which comes out of the water use, which is a substantial amount – probably in the 80% range of the total water use. However, the developer has to budget for, and purchase water rights for, the entire metered use, not the consumptive use. He said, “We think, as a small concession, would be not to nick us another 10% for that line loss, which could be substantial in the case of Mr. Brown’s example. It could add another, if the water rights are \$1 million, and we have to purchase another 10%, that could add another \$100,000 worth of water right. And, then by the time you bond for those, it could cost another quarter million just to provide that extra 10% of water rights.”

Mr. Borrego reiterated what Mr. Brown said about the bonding amount. He said, “We’re already bonding 100% of the project when we start a development, and I think, historically, the City has a track record. They know how much of the water rights that we propose to transfer are actually transferred, and City staff would tell you that that’s usually pretty close. So, to require another extra 50% is, I think, excessive, and at a minimum it should be consistent with the 100% bond that we have to put up for the rest of the project.” He thanked the Council for its consideration.

Jim Brockman, attorney with Stein & Brockman, said his firm does water rights work around the State. He said his firm represents Mr. Borrego, Mr. Brown and several other developers. They also have a background in municipal water work, representing the Cities of Albuquerque, Las Cruces, Gallup, Alamogordo, Espanola and others. He complimented City staff, particularly Frank Katz and Marcos Martinez on the legal side, and said they have had a lot of meetings with them, including Dale Lyons and Brian Snyder. He said there have been a lot of meetings and iterations, and he appreciates their patience. He thinks we have a better process. He said at the outset, all of us acknowledged that there would be policy issues on which staff would not be willing to compromise, and those issues would have to go to the Governing Body for decisions.

Mr. Brockman said, “I really don’t have anything else to add from what Mr. Borrego and Mr. Brown said with regard to the cost of transfers, except that our recommendation would be to stick with the existing ordinance which splits the cost between the City and builders once they get to the application phase. I think if the City looks at the cost of that over the history of this ordinance, they’ve generally been very small and it really hasn’t cost the City very much to split costs up to this point.”

Mr. Brockman continued, “On the 10% line loss issue, again I think the primary issue, in terms of the builders perspective is the City’s asking for a water budget of 110%, yet the development project itself consumes about 20-30% of that total metered water, and 70-80% is return flow. So, the City does get the benefit of the effluent, either selling the effluent, or ultimately, the City has plans, wise plans, to apply for return flow credit, so the City does get benefit from that. I think the builders could have been much more

aggressive in asking for something, but they've said 100% is reasonable, and I believe that that's an extremely reasonable position from their standpoint."

Mr. Brockman continued, "In terms of the third item that we brought forth and we provided you a letter with our points, the third item is in terms of the letter of credit being at 100%. When the ordinance was first passed, I think there was a lot of concern among the Council that possibly a builder would buy water rights, put up a letter of credit and then walk away from the process. And, so there was a concern that the City wanted to have enough money, so that if the water rights were not transferred, if the builder did not follow up with his plans, that the City had some money to fall back on to actually buy the water rights needed, and then money for the transfer."

Mr. Brockman continued, "Well, there's been a several year history now, under the existing ordinance. And part of that process is that initially these water rights have to be reviewed by a City hired consultant – Lee Wilson & Associates has been doing that work. And there's a history that shows that their analysis and review is extremely conservative. In our experience, in doing these transfers with the City there's probably... the State Engineer is approving about 5-10% more cumulatively, on the average, than what Lee Wilson, or the City is initially accepting. So, I think the fear that initially went into the initial ordinance, asking for an escrow of 150% has proven not to be true, just through the history of the program. And, again, I think it would have been reasonable to say we'd like to escrow 50% of the total value of the water rights, but the City could collect 150% of any amount that's not accepted for transfer by the State Engineer, less what the City did. I hope that's clear. So, 100%, I think is extremely reasonable, escrowing at 100% and then if the State Engineer does not accept some component, you can take 150% of the value of what's not accepted by the State Engineer."

Mr. Brockman continued, "The final point that I'd like to make, deals with the provision in the new ordinance that requires an immediate transfer of title, a warranty deed, on banked water rights. This was something that actually came up in the initial ordinance also. When the ordinance was first proposed, staff and, again with some input from builders and others, had recommended, with respect to the banked water rights, that title would be transferred. There would actually be a legal conveyance of the title, once those water rights were designated. At the time of the City Council meeting several years ago, Councilor Heldmeyer at the time, suggested doing an immediate transfer of the title to the banked water rights once the State Engineer had approved them. That night, the Council went ahead and approved that amendment to the ordinance, but immediately we sat down with the City legal staff, at that point, and discussed the problems that that was going to create – legal problems and practical problems – with the water bank. And there was an amendment within a couple of months actually to remove that provision – that the legal title had to be immediately transferred. And, that formula has worked well for several years. In my opinion, it's going to discourage the use of the water bank if somebody immediately has to, upon getting your application approved by the State Engineer, transfer legal to the City. It creates, in my mind legal questions: what do you get in return. You've given the City a deed to your water rights, they haven't been designated to a project. What do I have. What happens if the ordinance changes, and I'm sure it will over time."

Mr. Brockman continued, "It just concerns me that there can be litigation over time, once you've made that transfer to the City. And, I think it would discourage the use, and we would recommend keeping the ordinance the way it is, so that you do not have to transfer legal title until it's actually designated to a project, once it's been put in the water bank. Thank you for your time."

David Groenfeldt, 1021 Camino Santander, Executive Director of the SF Watershed Association, said he is going to talk about the river. The SF River is running right now because of the action of this body to adopt a resolution, and for the first time in a lot of peoples' memories, the river is actually running during the summer which is a real departure from business as usual in Santa Fe. He commends the Council for this. This ordinance is an opportunity to build on that policy, an environmentally sustainable water policy, and meet the needs of development and affordable housing. It offers a great opportunity, and "it is backing away from that opportunity right now," that the ordinance as it is written is a development ordinance and not a water ordinance.

Mr. Groenfeldt said the Santa Fe River was designated the most endangered river in the entire country just two years ago. He said, "The very water policy that this water continues, in fact, this water ordinance is the more sophisticated and more progressive version of a business as usual dead end water policy." He said it doesn't have to be that way, noting there are many good things, improvements, systematic thinking in the ordinance. He commended the logic that went into it, but he doesn't want to commend the outcome. He said this needs to be environmentalized, and gone through with a fine tooth comb to look for ways to put the environment back into the ordinance and making our water supply sustainable. This is an injustice to future generations. It's an injustice to the state of water management thinking everywhere else in the country, not to mention the world."

Mr. Groenfeldt continued, "Now this is just not my view. It's not just the view of the Watershed Association. Four years ago, when this first came out in draft form, I asked some of our fellow environmental groups if they could support our amendments to this ordinance. And, I got almost immediate endorsements from: Rio Grande Return; Wild Earth Guardians; Santa Fe Permaculture; Surroundings a consulting firm; River Source; Santa Fe Farmers Market; Earth Care, International; Rain Catcher; Northern New Mexico Chapter of Sierra Club; New Mexico Wildlife Federation; and even in terms of principle, the City's own River Commission. And what we proposed basically is, yes we do need development, we certainly need affordable housing, we need water conservation and we need a living river. Let's use this ordinance to put them all together, to share the water savings with the river and development. Right now, our river is in debt and we're talking about we're going to divide up the next loan. We're not talking about repayment. We need to repay the debt to the river before we start talking about how much more development and affordable housing we're going to have."

Mr. Groenfeldt said we have to operate within a budget which will accommodate these things without forsaking the River. He doesn't think this is difficult. He believes the ordinance can be salvaged. He said they are proposing to do twice as much water conservation, as business as usual, and then you have double the water savings. He said the City can have needed development and put some water back into the river. He said we need that commitment to the river in this water ordinance, because it set the

stage and tone for years in the future. He challenged the Governing Body to take advantage of this situation.

Jerry Jacobi, 2314 Calle Colibri, a member of the Santa Fe River Commission, said the Commission agrees in principle with Mr. Groenfeldt regarding water in the river. He said he appreciates the Councilors including the new amendments bringing the flow to the river to the front.

Mr. Jacobi said, speaking as a resident of the City, we have reduced our water consumption by 33%, and he was part of that program and went to a very small usage. He said he spoke with Ms. Borchert, Mr. Lyons and Mr. Ransom about what he can do personally to get more water in the river. He said two years ago in August he used 2,500 gallons of water, but he paid for 7,500 gallons, and wanted to put the unused 5,000 gallons into the River. He said the next month, he got a credit on the next water bill. He would be willing to not use water, pay for it and put it into the river. He said the 5,000 gallons is 8 minutes of flow out of 1.4 cfs. He said if 5,000 of the 35,000 hookups were to do this there would be an additional 1.5 cfs for the River. He wants to do more.

The Public Hearing was closed

Councilor Wurzbarger thanked the staff and everyone who participated in working on this bill over the past two years.

MOTION: Councilor Wurzbarger moved, seconded by Councilor Calvert, to adopt Ordinance No. 2009-38, noting that she asked Mr. Lyons to do a summary of all of the amendments which have been presented.

DISCUSSION: Councilor Wurzbarger noted there is an amendment from City Staff, an amendment from Councilor Chavez and another page of amendments which was received today from Councilor Chavez, amendments from Councilor Calvert, and an amendment from her with regard to the creation of a living Santa Fe River as one of the City priorities equal to the others.

Councilor Wurzbarger asked Mr. Lyons to review the proposed amendments one-by-one. She said all of the amendments are friendly to her, pending any discussion which changes her mind.

Dale Lyons reviewed the proposed amendments to the Ordinance from Exhibit " " as follows:

- A. **Staff amendment** to remove reference to Tierra Contenta and the City's Northwest Quadrant project from the definition of affordable housing. **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND AND THERE WERE NO OBJECTIONS FROM THE OTHER COUNCILORS.**
- B. **Councilor Wurzbarger's amendment** to add text in the purpose section of the ordinance to include the creation of a living Santa Fe. River. **THE AMENDMENT WAS FRIENDLY TO THE SECOND AND THERE WERE NO OBJECTIONS FROM THE OTHER COUNCILORS.**

C. **Councilor Chavez's amendment** with additional language allowing for the inclusion of rain barrels in the new rebate program. **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND AND THERE WERE NO OBJECTIONS FROM THE OTHER COUNCILORS.**

D. **Councilor Calvert's 6 amendments:**

- 1) An explanation of the additional 9.8% contingency water required from developers to offset their anticipated water demands. Councilor Calvert said this for line loss as well as for public and community health and safety purposes such as firefighting, fire hydrant testing, water used to flush lines. Responding to Councilor Bushee, Councilor Calvert said it expands the definition, but doesn't change anything. Councilor Chavez said we are talking about a system wide approach
- 2) A statement in the purpose section that, "The city shall make every reasonable effort to maintain a minimum flow in the Santa Fe River and to sustain a healthy riparian ecosystem."
- 3) Typographical correction.
- 4) Removed the prioritization of water that the City Governing Body has the ability to allocate on an annual basis. Currently, the Governing Body has the ability to allocate the available water obtained through the City's water budgeting process to specific purpose, and the first priority is affordable housing and small development projects. This amendment proposes that all the purposes are equal and the Governing Body would decide the priority annually, rather than codifying the priorities in the ordinance.
- 5) Councilor Calvert said, "This is part of the same one."
- 6) Councilor Calvert explained that this amendment deals with a credit created by the developer, and if the developer doesn't use all of it, they can donate it to the City, but before they can sell to someone else, the City has the first right of refusal to purchase the credit.

THE AMENDMENTS WERE FRIENDLY TO THE MAKER AND THERE WERE NO OBJECTIONS FROM THE OTHER COUNCILORS.

E. **Councilor Chavez's 5 amendments:**

(1), (2) and (3) **Mr. Katz said these have already been addressed in other amendments, and are stricken from the amendment sheet.**

(4) An addition to the water conservation contract program which would open it to both

commercial and residential. The ordinance as draft currently applies only to commercial.

Councilor Chavez said part of the Ordinance directs the City at the end of each year to develop a water update. At the end of 2008, the City had a total of 32,818 utility customer meters, of which 28,790 are residential [87%], 531 are multi-family [1.6%] and 3,497 [10.6%] are commercial. This ordinance focuses only on the 10% of the City's customers. This is the reason he wants to include the residential component.

Councilor Calvert said the contract portion is focused only on the commercial, but the rebate program is also open to residential. He said the Water Conservation Committee recommended this, noting the water conservation contract is a new concept. It will be complicated. The biggest bang for the buck comes from commercial customers who use more water per capita. He said if this is successful we will want to expand it into residential. However, if we move too fast and it falls flat, we will defeat our own purpose. The thought was, because this is complicated, to start with the commercial sector where we'll get the biggest bang for the buck, take one step at a time, and ease into residential if this program is successful. We have a rebate program for residential and they're familiar with that.

Councilor Chavez appreciates Councilor Calvert's remarks, but he still wants the residential component for the opportunities it provides. He quoted from the cons in the Memorandum, "Difficult for the City in setting price for water. If too low, less incentive to conserve. If too high, City may not recoup costs."

Councilor Calvert said his last amendment addressed concerns about the "black market," and the reason for the City's first right of refusal.

Councilor Chavez said the bottom line it is drafted as a conservation ordinance, with the provision that someone can bank the water and sell it into the open market. He said we're saving water to allocate it elsewhere, so it is a little bit of a mirage in a sense. He is willing to work this, but if we don't include residential because it's too much work, or too hard, or too risky, and we're going to wait to do that later, he doesn't want to wait until later.

THE AMENDMENT WAS ACCEPTED AS FRIENDLY BY THE MAKER AND SECOND FOR PURPOSES OF HAVING IT AS OPTION, AND THERE WERE NO OBJECTIONS BY THE OTHER COUNCILORS.

- (5) Councilor Chavez said this gets to some of the heartburn where we're asking applicants to pledge 150% of the market value. He said his concern is that we are giving credits before those credits are earned.

Mayor Coss and Councilor Wurzbarger said this has nothing to do with the 150% of the water rights transfer portion.

Councilor Chavez believes it is all part of it, noting the issue that surfaces is getting the application through the process, and having the water right transfer track it.

Councilor Wurzbarger reiterated that this section is not about water rights transfer, and Councilor Chavez responded that it is tracking the customers usage. Councilor Chavez noted the water would be sold on the open market and that's where there is the cost of transfer.

Mr. Lyons said there would be no water rights transfer, and that is a completely separate process. He said this would be the right place for the language, but there is no water rights transaction which is associated with the water conservation contract program. He said people would be selling is a water conservation credit which can be applied to a development water budget only within the City system.

Councilor Calvert said this will disincentivize people to do the program. He said, under Plan B, people were allowed to move forward, and if they don't comply, they have to pay the penalty. This proposal wouldn't allow the credit for a year which will disincentivize the ability or desire of people to participate in this particular program, as he reads it.

Councilor Chavez said we are anticipating, and setting aside a certain acre feet of water per year for those who might not achieve the goals set out in the contract. He said it doesn't seem right to grant credits before you earn them.

Councilor Calvert said we are asking them to expend the money out front and wait a year for the credit, and he doesn't think we will get takers on this.

Councilor Chavez asked if we want to invest in our future and secure water rights into the future, and Councilor Calvert said he isn't arguing that point, but the actual workings of this particular amendment as presented.

Responding to Councilor Bushee, Councilor Chavez said he is trying to point out that people earn the credits before they are granted to them under the program.

Mr. Katz this isn't strictly true. He said the contract promises to reduce usage, and from day one that usage is reduced. The whole first year the customer is performing, but you're not getting the credits. He said the customer usage is tracked, and if someone doesn't perform, they have to buy the credits to make up for what they didn't do.

Councilor Wurzbarger said, having heard this discussion, she would like clarification from

staff that this isn't necessary, based on the mechanisms we have in the ordinance.

Mr. Katz said this is a policy decision, although he does not believe it is necessary, because he thinks we have the mechanism to require people to provide the water if they fail to comply with the contract. He said they do it voluntarily, or we just bill them.

THE AMENDMENT WAS NOT FRIENDLY TO THE MAKER.

Councilor Chavez said we also will have to invest funds in this program, and asked how much water we are saving for the funds and time invested.

Councilor Bushee asked where are the Administrative Procedures to implement this ordinance, and when do we vote on those.

Councilor Wurzbarger said it is the same as years ago when we had this same discussion.

Councilor Bushee said at Public Works she said those could come to us at the same time, and she has no idea how anyone will get through the maze of this at this point.

Councilor Wurzbarger said we will do it the same way we did it before when the administrative procedures were prepared after the adoption of the ordinance.

Councilor Bushee said she requested the administrative procedures when this item came to Public Works.

Mr. Lyons said the administrative procedures for this ordinance have not yet been developed. Staff have met several times to talk about implementation of the ordinance. Staff has developed flow charts, which Councilor Bushee has seen and didn't like, noting they offered to meet with Councilor Bushee, but that never happened.

Councilor Bushee said she was out of town when Mr. Lyons offered to meet with her.

Responding to Councilor Bushee, Mr. Katz said staff can't write regulations until they know what the ordinance says, noting, for example, Councilor Chavez's proposed amendment to expand the conservation contract makes it very different.

Councilor Bushee asked if staff will be ready to implement this ordinance in thirty days, and Mr. Lyons said this is staff's intent.

Councilor Wurzbarger said, if the ordinance is adopted, she would agree to a friendly amendment to require the administrative procedures to be provided within the next two weeks for Council review. Councilor Wurzbarger said she also could amend her motion that approval is conditional on the administrative procedures for the ordinance being presented at the next Council meeting.

Mayor Coss said we could give staff 30 days to do the administrative procedures, and extend the effective date as well.

FRIENDLY AMENDMENT: Councilor Ortiz proposed to amend the motion to provide the ordinance has an effective date of January 1, 2010, and administrative procedures will be developed within that time frame. **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND AND THERE WERE NO OBJECTIONS BY THE OTHER COUNCILORS.**

MOTION TO AMEND: Councilor Chavez moved to amend the motion to include the language in #5 of his proposed amendments. **THE MOTION DIED FOR LACK OF A SECOND.**

FRIENDLY AMENDMENT: Councilor Ortiz proposed a friendly amendment to Councilor Calvert's amendment #4(4) as follows: "City projects including, but not limited to, parks and open space, affordable housing, water for..." **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND AND THERE WERE NO OBJECTIONS BY THE OTHER COUNCILORS.**

FRIENDLY AMENDMENT: Councilor Ortiz proposed a friendly amendment to the ordinance on line 7, page 21, of the bill as follows: "... parks and open space, affordable housing, water..." **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND AND THERE WERE NO OBJECTIONS BY THE OTHER COUNCILORS.**

Responding to Mr. Katz, Mr. Ortiz said he realizes the language is redundant.

FRIENDLY AMENDMENT: Councilor Ortiz proposed a friendly amendment to the ordinance on page 34, line 13, as follows: "The escrow funds or irrevocable letter of credit shall be in the amount of ~~450%~~ 100% of..." **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND AND THERE WERE NO OBJECTIONS BY THE OTHER COUNCILORS.**

Councilor Ortiz said Mr. Brockman sent a letter to the Councilors on June 8, 2009, but he also sent a subsequent letter. He spoke about the issue of transfer of title raised by Mr. Brockman in his letter, saying he recalls we had to come back and change the water banking ordinance previously because of the amendment. He said Mr. Brockman proposes a change back to that language, and he asked if it would be better, given the legal issues, to do this. He asked Mr. Katz his thoughts about Mr. Brockman's letter. *[STENOGRAPHER'S NOTE: The letter from Mr. Brockman was discussed, but a copy was not entered for the record relative to this discussion.]*

Mr. Katz said there are two concerns. One is the very legitimate concern of somebody who is turning over all of their water rights to the City and wants to be very confident that they have a document that protects them, and that they have a deed to those water right in our water bank. He said we must do that if we're going to do it this way, and that gives them some comfort.

Councilor Ortiz said a water bank would be considered one of that bundle of property rights that a property owner would have, and Mr. Katz said this is correct. Councilor Ortiz said, "So the transfer of that in expectation of being able to use that, the person who is transferring it wants to have some expectation of getting it back somehow."

Mr. Katz said the requirement of transferring it to the City freezes it into the City system, and he thinks this is one of the things Mr. Brockman was arguing against. He said M. Brockman would like the option to be able to say this hasn't worked out, the market in Santa Fe has collapsed, and to be able to take the water rights out of the bank and sell them back to Los Lunas, for example. This is a policy decision for the Council to make as to whether they want to allow that. He said he believes the developers are willing to have some limited language which restricts that to some extent. He said as drafted, the rights go in the bank, and are in Santa Fe and never leaving it, versus the rights are in the bank, but the owner of the rights still remains with the developer who brought them and they can take them out and move them elsewhere should the State Engineer agree. This is an issue.

Councilor Ortiz asked Mr. Katz, if we want to give that policy action on these water rights, what would be the language we would need to insert. He said in his letter, Mr. Brockman presents the possibility of some kind of presentation of a special warranty deed, but doesn't know if we need to do that.

Mr. Katz said he doesn't have the language to do that right here, but the Council could give direction to staff as to how to do this. He said we can simply not require them to transfer title of water they put into the bank until they apply it to a development project in Santa Fe, or you can put some limit on their ability to transfer it out, even though you leave it in their name.

Councilor Ortiz said the current ordinance has this allowance for people to put water into the bank, and this ordinance changes it into a wholesale transfer, and Mr. Katz said yes.

FRIENDLY AMENDMENT: Councilor Ortiz proposed that the ordinance be amended in the applicable provisions to return to the original intent of the worked out water banking ordinance, and with respect to this amendment, that we direct staff to come up with the appropriate language to give the owners of the water rights that are being transferred some possession or right to transfer those water rights as opposed to a wholesale transfer to the City. **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND AND THERE WERE NO OBJECTIONS BY THE OTHER COUNCILORS.**

Councilor Bushee asked why we didn't provide the opportunity to have conservation credits and water rights transfers to be dedicated to the living river.

Mr. Katz said the conservation contract credit was originally conceived to do exactly that – that you can use them in the project, but you can donate to the City for a particular purpose, such as water in the river, or sell them to another developer. He said Councilor Calvert's amendment provides that they would first have to offer them to the City and then sell them. He said it still has language providing that they can be donated to the City. He said the major reason we came up with the conservation contract credit is to allow

people to do what Mr. Jacobi wants to do, which is, "I'll save water, as long as it can go to the river." He said now, with the extension to residential, that's what it will do.

Councilor Bushee said then by saying you are dedicating it to the City you can specify for the river, or does that need to be stated somewhere in here, because it is not. She said it took a long time just to be able to donate funds to the River Fund.

Mr. Katz said the ordinance says it can be donated to the City, which could include the river. He said that purpose could be named. He said there is the legal issue which he's discussed with the Governing Body, with regard to whether in-stream flow is a beneficial use, and do we risk losing the water rights if they're not put to beneficial use. He said he will have to work within that constraint. However, as the ordinance now stands, someone who chooses to save water and do a conservation contract, can take that saved conservation water credit and donate it to the City for use in the river.

Councilor Bushee asked when there will be clarification on the issue of beneficial use.

Mr. Katz said we will not have clarification until either the State Engineer or a court rules on that issue.

Councilor Bushee asked what we are guaranteeing with the dedication of a conservation credit or a water right – that it will sit there until we having a ruling.

Mr. Katz said staff is working through a number of ways to deal with this, to test it, and to see whether the State Engineer will vest it. He said the State Engineer does allow a conservation program which allows people to conserve, and staff is in conversations with the State Engineer to see if we can use a conservation program and put water in the river as result. He said it isn't clear, and we're working with the State Engineer to get clarity. However, there may be other ways to leave water in the river without risking losing water rights to an abandonment charge or non use.

Councilor Bushee asked about the work on the recharge of the aquifer and its benefit to the City.

Mr. Katz said this is one of the advantages of water in the river of in-stream flow, and there is some degree of recharge.

Councilor Bushee asked if we have been able to quantify that, and Mr. Katz referred the question to Claudia Borchert.

Ms. said she recently applied for stimulus funds to try to answer this question, commenting staff believes it will cost about \$300,000 for the installation of monitoring wells to track the water. She said that question hasn't been answered, and she is trying to find funding sources to answer this question.

Councilor Bushee asked, in the short term, what will we do with those credits until there is a clear ruling.

Mr. Katz said in the very short term we can put it in the river. He said an abandonment has to be over time, but we will need to get resolution fairly quickly, saying he wouldn't be comfortable with the City doing that for five years or more without clarification. He believes it would be okay to do this for 2-3 days.

Responding to Councilor Bushee, Mr. Katz said we may have an answer on a conservation program by the effective date of the ordinance.

Mayor Coss thanked Councilor Wurzbarger, the Councilors and staff for bringing this forward, saying he believes this a good evolution of the original water budget. He said, although he voted against the initial ordinance, it has worked, and with these changes, he believes it will work even better. He appreciates the efforts of the river activists. He said he disagrees with Mr. Groenfeldt, because he believes Mr. Groenfeldt mischaracterized this ordinance. Mayor Coss said we have done a lot to put the City on sustainable footing, and he believes these water budget amendments will carry us even further. He said there are issues to be resolved, but he believes we may be the City that resolves many issues with this kind of policy.

VOTE: The motion, as amended, was approved on the following Roll Call Vote:

For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo, and Councilor Wurzbarger.

Against: None.

Explaining her vote: Councilor Bushee said she was unsure about this ordinance when we started this evening because she didn't think the bill was ready for "prime time," but she thinks we got something better, so she votes yes.

Explaining his vote: Councilor Chavez said he was unsure as well, but he appreciates that some of the amendments were accepted as friendly, and that the focus is moving away from the river a little and focusing on parks and other parts of the system. The focus on the river is good, but we have other needs to address. The voters approved investing in the parks, and he thinks we need to keep those well watered. He is going to support the ordinance at this time, vote yes, and hopes as we move forward we can really focus on sustainability.

Explaining his vote: Councilor Ortiz said this ordinance as presented, needs some clarity. He believes moving the effective date of the ordinance to January 1, 2010, will give us time to get administrative procedures in place, to work out any kinks and to address this Council's priorities. He said Carl helped us back on the original water budget, and it was a contentious 4-4 vote on every single amendment, and act and line. He said to have come to this place on the template worked out so long ago is an amazing achievement, and he votes yes.

- 7) **CASE #H-09-014. APPEAL OF THE HISTORIC DESIGN REVIEW BOARD'S DECISION ON MAY 12, 2009, CONCERNING VACANT PROPERTY LOCATED AT 502 OLD SANTA FE TRAIL IN THE DOWNTOWN & EASTSIDE HISTORIC DISTRICT. SOMMER, KARNES & ASSOCIATES, LLC, AGENT FOR DOS CAMINOS, LLC, REQUESTS THAT THE GOVERNING BODY RESCIND THE DENIAL TO CONSTRUCT AN OUTDOOR FLEA MARKET. (DAVID RASCH) (Postponed at July 8, 2009 City Council meeting.)**

A Memorandum dated July 8, 2009, with attachments, to Mayor Coss and City Council members, from David Rasch, Historic Preservation Division Supervising Planner, is incorporated herewith to these minutes as Exhibit "6 ."

A packet of five color photographs of the site, entered for the record by Karl Sommer, is incorporated herewith to these minutes as Exhibit "7."

The staff report was given by David Rasch. Mr. Rasch said, "This case came before the Board, the Historic Design Review Board, in March of this year, for a half acre vacant lot in the Downtown Eastside District, to construct a seasonal, temporary art market. And the first that was presented, the case was postponed for additional information and it was reheard in May of this year. And at that point, the number of booths went from 73 to 14 in order to clear up some zoning problems with the application."

Mr. Rasch continued, "But at that time in May, we also had further clarification from the Legal Department, besides the Findings... I would draw your attention to Exhibit E, which is page 11 and 13 of your packet which is that memo. What that memo really did was to clarify the application to the Board and staff in more terms than just the historic ordinance. In the Downtown and Eastside District, there are two standards that apply to buildings: the Old Santa Fe Style which is typically built out of adobe and the Recent Santa Fe Style which must simulate adobe. And in that light, this application with these temporary tent-like structure, the Board felt that they did not meet the ordinance for a building and therefore did not approve the design."

Mr. Rasch continued, "The Board also denied an exception to build pitched roofs which was found to not be in harmony with the streetscape. But, that memo from the Legal Department also clarified for the Board and staff, the idea of principal use versus accessory use, and may have not looked at that close enough. But, that's why the Board denied the application for this temporary, seasonal art market."

Councilor Wurzbarger asked if staff twice Mr. Rasch recommended approval of this and worked with the proponent giving them information that that suggested that this was an okay project. She said she is always concerned about consistency and having all the rules clear.

Mr. Rasch said, yes, in a way. He said what happened was that he was approaching this project as the H-Board has in the past, where it had granted approval of similar structures – temporary structures that were not adobe-like. What the clarification Memorandum [from City Legal of May 12, 2009 pages 11-13 of the packet] did for the H-Board and staff was to point to the fact that those structures which had been

approved in the past were accessory structures on a property. When legal clarified that this was a principal use on the property, those temporary structures no longer worked with the ordinance.

Councilor Bushee said then these are considered to be principal structures, and Mr. Katz said this is correct.

Councilor Chavez said they are principal, but temporary, and asked Mr. Katz how he reconciles that.

Mr. Katz said, "I don't know how temporary, temporary is. They're going to be up for seven months and then taken down, and they're going to put them back up. You can move a house. It's not temporary. The key thing is whether it is affixed to the ground. That's what defines a structure under the Code, and these structures are affixed to the ground, so they are structures under the Code, and being structures, they must meet the historic ordinance and canvass doesn't look like adobe."

Councilor Chavez said they're not affixed in a permanent way, they're temporary.

Mr. Rasch said this is correct. He said, "And when we perused the ordinance for where the use of temporary structures come in, there's two areas. And, one is for temporary structures relating to construction – construction trailers and also accessory structures like an awning over the entrance to a hotel. And, because legal helped us define this as not an accessory structure, that's where it failed in the temporary as well."

Public Hearing

Presentation by the Appellant

Karl Sommer, P.O. Box 2476, Santa Fe 87504, was sworn, Mr. Sommer said Michael Bodelson, who did the designs and the drawings, is here to answer any questions that you might have about these structures that are not buildings, that are not temporary, that are not permanent.

Mr. Sommer said, "I am here on behalf Dos Caminos, LLC, which is basically owned by Mr. Sonny Otero, who is a long time contractor-builder in this town and has a history and a track record with doing, I believe, what is the highest quality construction that you can find in the City."

Mr. Sommer continued, "This case raises an Orwellian question and that is, are all tents equal or are some tents some more equal than other, because I'm going to hand out to you examples of what apparently cannot be put in the Downtown Eastside Area, but they are there, and they've been there a long time, and they're still there today." [Exhibit "7"]. [STENOGRAPHER'S NOTE: Mr. Sommer's remarks are inaudible here because he was away from the microphone handing out copies of the photographs to the Governing Body].

Mr. Sommer continued, "I'd like to point out to you the Historic Design Review Ordinance is pretty straightforward. It says it covers all structures. There is no distinction anywhere in the Historic Design Review Ordinance that says, 'we only cover accessory structures, or permanent structures, or temporary structures or primary structures.' If you turn to the section where the Code applies, it applies to all new construction of structures, period. It doesn't say temporary, it doesn't say permanent, it doesn't say accessory and it doesn't say primary. The distinction that the legal memo came up with, is a distinction that has nothing to do with the Code, and I submit to you, based on the photographs, it has nothing to do with the record of the Historic Design Review Board."

Mr. Sommer, referring to Exhibit "7," continued, "If you look at the tent on the El Dorado, that was approved. There are no other tents in the streetscape there, etc., that is a permanent structure. There is nothing in the record anywhere, either in that case or in this case, that says that was approved as a tent because it's an accessory structure. It was approved as part of the design of that building because the Historic Design Review Ordinance says it's new construction of a structure and it was approved, and it's there today and it will be there tomorrow. The next page is proof, on the inside, that it's actually a tent. If you look at the next, you'll see the La Fonda has a tent at the top which was approved. There's nothing in the record that says it's an accessory structure versus a primary structure. If you go to the next, you'll see the O'Keefe Museum has an awning on it. There's nothing in the record that says anything about accessory or primary. If you go to the Coyote Café, you'll see there's a tent. There's nothing about accessory or primary in the approval of those. You go to the next one, which is Tierra Santa Fe, which is on the Old Santa Fe Trail, now that looks to me a primary structure. That tent there, which has been there and has been there a long time, is a primary structure. It is the primary use of that particular piece of property and there's nothing in the record about it being accessory and approved as accessory. Go to the next photograph and you'll see the northwest corner of Water and Old Santa Fe Trail and you'll see the very same sort of thing. That is part of a primary structure. The only structure on that entire corner is the wooden and the tent. Those are the primary uses on that corner, and there is nothing in the record to distinguish the approvals or the uses of those as accessory or primary."

Mr. Sommer continued, "And I'd like to submit to you also, you all come down here every weekend practically, and you go by the First National Bank and you've been doing like I have for years, seeing tents go up and people selling art, year after year after year. And they begin it on Saturday and they close it on Saturday evening and that goes on all summer long and sometimes they move it to another location, but those are structures and they are allowed and they continue to be allowed in the downtown area. On those particular days in that parking lot, they are the use. They are the primary use of that property, because there's no other use on that property except the parking. I point all this out and I say it over and over again just simply because the Code doesn't say anything about accessory and primary."

Councilor Bushee asked if the plan is to erect and disassemble daily.

Mr. Sommer said they will be disassembled at the end of the summer, and not daily.

Councilor Bushee said so they're essentially permanent for a period of time.

Mr. Sommer said, "They're there from when they go up in May or June and they are down in November."

Councilor Bushee said, "It's not anything like the First National Bank where we have weekend markets. Correct. Or any of the crafts and arts fairs that we have on occasions on the Plaza where they are erected and dissembled over the span of a weekend, or Indian Market."

Mr. Sommer said, "No. They're not put up daily and taken down daily or over the weekend."

Mr. Sommer continued, "The Code is clear that it applies to structures. Staff has said, and I think that the record is clear, that the Historic Design Review Board has taken these applications and said these structures comply with the Downtown Eastside District and they're approved. This particular development proposal was denied on the basis that it didn't meet the general standards of the Code. Well, if you go through the general standards of the Code in the Historic Design Review District, you won't find a single one that applies, or that was cited in the Findings of Fact that we didn't comply with. I could walk you through them, but if you look at the Findings of Fact, all it says is it doesn't comply with the general standards. It doesn't say which ones. And, if you look through the general standards, you will see not a single one that has any application. In fact, the only one that deals with anything remotely related, is roofs. And, the question of roofs isn't addressed in a way that we didn't comply with."

Mr. Sommer continued, "Then the Findings of Facts say that we didn't comply with the specific standards of the Downtown Eastside District. Well, we complied with the general standards because Mr. Rasch has said we did, and I think we did, and if you look yourself, you'll see we did. So, you go to the specific standards and they deal with buildings. This is not a building. Everybody says this is not a building, so if it's not a building, then the standard doesn't apply, because it doesn't regulate this structure because that's what the Downtown Eastside District regulations say. It regulates buildings. And as David Rasch has pointed out, that's the way this Board has interpreted this ordinance. It's a tent, it has to comply with the general standards. If it's in the Downtown Eastside District, they're allowed. That's the way this has been applied."

Mr. Sommer continued, "I submit to you, the distinction between accessory, temporary, primary or permanent are distinctions that are not material to the Code. The Historic Design Review Board does not make those distinctions. The Board has never applied the Code as though it made those distinctions. And what we have today is a new application, new interpretation and really a wholesale creation of a new standard. That if you have an accessory structure you're okay, if you have a primary structure you're not okay. That's the new standard that's being created, but is not found in the Code. I submit to you that's arbitrary and it's capricious."

Councilor Bushee asked how the streetscape, height and massing, and all of that applies in this case.

Mr. Rasch said, "We did apply the Downtown and Eastside District standards as well as the

general design standards to the application. That's how we determined they needed a pitch exception, and the pitch exception was denied because it was not harmonious to the defined streetscape. The tent structures definitely are within the allowable height. And then, when it came to the design... when I first saw this application....

Councilor Bushee asked if the massing applies.

Mr. Rasch said, "Massing is probably applicable either to the general harmony of the streetscape. But, the design when I first saw it, the structures looked very tent-like, and I did work with the applicant to make them, in my opinion, try to be more harmonious to the territorial style by getting the upright post to be more square and look like a territorial style design...."

Councilor Bushee said, "And brick coping along the..."

Mr. Rasch said, "That would have been a little more permanent, but I feel that the Board thought that that was not enough of the design criteria being met and that's why they determined it not to be harmonious to the streetscape."

Mr. Sommer said, "With respect to the question that was asked about harmony and streetscape, if you look at the Design Review Ordinance, it has standards and it says in there that your application must meet the standards of the Ordinance. And what David just talked about was the purpose section of the ordinance, and let me read the purpose section of the ordinance just so I'm clear. 'That in order to promote the economic culture and general welfare of the people of the City of Santa Fe, and to ensure harmonious, orderly, efficient growth and development of the City, it is deemed essential by the Governing Body that the qualities relating to the history of Santa Fe and the harmonious outward appearance which preserve the property values and attract tourists and residents be preserved. Some of these qualities being...' and then it talks about... that's in the purpose section. The Code has standards. The standards don't say anything about harmony with the streetscape. The standards are very very specific about what you must do and what you must not do."

Mr. Sommer continued, "So, I submit to you that this application, like many applications before it, meets the Code, and that it is being treated in a different fashion under an unpublished, unadopted regulation and that the Design Review Board's decision should be overturned."

Speaking to the Request

Christy Walker, Santa Fe Gallery Association, was sworn. Ms. Walker said she is here speaking on behalf of the Association Board, and the majority of their 96 members. She said, "The Santa Fe Gallery Association is against, or opposed to a temporary flea market on Old Santa Fe Trail and Paseo de Peralta. Unlike permanent galleries and retail businesses, the flea market would not create or sustain jobs in Santa Fe. The proposed plan does not meet the City's historical criteria for temporary or existing structures and should be enforced. If the development is allowed, it will set precedence for other flea

markets in downtown Santa Fe. Any empty lot could become a potential flea market. With the City of Santa Fe celebrating 400 years of our cultural richness, do we really want the image of our City Different to be remembered as a flea market. The proposed flea market would be located across the street from our State Capitol. With any additional traffic to the already busy intersection, we feel that it would cause safety issue. There is also a concern with parking problems that may arise because the lot cannot accommodate parking for vendors and clients. We urge the City Council to please vote no, and uphold the Historic Design Review Board's decision on May 12, 2009. We appreciate your time and attention to this matter."

Dena Aquilina, 327 Sanchez, was sworn. Ms. Aqualina said she lives a block and a half from this, and said, "Let me count the ways that I don't love it." She said she echoes everything that Christy just said. She said, "One of the things I do professionally is advise artisans and entrepreneurs and we were just visiting the art market at the corner of Guadalupe and Water Street that's set up there on the weekends. And they're struggling there. They're having a very hard time, because there's not a lot of traffic there. And so, in some ways it's not a good service to the artisans because it's just kind of popped-up and it's not a place where there's a lot of traffic like there would be downtown for some of the markets that happen on the Plaza. Another thing we advise people is to be upscale, to make really upscale work and show in a fine gallery. And I think that what Christy said would go against that too. And I really urge you to uphold the H-Board's decision on this."

Marilyn Bane, 622 ½ Canyon Road, was sworn. Ms. Bane said, "Well, let me blunt. I don't want to see porta sands or porta potties in the entrance to Santa Fe. I think, you know, Coyote Café doesn't have them. La Fonda doesn't have them. The El Dorado Hotel doesn't have them. So, if you're talking about temporary structures which are seven months, you're talking about an environment. You're not just talking about the tents, with or without bricks, with or without territorial style. You're talking about an environment that is a flea market on the corner of the entrance into Santa Fe. And I think we all want more gross receipts tax, I don't think that is an issue in the least. I think we all have a great respect for Mr. Otero. However, I have to say that I think that this is a very poor idea to have this there. I know that there was much legal discussion, and I would leave it up to staff that consulted with the H-Board, because it was a very difficult decision here, how you classify this, how you look at it. I mean, how can you... there's a certain ridiculousness in trying to define tents in Santa Fe Style. It sort of defies logic to a degree. But, I think that the fact of the matter is that I don't think that... I think that this situation is, in fact, different from the other things that Mr. Sommer pointed out, and I think we should think very carefully before we start looking for gross receipts tax in flea markets on the corner of Old Santa Fe Trail."

Ben Galanter, 327 ½ Pino Street, was sworn. Mr. Galanter said he was born on Pino Street and left Santa Fe 47 years ago and was lucky to find his neighbor's house for sale a few years ago which attaches to the house that he was born in. He said, "The only difference that I see in the neighborhood is the fact that now there are cars on the street that I lived on. There were no cars in the fifties and sixties on that street. And, now it's only wide enough to accommodate about 5-6 cars. Frequently, cars deciding they can turn around on Pino Street or don't understand that it's a dead end, have to back out to get out of that street." He said this is near Kaune's and across the street from the proposed business. He said traffic is horrendous and the only time he saw traffic such as we have now would be during the Fiesta. He

doesn't understand how a business such as this one would be approved. He said this is right on his street, right on Acequia Madre, and it doesn't seem reasonable to place this kind of business there.

Mr. Galanter said, "When I was reconstructing my house, the Board denied a light that I had above my door. It was the wrong color. I had a silver colored light and they chose and indicated that I had to have a copper colored light. And I had to pay an electrician to take the old one down. That's a smaller issue than what I see here. And I would strongly recommend that this not be allowed."

Raymond Herrera, 327 Hillside Avenue, was sworn. Mr. Herrera said he is opposed to this project on the terms that it doesn't fit into the neighborhood. He said, "I'm really surprised that Sonny Otero would envision something like this right across from such a unique shopping center." He noted this is the first shopping center built in Santa Fe in the 1950s and was down the street from where he lived. It is still part of that unique neighborhood, and this proposal doesn't fit the streetscape, and he believes it is a bad precedent for the adjoining properties. He said we complain about what has happened downtown, and asked if we are going to continue to allow that all the way up Old Santa Fe Trail, the entrance to our community. He said Sonny should have better feeling for the area and come up with something that is more appropriate.

James Wyatt Rutherford, P.O. Box 2450, Santa Fe 87504, was sworn. Mr. Rutherford said he first came to Santa Fe in August 1969, as the result of seeing the movie Easy Rider. He said he fell in love with this area and the reason he moved here a little over a year ago. He said, "I've seen Santa Fe transfer from what Santa Fe used to be, a city which now supports as many t-shirts shops, ice cream shops as it does art galleries, and I'm saddened by that."

Mr. Rutherford continued, "You have an opportunity now, and I have no dog in this fight at all. I don't know the people involved, but I saw what was going to be presented here. I am somewhat a student of history. This is exactly what Santa Fe was like when it was founded. There was no territorial style buildings in 1821, 1825 and 1840." He spoke about an old book, which has drawings by Stanley Mix, an artist hired by the U.S. Army to draw exactly what Santa Fe was like and what this whole area was like at that time. He said Santa Fe didn't begin with territorial style architecture.

Mr. Rutherford has been building extremely high end homes since he retired from the Navy, and he has purchased over \$500 million in art, specially Western art and sculptures from the same 36 galleries which continually change hands. He said not one of these pieces which went into the homes that he built have ever been purchased from a street vendor. He said this process won't impact "ten cents worth of income" on the fine art galleries in Santa Fe. Mr. Rutherford said the fine artists represented in the galleries of Santa Fe have in common that they began selling their art as street vendors.

Mr. Rutherford said, "This is not a flea market, and if it was being set up to sell beer, hubcaps and used tires and automobile parts and junk from somebody's house I would be here standing here with the good people in front of me. That's not what the intention is." He said he could envision a blacksmith there with a smokeless forge making Spanish crosses and other replicas of historic artifacts that that would have

been traded as in 1821. He said this is an opportunity to represent a living history of Santa Fe, and strongly urged the Council to approve it. He thinks it's innovative, creative and a grand idea.

Stefanie Beninato [previously sworn]. Ms. Beninato said she is opposed to having a tent city there for seven months. She believes the H-Board does control structures, including walls and fences, so regulating another structure is really not outside the ordinance. It is there to preserve a certain look. She said as a historian, she would say we're not preserving the original look of Santa Fe or we would all have one-story buildings in downtown. So, it depends on what period you want to freeze it in, and within that era, the City and the Board have decided on certain styles. She said they are trying to look at these tents and buildings and believes that they do not comply because of the pitched roofs. There are exceptions and certain qualifications and standards for that exception. The project didn't meet those standards, so they didn't get the exception for the sloped tent roofs. The H-Board does look at the other pitched roofs in the area, and if there aren't enough, you don't get a pitched roof unless you meet the exception. She doesn't believe the H-Board has gone outside of what it can do. She said it is too bad that the El Dorado and other places have put up a tent. She believes that the El Dorado is a large building and the tent is only a part of that. She believes this will be something people will see coming into Santa Fe and will create a traffic problem. She asked the Council to uphold the H-Board's decision.

Mr. Sommer said, "Mr. Otero's vision for this property is to have a crafts location, so that people who do fine crafts in this community have a place where they can sell their things. We're not competing with the Gallery Association. And if you look at the emails that were sent, they talk about the competition with them. And I submit to you, that it's not your job to protect their businesses through your decisions. Your job is to apply the Code. If I got up here and said we're going to put them out of business in favor of my other clients, you would laugh me out of the room. The gentlemen who spoke, Mr. Rutherford, I think hit the nail on the head. We envision people who do fine crafts having a place that they could afford to sell their wares in a tasteful, well done, well regulated environment. I don't know if you've seen the wall that Mr. Otero put up. That alone, has been a boon to that corner. My minute's up, and I would again urge you to look closely at the way the H-Board has applied the law as it is written and the law as they would like it."

Marilyn Bane said, "I was hoping that someone on the City Council would ask Karen Walker, who's been sitting here for three hours to be available, to comment as part of the public. She is not able to do so unless she's asked by the City Council, so if someone would be good enough to do that I'd be very grateful."

Mayor Coss noted Ms. Walker is a member of the Historic Design Review Board.

Councilor Wurzbarger said she would like to hear from Ms. Walker, and doesn't believe it would be inappropriate to give her two minutes. She would like Ms. Walker to clarify the conversation tonight as to whether it is suddenly relevant for the H-Board to look at the impact on the streetscape,

Karen Walker, was sworn. Ms. Walker said, "Streetscape is part of the fabric, the historic fabric that we look at in absolutely every single case. We added some things to our ordinance to make it easier

for people like Mr. Sommer to read, although he's quite good at what he does. But, we are going to make it even more clear, and we should hear that in September. I would like to thank Sommer for his comment on the wall that was designed by the Historic Design Review Board."

Ms. Walker continued, "And the problem with this unusual, sort of oxymoronic proposal, is that, due to it's nature, a tent city, it can't meet the design standards. Mr. Sommer referred to prior H-Board approvals of some really marginal issues. This H-Board isn't concerned about that. We're sorry about them, but some of may have been necessary, but that's got nothing to do with this H-Board. We simply can't... this application could not meet our design standards, the design standards in the ordinance, it's simple. This is a stopgap application. This is a stopgap measure. There's been a *Will Built To Suit* sign on his property for months. So, this is not going to go up and down every year, it's going to go up and down until he finds somebody that will let him build for them on that lot. That's neither here nor here. The point is the nature of this application could not, by its nature, meet the design standards."

The public testimony portion of the public hearing was closed

Councilor Dominguez asked Ms. Walker if she is speaking on behalf of H-Board or as an individual, and Mr. Walker indicated she is speaking on behalf of the Board.

Councilor Dominguez said there are parts of our community where a flea market is a way of life. He asked what will be the difference between this and other projects for other areas in the City that really could be construed as flea markets.

Mr. Sommer said the definition of flea market is defined in the Code, so people's general conception of flea markets is like the one by the Opera which variety of things. He said the Code defines a flea market specifically, so a flea market is an outdoor market where goods and services are sold. He said what others mean a flea market conjures up for them is something we're not talking about here.

Councilor Dominguez asked how the City can be assured that that is not going to happen.

Mr. Sommer said, "Mr. Otero has made representations in his application about the types of uses that he's going to put there and the improvements. I haven't seen another flea market anywhere in the City anywhere in the City that has this kind of design, or construction or layout or quality behind. So, that's one thing in terms of the design. There's nothing like that anywhere, and the flex market that is conjured up in peoples' minds about what they're doing. That's not what this design is."

Councilor Dominguez said Mr. Sommer said there has been some indication from Mr. Otero that that is not doing to be the case here, noting he doesn't see that anywhere in the packet. He just wants to make sure that this is somehow memorialized.

Mr. Sommer said, "It is. It's in the packet about his representations, and the other distinctive quality is that in order for this to be a success, Mr. Otero is going to provide a mix of craftspeople, so that

you would have the person who does hardware blacksmith, door design, and other things. They're not competing with one another. That will create a successful place. Anyway, that's basically what he's after and he's made representations, in writing to the City and the design reflects that."

Councilor Dominguez said he understands the permanent or temporary structures will be anchored in concrete, and asked how that affect its status of being permanent or not. The units will be moved, but the foundation will still be there.

Mr. Sommer said the term temporary is defined in the Code and that has been provided by Mr. Katz's office. He said, "A structure that is temporary is placed there and then removed. As you correctly point out, this has an anchor, correct Michael."

Michael said, "There is no concrete."

Mr. Sommer said, "So the whole structure is anchored to the actual dirt and then it's removed."

Councilor Dominguez said in the detail in the packet, it doesn't say concrete, but it says that there is a pin, so the pin isn't going to be anchored in concrete, it's going to be in the dirt.

Mr. Sommer said, "Right. So it's removed and the whole structure is removed and what's left is dirt. So, I think it probably qualifies as a temporary structure by virtue of the fact that it's removed in November, but it's then replaced again... so it's... unfortunately the Code doesn't talk about intermittent structures like the First National Bank or other places."

Councilor Dominguez said amenities such as restrooms will be needed, and someone talked about porta potties. He asked where vendors or customers will use the restroom, and will those be temporary or permanent structures and what is the requirement.

Mr. Rasch said, "On the site plan, the application did identify where porta potties would be located. They are at the southwest corner, interior corner of the lot. And that was the first question that came up during the H-Board's initial hearing was, are we supposed to have jurisdiction over porta potties, so this is where this whole kind of question came in. What they did do, was they looked at porta potties and looked at how it would be screened with the coyote fencing, although they had a lot of concern about porta potties being on site for 7 months out of a year. And that's not typically how often a porta pottie is located on a certain site. Then, there's also some tables and chairs and planters near the front streetscape for food consumption. So, that was planned by the applicant."

Councilor Dominguez said, regarding the photographs, it seems to him as if some sort of precedent has been established when we get down to the technical details of the application and the allegations which have been made. He asked if it is safe to say that a precedent has been established, given this kind of evidence.

Mr. Katz said, "Councilor Dominguez, I'm glad you used the word technical. It is technical from a legal perspective. All of the examples in the photos are accessory structures. They are all on a single lot where there is a principal structure. The hotels, the building opposite La Fonda, all are accessory structures which meet the definition in the Code as a temporary structure and are allowed like pool covers and things like that. So, they are not precedent, I don't believe for this situation. And just visually they aren't... is hardly the same thing, but they're not precedent for a situation where the only thing you have are the tents and not a building that they're attached to, or right next to.

Councilor Calvert said our concern tonight is this particular application and not some of the other buildings that may or may not comply with what we think are the rules today.

MOTION: Councilor Calvert moved, seconded by Councilor Romero, to deny the appeal in Case #H-09-014, based on the Findings of Fact and Conclusions of Law adopted by the Historic Design Review Board, and an additional finding that this application doesn't meet the definition of temporary as provide in guidance in the Code which states, "Provided that no such permit shall be for a period of more than twelve months, renewable for periods of not more than six months," and this application on its face is renewable for periods of seven months because they intend to operate every year from April to November, and he would add this as an additional finding in upholding the H-Board's ruling and denying this appeal.

DISCUSSION: Councilor Bushee asked Mr. Katz if he concurs with the additional new finding proposed by Councilor Calvert in his motion.

Mr. Katz said, "I think that it's justified by the record. Yes."

Councilor Chavez spoke against the motion. He said he believes historic preservation goes beyond just the build environment or streetscape. He said it is about people and place and about cultural survival, and about supporting the living artists and craftsmen who are in the community today. He has heard accusations that this will be a tent city. He said it is down from 73 vendors to 14, and he doesn't believe 14 vendors constitute a tent city. He said we have talked a lot about creative cities and about how creative we are, but when it comes to promoting the artists and craftsmen, well we have galleries, and if we're not in the galleries, then we don't have much.

Councilor Chavez said, "We talk about the City of Santa Fe being an international art destination, but when it comes time to supporting the artists and craftsmen, where are we. I think we got caught up in semantics between a flea market and an art market, because there's also language in here that says this will be used for an art market to promote products that are produced locally. That's what creative cities is supposed to be about, I thought. So, I think it's unfortunate that we're not able to support the artists and craftsmen in this effort to establish this local mini market on a corner in the downtown area. So, we'll accept weekend markets in any parking lot that we can find in the downtown area, and that's okay. It's not very permanent, but that's what we're given. So, I cannot support the motion."

Councilor Trujillo said, "Looking at 'this' picture, I would say that does set precedent. I don't think it was this H-Board, but an H-Board did approve this, and you consider it looking gaudy, but it's up. I have to agree with Councilor Chavez. You know here we're talking about, yes there is a first, it doesn't happen that often. It's about the artists. Here we just saved a college two weeks ago because we want art in this community. I'm looking at these structures. You know, we talk streetscape. What I see streetscape right now, I see a lot with weeds. Beautiful. That's just in my opinion shows Santa Fe now. Here you look at a structure, you'll be able to put artists in there to sell their goods. Frankly I think it's a bunch of bull that we're competing against these high end art galleries, because when you have people that want to buy the high end stuff, they're going to go over there. They're going to go buy it there. And all these high end galleries, these artists, they started somewhere. They didn't become popular overnight. It took them a while to get established, and they probably got established in these little galleries, be it papa galleries.."

Councilor Trujillo continued, "You guys say flea market. I guess in my opinion, a flea market is like you said, hubcaps, old clothes old junk. I don't see this being a flea market. I see it as being a place where artists can show their work, up and coming artists, maybe even a graduate of the College of Santa Fe might be able to show their art there. I think this is a good project for downtown. As Councilor Chavez said, we allow every weekend, you want to call tent city, there's a tent city in the County parking lot and there's a tent city on every street corner downtown. And I'll just say, if this was being done on the south side, District 3, District 4, they would say put it up. I'm just saying right away you guys would say lets build it, because it's District 3 and District 4. "

Councilor Bushee said, "I'm dumbfounded. This is a Historic District appeal. Everybody's been talking about uses. How did we get here. The speeches tonight from my colleagues are about uses and the south side and economics, and speeches even from some of the people that know better on historic preservation were about uses, intensities. This is about historic styles; whether or not this meets our Code which we have had on the books. That gentleman that spoke about there were tents before, we didn't have a historic ordinance then. We're dealing with an historic ordinance. I'm sorry, I don't usually get this upset about historic cases. You know, I'm just astounded that that's where we are tonight at this point. Come on folks. We have a Code. We're clear. These are not accessory structures. These are primary principal structures. They aren't even really temporary. They don't meet the Historic Code, plain and simple from what I can tell. I mean, I don't always agree. I was maybe this worked up over the ancillary building to the Georgia O'Keefe museum when I had somebody stand up and say that cement was more historic than bricks, and underneath the cement walkway that they were trying to replace, were bricks. But, you know, that's one case."

Councilor Bushee continued, "This case to me is cut and dried, clear and simple. We can't be talking about anything other than the Historic Code that we should uphold as did the H-Board. So, I really hope that we get back down to what we're here to do tonight."

Councilor Ortiz said, "I agree with Councilor Bushee. I think that the reason why we're here is because the H-Board went off of their mission. And I find, just like I did when Randall Bell, as the Chair of the H-Board would come and do testimony as an H-Board member, it is inappropriate for a subordinate body who is

adopting Findings of Fact that is for our consideration, to come and give extemporaneous testimony on the decision that was made at the H-Board, to say that she speaks for the H-Board, to give comments over and above what was in the H-Board decision. That's just inappropriate. I agree with Councilor Bushee, looking at the record, looking at the testimony here from all of the witness, looking at the Code, there is no way we can support the H-Board's decision, because the H-Board's decision is based upon a new interpretation of Code. And that new interpretation of Code, like it or not, is not supported in the Code. And for those reasons, I am going to be voting against this denial."

VOTE: The motion was approved on the following roll call vote:

For: Councilor Bushee, Councilor Calvert, Councilor Romero and Councilor Wurzburger.

Against: Councilor Trujillo, Councilor Chavez, Councilor Dominguez, and Councilor Ortiz.

The resulting vote was a tie and Mayor Coss voted in favor of the motion.

Clarification of the motion before voting: After clarifying that a vote in favor of the motion is to uphold the decision, Councilor Wurzburger voted yes.

- 8) **CASE #AB-2009-05: 604 ½ GALISTEO APPEAL. STEFANIE BENINATO APPEALS THE APRIL 30, 2009 BOARD OF ADJUSTMENT DECISION TO DENY CASE NUMBER V-2009-9 VARIANCE REQUEST FROM SECTION 14-7.1(B)(g)(ii)(C) (MINIMUM SETBACK STANDARDS FOR SECOND STORIES) TO ALLOW A SECOND STORY SIDE YARD SETBACK LESS THAN 10 FEET. THE PROPERTY IS ZONED RM1 AND LOCATED WITHIN THE DON GASPAR HISTORIC OVERLAY DISTRICT AND HISTORIC DOWNTOWN ARCHAEOLOGICAL REVIEW DISTRICT. (DANIEL ESQUIBEL) (Postponed at July 29, 2009 City Council Meeting)**

Stefanie Beninato, the Appellant in this case, said, "I'm the next public hearing, and I'm going to ask to postpone because, my understanding is 10:30 p.m. is when you're not supposed to hear anything more and you're supposed to be done by 11:30 p.m."

The Mayor and Councilors said they must be done by 12:00 midnight.

Stefanie Beninato said, "But again, we're already pass... I think I just lost this altogether. I'm just going to ask to postpone so that you are actually would be able to think, because I know I can't. My nervous system is just totally shot at this point. And I would not do a good presentation."

MOTION: Councilor Wurzburger moved, seconded by Councilor Romero, to postpone Case #AB-2009-05 at the request of the Applicant, to the next Council meeting on August 26, 2009, and to have this item first on the Public Hearing Agenda, instead of last.

VOTE: The motion was approved on a voice vote with Councilors Bushee, Chavez, Calvert, Dominguez, Ortiz, Romero, Trujillo and Wurzburger voting for the motion and none against.

F. PETITIONS FROM THE FLOOR

A copy of Mr. Firstenberg's statement, submitted for the record by Mr. Firstenberg, is incorporated herewith to these minutes as Exhibit "8."

Lindsay A. Lovejoy, Jr., Esq., said he is representing Arthur Firstenberg, who wants to make a short statement. Mr. Firstenberg had to leave the room and the building because of his acute sensitivity to radiation associated with the use of a WiFi here, and asked if it can be turned off briefly, so Mr. Firstenberg can make his statement.

It was the consensus among the Governing Body to ask staff to shut off the WiFi.

Arthur Firstenberg said, "I'm here to testify about the Water Division pressure monitoring project. This is going for public hearing next week, but I am assuming I won't be able to be there because of the Wi-Fi, so I took this opportunity to see if I could speak to the full Council on the issue."

Mr. Firstenberg continued, "As you all probably know, they want to build radio telemetry – 54 short, 14 ft. towers – to transmit data from all the water pressure monitoring stations. My first issue on this is one of environmental justice. At the last public hearing, a number of irate homeowners in the historic district near Canyon Road showed up with an attorney. Some other homeowners came from Valley Drive off Bishop's Lodge Road. So in the Water Division's new report, 8 of the towers in those two neighborhoods have been eliminated, while the other 46 towers all over the rest of the City, mostly in less wealthy neighborhoods, are still in the plans. That's unacceptable."

Mr. Firstenberg continued, "Second. All the towers have now been reduced in height from 20 to 14 feet. This makes them more dangerous. If a 6 foot person walks underneath one, their head will be about 6 feet below the bottom of the antenna instead of 12 feet, and the radiation at head level will be four times as strong. In addition, repeaters are going to be built to relay the signals back to San Mateo Road, which wouldn't have had to be built if they were 20 feet tall as originally planned."

Mr. Firstenberg continued, "Third. The exact same data could be sent from each pressure reducing valve to the Water Division over telephone lines instead of radio transmitters. The only reason the Water Division doesn't want to do that is because the phone lines don't belong to the City, but would have to be leased from Qwest."

Mr. Firstenberg continued, "Fourth. The cost comparisons between radio telemetry and telephone telemetry are not credible. The telephone telemetry alternative presented back in March, which is the alternative that most of the public favored who showed up, had overhead electric service and telephone

lines leased from Qwest. That alternative is not even included in the new report, but it would be \$120,000 more to install it at 46 sites, than the radio telemetry alternative favored by the Water Division. "

Mr. Firstenberg continued," And there are other problems with the report. Does it really cost almost \$3,000 per site to run a phone extension line. There is no estimate of the increased electricity cost for radio telemetry in the report. Why does it cost more to eliminate the towers all together for telephone telemetry and to eliminate 20 foot towers and put in new 14 foot towers. Why is structural maintenance on the radio towers not included in the operating cost of radio telemetry. How many repeaters are going to be needed and why is their cost not included at all in the report."

Mr. Firstenberg continued, "Councilors and Mayor Coss, through a little bit of creative accounting, radiotelemetry has been made to appear slightly cheaper. But, it should be obvious to everyone that the cost of building and maintaining 46 radio towers and associated equipment is more expensive than not building and maintaining them, even if you add in the cost of leasing telephone lines."

Mayor Coss said he can enter a copy of his formal statement into the record this evening if he would like.

Mr. Firstenberg said he would do that as well as make a copy for the Mayor and each of the Councilors. Mr. Firstenberg entered a copy of his statement for the record [Exhibit "8"].

16. MATTERS FROM THE CITY CLERK

There were no matters from the City Clerk.

17. COMMUNICATIONS FROM THE GOVERNING BODY

A copy of "Bills and Resolutions scheduled for introduction by members of the Governing Body," for the Council meeting of August 6, 2009, is incorporated herewith to these minutes as Exhibit "9."

Councilor Bushee

Councilor Bushee said she will not be submitting the ordinance on busking because she has questions of Mr. Gurule.

Councilor Bushee introduced an ordinance adopting an ICIP. A copy of the ordinance is incorporated herewith to these minutes as Exhibit "10."

Councilor Bushee said she wanted Chief Wheeler to get back to her after he looks at what Albuquerque has just submitted called ART, which is a retired force of officers to deal alarm systems, noting it sounds economical and possible. She wants to see if this can be done here.

Councilor Bushee said she still doesn't know the resolution of the issue of the electrical panel on the Plaza, noting it hasn't come back to Public Works. She asked Mr. Buller to ask Robert Romero to get back with her in this regard.

Councilor Bushee said there was an issue around water on PNM lands to continue the Acequia Trail through Potencia Street to Felipe Place, and asked Mr. Buller to report back on that.

Councilor Bushee said she has calls regarding upper Don Gaspar that the streets and sidewalks in front of the businesses are in bad shape with potholes and such. She wants some attention given to this.

Councilor Bushee said she saw someone texting while driving a motor vehicle in a very dangerous section of Don Gaspar.

Councilor Ortiz

Councilor Ortiz thanked Councilor Wurzburger for following through on the water budget ordinance, because it wouldn't have happened without her – she has been the fulcrum and the focal point.

Councilor Trujillo

Councilor Trujillo asked Mr. Buller to ask Parks to cut the weeds at Mark Brandt Park.

Councilor Wurzburger

Councilor Wurzburger introduced an Ordinance amending Rule 8 to increase the monthly sewer service and usage fees. She said it has been to Public Utilities, Public Works, Finance and Council and there will be a public hearing on October 28, 2009. The timeline of Committees hearing this ordinance is critically important. She said at the last PUC meeting we learned by postponing this 2-3 months for further deliberation we though we needed, it increased from 17% to 30% and we really need to hear it quickly. A copy of the proposed Ordinance is incorporated herewith to these minutes as Exhibit "11."

Councilor Wurzburger said a lot has been said in terms of thanking the Mayor, the Governor and herself for the College of Santa Fe. She said, for the record, the College of Santa Fe could not have happened without the work that was done by our staff, and she publicly thanked Galen Buller, Frank Katz, Kathy McCormick, Kelly Brennan, Robert Romero and Dave Millican who did an unbelievable job. She thanked Dr. Bruce Perlman of the Governor's staff who helped to carry this through.

Councilor Dominguez

Councilor Dominguez thanked staff for the improvements which have been made in some of the parks in District 3, primarily the park at Los Milagros and Cesar Chavez. He thanked staff for improvements they made along Paseo del Sol west, and other arterials in Tierra Contenta. He said staff has gone out of their way to make these things happen.

Councilor Dominguez said, in terms of discussions at Finance Committee and City Council, he hopes Galen Buller will continue to work with labor – AFSCME, the POA and the Firefighters – to be sure that they know that we value and recognize the work that the people that they represent are doing. He said this is part of the reason parks, streets and other things are looking good, for example.

Councilor Dominguez commented that he wants staff to continue to work to get contract work bid locally, and thanked Councilor Chavez for bringing this issue to the Council's attention.

Councilor Calvert

Councilor Calvert had no communications.

Councilor Chavez

Councilor Chavez asked Mr. Buller to explore what we can do to work with the appropriate staff to interface with the publishers and printers in terms of seeing what we can do to keep as much of the contract funds in the City as possible. He has received calls from some printers in town, noting this is one of the cluster industries we were to be focusing on.

Mr. Buller said he will ask someone from Economic Development to get in touch with them.

Councilor Chavez suggested they could work with Robert Rodarte to streamline the bid process for printers and publishers.

Councilor Romero

Councilor Romero asked Mr. Buller to work with Mr. Bulthuis with regard to a request from Taos County to use City stored bus shelters in Taos County.

Councilor Romero is organizing a public meeting in mid-September for the triangle district around crime and burglaries. This is specific to the article in The Reporter in terms of the concerns of neighbors about calling police and developing their own community watch program.

Councilor Romero thanked the people in District 2 who have invested their time and energy in upgrading the parks. She would like to take a close look at how we're spending park funds in the fall, perhaps a summit to really lay out how we are allocating support for all the parks throughout the City. She noted District 2 has less green space and more passive parks, and perhaps this is the reason the District doesn't get some of the attention.

Councilor Romero challenged the other Councilors to look at the cheapest rates in-town for any campaign printing, rather than emailing them to Los Angeles or elsewhere.

Councilor Ortiz said he uses Ortiz Printing, and Councilor Chavez said he would put in a plug for the Paper Tiger.

Mayor Coss

Mayor Coss had no communications.

I. ADJOURN

The was no further business to come before the Governing Body, and upon completion of the Agenda, the meeting was adjourned at approximately 11:30 p.m.

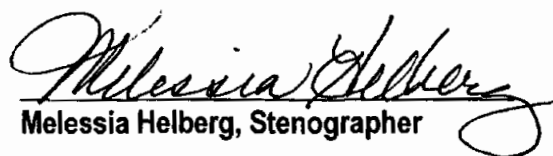
Approved by:

Mayor David Coss

ATTESTED TO:

Yolanda Y. Vigil, City Clerk

Respectfully submitted:


Melessia Helberg, Stenographer