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SANTA FE CITY COUNCIL MEETING
Wednesday, July 8, 2015

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Approved

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FOR A WAIVER OF THE 300 FOOT LOCATION
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AND WINE AT MANITOU GALLERIES, 225
CANYON ROAD, WHICH IS WITHIN 300 FEET
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EAST ALAMEDA STREET. THE REQUEST IS
FOR THE FOLLOWING DATES, FROM 5:00 P.M.
TO 7:30 P.M.: FRIDAY, JULY 24, 2015 – ART
OPENING AND THURSDAY, AUGUST 20, 2015 –
ART OPENING

Approved

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REQUEST FROM ELSWORTH GALLERY FOR
A WAIVER OF THE 300 FOOT LOCATION
RESTRICTION AND APPROVAL TO ALLOW THE
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ELLSWORTH GALLERY, 215 E. PALACE
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REQUEST IS FOR AN OPENING RECEPTION
TO BE HELD ON FRIDAY, JULY 17, 2015,
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Approved

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**MINUTES OF THE
REGULAR MEETING OF THE
GOVERNING BODY
Santa Fe, New Mexico
July 8, 2015**

AFTERNOON SESSION

A regular meeting of the Governing Body of the City of Santa Fe, New Mexico, was called to order by Mayor Javier M. Gonzales, on Wednesday, July 8, 2015, 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 Javier M. Gonzales
Councilor Peter N. Ives, Mayor Pro-Tem
Councilor Patti J. Bushee
Councilor Bill Dimas
Councilor Carmichael A. Dominguez
Councilor Signe I. Lindell
Councilor Joseph M. Maestas
Councilor Christopher M. Rivera
Councilor Ronald S. Trujillo

Others Attending

Brian K. Snyder, City Manager
Kelley Brennan, City Attorney
Yolanda Y. Vigil, City Clerk
Melessia Helberg, Council Stenographer

6. APPROVAL OF AGENDA

MOTION: Councilor Dominguez moved, seconded by Councilor Trujillo, to approve the agenda as presented.

VOTE: The motion was approved on a voice vote with Mayor Gonzales, and Councilors Dimas, Dominguez, Ives Lindell, Maestas, Rivera and Trujillo voting in favor of the motion, none voting against and Councilor Bushee absent for the vote.

7. APPROVAL OF CONSENT CALENDAR

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

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

For: Mayor Gonzales, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

Against: None.

Absent for the vote: Councilor Bushee.

- a) **REQUEST FOR APPROVAL OF GRANT AWARD FOR \$6,323 AND BUDGET ADJUSTMENT FOR FY 2015/2016 – FUNDING TO SUPPORT PUBLIC PROGRAMS AT THE ARTS COMMISSION COMMUNITY GALLERY; NEW MEXICO ARTS. (JULIE BYSTROM)**
- b) **REQUEST FOR APPROVAL OF GRANT AWARD AND BUDGET INCREASE IN THE AMOUNT OF \$1,000 FOR FY 2015/2016 – DIVISION OF SENIOR SERVICES FOSTER GRANDPARENT PROGRAM, RETIRED SENIOR VOLUNTEER PROGRAM AND SENIOR COMPANION PROGRAM; STATE OF NEW MEXICO AGING AND LONG TERM SERVICES DEPARTMENT. (MELANIE MONTOYA)**
- c) **REQUEST FOR APPROVAL OF AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT – WEBSITE DESIGN AND CONTENT MANAGEMENT SYSTEM (CMS) SERVICES FOR TOURISM SANTA FE; STUDIO X. (RANDY RANDALL)**
- d) **REQUEST FOR APPROVAL OF PROFESSIONAL SERVICES AGREEMENT –0 DEVELOPMENT AND ADMINISTRATION FOR GREEN LODGING INITIATIVE (RFP #15/20/P); SANTA FE WATERSHED ASSOCIATION. (JOHN ALEJANDRO)**
- e) **REQUEST FOR APPROVAL OF PROFESSIONAL SERVICES AGREEMENT – CONDUCT WATER SYSTEM LOSS AUDIT SERVICES FOR WATER DIVISION (RFP #15/09/P); DANIEL B. STEPHENS AND ASSOCIATES, INC. (ANDREW ERDMAN)**
- f) **REQUEST FOR APPROVAL OF PROFESSIONAL SERVICES AGREEMENT – SPANISH INTERPRETIVE SERVICE TO THE MUNICIPAL COURT FOR FY 2015/2016 TO FY 2018/2019; MARIA CRISTINA LOPEZ. (JUDGE ANN YALMAN)**

- g) **REQUEST FOR APPROVAL OF CHANGE ORDER NO. 1 AND BUDGET ADJUSTMENT IN THE AMOUNT OF \$48,436.14 – NEW ITEMS NOT PART OF THE ORIGINAL BID AND QUANTITY OVER/UNDER RUNS FOR ENGINEERING DIVISION; TLC PLUMBING AND UTILITY. (JAMES MARTINEZ)**
- h) *[Removed for discussion by Councilor Trujillo]*
- i) *[Removed for discussion by Councilor Trujillo]*
- j) **REQUEST FOR APPROVAL OF PROCUREMENT UNDER STATE PRICE AGREEMENT AND CONSTRUCTION AGREEMENT – ON-CALL SERVICES (BID NO. 14/10/B) FOR 2015 PAVING RESURFACING PROJECTS; ALBUQUERQUE ASPHALT, INC., AND GM EMULSION, LLC. (DAVID CATANACH)**
- k) **REQUEST FOR APPROVAL OF 2015/2016 NUTRITION SERVICE INCENTIVE PROGRAM AGREEMENT AND BUDGET ADJUSTMENT IN THE AMOUNT OF \$4,024 – PURCHASE RAW FOOD SUPPLIES FOR MEAL PREPARATION FOR ELIGIBLE SENIOR CITIZENS PARTICIPATING IN MEAL PROGRAM; NORTH CENTRAL NEW MEXICO ECONOMIC DEVELOPMENT DISTRICT NON-METRO AREA AGENCY ON AGING. (RON VIALPANDO)**
- l) **REQUEST FOR APPROVAL OF VENDOR AGREEMENT AND BUDGET INCREASE IN THE AMOUNT OF \$5,000 – FY 2015/2016 TRANSPORTATION, NUTRITION, IN-HOME SUPPORT SERVICES FOR SENIOR SERVICES DIVISION; NORTH CENTRAL NEW MEXICO ECONOMIC DEVELOPMENT DISTRICT NON-METRO AREA AGENCY ON AGING. (RON VIALPANDO)**
- m) *[Removed for discussion by Councilor Ives]*
- n) *[Removed for discussion by Councilor Trujillo]*
- o) *[Removed for discussion by Councilor Ives]*

8. APPROVAL OF MINUTES: REGULAR CITY COUNCIL MEETING – JUNE 24, 2015

MOTION: Councilor Rivera moved, seconded by Councilor Trujillo, to approve the minutes of the Regular City Council meeting of June 24, 2015, as presented.

VOTE: The motion was approved on a voice vote with Mayor Gonzales and Councilors Dimas, Dominguez, Ives, Lindell, Maestas, Rivera and Trujillo voting in favor of the motion, none voting against and Councilor Bushee absent for the vote.

9. PRESENTATIONS

a) INTRODUCTION OF LAW ENFORCEMENT ACADEMY GRADUATES AND HIRED LATERALS. (CHIEF ERIC GARCIA)

Chief Eric Garcia introduced the Law Enforcement Academy graduates and hired laterals.

Mayor Gonzales thanked all of the graduates and hired laterals on behalf of the City for their service to the City. He said being a Police Officer isn't about a job, it's a calling to protect our community, and we are thankful you have chosen to be a part of our City and we wish you all the best of luck – keep yourself safe as well as our community.

Chief Garcia introduced Officer Nick Wood, Officer Faron Rodriguez and Officer Janelle Martinez who are working with the new officers.

Councilor Dominguez thanked the Chief for getting the officers on board, and thanked the new Officers for coming to the City of Santa Fe. He asked the status of staffing levels and the number of vacancies.

Chief Garcia said with this group here, and the 8 that were sworn yesterday, there are now 11 vacancies.

Mayor Gonzales asked the difference between the 8 sworn yesterday and this group.

Chief Garcia said the New Mexico Administrative Code under the New Mexico Law Enforcement Academy, requires that officers that are going to be working the streets attend the Academy within the first year of duty. The lady and gentlemen here are graduates of the New Mexico Law Enforcement Academy. The 8 sworn yesterday are saying they will attend the academy within that time frame.

Mayor Gonzales said then everyone here ready to go out on patrol.

Chief Garcia said, "Yes sir. And as you can see, they're eager to go.

b) USS SANTA FE SUBMARINE – UPDATE ON THE HOMECOMING AND CHANGE OF COMMAND CEREMONY TO BE HELD IN PEARL HARBOR, HONOLULU, HAWAII (RICK CARVER)

Rick Carver said the U.S.S. Santa Fe departed Pearl Harbor to go on a 6-month deployment in late April. 6 months from late April brings us to late October, and there will be a homecoming and a change of command will take place in Pearl Harbor, and he is inviting each and every one of you, and anybody in the audience, to go to Hawaii to take part in the homecoming and change of command of the U.S.S. Santa Fe. He said Councilor Ives has invitations for each of the members of the Governing Body to attend the last week of October, noting the actual date of homecoming is classified, and he can only speak

to you in person about the dates. He said if they have questions they can speak with him, or the Mayor and Councilor Ives, they can give the exact dates. He said if anybody is interested, he would encourage them to get in touch with him as soon as possible. He thanked the Governing Body for the time to address them.

Councilor Ives said he had the privilege in the past of attending one of the ceremonies that will be occurring in Hawaii in late October when the ship came back from a previous deployment. Noting the personnel are out at sea and often out of touch for significant periods of time. He said to say it is an electrifying and electrified opportunity to participate in a significant event in the lives of our service men is an understatement. He said the change in command is a significant event in the life of each ship, and it was an honor and privilege to participate on the U.S.S. Santa Fe committee. He would urge his fellow Councilors to attend if possible, commenting it is a remarkably enriching experience and Hawaii is just where it happens to occur. He thanked Mr. Carver for the invitation and information.

c) PROCLAMATION – PARKS AND RECREATION MONTH. (ROB CARTER)

Mayor Gonzales read the proclamation into the record and presented the proclamation to Rob Carter.

Councilor Dominguez thanked Parks and Recreation for all of their work, noting it is one of these things that indigenous communities can't take advantage of. It is a Department that we need to make sure receives the resources they need so people of our community can enjoy the amenities the City has to offer.

CONSENT CALENDAR DISCUSSION

10 (h) REQUEST FOR APPROVAL OF COOPERATIVE PROJECT AGREEMENT – EAST ALAMEDA PEDESTRIAN IMPROVEMENTS ALONG EAST ALAMEDA STREET FROM EL ALAMO TO MONSIGNOR PATRICK SMITH PARK; NEW MEXICO DEPARTMENT OF TRANSPORTATION. (JAMES MARTINEZ)

Disclosure: Councilor Trujillo said, "The reason I pulled Item 10(h) is to state I am an employee of the New Mexico Department of Transportation. I used to oversee the Cooperative Project Agreement projects for the District. I no longer do that. There is no conflict of interest, so I will move for approval."

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

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

For: Mayor Gonzales, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

Against: None.

Absent for the vote: Councilor Bushee.

10 (i) REQUEST FOR APPROVAL OF COOPERATIVE PROJECT AGREEMENT – SANTA FE RIVER TRAIL CONNECTIONS AND IMPROVEMENTS PHASE 1 – CAMINO DE CHELLY/AGUA FRIA TO CAMINO DEL CAMPO; NEW MEXICO DEPARTMENT OF TRANSPORTATION. (JAMES MARTINEZ)

Disclosure: Councilor Trujillo said, "Ditto, the same thing as Item 10(h). Move for approval."

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

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

For: Mayor Gonzales, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

Against: None.

Absent for the vote: Councilor Bushee.

10 (m) CONSIDERATION OF RESOLUTION NO. 2015-62 (MAYOR GONZALES AND COUNCILOR LINDELL). A RESOLUTION AUTHORIZING STAFF TO COLLABORATE WITH THE SANTA FE FARMERS MARKET TO STAGE A PLAZA FARMERS MARKET ON SUNDAY, SEPTEMBER 27, 2015. (DEBRA GARCIA)

An amendment to the proposed Resolution, submitted by Councilor Carmichael Dominguez, is incorporated herewith to these minutes as Exhibit "1."

Councilor Ives said he has one quick question, because there seemed to be a little bit of a "pushme-pullme thing" going on in terms of some of the predicates stated in the measure, and was hoping for a little clarity. He said, "On page 6 of the packet, lines 22 and 23, it states: '*Whereas, Section 23-5.2 permits eight (8) events per year for major commercial events on the Plaza, of which the Farmers Market is not one; and...*' and then at the top of page 7 in the packet, lines 1-3, it states: '*Whereas, Section 23-5.(G) SFCC 19872 allows the Governing Body, by resolution, to authorize a committee of City staff to receive, review and approve or deny requests for any function of a commercial use on the Plaza or Plaza Park.*' So on the one hand we seem to have set out a strict number of 8, and clearly those are fairly well distinguished and identified such that we can affirmatively state that this market is not one, and yet it sounds like we are free to ignore that anytime the Governing Body wants to. Am I reading that correctly."

Jesse Guillen said the Plaza Farmers Market isn't considered a major commercial event. It doesn't take up the entire Plaza park, Plaza area. It will be just in a small area of a portion of the Plaza, so that's where, under 5.2(G) as you said on the last page there, that we are allowed to do that.

Councilor Ives said he was struggling with this, because if it's a Farmers Market it's a commercial event, commenting he is trying to understand and make sure we're following our own guidelines appropriately.

Mr. Guillen said, "We looked at it closely, so yes we are."

MOTION: Councilor Ives moved, seconded by Councilor Lindell, to adopt Resolution No. 2015-62, with the proposed amendment [Exhibit "1"].

DISCUSSION: Mayor Gonzales said, "Councilor Ives, I wanted to just state for the record and the Council that this was a request that I had made to the Farmer's Market. I want to be very clear that this was not a reverse request that the Farmer's Market was looking or necessarily coming in to expand operations in the Plaza. I know Councilor Dominguez, a big focus has been to assure that there are farmers present on the south side so we can address some of your goals in terms of food security, and I want to assure the Council that that continued to be the priority, as well as the Railyard for the organization as they considered when would be an appropriate time, how many dates would be appropriate so that there would not be any type of reallocation of farmers, if you will, to the Plaza, as opposed to the south side. Please convey my thanks to the organization for being willing to try this out. It's along the lines of the People to the Plaza. We're going to bring farmers to the Plaza. I think that's going to be a wonderful Sunday in September for all of our community. It's a one time event. We've agreed to kind of take a look at it and see how people like it, and if they respond well, maybe next year we can expand the number of days, if it's appropriate. But I do want to assure Councilors Dominguez and Rivera. I know food security and having the presence of the Farmers in the south side is important that the organization stay very true to that through this process."

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

For: Mayor Gonzales, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

Against: None.

Absent for the vote: Councilor Bushee.

10 (n) REQUEST TO PUBLISH NOTICE OF PUBLIC HEARING FOR AUGUST 12, 2015: BILL NO. 2015-28: AN ORDINANCE AMENDING SUBSECTION 23-6.2 SFCC 1987, TO PERMIT THE SALE AND CONSUMPTION OF ALCOHOL AT FORT MARCY BALLPARK FOR THE FIESTA COUNCIL MARIACHI EXTRAVAGANZA CONCERT (COUNCILOR TRUJILLO). (JESSE GUILLEN)

Councilor Bushee arrived during this presentation

Councilor Ives said he's trying to understand the mechanics of this. He said we have the beergarden at functions during Fuego games, but he isn't totally clear what is proposed here in terms of the mariachi concert – what is access like, where it will be located and those kinds of things

Mr. Guillen said this is going to be held for the Mariachi Extravaganza by the Fiesta Council, and what they've proposed is to have a designated wine, beer and margarita garden within the Ft. Marcy ballpark. According to regulations it can be only 25% of the size of the entire venue, so they will designate that. It will be approved by the City Manager where that area is. He said there are various guidelines as to a buffer between the inside and the outside of that garden. Security guards will have to be checking ID's and all of that. So there are regulations governing that aspect.

Councilor Ives observed that 25% of the ball park would be a very sizable beergarden, and asked if that is really what is proposed.

Mr. Guillen said nothing has been proposed yet, that's simply according to regulations, that's the maximum they can have.

Councilor Ives said it may behoove us as a Council to rethink what we're doing with regard to alcohol at parks, because we've opened some doors and suspects there will be many more and we'll be faced with this question time and again. He thinks it's time we started looking at some type of overarching policy to incorporate. He said it appears the changes that we propose to be making in terms of how we'll be doing these events into the future.

Councilor Dominguez said this is just a Request to Publish and he anticipates proposing some amendments by the time this gets to Council for a vote, to deal with some of the best practices to which Councilor Ives might be alluding, and just having some general, best practices that we can apply to some of these events. He said when the issue of bring alcohol in parks came up, the fear from those advocates who are looking for responsible behavior, were worried that we were opening the door for more of these sorts of activities and events. Having said that though, he thinks there are pretty significant and good best practices out there that we can apply that probably should be amended and tweaked as years go by and as we gain more experience in how to deal with alcohol in these sorts of venues. He will be bringing amendments that talks about the details and how we will measure the alcohol contents of a margarita by the time we get to Finance Committee.

Councilor Maestas said his comments are consistent with Councilor Ives. This is an Ordinance and it's the highest level of legislation we have which requires a public hearing. His issue is that we keep adding these events, and he doesn't like an Ordinance to be event specific. There's no guarantee that they are going to sustain themselves in the future. He said as we make the transition to a tighter Ordinance that isn't event specific, that we fix the areas available and they can be open for events. Perhaps we can delegate some of this down to the administrative level if we limit the areas in these City facilities. He supports this, but he doesn't want us to come back and say the Extravaganza moved back to the opera. He would like to come up with a better way to maintain appropriate Council oversight, but not include these date specific events in the Ordinance.

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

For: Mayor Gonzales, Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

Against: None.

10 (o) CIP PROJECT #611B UPDATE – 2015 AIRPORT TERMINAL IMPROVEMENTS, SCHEMATIC PLANS. (MARY MacDONALD) (INFORMATIONAL ONLY)

Councilor Ives said some people in the community have been very deeply involved in proposing alternatives, and he is unsure if those alternatives have ever “seen the light of day or been considered by anybody or any of the groups,” or any anybody to whom presentations have been made. He said a number of presentations are noted in the packet, but if there is only one option, it begs the question about whether or not there is significant input in terms of determining a best pathway forward. He said, for example, in looking at the one schematic which is the last page in the packet, it shows arrivals coming in at the western portion of the gate and they appear to be heading directly outside to the sidewalk.

Councilor Ives continued saying there is almost always one stop he always makes when he gets off an airplane which is to the bathroom. And the bathrooms are all the way across the airport on the other side of the entry. He would like to take a little more time in the process. He would like to try to make sure the efforts of others in the community who are deeply interested in these issues have an opportunity to present them in some forum. He would like to see that happen at the Airport Advisory Board so there can be full consideration. He asked Mr. Bulthuis to comment.

Mr. Bulthuis said that is exactly the process they’ve been following for the past 8 months. They have engaged the community with an opportunity to comment, make suggestions, present alternatives through that process at the Airport Advisory Board. He said he believes the individuals he is speaking about have done that, and have been present at the meetings and has the opportunity to present ideas. He said many of those have been included in the Phase 1 construction plan moving forward now. He said they weren’t able to incorporate all the ideas, given the project budget we have, but that dialogue did take place in the suggested form.

Councilor Ives said he is encouraged to hear that, and said he has only been to one meeting of the Advisory Board meetings where the future master plan has been discussed. He would like to be better educated, when he has a chance, as to what is being proposed here rolls into the master planning process. He said there is a sense of where we want to end up, and it begs the question of interim plans leading to that point in time. He looks forward to getting with Jon and talking more about that.

Councilor Bushee said she asked a similar question at Public Works and asked the timeline of expending these funds and if there is an opportunity to have one more, well publicized meeting, at Public Works or somewhere more central than the Airport. She said Mr. Bulthuis talks about stakeholder meetings, but the folks who were invited are vendors at the Airport, and there were no schematics for people who actually use the airport, or any way to give real input. She wants to extend that opportunity for a brief period of time.

Mr. Bulthuis said he is open to this, commenting they want input and feedback and to inform the community about what's happening here, the longer term goals. He said the immediate improvement is meant to fix immediate needs, and not to solve all the problems and issues. He said if the Council would like continued dialogue in whatever forum, he is available to do that.

Councilor Bushee asked if it is possible to take one more month and conduct at a minimum one more big public hearing.

Mr. Bulthuis said they have a dialogue/suggestion box in the secure hold based on her comments at public Works.

Councilor Bushee pointed out that was only two weeks ago. She said there are people who fly or have an understanding of what they want to see on the Board. However, she wants to hear from the airline passengers. She said there are industry people who are communicating their concerns to her. She said perhaps we could schedule on public hearing at Public Works and maybe something at the Airport. She said the meeting has to be well publicized and people need to know it's happening.

Councilor Trujillo asked if this is time sensitive.

Mr. Bulthuis said yes, and they're looking to get the project under construction in this calendar, so there is time to do what Councilor Bushee wants to do, but there is not an extended period of time.

Councilor Trujillo asked if we want to have the meeting at City Hall or at the Airport, commenting he thinks it should be at the Airport so the Councilors can see what's going on out there.

Councilor Bushee said she saw the schematics, but the problem is where the public would most likely show up.

Councilor Trujillo asked if she thinks they would want to show up at the Airport.

Mr. Bulthuis said the public is invited to the monthly Airport Advisory Board meeting and the public has come in.

Councilor Trujillo said if it happens it will happen at a Public Works Committee meeting.

Mr. Bulthuis said he thinks that is appropriate.

Councilor Trujillo said we could move the Public Works to the Airport for one day, and we can work that out to do that.

Councilor Bushee asked if they can bring larger drawings.

Mayor Gonzales said he would remind the Council that this has been an 8 month process, but it's never too late to allow for more participation until we move forward. He said \$800,000 doesn't go far, and there will be no change to the façade, or any of those elements that make the Airport unique for all of us. He said what passengers are saying overwhelmingly is that they hate going through security and not being able to go to the restroom after they go through security, and to go through security and not access something more than a coke machine. He said much of the design in place is to address those very simple issues that won't do anything to the authenticity of the building while making it more friendly for those who use it.

Mayor Gonzales continued, saying he likes Councilor Trujillo's idea of moving it to the Airport for people to see what this will mean, commenting it is great to be on site so there can be a walk-through and a review of what is going to happen. He said it shouldn't be hard to put in place a "frequently asked question sheet." He is hearing concerns about the esthetics and unique architecture that is very much in line with the Santa Fe brand, and we're not going down a path that will disrupt that. He said we need to make sure there is collaboration and participation by the Historic Division as final design elements are put in place, even in the first phase, so it is compatible with what is not being worked on. This is what he is hearing a lot from individuals who just want more information about what's really planned.

Mr. Bulthuis that's exactly what was communicated in all the stakeholder sessions. People love the facility, the character of the facility, but they don't like the limited amenities, and these are things they're trying to fix without changing the character of the building.

Councilor Lindell said the preservation is paramount to us, and we're hearing from many many people. She asked where we are in our current commitment on this plan. She asked if we have committed to this at this point in time.

Mr. Bulthuis said, "We have directed the consultant to move from the schematic design stage into the construction drawing development and that will take some time."

Councilor Lindell said it is also a pretty big commitment of money, and asked if we are premature in doing that if we still would like to have a discussion about this.

Mr. Bulthuis said it's something we can negotiate with the contractor if there's information that comes from the public process that would alter what is being carried forward right now.

Councilor Lindell said, "I'd like not to pay for this twice."

Mr. Bulthuis said, "We can hold off. We can direct the contractor to suspend their work until we hold that meeting and have any final comment that may change the direction of the plan."

Councilor Lindell said she thinks that would be prudent so we don't pay for it twice.

END OF CONSENT CALENDAR DISCUSSION

11. UPDATE ON PUBLIC BANKING INITIATIVE. (KATE NOBLE AND ROSS CHANEY)

A power point presentation, *Public Banking – The Consensus Document and Progress Report*, entered for the record by Kate Noble, is incorporated herewith to these minutes as Exhibit "2."

Kate Noble, Interim Director, Housing and Community Development Department, presented information from her Memorandum of July 8, 2015, with attachment, to the City Council, which is in the Council packet. Ms. Noble introduced Katie Updike of Building Solutions to make the presentation.

Katie Updike presented information via power point. Please see Exhibit "2" for specifics of this presentation. Ms. Updike said she is available to meet with the Councilors individually and to meet with community groups they would like to set up for her to meet with.

The Governing Body commented and asked questions as follows:

- Mayor Gonzales thanked Ms. Updike, commenting she has great credentials to guide as we move forward, noting she has put in way more time than her contract is work which indicates her willingness to help us move forward in addressing local needs and what is happening from a national perspective.
- Mayor Gonzales said Ms. Updike did a good job of stating the challenges in accessing credit for many businesses. He understands the City has between \$200 and \$225 million sitting in various banks and government securities at any one time.

Ms. Updike pointed out that half of it is in government securities because there isn't that much room.

- Mayor Gonzales said the capital is in national banks such as Wells Fargo. He said there could be a point where it is costing the City money to have deposits in plan. He said one of the concerns for Santa Fe there a place where it will cost taxpayers money to have their money in a banking facilities – we want to discourage you from giving us more money because we've got too much already and we have to figure out to manage it. It moves to the issue of next steps of how challenging it would be to go down the path of chartering a City bank in place governed by FDIC and State banking rules and a separate board of directors, but was able to keep the money locally and figure out how to protect and preserve it in ways that it is actually earning money. It's part of

the issue that is hoping can be part of the discussion. He said, of course, we would have to address the governance issues.

Ms. Updike said our deposits are a loan to the bank, and a bank then goes on and lends it. What we're doing is saying we're making loan and then pulling it back in the form of the collateral we require. So, we are to some extent, inhibiting what would be a normal lending function from occurring, which is part of the reason some of our local smaller banks can no longer afford to do that. She said a first step may be to look at capital investment in the City as the one place where we won't have to compete with our local banks or only take the loans they won't take or that the CDFI's won't take, which puts "you in the position of taking everything else."

Ms. Updike said the first step, learning how to lend on our own capital infrastructure seems like a really healthy step. She said she hasn't talked about the interesting trend of social impact bonds. This is where the City and the private sector have come together and done various alternatives to the recidivism in jails in New York City. In Chicago the City, Goldman-Sachs and the public schools have put together a bond to create early childhood education and the payback is coming from the schools. She said there are opportunities to do creative things like that, but they're still heavily focused in the public agenda.

Ms. Updike continued, saying it is hard for her to recommend that the City go out and fund its bonds, rather than using its internal monies first and focus first on a business sector which, technically is already being serviced by our banks.

- Mayor Gonzales said as we go through this process it is important to be very clear about the role of the public bank. He said, "I think there are people out there that feel when they hear that idea, is that we as Councilors, are going to see a series of loans on our agenda and we're going to decide yes or no, so we have to answer that the function of being able to develop it is completely separate." He said the other part is to challenge the concept that the only loans a public will be making are loans that can't be made by traditional banks – the truth is we can't do that. We are in a regulated environment and the standards a City bank would loan money would be exactly the same as a community bank. He doesn't want to think the bank is in place to loan money for high risk loans because that will not be the case.

Ms. Updike said this precisely what she is recommending we don't do. She said we have an Economic Development Department that makes subsidies available in those instances where we want to do something that helps a bank to make a loan. That's a different kind of activity.

- Councilor Ives said he looks forward to sitting with her and running through the charts again so he can grasp the content. He asked her what she will be doing from this point, what she will bring back to the Governing Body and the timeframe.

Ms. Updike said the contract calls for them to come up with a strawman or two. She said it seems two strawmen that are surfacing. A public bank focused initially on City infrastructure, interdepartmental support. The second piece is for the City to get serious at looking at funding

and to be the convener for a conversation between the banks, Start Up Santa Fe, Chamber of Commerce and whoever wants to be part of that. And then they will do an assessment of issues and then an economic analysis.

- Councilor Ives asked about the State regulations on crowdsourcing. He asked if those have been put out for public comment – where are they in that process.

Ms. Updike said Alan Wilson, Director, State Securities Division, published a letter to the Governor and others in September which she is told is the basic outline. She said he basically said this is just too powerful an economic engine not to look at it. They have been writing the regulations since then. She was told by the attorney at the State who is writing them that they would be published by the end of May, but that hasn't happened to her knowledge. She said once they come out, "we'll be all over them."

- Councilor Ives asked the name of the attorney and Ms. Updike said she doesn't remember, but if she remembers she will let them know.
- Councilor Ives said at Public Utilities last week, pursuant to a Resolution passed by the Governing Body not long ago asking the Waste Division to bring forth a proposal for single stream recycling to be implemented by July 2016, there was a proposal considering the funding of the acquisition of certain equipment as well as the construction of a natural gas maintenance facility by borrowing funds within the City from available funds for a no interest loan. He was unsure of the pluses and minuses of doing a no interest loan, but understands the attractiveness of doing that. He asked if this is the type of transaction she is speaking about when she says the City should be looking internally to put the funds it has to use, rather than losing money.

Ms. Updike said the alternative is to fund it with a bond for that project and 5-6 other projects over a 20 year life, and the interest paid might be 40-50% of the overall proceeds, noting the time value of money would be discounted. The alternative would be for areas in the City with excess funds to earn more than the 0.2% we're earning and for the receiving entity to pay less. So it's kind of a win-win. It also allows us to recognize that some City departments have huge long-term needs.

- Councilor Ives said there's a spread of 3-4% on the funds that we're losing continually, and some have said up to \$3 million annually across the City.

Ms. Updike said there's a real opportunity, notwithstanding that you have to be very careful with your liquidity ratios and your bond ratings. She said she and Mr. Rodriguez have talked about the idea that we don't do anything to impact the bond rating.

- Councilor Bushee understands this is an interim report, so we can expect greater detail. She asked if Ms. Updike is suggesting we just stick with City capital projects and when will we be able to get into the social impact side of public banking.

Ms. Updike said she thinks the social impact happens with or without the City. The City always has the opportunity to make those investments, and most of our work creates impact, whether tax or social impact. The real question is, if it's something we fund out of our budget anyway, we don't need a bank for that. We don't need a bank for that and we can fund with a grant, a subordinated loan under LETA.

- Councilor Bushee said the City has many capital needs, but there are other needs that will impact over-all. She wonders when we will get to those possibilities.

Ms. Updike said that isn't dependent on the public bank, and the City can do that regardless, and should. She said we can look at a social impact bond as we way to fund early childhood education, but a public bank isn't needed to do that. If we had a public bank it perhaps could be the vehicle. She said that is a matter of how the City budgets and uses its money, rather than whether you can establish a public bank question.

- Councilor Bushee asked what collateralization she is suggesting, if we're overdoing it now.

Ms. Updike said you might require more collateral, and we might ask the banking sector what would allow it to lend more and feel better about taking our deposits. This is part of a discussion she would like us to have and encourage. The State only requires 50%, with a tiered structure of 50-75-102% of predominantly federal securities as its collateral requirement. She said if we just adopted the State regulations that would give us extra wiggle room.

- Councilor Dominguez said this is bold and complicated, and he doesn't yet know how much is practical. But it's good, because we're going to have to be creative and do things differently while local governments continues to have the challenges it has. He said on the 4th slide he didn't get everything she said about not being able to get money quickly enough in the market.

Ms. Updike said what happened when the recession hit, the federal reserve pushed a lot of money into the banking sector very quickly so banks would remain solvent and more institutions wouldn't go bankrupt, but at the same time telling them they would be watching their loans closely. She said having that much cash flow into the banking system meant it was hard for banks to get that money pushed quickly into main street with good loans, especially in the middle of a recession when we were seeing a lot of bankruptcies.

- Councilor Dominguez said Councilor Bushee brought up the other question he had about social focus. He said the financial challenges of the City impact the social services much more than at higher levels of government, especially in the high poverty sections of the community. He asked, give the complexities of public banking in general and the idea that we can have monies focused on social infrastructure, how do you articulate that.

Ms. Updike said she wants to make a distinction between the City budget process and where you spend the City's resources – that's where those decisions are made. She said any kind of bank is merely where you count the numbers. You are setting the policy, the bank isn't. If you're funding a project in the City, the question is, is it better to fund it inside the City or go into the bond markets for it.

- Councilor Dominguez said it is important for us to let people know, and asked how we articulate this to the public.

Ms. Updike said the important message is that this is a way the City potentially can manage its money more efficiently. It is not something that all of a sudden is a game changer on what you can invest in. These are policy decisions that they aren't making as part of the study. The real question is can a public bank in however it functions, profitably, help the City end up at the end of the day with more money. To that extent, you have better budgets and perhaps budgets that can do more.

- Councilor Dominguez said that speaks to what Councilor Ives brought, and the recent moves we've made to balance the budgets and the requests we've had, and that's appropriate. He looks forward to future discussions.
- Councilor Maestas said, regarding the portion of her report that speaks to external bond funding, it seems she has pointed out a paradigm we're using that needs to change, in that we fund the entire capital project through bonds. It seems we might should take out the low cost, high duration phase, the project development phase and fund that on a pay-as-we go basis, and fund the shovel ready project with bond funds.

Ms. Updike said shovel ready or even when it's ready for CO, you could go that far if you want.

- Councilor Maestas said this could be a fundamental break-through for the way we do business and provide a much needed economic stimulus to our community. The construction industry was hit hard in the recession, and slow to recover. He said perhaps she can identify any best practices in her study of other municipalities and local government have decided to do this.

Ms. Updike said she's looking at this. She said it's nice to ask the voters for approval on a bond in using property taxes, commenting that GRTs doesn't require a bond vote in New Mexico. It's nice to say we've got a shiny new penny project we want to fund with bonds, rather than saying we need to refinance the overall financial structure of the City. It does appear that some cities consolidate their funding needs into larger bond issues, rather than saying a bond issue is for a specific project. She said that will be part of their final report.

- Councilor Maestas sees tremendous potential just in this part alone. He said perhaps we can try and identify the capacity of our construction industry, because we don't want to go from one extreme to the other. This can usher in a whole new paradigm on how we manage and procure our capital project.

Ms. Updike said she was going to put forth an estimate, but it is many millions of dollars.

- Mayor Gonzales said he wants to make sure as we go forward, there are things we can wrap our arms around that makes sense – interagency loans, looking at capital projects. He wants to be very clear to the Council, Katie and others that he doesn't want to limit and focus only on what we know we can wrap our arms around. He is committed to keeping alive the discussion of staying outside that box and developing a true City Bank and to continuing to be honest and sincere about exploring what that would mean as part of the future of the City and how it can play a role in it, and continuing the education process. He knows the banks got low to zero interest loans from the reserve to fuel the markets with liquidity, and there could have been access to more capital to go into social impact investing we could have facilitated and provided at lower interest loans. These are conversations he wants to continue to have and understand. He said what Councilor Dominguez said, it's right, it's bold for all of us. And to many who don't understand it can be tough to take the time to wrap our arms around it. He said, "But I do want to stay committed to keeping very much alive that target of a city bank that can truly play a role in helping us to keep those resources to the degree we can."

Ms. Updike said the green banks could be one of several flags that could be flown.

- Mayor Gonzales said he's learned a lot from her and looks forward to learning more. He said Ms. Updike has been great about being accessible, and for any Councilors who would like to have a question and answer session she's been great.

12. MATTERS FROM THE CITY MANAGER

There were no matters from the City Manager.

13. MATTERS FROM THE CITY ATTORNEY. EXECUTIVE SESSION

IN ACCORDANCE WITH THE NEW MEXICO OPEN MEETINGS ACT §10-15-1(H)(7) NMSA 1978, DISCUSSION REGARDING PENDING OR THREATENED LITIGATION IN WHICH THE CITY OF SANTA FE IS OR MAY BECOME A PARTICIPANT, *CITY OF SANTA FE, ET AL. V. COUNTY COMMISSION OF SANTA FE AND NEW MEXICO DEPARTMENT OF REVENUE*, FIRST JUDICIAL DISTRICT COURT NO. D-101-CV-2015-01396. (KELLEY BRENNAN).

MOTION: Councilor Maestas moved, seconded by Councilor Dimas, that the Council go into Executive Session, in accordance with the Open Meetings Act §10-15-1(H)(7) NMSA 1978, as recommended by the City Attorney for discussion regarding threatened or pending litigation in which the City of Santa Fe is a participant, *City of Santa Fe, et al. V. County Commission of Santa Fe and New Mexico Department of Revenue*, First Judicial District Court, No. D-101-CV-2015-01396.

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

For: Mayor Gonzales, Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

Against: None.

The Council went into Executive Session at 6:28 p.m.

MOTION TO COME OUT OF EXECUTIVE SESSION

MOTION: At 7:15 pm, Councilor Rivera moved, seconded by Councilor Trujillo, 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 on the following roll call vote:

For: Mayor Gonzales, Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

Against: None.

14. ACTION REGARDING CITY OF SANTA FE, ET AL. V. COUNTY COMMISSION OF SANTA FE AND NEW MEXICO DEPARTMENT OF REVENUE, FIRST JUDICIAL DISTRICT COURT NO. D-101-CV-2015-01396

MOTION: Councilor Rivera moved, seconded by Councilor Bushee, with respect to *The City of Santa Fe, et al, versus County Commission of Santa Fe*, to direct the City Attorney to take action consistent with the discussion held during Executive Session.

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

For: Mayor Gonzales, Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

Against: None.

15. MATTERS FROM THE CITY CLERK

There were no matters from the City Clerk.

16. 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 July 8, 2015, is incorporated herewith to these minutes as Exhibit "3."

Councilor Dimas

Councilor Dimas said, "It's good to be in Demon country."

Councilor Maestas

Councilor Maestas had no communications.

Councilor Bushee

Councilor Bushee introduced the following:

1. An Ordinance amending the Code of Ethics provisions for the City of Santa Fe to delete language permitting the acceptance of non-pecuniary gifts by members of the Governing Body or public employees as it relates to their official duties; and prohibiting a public official from accepting employment with the City of Santa Fe within one year of leaving office. A copy of the Ordinance is incorporated herewith to these minutes as Exhibit "4."
2. A Resolution requesting staff to develop a land use facilitation program based on the highly successful Albuquerque model.
3. A Resolution directing staff to complete the Old Pecos Trail Scenic Corridor Plan by following the necessary public process.
4. A Resolution directing staff to complete the Santa Fe River Corridor Plan by following the public process.

Councilor Bushee said Items #3 and #4 were entered by title and she will get full copies to the Governing Body after the meeting.

Councilor Bushee thanked everyone for showing up, commenting these aren't the most comfortable seating, but "let the evening begin."

Councilor Ives

Councilor Ives had no communications.

Councilor Dominguez

Councilor Dominguez would like to ask the City Manager to provide the Governing Body with an update on any issues that resulted from the amount of rain we've been the last couple of days, commenting he can do that via email.

Councilor Lindell

Councilor Lindell had no communications.

Councilor Trujillo

Councilor Trujillo said, "I'll just echo Councilor Dimas, it's good to be in Demon country."

Councilor Rivera

Councilor Rivera had no communications.

END OF AFTERNOON SESSION AT 7:18 P.M.

There was a short break from 7:18 p.m. to 7:30 p.m.

EVENING SESSION

A. CALL TO ORDER AND ROLL CALL

The Evening Session was called to order by Mayor Javier M. Gonzales, at approximately 7:30 p.m. There was the presence of a quorum as follows:

Members Present

- Mayor Javier M. Gonzales
- Councilor Peter N. Ives, Mayor Pro-Tem
- Councilor Patti J. Bushee
- Councilor Bill Dimas
- Councilor Carmichael A. Dominguez
- Councilor Signe I. Lindell
- Councilor Joseph M. Maestas
- Councilor Christopher M. Rivera
- Councilor Ronald S. Trujillo

Others Attending

- Brian K. Snyder, City Manager
- Kelley Brennan, City Attorney
- Yolanda Y. Vigil, City Clerk
- Melessia Helberg, Council Stenographer

F. PETITIONS FROM THE FLOOR

Mayor Pro-Tem Ives gave each person two minutes to petition the Governing Body.

**VERBATIM TRANSCRIPT
 OF THE REQUESTED PORTION OF PETITIONS FROM THE FLOOR, ITEM #F
 CITY COUNCIL MEETING
 July 8, 2015**

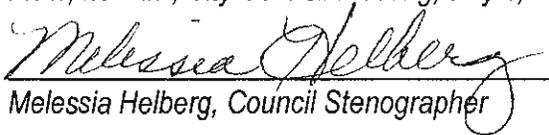
Mayor Gonzales gave each person 2 minutes to speak

[Stenographer's note: Stefanie Beninato approached the podium and spoke without identifying herself, but I knew this was Stefanie Beninato at the podium speaking]

STEFANIE BENINATO: I'm here to talk about the streets and roads. It won't quite answer Councilor Dominguez's request, but the berm that is on West Santa Fe Avenue, the City knows or should know, is really substandard. This was in statute, a Maryland Statute, *[inaudible]*, that's Josh Harris, he used this

statute to try to undermine my expert engineer, Morrie Walker. And it turns out this is a statute about berms that is used in Maryland, not really relevant, but it's informative. In that in Maryland the berm is definitely temporary and is always temporary, despite Mr. Harris's attempt to make it look like it was permanent. But more importantly, these berms are only supposed to serve an acre and a half, and the berm that's on West Santa Fe Avenue serves 12.74 acres, that is 8 1/2 times the highest amount that it's supposed to serve. The berm is supposed to be at least 8 inches high. It's somewhere between 2 to 6 inches high and it's too much of a slope. So the City has known, or should have known, if anybody actually did any research, that the berm that was put in was actually supposed to be temporary, never supposed to be permanent, is substandard, isn't going to work, doesn't work, hasn't been working in these particular rains. And so again, I'm asking that the City do something about that intersection and follow the recommendations of the Louis Berger group and actually put storm drains in there that will work. Thank you.

I certify that this is a true and accurate transcript of the requested portion of Petitions from the Floor, Item #F, City Council Meeting, July 8, 2015.


Melessia Helberg, Council Stenographer

Mayor Gonzales said two minutes are allotted to speak. He said the Council has directed the Airport Manager to hold another public hearing under Public Works that will take place out at the Airport to allow for a broader community review of the current plans in place for the existing budget that has been allocated. So I just want to make sure that, I'm going to limit it to just 2 minutes, but you know the Council is going to be participating in a public hearing out at the Airport.

Frank Nichols, 925A Dunlap Street, said that's fine. He said he wanted to bring up two points about the renovation plan that's been proposed. His first point is the architectural treasure that the building represents. When it was built in 1956, it still had vigas, it was Revival Southwestern style, and the building hasn't changed that much. He said you can see on the second page, and on the third page of your packet it show the kind of boxed-in entry that was done in an earlier renovation that is part of his concern with the new renovation plan. They intend to add two more kind of boxed extensions to the outside of the building and he feels it doesn't respect the architectural integrity of the built. He said he wants to talk about the circulation flow. He said they are expanding the secure area into the restaurant dining space and moving the seating for the restaurant into the main lobby. He said the main lobby is already very crowded, and basically everyone is seated in the space as your first step into the lobby. He said the last point is that arrivals has been moved to the south end of the building. His concern with that plan is the path of the

arriving passengers with their bags. The first thing you want to do when you get off the plane is go to the restroom. And now, you have to walk through the ticketing area where everyone is standing with their bags, with your bags to get to the restaurant.

Mayor Gonzales said, "I want to say from the Council's perspective, I want to thank you for being as involved as you have in this. This is all your own personal effort and it means a lot. There is going to be a venue for a broader discussion under Councilor Trujillo's efforts at Public Works. So continue to keep that front and center. Thank you."

Lillis Taylor, 124 Duran Street, said she is here to echo what Frank just said. She said it is a lovely little airport, it's charming and it shows off Santa Fe beautifully. It's lovely to arrive there. You can pretend that you're part of Casablanca and the food also happens to be rather nice. So I'm very happy to hear that you are going to have a Council meeting at the Airport, but please, really, do be very careful. She said, "It's a sweet little gem. Thank you very much."

G. APPOINTMENTS

COMMUNITY HEALTH CARE AND HOSPITAL STUDY GROUP.

Mayor Gonzales made the following appointment to the Community Health Care and Hospital Study Group, in accordance with the Resolution:

John C. Beeson, M.D. (Christus St. Vincent Chief Medical Officer); and
David L. Delgado (SVH Support)

MOTION: Councilor Bushee moved, seconded by Councilor Ives, to approve these appointments.

DISCUSSION: Councilor Bushee said she spoke with Mayor Coss who will be the Chair, but they have yet to meet, and nobody has set a date. She asked do these appointments complete the complement of membership and can we start meeting.

Mayor Gonzales said it doesn't complete it, but he thinks meetings should progress now that St. Vincents has submitted its appointments which gives a broad representation of people who will be able to meet the points of the Resolution. He said he will encourage Mayor Coss to convene a meeting.

VOTE: The motion was approved unanimously on a voice vote with Mayor Gonzales and Councilors Bushee, Dimas, Dominguez, Ives, Lindell, Maestas, Rivera and Trujillo voting in favor of the motion and none voting against.

H. PUBLIC HEARINGS

- 1) REQUEST FROM ST. MANITOU GALLERIES FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION AND APPROVAL TO ALLOW THE DISPENSING/CONSUMPTION OF BEER AND WINE AT MANITOU GALLERIES, 225 CANYON ROAD, WHICH IS WITHIN 300 FEET OF THE CATHEDRAL BASILICA OF ST. FRANCIS OF ASSISI, 131 CATHEDRAL PLACE AND THE NEW MEXICO SCHOOL FOR THE ARTS, 275 EAST ALAMEDA STREET. THE REQUEST IS FOR THE FOLLOWING DATES, FROM 5:00 P.M. TO 7:30 P.M.:
 - a) FRIDAY, JULY 24, 2015 – ART OPENING AND
 - b) THURSDAY, AUGUST 20, 2015 – ART OPENING

The staff report was presented by Yolanda Y. Vigil, City Clerk, from her Memorandum of July 1, 2015, which is in the Council packet, noting there are letters of support in the Council packet from the Reverend Adam Lee Ortega y Ortiz of the Cathedral Basilica of St. Francis of Assisi and Cindy Montoya, Head of School, New Mexico School for the Arts.

The Applicant was not in attendance.

Public Hearing

There was no one speaking for or against this request.

The Public Hearing was closed

MOTION: Councilor Dominguez moved, seconded by Councilor Dimas, to grant the waiver of the 300 foot location restriction and approve the dispensing/consumption of beer and wine at the Manitou Galleries, 225 Canyon Road, 5:00 p.m. to 7:30 p.m., on Friday, July 24, 2015 – Art Opening and Thursday, August 20, 2015 – Art Opening, with all conditions of approval as recommended by staff.

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

For: Mayor Gonzales, Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

Against: None.

- 2) **REQUEST FROM ELSWORTH GALLERY FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION AND APPROVAL TO ALLOW THE DISPENSING/CONSUMPTION WINE AT ELLSWORTH GALLERY, 215 E. PALACE AVENUE, WHICH IS WITHIN 300 FEET OF THE CATHEDRAL BASILICA OF ST. FRANCIS OF ASSISI, 131 CATHEDRAL PLACE. THIS REQUEST IS FOR AN OPENING RECEPTION TO BE HELD ON FRIDAY, JULY 17, 2015, FROM 5:00 P.M. TO 8:00 P.M. (YOLANDA Y. VIGIL)**

The staff report was presented by Yolanda Y. Vigil, City Clerk, from her Memorandum of July 1, 2015, which is in the Council packet, noting there is a letter of support in the packet from the Reverend Adam Lee Ortega y Ortiz of the Cathedral Basilica of St. Francis of Assisi.

The Applicant was not in attendance.

Public Hearing

There was no one speaking to this request

The Public Hearing was closed

MOTION: Councilor Bushee moved, seconded by Councilor Dimas, to grant the waiver of the 300 foot location restriction and approval to allow the dispensing/consumption of wine at the Ellsworth Gallery, 215 E. Palace Avenue, for an Opening Reception on Friday, July 17, 2015 from 5:00 p.m. to 8:00 p.m., with all conditions of approval as recommended by staff.

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

For: Mayor Gonzales, Councilor Bushee, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

Against: None.

Mayor Gonzales asked the City Clerk to notify Applicants that in the future they have to be in attendance for the Governing Body to consider their request.

- 3) **CASE NO. 2015-51 – APPEAL. THE SOUTHEAST NEIGHBORHOOD ASSOCIATION (SENA) APPEALS THE MAY 7, 2015 DECISION OF THE CITY PLANNING COMMISSION TO APPROVE THE APPLICATION FOR LOT SPLIT, SPECIAL USE PERMIT AND DEVELOPMENT PLAN REQUESTED BY THE BENEVOLENT AND PROTECTIVE ORDER OF ELKS, LODGE NO. 460 (BPOE) AND MVG DEVELOPMENT AND MORNINGSTAR SENIOR LIVING AT 1615 OLD PECOS TRAIL. (ZACHARY SHANDLER)**

A Memorandum dated June 30, 2015 for the July 8, 2015 Meeting of the Governing Body, with attachments, to Members of the Governing Body, from Zachary Shandler, Assistant City Attorney, in this case, is incorporated herewith to these minutes as Exhibit "5."

A copy of the City of Santa Fe Future Land Use Map, entered for the record by staff, is incorporated herewith to these minutes as Exhibit "6."

A power point presentation *Morning Star Senior Living Casting a new light*, entered for the record by Monica Montoya, is incorporated herewith to these minutes as Exhibit "7"

A copy of §24-17-3 Definitions, New Mexico Statutes, with attachment, submitted for the record by Karl Sommer, is incorporated herewith to these minutes as Exhibit "8"

A copy of *Appellants' Handout* in Case #2015-14, 1615 Old Pecos Trail Lot Split, Case #2015-15, 1615 Old Pecos Trail Special Use Permit and Case #2015-16, 1615 Old Pecos Trail Development Plan, entered for the record by Frank Herdman, is incorporated herewith to these minutes as Exhibit "9."

A copy of a statement for the record by Beverly Spears, entered for the record by Beverly Spears, is incorporated herewith to these minutes as Exhibit "10."

A packet of drawings and photographs from which the enlarged drawings used by Beverly Spears were prepared, entered for the record by Beverly spears, is incorporated herewith to these minutes as Exhibit "11."

A copy of the statement for the record by Joanne Birdwhistell, Ph.D., entered for the record by Joanne Birdwhistell, is incorporated herewith to these minutes as Exhibit "12."

A packet of support letters and petitions containing 550 plus signatures from Santa Feans who support the proposed MorningStar Senior Living Community at 1615 Old Pecos Trail, is incorporated herewith to these minutes as Exhibit "13."

The Affidavit of James T. Dyke, dated July 2, 2015, entered for the record by Jerry Christopher, is incorporated herewith to these minutes as Exhibit "14."

A statement for the record, dated July 8, 2015, entered for the record by Gale Kenney, is incorporated herewith to these minutes as Exhibit "15."

A copy of an email to Charles Koenig, from Edward Heighway, President, Vista Encantada Neighborhood Association, entered for the record by Phil Sena, is incorporated herewith to these minutes as Exhibit "16."

A copy of information regarding various care facilities from other states, entered for the record by Elena Benton, is incorporated herewith to these minutes as Exhibit "17."

A note to the Governing Body from Kathleen Boswell regarding vacant lots in C-1 District that she feels would be appropriate for MorningStar, is incorporated herewith to these minutes as Exhibit "18."

7 pages of a Petition against MorningStar, submitted for the record by Jan Brooks, is incorporated herewith to these minutes as Exhibit "19."

A Memorandum to Mayor Gonzales and the City Council with attached typed list of petition signatures in opposition to MorningStar, submitted for the record by Jan Brooks, is incorporated herewith to these minutes as Exhibit "20."

A Memorandum to Mayor Gonzales and the City Council with attached typed list of petition signatures in opposition to MorningStar, submitted for the record by Jan Brooks, is incorporated herewith to these minutes as Exhibit "21."

A statement for the record by Bob Walsh, President, San Mateo Area Society of Homeowners, entered for the record by Barbara Chatergy is incorporated herewith to these minutes as Exhibit "22."

A packet of *Letters of Support and 550 plus signatures in support of the proposed MorningStar Project*, entered for the record by Charlie Dalton, is incorporated herewith to these minutes as Exhibit "23."

A statement for the record by Kris Rodgers, entered for the record by Kris Rodgers, is incorporated herewith to these minutes as Exhibit "24."

A statement for the record by Gayle Kenney and John Gonsiorek, entered for the record by Gayle Kenney, is incorporated herewith to these minutes as Exhibit "25."

A statement for the record by Ann Lacy, entered for the record by Ann Lacy, is incorporated herewith to these minutes as Exhibit "26."

An information sheet entered for the record by Pat Lillis, is incorporated herewith to these minutes as Exhibit "27."

An information on a survey of 6 Elder Care Facilities, entered for the record by Pat Lillis, is incorporated herewith to these minutes as Exhibit "28."

One sheet of a Petition Against MorningStar, entered for the record by Patricia McNeil, is incorporated herewith to these minutes as Exhibit "29."

A statement for the record from the La Cieneguita del Camino Real Homeowners/Neighborhood Association, signed by Marie Campos and Hilario Romero, is incorporated herewith to these minutes as Exhibit "30."

A statement for the record by Mary Shepherd, dated July 8, 2015, submitted for the record by Mary Shepherd, is incorporated herewith to these minutes as Exhibit "31."

One sheet of a Petition against Morningstar, submitted for the record by Jane Siskin, is incorporated herewith to these minutes as Exhibit "32."

A copy of *Story of MorningStar's Application*, a review by John Stanke, submitted for the record by John Stanke, is incorporated herewith to these minutes as Exhibit "33."

General Comment by the Mayor

Mayor Gonzales said, "Before we start this case brought forward by the Southeast Neighborhood Association, I want to make a general comment tonight just as we begin to have this dialogue as a community. It is, there are a lot of people who have come in obviously supporting the SENA Neighborhood Association, there are also people here supporting for the request for new programming or new buildings on the Elks property. What I just want to ask all of you to do to reflect tonight is that we're all neighbors, we're all part of this community. And even while emotionally we may be very focused on trying to make sure our points are brought forward, I would just ask the community to, regardless of how the decision goes tonight, to keep in mind that we're all part of this community and we all care about. I would just ask as we go through this process both in people who participate in the conversation that you show respect, and then afterwards that we try and go forward and continue to be a community that has made it so special tonight. So, having said all of that, Mr. Zach, I'll let you go ahead and introduce the subject."

Presentation by Staff

The staff report was presented by Zachary Shandler, Assistant City Attorney. He said, "Let me start with the bottom line. City staff is requesting that the City Council uphold the Planning Commission's decision and adopt its Findings of Fact and Conclusions of Law." Please see Exhibit "5" for specifics of this presentation.

Mr. Shandler said, "At the end of this hearing there will be at least two options. Staff recommends a motion that reads, '*I move that the Planning Commission acted in accordance with law in reliance and substantial evidence and to dismiss the appeal in Case 2015-51, adopting the Planning Commission's Finding of Fact and Conclusions of law as their own.*' Option 2. If however, the Governing Body finds and concludes that MorningStar does not meet the definition of the Continuing Care Community under the Code or is not compatible with the surroundings, you could grant the appeal, and that motion would read, '*move to grant the appeal on grounds the Planning Commission did not act in accordance with law and did not rely on substantial evidence and therefore to deny the Special Use Permit, Lot Split and Development Plan and direct staff to prepare Findings of Fact reflecting this decision.*'

Mr. Shandler continued, "Now I anticipate many of are going to have questions for City staff, but I would like to reserve City staff Q & A for later in the evening.... I think hearing from the appealing party right away might actually focus the discussion, maybe even narrow the issues that are before you. Maybe I've misread what their issues are, what their priorities are, so I would hold off on questions to John Romero, the Traffic Engineer and Dan Esquibel until we hear the two sides make their presentation. The

two sides have been alerted they have 20-30 minutes to speak, but after the public has finished, I would like brief time to complete their legal issues for all 3 lawyers to make a brief rebuttal."

Mayor Gonzales said, "I'm going to ask the Council, in addition respecting their request to hold off on all of our questions until both parties have been able to present, is to also allow for us to allow the public to be able to offer input. I think there are many people who want to weigh-in, but may also want to leave, and then we can begin the conversation as a Governing Body after all input has been provided."

Councilor Maestas suggested cutting back the presentation time to 15 minutes, because we had a substantially long presentation at our last meeting when we heard a controversial development. He said, "I'd just as soon shorten the presentations a bit more and give more time for public comment."

Mayor Gonzales said, "There have been conversations by our legal staff and both parties leading up into tonight, and it was agreed upon and they probably came prepared to take the full amount of time to grant each party 30 minutes for both presentation and to be able to come back if they want to provide rebuttal to what the other party indicated. We kind of gave an indication to both parties to come in prepared to stay in totality at 30 minutes each and I would like to go ahead and honor what the staff has negotiated with them. But if you can be brief and not take that whole amount of time, please do so. So Yolanda's going to start the clock and when you finish she will let you know how much time you have left of your 30 minutes to come back and provide rebuttal. We're going to try and really stay strict to that. I would ask the audience as you're preparing to address the Council, we're going to grant one minute for you to be able to come up and address the Council. And to ask you that if someone has already stated what you believe to be correct, that you just go ahead and briefly say you agree and allow for others to come forward. Those are things to think about as we prepare for tonight's conversation with the community."

Public Hearing

Presentation by Appellant

All those speaking were sworn en masse

Frank Herdman, Attorney for the Appellants, 123 E. Marcy Street, said the presentation will include several speakers who will address different aspects of the appeal, and we request sufficient time to complete our presentation. It might take a tad over 30 minutes, but we believe that a matter of community interest, and we request that we be permitted the time to make our case."

Mr. Herdman said, "I would also like to respond to a procedural issue that was raised by Mr. Shandler regarding the nature of this appeal. The Code states very clearly that is an Appeal *de novo*. It involves a *de novo* public hearing. What that means are the applications are before you in the same capacity that they were before the Planning Commission. They are before you for your decision and no deference to the Planning Commission is required. Additionally, it is a *de novo* hearing, which means the public testimony is an equal part of the process, comparable and equal to the presentations made by the Appellant and the Applicant."

Mr. Herdman said you should all have a packet of materials with a green cover sheet called Appellants' Handout, and requests that packet of materials be made part of the record this evening [Exhibit "8"]. He provided copies to Mr. Sommer as well as Mr. Shandler.

Mr. Herdman presented information in this matter. Please see Exhibit "8" for specifics of this presentation.

Mr. Herdman said under City Code, Section 14-12.1, a Continuing Care Community is an allowed special use in an R-1 district. He said MorningStar does not meet the definition of a Continuing Care Community and for that reason the application must be denied. Mr. Herdman said he has included the definition of a Continuing Care Community on page 1 of the handout [Exhibit "8"], as follows, "*A continuing care community must be a residential community that provides a variety of living accommodations and differing levels of health services, and it must contain a full nursing care with beds.* The 'and' means 'and.' He said a Continuing Care Community may also include independent dwelling units for residents who are not yet in need of that level of care, as well as an extended care facility.

Mr. Herdman continued his presentation.

Mr. Herdman said, "I would like to conclude with this observation. If this project is built, then the commitment made in the General Plan to adopt development standards for this area through a public participation process will become more than just an unfulfilled commitment. It will become a broken promise that will forever affect this historic and scenic entrance into our City because this very large building will, by default, becomes the standard by which all future development in the corridor will be measured. We ask that you deny the applications and reverse the decision of the Planning Commission. Thank you."

Steven Post, 3924 Old Santa Fe Trail, Archaeologist [previously sworn], said he co-authored an archaeological and historical study of Old Pecos Trail in 1992. He said, "The characteristics that are significant to the Old Pecos Trail Scenic Corridor do not stop at St. Michaels Drive. As you travel up the road, the importance of the corridor is even greater in this gap and the City Land Development Code represents the City's unfulfilled commitment to its citizens to protect the corridor. My statement draws on Section 2.03 Environmental Protection and 2.04 Cultural and Neighborhood Preservation of the Charter amended 2014, which embody the wishes of the citizens of Santa Fe and clearly remind us of several important things. One, the natural beauty of Santa Fe, its historical heritage and its unique architectural style are among the City's most valued and important assets. In order to protect these characteristics and assets, the Governing Body shall protect, preserve and enhance the City's natural environments, plan for and regulate land use and development and manage the City's growth to promote and maintain and esthetic and humane urban environment. Two, the people of Santa Fe derive invaluable benefits from our multi-cultural heritage, the multi-ethnic and multi-racial residents who have made their homes here over the centuries have each left their unique cultural mark on our City, producing a rich blend of stories, traditions and neighborhoods. The multi-cultural heritage in neighborhoods are essential to the people of this community and public officials shall, at all times, exercise their powers with sensitivity two and in respect for those values."

Mr. Post continued, "The Old Pecos Trail embodies the essence of Sections 2.03 and 2.04. The Old Pecos Trail/Santa Fe Trail network is one of the best preserved and most important historic roads in the American Southwest. For more than 800 years, the Old Pecos Trail has been the trail road and highway traveled by all who left or entered Santa Fe from the southeast. Ancestral Puebloan people traveled the corridors. Spanish colonists, soldiers and priests traveled it. The American traders of the Santa Fe Trail traveled it. Route 66, the oldest national tourist route in the United States, follows the 1930's route of the Old Pecos Trail. Today, visitors from all over the world travel it on the way to Santa Fe's annual UNESCO recognized world class markets, festivals, and cultural and historical events."

Mr. Post continued, "The MorningStar project in its current size and design, goes against everything that Sections 2.03 and 2.04 charge the Governing Body and public officials to preserve and protect. The MorningStar project has been recommended by City staff and approved by the Planning Commission in complete contradiction to the clear guidance that the natural beauty of Santa Fe, its historical heritage and its unique architectural style are among the City's most valued and important assets."

Mr. Post continued, "It is critical to preserve the Old Pecos Trail Scenic Corridor as the entry way to the historic downtown of Santa Fe. The open landscape with its iconic views of the Sangre de Cristo and Jemez Mountains must be protect. Once our connection with a place and landscape is broken, the stories fade and the past is forgotten. MorningStar opens the door for future setting insensitive, maximum profit developments while shutting the door on the community's explicit desire to preserve their history, traditions and stories for its future multi-cultural, multi-racial and multi-ethnic generations. By approving MorningStar, the Planning Commission ignored the heritage and environmental issues embodied in our 2014 Charter amendment. It is incumbent on the Governing Body to fulfill its commitment to protect the Old Pecos Trail to its citizens by recognizing the irreparable disruption this building would represent to our centuries old corridor. Thank you."

Responding to the Mayor, Ms. Vigil said the Appellants have 10 minutes and 18 seconds left on the presentation time.

Mayor Gonzales said, "We're going to hold true to the 30 minutes, because we gave you guys lots of time to prepare for it, so please make your presentation."

Beverly Spears, Architect [previously sworn], read a statement into the record, demonstrating the site and her statement using enlarged drawings of those in Exhibit "11." Please see Exhibits "10," and "11. for specifics of this presentation.

Mayor Gonzales said we are moving right up against the 30 minutes and asked Ms. Spears to wrap up her portion.

Ms. Spears said, "The Planning Commission did not discuss whether this building was suitable for this site. They talked about LED lighting and other things, but they never discussed the critical questions. Thank you all Councilors and Mayor."

Responding to the Mayor, Ms. Vigil said the Appellants have 5 minutes and 28 seconds.

Mayor Gonzales said, "Five minutes Frank, so you can either hold off until after further rebuttal or you can keep going."

Mr. Shandler said, "We have two more speakers who I anticipate will be approximately 6 minutes."

Mayor Gonzales said that would leave no time for rebuttal.

Mr. Herdman said, "That wasn't my understanding. My understanding was that it was rebuttal in addition to the time allotted."

Mayor Gonzales said, "30 minutes total, including rebuttal, so I just want to be sure that we are fair to the terms that were agreed coming in there."

Mr. Herdman said, "The email from Mr. Shandler, in all due respect, Mr. Mayor, said 20-30 minutes together rebuttal thereafter. That's how I understood it, so we prepared a very tight 30-minute presentation, we may be 1-2 minutes over."

Mayor Gonzales said we need to move to the Public Hearing, and this will move past the 30 minutes and he wanted to make sure before we got here that you had agreed on what the total time limit was going to be. He said, "And I want you to preserve your 5 minutes if you need to, for rebuttals if you want. He asked Mr. Shandler his point of view on what he felt was clearly sent to both parties.

Mr. Shandler said, "Mr. Mayor, we did talk about the 30 minutes. I think it wasn't clear that the rebuttal was carved out of that. I would ask us to preserve the record if you gave him the 5 minutes"

Mayor Gonzales asked Mr. Herdman how much time he will need for rebuttal.

Mr. Herdman said, "I don't know until I hear everything."

Mayor Gonzales said, "That said, right now, I want you Karl to agree on how much more time that you guys will both go, so 5 additional minutes on rebuttal, for 35 minutes total, however you use it."

Mr. Sommer said, "The 5 minutes will be adequate time for rebuttal. We're not going to repeat things that have been said and we'll get right to heart of very specific issues."

Mayor Gonzales said, "So 5 minutes for rebuttal."

Mr. Herdman said he will agree.

Mayor Gonzales said, "So 5 minutes on what you have left, not 6 minutes."

JoAnn Birdwhistell, 1810 Calle de Sebastian [previously sworn], said she lives right next door to this proposed project. Ms. Birdwhistell read a prepared statement into the record. Please see Exhibit "12," for specifics of this presentation.

Ms. Birdwhistell said, "I prepared a statement that would take 5 minutes, but I understand that is not allowed, so I request to be able enter this into the record. So I will say, quickly, in order to allow time for rebuttal and for Counsel, I'm a long time teacher of Chinese History. And when I heard about the size and length of this facility, I could not help but think of the Great Wall of China. When I realized that the MorningStar will be over 300 feet long and 30 feet on Calle de Sebastian, imagine that next to your own home, especially if yours is one of the townhomes next door, one story high and 1,300 sq. ft. That is the comparison that makes this a massive, unfriendly project to the neighborhood. I ask you on behalf of the neighborhood to reject the MorningStar proposal." She thanked the Governing Body for allowing her to enter her full statement into the minutes. Ms. Birdwhistell entered the balance of her statement for the record [Exhibit "12"]. Please see Exhibit "12" for the complete text of Ms. Birdwhistell's statement.

Jerry Christopher, 2000 Ft. Union Drive [previously sworn]. Mr. Christopher said, "As the Appellant in this matter, I approve of what has been spoken before me and I thank you and hope respectfully our request will be followed."

Responding to the Mayor, Ms. Vigil said the Appellants have 3 minutes and 55 seconds.

Mayor Gonzales said Mr. Herdman can use this for rebuttal or use it to finish the presentation.

Mr. Herdman said, "We will reserve it for rebuttal. And for the record, Mr. Christopher has entered into the record the affidavit of Jim Dyke who is one of the Appellants and he was unable to make it to the hearing [Exhibit "14"]."

Mayor Gonzales asked the audience once again to refrain from applause so the hearing can continue moving forward so all of you can present to the Council, commenting that it would be appreciated greatly.

Presentation by the Appellee

All those speaking were sworn en masse

Karl Sommer, Attorney for Appellee, SENA, said, "My name is Karl Sommer, P.O. Box 2476 Santa Fe, New Mexico. I represent MorningStar here tonight along with my partner, Joseph Karnes. Tonight with me is Matt Turner who is with MorningStar, Done Rosemann, Architect, Monica Montoya, Planner for the project and she has followed the process from the beginning. We have a very short period of time. I will hit the major issues and answer any questions at the end you might have, so please bear with me if I miss something that's important, the same thing with our team."

Mr. Karl Sommer said, "I intend to, and we intend to hit some very important legal issues very quickly, and then Mr. Turner and Mr. Rosemann, will tell you what this project really is. They will give you the facts as to what the Planning Commission had and what the use will be. And you don't need a lecture from me about a *de novo* hearing, and what your authority is. You know it. And at the end of that hearing, we are confident that you are going to make and draw the same conclusions that the Planning Commission did, and that is, namely that this planned project meets and exceeds all of your requirements in the Code."

Mr. Sommer continued, "The second thing, it is needed in our community and it is in the public interest of our community and it is proposed by experienced professionals with a track record of success, commitment and excellence in this field. It is what this town needs."

Mr. Sommer continued, "Let me turn to the legal issues that are in front of you that you need to decide and they're really pretty straightforward. The first legal issue as Mr. Shandler pointed out is a definitional issue. You all can read, you can go to your definition, and you can say all right what do these words mean. The critical issue on this definition and whether or not this project meets the definition boils down to one thing and one thing only. Your Code has requirements and the question is simply does this facility, as proposed and its uses, meet your Code that you have drafted, not some vague industry standards that vary all over the world that vary from state to state. Your Code. What does it require. You get to decide that. The Appellant in this case through Mr. Herdman has said this, oh the phrase, full nursing care means one thing and one thing only. And it must mean, and I'll point it out to you. And this is why, categorically, they say you cannot have any authority to make this decision. Here is their position and it's on page 3 of their appeal. It requires a separate segregated unit with multiple beds that is devoted entirely and exclusively to the provisions of full and continuous 24 licensed nurses. Is that what your Code says. It doesn't say that at all. Mr. Herdman and the Appellant would like to put that in the Code, tie your hands and say you can't make this decision because it doesn't have that. You have the right, the power, the authority and the discretion to say whether or not a facility that has these two kinds of units that has full time nursing, that has licensed nursing services provided, and the description that Matt and Don will give you. You get to decide whether that meets your definition. I leave it up to you. That is the simple question in front of you on the definition."

Mr. Sommer continued, "They try to do this in their appeal. They say to you, oh, if your go to the State Statute, I handed out to you the State Statute they referred to related to what's called the Continuing Care Act. The Continuing Care Act is an act that deals with consumer protection. It has no application to this application at all. And I'll tell you why. If you look to the definition, it applies to facilities that provide independent living. If you fall under the act, you must provide independent living. This facility that doesn't provide independent living. Then they say, they conflate this definition by saying, it's the Continuing Care Act, it's a licensed facility there and they don't qualify. They go to the next portion of the definition and say, oh by the way, they have to have priority access to nursing and hospital facilities, therefore they must be licensed as a skilled nursing facility. That's not the case. Look at the definition on the second page of the handout for priority access to nursing facilities. That is a facility that is either close by, or within, or these people promised to provide that kind of care. It could be a hospital, it could be a nursing facility somewhere else. But essentially what the Act is, is a consumer protection act, has no application here, does not tie your hands and adds nothing to the argument. So I submit to you, we meet the definition. You have the discretion to make that determination. You will hear about the uses themselves."

Mr. Sommer continued, "I'm going to cut it fairly short and just deal with one more legal issue, actually two. The next thing that the Appellants will try to do is to say, oh, you know what these folks are. They are a personal care facility and that's a commercial facility. It's a facility. It's not where you live it's a facility and they turn to the term facility as if that's some sort of magic. Look at the definition you're dealing with. This kind of continuing care definition requires that you have congregate living. That means no kitchens, no separate independent dwellings. It must be a facility of some kind. I think that is parsing things very closely. Why is it important for the Appellants to tag us with a use that's now allowable. Because then they would say to you and have said to you, oh, you can't decide this case, because they're not that kind of facility. A personal care facility doesn't have any nursing in it, if you look at that definition it doesn't have any nursing. This facility does. It's what distinguishes it partly."

Mr. Sommer continued, "The last thing I would like to point out to you. They turned to the Old Pecos Trail Corridor Plan, and they made an argument, and this is what they said to you in their appeal, this is what they verified to you in their appeal, and I'll read to you from page 4. *'The Old Pecos Trail Scenic Corridor as shown on the future Land Use Map is actually listed as a land use classification in Section 3.5, and the General Plan mandates that any changes from the land use classification as shown on the map proposed for any parcel requires a General Plan amendment.'* The argument they made in writing to you was the Planning Commission had no authority to decide this case because a General Plan Amendment was required. They didn't make that argument to you here tonight. Why. Because it doesn't hold any water. The Land use legend has classification and uses and it has also other designations. You can your staff whether the Old Pecos Trail Scenic Corridor is a land use classification. It clearly is not for any purpose, so that argument was apparently dropped, and they've now turned to an argument that says, oh, it was a promise. You all have the law in front of you and the requirements of the law. That's what this Applicant has had to comply with."

Mr. Sommer continued, "At the end of the night we are hopeful that you, as the Planning Commission did, will find that this is compatible, compliant and is exceeding the requirements, and it's what our community needs. I'm going to turn it over to Matt to tell you, what, operationally is going to happen on this facility, and you don't have to rely on what people are saying to you that don't have anything to do with the facility. So I'll turn it over to Matt Turner. Mr. Chair, I don't know how much time I used."

Responding to the Mayor, Ms. Vigil said the Appellee has 21 minutes and 21 seconds.

Mayor Gonzales said you have 9 minutes to finish the first half so Mr. Sommer has 5 minutes left to rebut.

Responding to Mr. Sommer, Mayor Gonzales said you're going to go ahead and allocate your rebuttal time.

Mr. Sommer said yes, we will do that so they can finish the presentation.

Mr. Snyder said they have 21 minutes remaining on the first 30 minutes and they have an additional 5 minutes on top of this.

Mayor Gonzales said, "You can put the boards in front of us, and Frank and his group if they want, are welcome to come behind us and look at what you're presenting. Oh, you're going to go up here, I'm sorry about that, I thought you were coming up here."

Matt Turner, MorningStar [previously sworn], said he wants to get away from the height of buildings and technical nuance definitions and legal terms and explain what we're doing, noting there has been some confusion and misinformation has made, even in the presentations tonight, so hopefully we can clarify that, and be able to respond to any questions if there is something you feel is missing. Mr. Turner said he is one of the two principals of MorningStar, noting his partner, Ken Yeager founded the company a dozen years ago. We are based in Denver, Colorado and this is what we do, it's all we do – we develop and operated senior living communities

Matt Turner, MorningStar [previously sworn], and **Don Rosemann, Architect for the project [previously sworn]**, presented information via PowerPoint.. Please see Exhibit "7" for specifics of this presentation.

Responding to the Mayor, Ms. Vigil said the Appellee has 1 minute 53 seconds.

Responding to the Mayor, Mr. Sommer and Mr. Herdman said they want to hold their remarks until after the public hearing.

Members of the Public Speaking to the Request

*All those speaking were sworn en masse
Mayor Gonzales gave everyone 1 minute to speak to the issue*

Mayor Gonzales asked everyone to get to the point as quickly as possible. If someone has already stated a point of view that you agree to, please state your name, what that point of view was, that you agree, and that will allow us to go through this process more quickly. He said we want to hear from all of you, we just want it to be redundant.

Maria Moreno de Marquez de Chavez, 1901 Calle de Sebastian [previously sworn], said she was both and raised in Santa Fe, and she has seen the growth of Santa Fe grow to an incredible amount. These buildings being built all over without consideration with what goes into it. She said she has knowledge of the Elks Club that it uses its club for advance – graduations, weddings, voting – which produces a lot of traffic and cars and that will increase with MorningStar being there. She said Mr. Turner mentioned the major traffic corridor, it will increase traffic and jeopardize public safety.

Faith Bowie, 1901 Calle de Sebastian [previously sworn], said the upper end of Calle de Sebastian begins across the street from the Women's Club. There's a steep hill going up, cars have to step on the gas pedal to get up that hill then there's a long hill going down, and without riding their brakes their speed increases. The unmanned traffic cars used to sit at the bottom of hill to give tickets. Her residence is at the bottom of the hill. She has to back out of the garage and if there's more parking on either side, she can't see the traffic coming until she is in the traffic lane. She had a puppy killed in front of her house with a speeding car. She is a Type I brittle diabetic and move to this neighborhood so she could be close to the hospital, Physician's Plaza and close to her doctors. She has been Type 1 for 45 years with no complications.

Duncan Lanum, 801 East Zia Road [previously sworn], said he and his family have lived there for the past 50 years, and are familiar with the territory. He said in his one minute he would suggest, from a religious point of view, if you approve this facility as the Planning Commission did, you are violation the commandment that says thou shalt not steal, because you would be stealing from the neighborhood the peace and quiet when they built their homes, that should not be done. You would be stealing from the people of Santa and people such as him the beauty of the only remaining heritage gateway into the City and stealing from the meaning behind the Ordinances you have. The Planning Commission has conveniently readjusted and reinterpreted things just to get past what might otherwise be an objection. Absolutely you should turn down this project.

Gayle Kenney, 1810 Calle de Sebastian, Unit M-3, said she is respectfully requesting 3½ minutes because she is speaking on behalf of the entire town home neighborhood immediately adjacent to the facility.

Mayor Gonzales said if he does that, it will open it to everyone for 3½ minutes, and she has 1 minute and then we can allow other people from the community to speak to the issue.

Ms. Kenney asked, "Even if I am the President of the Homeowners Association."

Mayor Gonzales said Mr. Herdman will have 5 minutes to come back and do rebuttal and he can add any issues that weren't brought up, so "one minute please."

Ms. Kenney said she is the President of the DeVargas Heights Town Home Association, and she is representing all of the owners and residents in the neighborhood of 54 townhomes. She said all but one owner opposes the development, and the remaining one has no opinion either way. The proposed facility will be totally out of scale with everything around it, and would ruin the culturally sensitive Old Pecos Trail and will have a significant negative amendment on quality of life. She asked them to look at the document they just received from her, which shows the blue colored footprint of MorningStar in comparison to its surroundings. There are 54 town homes on either side of the subject site which has been here for 40 years. MorningStar is a large facility with a second story 30 times larger than the second story of the Elks Lodge and would sit higher.

Mayor Gonzales said she can pass the rest of her statement to someone from the association and they can finish her letter, saying, "I apologize, we've got to be fair to everybody."

Danyelle Scott, 1810 Calle de Sebastian, DeVargas Heights Town Homes, B2 [previously sworn], said she has lived here for 43 years, noting she belongs to the Southeast Neighborhood Association. She cares about Santa Fe and counts on Mayor Gonzales and the City Council to vote no to prevent this "MorningStar Continuing Care monster of a building from being built, and to make the only responsible decision to prevent this huge facility from being built on the proposed location which is blatantly inappropriate. She said Santa Fe works hard to protect its historic building, streets roads and proposed sites. She said, "I ask of you please, use your important position to protect the only historic route into the City which includes where the Old Pecos Trail and Calle de Sebastian meet. It was originally designed as a scenic corridor into our historic City and I ask you to recognize and continue to protect this forethought and design. Thank you very much."

Elaine Pinkerton Coleman, 899 E. Zia Road [previously sworn], said she lives about a mile from the proposed MorningStar center. She cares about Santa Fe, and we need growth and development, but we don't need it on the entrance into the scenic corridor. She said tourism is our life blood, and to put this on the unspoiled and loveliest entrance into town makes as much as putting a McDonald's on the Plaza. She asked the Governing Body to think deeply and carefully about the entrance to Santa Fe, the first impression, and to quote Ms. Spears, "Please protect our Santa Fe Trail entrance, understanding that our most precious resource in Santa Fe is the authenticity, character and culture we have created and nurtured over the centuries."

Mayor Gonzales said, "To the individual from the DeVargas Town Home Association, I just wanted you to know that the rest of your statement will be entered into the record if you could please give it to the Clark."

James Satzinger, 1801 Camino Cruz Blanca, Architect [previously sworn], said he has been living and working here since 1981. In 1986, along with his partner, Neil Carter, he designed the Quail Run Project, and they are proud of what they did there. They preserved as many pinons as possible, kept a large common area setback around the project and it speaks well for the neighborhood. In contrast, this proposal has a floor area ratio of almost 50%, meaning the building is almost 50% of the size of the lot. In R-1 Zoning, the average is 10%, meaning 4,000 sq. ft. on a 42,000 sq. foot property. The remainder of the site is a sea of asphalt and retention ponds. There has been no effort to put parking underground, to save more trees or to put the storm drainage underground. "I think this is a really bad project."

Hilario Romero, 1561 La Cieneguita del Camino Real [previously sworn], said he is here on behalf of the La Cieneguita del Camino Real Neighborhood Association, noting he is Vice-President, and they are in support of SENA, noting they are being handed a letter from him and the President of the Association regarding this project. They are totally against the project. He said one of the first question the Assistant City Attorney asked is, "What is too big." He said what is too big is 73,500 sq. ft. in a Rural Mountain R-1. We need to respect our zoning laws. A building that dwarfs everything else in the area is out of character. It is 85 units, high density, 104 beds. He said Santa Fe is one of the leading tourist destinations in the United States is because people like himself, 40 years ago as an archivist and as the State Historian were working to preserve the City, and asked the City to do a senior survey in this matter.

Anna Hansen, 2008 Kiva Road [previously sworn], said she is concerned, and asked if Santa Fe wants to become Albuquerque, and if we want to change the character of our community. She said we need to respect the last historic entrance we have to Santa Fe. We have already put a WalMart at the entrance on Cerrillos, and St. Francis looks like Albuquerque's northeast heights, reiterating that Old Pecos Trail is our last historic entrance and we need to oppose it. She said, "Please oppose this project." She is also concerned about the landscaping and the destruction of old pinons. She is concerned about the Night Sky Ordinance and how they will protect the neighbors from the light from this facility.

Cathy Valdes, 1810 B1 Calle de Sebastian [previously sworn], said she lives in the Town Houses, noting she is a 1964 graduate of Santa Fe High. Her concern about the project is the negative impact this project will have on her property values, noting she inherited the unit from her parents and, her son, who is a 16th generation Santa Fean, will inherit it from her. She hates to see it diminished because of this project.

Lauren Oliver, 1917 Conejo Drive [previously sworn], said she made a piece of art, and it says there's no left turn out of the facility and you have to turn right. That means you and everybody else will be turning right on Calle de Sebastian – employees, delivery trucks, ambulances, service vans, visitors and residents. This is a street without stop signs, and people back out of their driveways. There are lots of hazardous intersections and unprotected left turns. This is a terrible problem in talking about 24/7 ambulances. She said she is asking that you say no to this project.

John Penn LaFarge, 647 Old Santa Fe Trail [previously sworn], said he is representing the Historic Neighborhood Association, Santa Fe's oldest neighborhood which opposes this Special Use Permit and worries about the integrity of the neighborhood being damaged by this intense development. He currently is president of the Old Santa Fe Association which has concerns about the intensity of the development, not its use, and its potential damage to the integrity of the neighborhoods. He said the City talks about caring about the integrity of the neighborhoods and what they want, commenting they showed this to the Governing Body two weeks ago when you opposed the El Rio development. The Historic Neighborhood Association and the Old Santa Fe Associations would ask you to show that kind of concern for this neighborhood as well. This use is too intense and too large and will damage the integrity of this neighborhood, please vote against it.

Dustin Garber, 1921 Conejo Drive [previously sworn], said he is here to speak against MorningStar and agrees with the last two speakers. He grew up in the neighborhood and his grandmother lives in the neighborhood. The project is excessively large for the neighborhood, and there is no respect for the people who live there.

James Mokres 27 Old Galisteo Way [previously sworn], said the developers have tried to wrap the project in residential living, but they are is here to make a profit and he doesn't believe a residential area should be used for out-of-state profit.

Katherine Kagel, 2005 Valle Vista St. [previously sworn], and thanked the Governing Body for its decision on the El Rio project. She said it is the same situation and we are being asked to accept a commercial development that is enormous in a residential area.

Haila Harvey, 2152 Calle de Sebastian [previously sworn], said she opposes the MorningStar development because the 73,000 sq. foot bldg will damage the neighborhood, its character, and the safety and beauty of the neighborhood and the Old Pecos Trail corridor. She asked the Governing Body to agree with *The New Mexican* to deny MorningStar this variance.

Herb Cohen, 1907 Calle de Sebastian [previously sworn], said he spent 4 years on the Urban Policy Board, studying issues so it continue to be the great place. The neighborhoods should be enhanced when possible, and the City' shouldn't make decision to bring change in the negative unless absolutely necessary and this project isn't necessary to the City.

Craig Hoopes, 2208 Ft. Union, Architect [previously sworn], said the danger is the precedent it sets for the rest of the Old Pecos Trail and the deterioration of the corridor will be significant. The building is the size of a medium WalMart, and asked them to imagine a Walmart next to their home.

Former Councilor Ouida MacGregor, 2319 Calle Camarico [previously sworn], said she was a City Councilor 34 years ago, and the Highway Depart notified them they were building a 4 lane highway all the way from I-25 to the capitol building. They worked to get a compromise people could live with. She said the Governing Body promised we would do a Corridor Plan, we would honor it, and Old Santa Fe Trail would be saved as the entrance to the City. She asked this Governing Body to help keep the promise they made as a Council then, and keep that promise into the future.

Mike Pitel, 2301 Brother Luke Place [previously sworn], worked for the State Tourism Office and brought hundreds of travel writers and TV crews into and through the City and the preferred approach is the Old Pecos Trail because there was so little development. In 1989, the City hired him to identify remnants of the historic Old Santa Fe Trail two years after the Congress approved. In early, 1990, the Old Santa Fe Trail earned a national historic byway, and in both cases it had a scenic and historic viewshed. This development would impinge on that. He asked the Governing Body to vote no on this project. He said let MorningStar look at other sites, and this Council not vote in favor of any commercial development on the east side of Old Pecos Trail from the Old Las Vegas Highway up to the Y.

Kenny Pin, 1810 Calle de Sebastian [previously sworn], said he is in opposition to MorningStar. He said with the recent defeat of El Rio project and the decision pending on MorningStar you are seeing large developments on parcels that are out of scale for the neighborhood. He said the 1999 Future General Plan is outdated and the City demographics have changed since 1999, and the plan needs an update. He said neighborhoods are waiting to work with the City to address growth, development and standards, and most would agree that infill is better than sprawl. Is the infill to be done in R-1 neighborhoods or in appropriate scaled areas. R-1 neighborhoods are found throughout the City in every Council District.

Pat Lillis, 2119 Conejo Drive [previously sworn], said she provided 3 handouts. She said at the January 22nd ENN she asked Matt Turner if MorningStar would have a nursing unit and he said no. She is here to say it is a personal care facility for the elderly. She has surveyed the 6 private pay facilities in Santa Fe and only one that is a continuing care community is El Castillo. The others are personal care facilities for the elderly.

Troy LaVata, 620 Calle de Valdez [previously sworn], said he moved to the neighborhood 2 years ago, and he and other residents are the future of Santa Fe with children in the neighborhood, and said he moved there for what the neighborhood offered. He thinks what MorningStar is trying to do is offensive to the neighborhood where he and his pregnant wife hope to raise their child. He moved from Albuquerque to Santa Fe because of what Santa Fe offers. He doesn't want to see Santa Fe destroyed. If you do this project you destroy that.

Kathryn Schepps, 7 Calle de Valle [previously sworn], said she opposes this project for a number of reasons that have been stated.

Barbara Chatergy, 228 Alta Vista Street [previously sworn], presented the statement of Bob Walsh, in support of the appeal by the Southeast Neighborhood Association. Please see Exhibit "22" for the text of Mr. Walsh's statement. She said there is noise associated with backup generators for power at the site, and she would urge you to raise that question with the architect to make sure it is covered.

Gary Ebersole, 1850 Palacio Lane [previously sworn], said they just built a new home behind the Baptist Church which is huge, and has bright lights in the parking lot. They knew this when they built. He said if you approve, we will have the same conversation when the Women's Club runs into financial difficulties and wants to subdivide, and fears it will set precedent. He said this is a slippery slope problem and would like the Council to think about that.

Robert Darmitzel, 2101 Calle Sebastian [previously sworn], said he grew up in Santa Fe and graduated from Santa Fe High in 1971, and is 61 years old. He said MorningStar is not allowed in R-1 and shouldn't have been granted a Special Use Permit. He said the loophole eliminates rezoning requirements, puts a development on a fast track and results in spot zoning. He said why have a Master Plan and zoning ordinances whatsoever.

Jorge Bernal, [previously sworn], Architect, commended the architects on the work done on MorningStar, but said they have the wrong site. He said it could be on St. Michael's where it is more commercial. He urged the Governing Body to vote against the approval.

Rick Martinez, 725 Mesilla Road [previously sworn], said he represents the Neighborhood Network and applauds the neighborhood for bringing appeal, because this is a Special Use that is going to happen City-wide. He said this project should be a rezoning not a special use. This is a new trick by the developers of "bait and switch" to move projects like this to every neighborhood in town. This sets a bad precedent for zoning around neighborhood. Please deny this, and let them come back as a rezoning, not as a special use permit.

Kathleen Boswell, 157 E. Lupita Road [previously sworn], said she lives exactly one block away from the proposed development. She is in a Historic Review District and nobody has talked about this tonight. It is one block from the Historic Review District, and they pay a lot of attention to their Historic District, and she would like the Council to remember this is the gateway to the Historic District. The zoning code says the purpose of R-1 zoning, where the property is, is to be residential areas of low population density.

Mark Gruber, 1810 Calle de Sebastian [previously sworn], said he lives in the town houses that are directly affected by this proposal. He and his family have lived off Calle de Sebastian for 41 years, noting his parents were original owners. He is strongly opposed to a development of size and nature in the R-1 residential area. He said, "Be careful as Yogi Berra would have said about opening a box of Pandoras. Once you allow one commercial development, others will come forward asking for the same variance. He strongly opposes this development and asked the Governing Body to do the same.

Ronald Alessak, 1896 Lorca Drive #95 [previously sworn], said he is a resident of District and proud member of the Elks Lodge he is in support of the facility. He said the multiplier effect of the size and nature of this development in the community employment sphere. They will employ several hundred highly skilled, and highly paid people. Other community members are going to be needed and the economic impact of this is going to be very important. He hopes you will respect the approval granted by the City Planning Commission.

Philip Sena, 1623 Camino de la Canada [previously sworn], said he is a 4th generation Santa Fean, and he has 40 years experience, and just finished helping master plan the largest development in Santa Fe, with a continuation of Jaguar with a privately funded interchange everybody is going to enjoy and we need to share. We need development, we need jobs and we need to protect our elderly, support our veterans. This is one of the best infill developments that he has seen in many years. He said he strongly asks for your support for all of Santa Fe, not just a limited few.

Cynthia Blackwell, 2005 Calle Sebastian [previously sworn], said since this is a judicial proceeding, she would ask that for a moment you take off your political hat and put on a judicial robe. She thinks by doing that the answer will be clear and you'll be free from having to be for or against the neighborhoods, the developer, the Elks Club. It is your responsibility to apply the law to this issue and asked that they consider both City and State law. When the City Code lacks definition you look to the State law to fill that gap. The record shows the Planning Commission did not review the lack of definition of *carte blanche* to basically say, ah, close enough which is fine in horseshoes, but doesn't rise to the test to interpret law. MorningStar doesn't meet requirements as a continuing care community or to obtain a permit. She asked the Governing Body not to approve this request.

Kenneth Hargis, 2150 Calle Sebastian [previously sworn], said his family have lived at this address since 1976. He supports the project if it were to be built at a location that doesn't require a variance from zoning or a Special Use Permit. It is so massive it is out of scale with the neighborhood. He urged that they deny MorningStar's project at this location, and they can build elsewhere which doesn't require a variance.

Rudy Blea, 2000 Calle de Sebastian [previously sworn], said he is 4th Generation Santa Fean. He said the facility is too big for the proposed location. The question is the need for reasonable health care for the low income and uninsured in Santa Fe. The environment on Calle de Sebastian is a protected environment and we need to preserve it for the residents. The facility will have a severe impact on the neighborhood. If it is approved, he will invite you to his back yard for a barbecue and we can see all the light from this facility that will destroy the evening twilight they experience. He asked their support in opposition to the facility at this location.

Kris Rodgers, 1810 Calle de Sebastian A-2 [previously sworn], noted she provided two handouts for distribution. Ms. Rodgers read her statement for the record in opposition to Morning Star. Please see Exhibit "24," for the text of Ms. Rodgers' statement.

Daran Moon, 2416 Camino Agua Azul [previously sworn], said is continuing the testimony from the DeVargas Heights Town House Association in opposition to the project. Please see Exhibit "25" for the text of the presentation. She is a member of another fraternal organization and they thought outside the box to survive, commenting her heart goes out to the Elks.

Jerry Wellman, 609 Calle Leon [previously sworn], said the industrial scale of the project will have an immediate irreversible destructive impact on the surrounding neighborhood. It lacks buffering and disregards its neighbors. At \$5,000 to \$6,000 per month this facility isn't for the neighbors he knows. He hopes you vote no.

Miranda Viscoli, 3869 Old Santa Fe Trail [previously sworn], said she is a 3rd generation Santa Fe native and her family has live in the area for decades. MorningStar is another absurd development threatening the City and open space and our land. She has volunteered and work in assisted living centers as well as serving on the Advisory of the Jewish Community Centers Elderly Divisions in Los Angeles, and she doesn't condone this development. She has read a lot of complaints about MorningStar's management and care. It is a huge red flag that they will have an insufficient nursing staff. The idea that this out-of-state company is considering building in this are demonstrates they have little concern or care for the people of Santa Fe, our unique history to the land and our need for open space. This will erode any trust that people have in buying real estate in Santa, her concern for many years.

Steve Libscomb, 3869 Old Santa Fe Trail [previously sworn], said he is the spouse of Miranda Viscoli. He is impressed by this City and what you do every day. It's great that people show up late at night. He said when you break it down, this is one of those things that makes a city just a little bit like everybody else.

John Stanke, 508 Calle de Leon [previously sworn], the issue is whether the proposed facility meets the City Code requirements. MorningStar represents the facility as a continuing care community in its application because it is required by Code. He does not think MorningStar has the skilled nursing care required, noting none of the 18 MorningStar facilities have skilled nursing care facilities. He asked the Governing Body to live by the Code and disapprove MorningStar.

Charlie Goodman, 1801 Calle de Sebastian [previously sworn], said this is "ground zero" for this project. He maintains the medians along Old Pecos Trail to St. Michael's. He isn't happy about the project. It is important to him, as business man, if he met all the requirements, he would expect the project would be approved, irrespective of everything else going on. He doesn't like it, but he would like to see you address the issue of the special use permit and if they've met that requirement.

Frank Gibbons, 2118 Plazuela Vista [previously sworn], said he lives in a housing development off Old Pecos Trail. He urged the Council to vote against the project. He is not opposed to the project, but he is opposed to the location. He said MorningStar isn't a continuing medical facility. He has been involved in getting two of his relatives placed in assisted living facilities. In both cases he was told that if they ever need skilled nursing care, such as feeding tubes, or on a respirator, they can't meet the requirements and he would have to move them to a skilled nursing unit, which in his opinion is not offered by MorningStar.

Dave Fitzgerald, 1908 Camino Cuarto [previously sworn], said he is the Exalted Ruler and CEO of the Elks Lodge, and following in the footsteps of what previous leaders have done for 116 years. He said organizing a governing committee is a team sport. He put together one of the best teams in the country two years and they have faced many economic challenges. They searched for different ways to handle this. They have been approached by many entities interested in purchasing all or a portion of their land for different venues. They looked at each offer and found MorningStar to be the exceptional offer which has been transparent, men of their word and gone above and beyond what they've been asked for in the last year.

Retired Justice Patricio Serna, 2321 Brother Abdon Way [previously sworn], said he has been a member of the Elks for 37 years. The Elks were instituted in 1899, 13 years before statehood for 116 years of service to the community. He supports the Planning Commission's decision as supported by the evidence and the law.

Jim Trujillo, 1901 Morris Place, State Representative District 45 [previously sworn], said he is in support of MorningStar, commenting there is a need for nursing homes and senior care. He has fought for seniors in his service at the Legislature, noting he serves on the Board of the North Central Economic Development which does funding for senior services throughout the state. There will more need for nursing homes of all types, and they have to be located throughout the City. Our senior population is going to double in the next 10 years, so we will need more facilities, commenting there no longer are the large families to take care of their parents. He served on the City/County Planning Commission 1969-1975 and he voted for the extension of St. Francis Drive with the condition it remain a residential area. Look what's happened to it.

Kathleen Fernandez, 2721 La Silla Dorada [previously sworn], said she has been a pharmacist in Santa Fe for 18 years. She sees challenges in her family life as well as those in the general population. Her brother has been in a facility in Santa Fe since 1990. If that hadn't happened, it would have been difficult for her and her mother to visit and spend time with him. Santa Fe has a large elderly population, born and raised here and want to stay here. This facility will give them an option. She supports the MorningStar project.

Former Mayor Larry Delgado, 2396 Camino Corto [previously sworn], gave the same history of Old Pecos Trail as that of Ouida MacGregor, talking about many projects with a lot of opposition which were approved by the City Council. He said this project has been found in compliance all down the line – Planning Commission and staff. He said it is 5 minutes away from a major medical facility. He asked that they approve this project which totally is in compliance.

Monica Steensma, 627 Calle de Valdez [previously sworn], said they live off Calle de Sebastian. She said our community is unanimously opposed to this project, but does not in concept object to senior housing or assisted living facilities in Santa Fe. They object to a location and an outsized facility which will dwarf everything around it. This is a commercial, for-profit enterprise and for the financial benefit of its developers which is fine, but the location is not. We are not unsympathetic to the unmet financial needs of the Elks Club. There are other solutions and other ways the property could be subdivided into single family homesites which would be much more compatible with the neighborhoods and solve all of our problems.

Philip Crump, 1897 Conejo Drive [previously sworn], a former member of the Urban Policy Committee of the Planning Commission. He said Santa Fe desperately needs the vitality and service offered by the members of the Elks Lodge, but not at the expense of the community. He asked that they keep the promise made to our community that Old Pecos Trail Corridor will be protected and any land zoned residential will be granted special exception, only when the proposed use is compatible and in scale with the neighborhood. He asked, "Please do not break this promise. Reject the Planning Commission's approval."

Will Hobbs, 2116 Calle de Sebastian [previously sworn], said he has lived most of the last 31 years in Santa Fe and he has enjoyed living at 2116 Calle de Sebastian for 9 years. MorningStar is trying to squeeze its project into this neighborhood by hoodwinking the Planning Commission into statements that aren't supported by honest information. There is no information that the City required due diligence by MorningStar except we've seen and heard, the adverse cultural, safety and environmental intrusions on the property. MorningStar's self evaluation is self serving. The Planning Commission accepted MorningStar's statements at face value not knowing how true they are.

Dan Clint, 1843 Arroyo Chamiso [previously sworn], said he is a near neighbor and welcomes these people. He is friendly and thinks Santa Fe is friendly and he is behind this project.

Teresa Clint, 1843 Arroyo Chamiso [previously sworn], said she supports MorningStar and thinks they've done a good job and it will be good for Santa Fe. She lives near there and will be driving by and doesn't think it will be a blight on the landscape and thinks we need it. They have family members in assisted living and knows it will be a good thing for Santa Fe.

Bob Clifford, 616 Galisteo [previously sworn], said he has served as a funeral service practitioner in Santa for about 35 years. He is now an operating partner in one of the upcoming funeral companies in Santa Fe. He said we are contacted more often lately by families to transfer their loved ones from a facility such as this out of Albuquerque, which tells him there aren't enough beds of this type in Santa Fe. We are aging population and we will need more of these facilities, and each of in this room will need an end of life bed. He urges approval of the application.

Former Councilor Karen Heldmeyer, 325 E. Berger [previously sworn], said both lawyers have talked to you about your duty in this case, and your duty is to decide whether a special use permit should be granted, which is a two-prong test. Prong one is does it meet the letter of the law and you've heard arguments on both sides. Secondly, and more importantly is it compatible with the existing neighborhood

in use, scale and design. This is a Council decision. At the Planning Commission, staff was asked if it was incompatible, and they answered incorrectly. They said well in Code there's a special use permit so it must be incompatible. "That's absolutely incorrect." She gave the example of a grocery which is a special use permit in R-1, in the Code for things like Johnny's Cash. WalMart has something called the neighborhood grocery which is 40,000 sq. ft. Just because that word is in the Code doesn't mean the specific use is compatible. That's what you need to think about.

Former District Judge Steven Pfeffer, 1922 Fort Union Drive [previously sworn], said before the Planning Commission, a number of members of the Elks Club got up and spoke about their good works. He expects we will hear that this evening. While the community appreciates their good works, it's irrelevant to the issue tonight. The representative of MorningStar talks about meeting the terms of the neighborhood, but they have not met that, because it is a matter of compatibility and they can never meet that.

Richard Barela, 3 Paseo Aguila [previously sworn], said he is an Elks member and is speaking in favor of the Club's application. Your approval will allow the Elks to serve and continue as a valuable contributor to the family functions and fabric of the social gatherings we have all enjoyed – graduations, weddings, anniversaries, funeral receptions and family dinners. It has served Santa Fe in this role since the 1930's when it was on Lincoln. Your approval is necessary for the Elks Club to survive financially and continue serving Santa Fe citizens and its members and family functions. If you don't approve it, will mean the ends of the Elks Club. This project is for quiet seniors and won't disrupt the neighborhood.

Joe Trujillo, 30 Reata Road [previously sworn], said he grew up at the end of West San Francisco on Fiesta Street. He said they saw a lot of encroachment into their neighborhood, Casa Solana came in and destroyed our playgrounds. The DeVargas Mall came in and later St. Francis, and so on. The trails where we once rode our bicycles also are gone because of encroachment. The health of a community depends on growth and development, you can't stop it. He said emotions are high here tonight and his heart goes out to them, but ultimately the decision has to be based on the Land Use Code. This project is in full compliance, and asked their favorable consideration.

Thomas Van Hesse , 05 View Haven [previously sworn], said you've heard about the 166 years of the Elk's Lodge. He said the City has a current deficit of more than \$2 million, and this project would contribute \$456,459 in construction and GRTs, and 115 direct construction jobs, and construction will generate \$1 million in taxes and fees. On April 2nd, two Commissioners hit home, one saying, 'We can't stay where are Santa Fe, I urge everyone to consider the greater good of the City, so I want you to know I'm voting on behalf of all of Santa Fe.' That person voted yes on all 3 proposals. Another Commissioner said, 'Change is going to happen. When you look at a development and someone doesn't want it in the neighborhood, where else is it going to be. In someone's neighborhood that doesn't want it as well.'

John Rehders, 27 Tano Road [previously sworn], said he is here to speak in support of the project. He thinks the architect and developer has done an excellent job of tucking a large building down into a space to create minimal impact on sight lines and views of the neighborhood. He think it's a much needed project. He supports it and "I ask for your support."

Robert Ochoa, 2315 Callejon Hermosa [previously sworn], long-time member of the Elks Club, and he is in total support of the project because it will help the taxes in the City. Additionally, we do need some more support for the seniors. He said we talk about protecting the Old Pecos Trail corridor, but the first things the tourists see coming off I-25 is a gated community on the right hand side and further down another gated community, and questions how that protects the corridor. He said, "I support this, we need it, I urge the City Council to vote for it. Everything is in compliance."

Gregory Hunt, Treasurer, Elks Club [previously sworn], said he came here 50 years ago when he was 17 years old. The first thing he heard was there's no water, we can't build. There were no businesses, we had no jobs. We still have the problem. We have a lot of water, but we still need clean jobs, and this is a perfect element for clean jobs. We need this. He said we have 3 kids, one has left the State, and our kids are leaving Santa Fe because there's no jobs. He said, "I support this, please vote for it."

Sherry Ortega, 7 Red Hills Lane [previously sworn]. Ms. Ortega read a brief statement into the record from Edward Heighway, President, Vista Encantada Neighborhood Association. Ms. Ortega said she cares for her elderly mother and her husband has had special needs for 28 years of the 30 years they have been married. She is passionate about this, and would support this approval if she ever has to make the decision to find them somewhere to live.

Charlie Dalton, Secretary, Elks Club [previously sworn], said all of their contributions are member generated, and last year they raised and distributed more than \$15,000 in charities, noting they have distributed \$5,000 in the first quarter to Bienvenidos, St. John's Kitchen, Kitchen Angels, Girls, Inc which are some of the groups they deal with and to which they contribute. The Elks Lodge wishes to continue to our community. He said, "We are a humble organization and although we aren't recognized for our work, we don't seek accolades." He said they want to continue their work, and the MorningStar project, which is in full compliance, is an avenue for the Elks to continue doing it. We respectfully request that you approve this so we as Elks can continue to serve our community."

John Bemis, 2119 Conejo Drive [previously sworn], former Secretary, NM Energy, Minerals and Natural Resources Department, said he is amazed the City's Land Use Department had allowed the project to get as far as it has. He said he has two questions: where is the nursing unit located. Is it on the first floor or the second floor. How many beds are in the unit. If you can't answer those questions right now, he thinks you should be concerned about. The City Code is clear and it uses plain language, "*Congregate housing which is defined in the Codes and which means in addition to a full care nursing unit with beds.*" He said this means everything nursing can give you. Skilled nursing, continuous nursing, rehabilitation care. That's simple language. And a unit with beds, that is a separate facility. It's plain and simple. He said, "I hate to borrow from Johnnie Cochran in the O.J. Simpson trial, but if the definition don't fit, you can't permit."

Leroy Ramirez, 509 Calle de Valdes, DeVargas Heights [previously sworn], said he has lived in DeVargas Heights for 38 years and has been a member of the Elks Lodge for 46 years, noting he is on the Board of Trustees. He said he grew up on South Capitol, and has seen a lot of changes in Santa Fe. He said neighborhoods should be willing to undergo change for the benefit and needs of the entire

community of Santa Fe. The assisted living and memory care facility is needed, it's close to the hospital and doctors offices. "I ask that you approve it."

Bob Morgart, 1810 Calle de Sebastian [previously sworn], in DeVargas Heights community. He has been hearing about jobs and more jobs and he has a lot to say about economics, because that's what he does, but he's just going to talk about the job. He said there are probably two good jobs in this project, and you would be hard pressed to call the rest of them good jobs. He said, "My question is – will there still be construction jobs and all those other jobs if MorningStar goes to another area that doesn't wreck and disrupt a community. They'll still be there. They can find another place. Thank you."

Nina Mastrangelo, 609 Calle de Leon [previously sworn], said she knows how important it is to listen to the neighbors having served on the Bicycle and Trail Advisory Committee for 6 years. She attended a lot of meetings and listen to a lot of neighbors, and it's important to hear them. She said the Elks want to make a profit and we've heard from a lot of Elks, and with the exception of MorningStar, those are the only ones she's heard talk positively about this project. There are other ways the Elks can make money. There are multi-million dollar homes going into the Museum Hill Estates, so they have a lot of opportunities. She said MorningStar tells us this project won't bother the neighbors, but the neighbors have told you they're going to be bothered by it – lights, noise, smells, increased possibly dangerous traffic. You are changing the neighborhood. You are allowed, but not required, to alter the zoning and this request for alteration of zoning is questionable and you have to listen to that. This project will change the neighborhood and it will change the attractive drive into Santa Fe.

Mayor Gonzales cautioned that people should respect others who are speaking, and if not, then those who are disrupting will be removed.

Mary Shepherd, 140 E. Lupita Road [previously sworn], said more than half the population of the State is eligible for medicaid based on income, or medicare based on age. The proposed MorningStar facility will not accept medicaid or medicare payment and will not be financially accessible to the majority of the people of Santa Fe. She said what Santa Fe needs are more senior care patient facilities that accept medicare and medicaid payments.

Elena Benton, 2225 Calle Alvarado [previously sworn], said she is on ACSYL the oldest and largest neighborhood association in southeast, encompassing from St. Francis to beyond Old Pecos Trail and from Rodeo Road to the hospital on St. Michaels Drive. She said they stand with SENA in opposition to this project, based on its size how it doesn't fit in the neighborhood. All other projects along Old Pecos Trail have made a sizeable effort to fit in, to push back from Old Pecos and to have a low impact in a low density area. She said she did research on MorningStar is of the 18 sites listed on the website, are either on 6 lane or 4 lane highways. The only exception is on two lanes, and it has only *[inaudible]* of memory care. There are 6 specific sites that parallel to what is being built, and 3 of them are on 6 lanes and 3 are on 4 lanes. She recommends low density here.

Ricardo Borrego, 3401 W. Alameda [previously sworn], is a lifelong resident of Santa Fe and is in favor of the MorningStar project. He said regarding the cost, you need to approve this and other similar projects and the supply and demand will drive the cost down to those who stay there. He said 2 of his 3 children had to leave Santa Fe to find good paying job. He is in favor of any clean industry that would create more jobs so more of our young people can stay here and the whole City doesn't turn into a retirement community. He has seen a lot of development in Santa Fe, some of which he didn't like such as the Siler Road extension that ended up a few feet from his driveway, but it was good for the entire community, and it's something we have to bear with and realize it's for the greater good.

Peggy Bowen, 2153 Calle Sebastian [previously sworn], said she was general counsel for Regulation and Licensing, and the attorney for the Construction Industries Division. She said Mr. Sommer said we shouldn't be paying attention to some vague industry standard. She said under the Building Code, people in assisted living are mobile and can be removed by firemen through the waist-high windows. And under the Building Code more fire protection is required for nursing care facility. The idea is because of the extra fire protections you will be able to shelter people in place who are actually in nursing beds. She urged to reject the proposal and allow MorningStar to find another site.

David Fresquez, 7046 Valentine Loop [previously sworn], said he a long time resident who just bought a house here. He said MorningStar wants to come to Santa Fe because we've got the best community and the best seniors in America. However, he feels they are missing the boat, because the national trend is toward smaller, residential homes for seniors that look like a Santa Fe house – 15 bed residential houses/homes, not facilities. What they propose won't work in Santa Fe. People don't want to be in those types of places. The ratios are far too high and the smaller residential home, the trend is for open kitchens where they can into their home and cook.

Ann Lacy, 81 Old Agua Fria Road [previously sworn], read a statement for the record in opposition to the project. Please see Exhibit "26" for the text of Ms. Lacy's statement.

Mary Schruben, 2119 Rancho Siringo Road [previously sworn], said last Thursday at Planning Commission meeting, they heard from the CEO of the Christus Corporation, that they want to build a new two-story wing on St. Michael's drive and eventually add two more stories to that and other parts of the hospital, and they intend to consolidate all skilled nursing and in-patient care from all existing regional providers into their facility. She asked what happens when the MorningStar operation fails financial. What happens to the special use permit. Can the next owner redevelop into a hotel, vacation rentals, business offices, retail arts and crafts, mental health center – what guarantees can the Council give to the neighborhoods and the rest of the City that will protect against this type of development creep. What we have here are competing senior health care proposals. This development chose the wrong location and it is too large in scale for the lot in a hilly area.

Robert Anaya, 46 Avenida Vieja, Galisteo, NM [previously sworn], said he lives at 6 Douglas, Stanley, and thanks the Council for the opportunity to speak. He said he supports the Planning Commission and its decision, and thanked the Mayor and Council for their work.

Charley Koenig, 601 Calle de Marcos [previously sworn], said he is at "ground zero" along with Charlie Goodman. He said Karen Heldmeyer talked about compatible with, and he wants to talk about adaptable to. He spoke about what could happen if MorningStar fails, and the City now has a vacant building and has received a development application to turn it into a hotel, which is the only viable purpose for a building with 84 single rooms. The site lacks adequate parking, so the hotel chain buys the Elks property for parking and a swimming pool. The City rezones and allow the hotel use.

Tresa Vorenberg, 11 Old Pecos Lane [previously sworn], said she is a second generation New Mexico, noting her grandfather was one of the drafters of the New Mexico Constitution, noting her father born in 1907 in Wagon Mound. She moved away after college, but came back to care for her parents before they passed in a City they lived dearly. She asked the Governing Body to honor the residents of Santa Fe and MorningStar, noting MorningStar would be a great addition to our economy in another location. She asked them to honor the beauty, character and sacredness of Santa Fe by leaving the corridor as is, and invite MorningStar to relocate here in Santa Fe in a more appropriate commercial place.

Stefanie Beninato, PO. Box 1601, Santa Fe, 87504 [previously sworn], said she would urge as Judge Pfeffer did, that you don't look at the good deeds of the Elks or their financial needs. You are looking at two questions: Does this facility meet the Code in terms of what it is providing and if it is compatible with the neighborhood. She thinks a 73,000 sq. ft. building isn't compatible with the area. You have to be careful, citing El Castillo which kept expanding and expanding, and then they took over Historic Valdez House.

Jan Brooks, 811 Camino Acoma [previously sworn], said she is with the Coalition to Save Old Pecos Trail. She is submitting for the record and additional 831 signatures on a petition against Morning Star and another 81 hard copy petitions to add to those in your packet [Exhibits #19, #20 and #21]. She said this projects represents the opportunity to kill the golden goose that laid the golden egg. This weekend the town will be full because of the International Folk Art Market will get her via Old Pecos Trail, and go to the Museum Hill district from Zia, Calle Sebastian, Camino Corrales all the way to Cordova, which are entrances and portals to one of our most important cultural districts, and most viable. This is the future of the economic development of the City. She we have to think about jobs.

Lloyd Kreitz, 2154 Calle de Sebastian [previously sworn], said he has thinking about this situation. Here we are at a meeting when an organization that owned residential property decided to sell it, but he doesn't think we expected all of this. He said the Elks have said they would benefit from selling the property, but not as residential property. MorningStar will benefit with another location for its financial enterprises.

Mark Sarnowski, 2225 Calle Alvarado [previously sworn], said when he was a student in High School in Chicago, his History class was taught by a Priest about the American democratic process and the importance of the word **vox populi**, the voice of the people, and how important it is in government to make decisions. You have heard an overwhelming voice against MorningStar, and he would like to reiterate it as a board member for ACSYL. He asked the Governing Body to weigh the **vox populi** just as you do the economic consequences.

Ralph Ortiz, 3012 Governor Lindsey Road [previously sworn], said he owns Desert Tees and Sports and Ortiz Printing shop. They have been in business since 1928, and he has been in business for 42 years and a member of the Elks Lodge for 37 years. He is a native Santa Fean, attended Santa Fe High and graduated in 1962, noting City Hall is located at the old site of Santa Fe High. He graduated from the College of Santa Fe in 1967. He believes his generation and those after will benefit from the facility and we made need the care offered by MorningStar in the future. The senior population and our children are moving away. He doesn't want to burden his children with his care.

Mark Nickerson, P.O. Box 32772 [previously sworn], he said if the appeal is approved that the Governing Body to try to develop a mechanism to "have this issue not coming up again," and to look into establishing an Old Pecos Trail Scenic Corridor so this issue is not revisited.

Steve Arias [previously sworn], said MorningStar exceeded the criteria given to them by the Planning Department which illustrates their willingness to do what is necessary and wanted. He said he is in support of them coming to Santa Fe and urges the Governing Body to vote for them coming to Santa Fe.

Break 10:35 to 10:45

Rebuttal

Mayor Gonzales gave each 5 minutes for rebuttal and asked Ms. Vigil to tell him when he is at one minute.

Frank Herdman said, "By way of brief rebuttal, I do want to point out that the descriptions of Continuing Care Communities on page 2 of the materials that I provided, those are relevant to you decisions this evening. Because it was obviously the intent of the City Council to capture what the industry recognizes, what the world recognizes and understands as a continuing care community and what it includes. A residential community, or as stated in the Applicant's own Traffic Report, a village with a range of housing types and a broad range of health care services that provide a continuum of care from assistance with daily living activities to skilled nursing and hospice."

Mr. Herdman continued, "The Applicant has failed to demonstrate that the proposed facility is a continuing care community as defined in Code, that it includes a variety of living accommodations, differing levels of health care service and a full nursing care unit with beds. And I trust that if this project were approved, it would not marketed or promoted as a continuing care community, because it is not and that would be incorrect and misleading."

Mr. Herdman continued, "The Applicant's intentions for this project, however good and sincere are not relevant to the criteria for a special use permit. The need for the services to be provided by the facility is not relevant to the criteria for a Special Use Permit. The number of jobs that the project might generate is not relevant to the criteria for a Special Use Permit. The benefits to the current owner of the property and the benefits to the services it provides, if these approvals were granted, those are not relevant to the criteria for a Special Use Permit. What is relevant is what is stated in the Code, and I agree with Justice

Serna that it is your job to apply the law. What is in the Code with respect to the criteria for a Special Use Permit is whether, *'The use and associated buildings are compatible and adaptable to the building structures and uses of the abutting property and other properties in the vicinity of the premises under consideration.'* This is a massive building that does not belong in the Old Pecos Trail Scenic Corridor or one block from the City's Historic Districts."

Mr. Herdman continued, "This is a high density development that does not belong in a low density R-1 Zoning District. The public has expressed legitimate and real concerns about the size of the building, the massing of the building, the height of the building, the density of the proposed development, the intensity of the proposed development, traffic, noise and other adverse impacts. This facility is not compatible with the surrounding area and does not meet the criteria for a Special Use Permit."

Mr. Herdman continued, "The people who spoke in opposition to this project this evening, they and others are among the citizens of this City who voted in favor of the adoption of a Charter Amendment that contains this mandate, and I quote, *'The Governing Body shall protect, preserve and enhance the City's natural endowments, plan for and regulate land use and development and manage the City's growth to promote and maintain an esthetic and humane urban environment.'* That law is an integral part of your decision this evening. request that the planning commission decisions be reversed and that the applications in all 3 cases be denied. Thank you."

Mayor Gonzales said Mr. Sommer has 1 minute and 50 seconds left to rebut.

Karl Sommer, Attorney for MorningStar, said, "Mr. Herdman said something very revealing just now, when he said what is not relevant to your decision is jobs. The two things he said, I wrote them down. They are relevant. Their own appeal said the public interest is at stake here. And what they want you to say is the public interest is one thing and it's not all the other things, that it's not jobs and it's not the needs of the community. Those are relevant, what they are not relevant to is the concerns of the community and the neighbors that spoke. They're not as concerned about the jobs. Thank you. I'll turn the rest over to Matt."

Matt Turner, MorningStar said, "There have been a lot of accusations back and forth, there have been a lot of statistics thrown out, there are a lot of definitions that have been manipulated, sometimes in people's favor, sometimes not. Your Planning Commission, your staff report both find that our project is compatible. We worked very very hard to ensure that it is. A lot of time, effort and cost was involved with that. This is a residential use. It's called a home, it's not called a facility, it's a home because it is a residence. It's where people live and where we care for him."

Mr. Turner said, "Lastly and very very briefly as it relates to the nursing care... you've heard all the facts, you've got really smart people that disagree on this. It's a question of use. It's a question of what's happened in the laws. It's not a question of licensure. Constantly tonight people against the project have suggested that we won't be a skilled nursing home. We agree with that, and we've never suggested we will be. We will be licensed as assisted living. That's really not what is at issue here, it is what's happening under that licensure, and we submit that we do comply. Thank you."

Zachary Shandler, Assistant City Attorney, said, "Mr. Mayor, as part of a community conversation, we try to walk in the shoes of others. So I've heard the frustration from people about these differing terms. Well this is my explanation. There is a difference between licensure and zoning definitions. The State licensure definition use terms like skilled nursing, intermediate nursing. You won't find those terms in Chapter 14. The State licensure statues are much more precise. Let me provide a practical example. Let's say my family wanted to set up a daycare center at my house. We're going to have to work with City zoning officials to get their approval. And then we're going to have to go the State CYFD to get licensure. There may be differing definitions for those two projects, but that doesn't mean they're separate. I think the SENA wants you to read the state licensure definitions into the City zoning definitions."

Mr. Shandler continued, "As for the Old Pecos Trail concerns this is a Special Use Permit and special use permits are only for that property and that use. Finally, on the substantial evidence test. You saw the slide in the difference in the façade, the grade of the property. Again, it's not beyond the reasonable doubt test. It's whether there is relevant evidence, a reasonable mind could accept, not love, but could accept, is adequate to support the conclusion. And that's the standard set up by the State Supreme Court. Thank you."

The Public Testimony Portion of the Public Hearing is closed

Councilor Dominguez said his question has to do with the idea that this is a *de novo* and whether we can consider things like building heights, the façade of a building and how the term *de novo* fits with our conversation tonight.

Mayor Gonzales said, "For the record, said the public hearing has closed, and we're on to Council deliberations."

Mr. Shandler said, "Mr. Herdman's statement that it is *de novo*."

MOTION: Councilor Dominguez moved, seconded by Councilor Trujillo, that the Planning Commission acted in accordance with law in reliance and substantial evidence and to dismiss the appeal in Case #2015-51, and adopting the Planning Commission's Finding of Facts and Conclusions of Law as our own.

DISCUSSION: Councilor Dominguez said, "First of all I want to thank everyone for coming out tonight and speaking. That's one of the things that makes Santa Fe so wonderful. We've seen it time and time and time again in the 10 years I've been on the City Council and the many years prior to that as a Planning Commissioner. The fact that we all come together and speak our minds and we're not afraid to provide that public testimony."

Councilor Dominguez continued, "I want to thank the Planning Commission as well, because the work they do, it's pretty obvious it's pretty important, it's very important. And I say that not only as a former Planning Commissioner but as a City Councilor and the fact that we rely on the record. We rely on the minutes they provide us. We rely on the substantive discussion they have and staff's ability to answer those questions in as clear and concise way as possible. It is true with land use cases, it brings out a lot of emotion and that's a wonderful. I think there's nothing wrong with that. In all my experience, land use cases bring out

all kinds of emotions – fear, confusion and an adamant position and other thing. And that's fine, that's part of what a democracy is."

Councilor Dominguez said, "There's two ways you can look at this. You can look at the Code which is part of our job in applying the law and Chapter 14, and then you can look at the emotional aspects of it, and I'm going to chime in quickly on both of those things."

Councilor Dominguez continued, "The word 'and' is what you've talked about Zach and that was a point of definition. Well, I think I understand what the Code intended, just like Mr. Herdman said, the difference between satisfying the Code and meeting the Code. I think understand what he was trying to say, but he used two different terms. So I think there's a level of common sense even that should apply to some of these definitions and our ability to define what they're intended to mean."

Councilor Dominguez continued, "When I talk about being comparable with the scale and use and design, there was a lot of discussion at the Planning Commission about that. A lot of discussion about height, a lot of discussion about height. There were even Planning Commissioners who supported the project who had lots of questions about whether or not they agreed with certain aspects of the design. But the point is, and the fact is that there was a lot of discussion about the scale and design and other aspects with regard to the building. I may not like one color of brown and somebody else may like a different color of brown. Some of it is subjective, and we've got a Code, and staff able to interpret that Code and determine whether or not those sorts of things are being met in the discussions that are being had."

Councilor Dominguez continued, "The other is the South Central Corridor District, and I certainly understand the need and the desire for folks out there who want to protect that corridor to do so. It's a wonderful part of our community, but when you're applying the Code and the law to this, it is true that it is a guideline and applicable law and how that applies. And I'll give you a good example and this is where the emotional piece comes into it. There was the Southwest Area Master Plan, SWAMP. It was a bunch of guidelines on how to develop the far south side of the community. And there were many times I brought up the guidelines whenever there was a development being proposed on that side of town. And sure enough, we were able to look at it and discuss it, but no use it and apply it as law. And what bothers me, is that I didn't see a single person here tonight that wants us to justify protecting it... speaking and protecting and applying SWAMP at that time in the community. Even the La Cienegita Camino Real Association who live out there."

Councilor Dominguez continued, "So there's a little bit of a double standard, and it comes to well, for me what I hear is, and this is the other part that's pretty emotional, this is something that is good for maybe a different part of our community. There was some reference to how would you like to have a WalMart built by your house or built next to you, or whatever the words were. What was interesting is that when that vote got approved we were in this gym, not we. I think Councilor Bushee was the only one that was in the building at the time. But it's not really relevant to this discussion, just kind of interesting how WalMart was brought up tonight, and the emotions WalMart may bring one way or the other and it's in the same building."

Councilor Dominguez continued, "So we talk about equities and what is good for one part of our community should be good for all parts of our community. It shouldn't just be specific to the South Central Highway Corridor District. It should be for all parts of our community. I didn't hear that spirit of equity tonight, all I heard was it's probably better in another part of time, I don't know. And the last thing is fear. I kind of spoke about that earlier. At the National level there is a lot of fear that is tried to be imposed on us citizens of our community and our nation. It bothers me when people try to use fear in these sorts of deliberations. We need to be fearful of the traffic, the size of the building. You need to be fearful of so many things that we should be living in a world of fear and that's not right and it's not fair."

Councilor Dominguez continued, "And those are some of the things that bother me. I've talked about how this applies to law and I've talked about the emotional parts, two expressions that were demonstrated tonight. And I just want to thank everyone for being able to talk about the law, but their emotions as well. And these are some of the reasons I'm supporting the motion, Mayor. Thank you."

Councilor Lindell said she would speak to some of the same things Councilor Dominguez spoke to. We do need continuing care communities, but I think we need ones that are accessible to the entire community. And for me personally, I might visit someone in a facility like this, but I certainly wouldn't be able to afford to live there.

Councilor Lindell said, "I think we have an obligation to look at compatibility with existing neighborhoods. This is R-1 zoning, and we're talking about a special use permit. This project is huge, the approximate size of the Convention Center in R-1 zoning. The second story is 36 times the size of the second story of the Elks building. I don't think anybody ever envisioned that type of use in R-1. And I think it's very unfair to allow an incompatible commercial use, but that's my opinion. The Code is not my opinion, and the project does not meet the definition of continuing care community. We started about talking about this, and I'll talk about it again, I know the meaning of the word 'and.' *A community care community shall include*, in the Code it gives then #1, and then it says 'and #2.' Number two is not included in this project. It is not meeting the Code, however much we may want it to, it doesn't. I'm clear about the word 'and' means. Further on down under Section B it says, '*It may include.*' Those are optional things. 'And' is not optional. When I'm told to go to the store to get milk and eggs, it means both, not one."

Councilor Lindell continued, "So this project doesn't meet the criteria of a continuing care community and I think that in the Charter we have some obligations in maintaining our neighborhoods. I also think we have obligations to people that have lived in places for decades to not erode the value of their property with a Special Use Permit for a commercial project. So those are my comments at this point in time."

Councilor Bushee said one attorney was saying this property was included in the Old Pecos Trail Scenic Corridor, and perhaps staff can firm that it is or is not in the Corridor. She said this isn't a very good map said firm but I see the Highway Corridor Protection District Map surrounding the property, but what I read in this voluminous report that was not included in the Highway Corridor Protection District.

Mr. Esquibel said with the last question, the South Central Highway Corridor, that turns down St. Michael's Drive and it doesn't affect this property.

Councilor Bushee asked how far is the Highway Corridor Protection District.

Mr. Esquibel said it is 600 feet from this property, it is right on the corner, because this property is right at that corner as the South Central Highway Corridor turns left on St. Michaels Drive but it doesn't incorporate any portion of that property. It's just outside of this property.

Councilor Bushee asked if somebody intentionally left this property off, commenting it seems surrounding by looking at this map, which is not a very good map.

Mr. Esquibel said it isn't that this property was intentionally left off. Guides were established by the South Central Highway Corridor that required it to go 600 feet from the right of way out. So there are limits in the South Central Highway Corridor that do not affect this property, because this property is outside of those boundaries.

Councilor Bushee asked by how many feet, and Mr. Esquibel said he can't tell her until he measures it from GIS, but the entire property is outside.

Councilor Bushee said, "I'm just going to read a couple of things from the Highway Corridor Protection District. *The purpose and intent of the South Central Highway Corridor Protection District. Purpose and Intent, because open, quiet and continuity adjoining the Highway Corridors in the south central section of the City is considered a special act that should be retained as the area of development. It is the intent of the SCHC District to establish: A. A clear sense of visual openness and continuity of development as seen from the major highway entrances to Santa Fe. B. Protect the openness and continuity of the existing landscape for retaining and planting native and other drought tolerant trees, shrubs and ground covers. C. To be sure that the landscaping provides an appropriate and attractive visual buffer, compatible with the neighborhood landscaping and character, conserves water by the use of stormwater collections, green transformers and loading areas and outdoor storage. D. Encourage the use of architectural style and scale that is representative of Santa Fe, and E. Preserve clean air and a sense of quiet and reduce the potential negative impacts of noise, air pollution, lights, movement of cars, activities on site or other nuisances on adjoining properties.*"

Councilor Bushee continued, saying it then goes into boundaries and then into uses. It says, *'The uses allowed in this District are the same as those allowed in the underlying District.'* And then it gets into standards, and development and design standards including density. *'The density for residential development should be the same as the underlying district, but in no case shall it exceed a maximum density of 21 units per acre.'* And then, this is important. It says, *'The minimum building setback or yards from the edge of the right-of-way shall be 50 feet, except that the minimum building setback from Old Pecos Trail between I-25 and St. Michael's Drive shall be 75 feet.'*

Councilor Bushee said, "I guess what I'm trying to say here is it is very frustrating from the viewpoint of the Elks that need to get the highest dollar possible to continue their mission, but it's frustrating from the perspective of a policy maker, because I feel like our processes and our Codes... once again, I'm sitting here in a development where we're pitting old versus new. The last development we dealt with, made it be about old versus young, millennials versus old timers. In this case, for me, this

property is very specific. It's the Old Pecos Trail, it's a scenic corridor. It's got an overlay district that have all these protections. It's zoned R-1, and it's extremely frustrating that this was brought to us on a Special Use Permit. It feels like, if this conversation had taken place in the form of a true rezoning and general plan amendment, people would have real issues we're discussing about the impacts and how we want this town to develop. But a Special Use Permit on this vague definition of continuing care.... I went on the website, I googled this company. Even the Albuquerque MorningStar is smaller, it's on a big highway and it's in a commercial zone. I can't find one of their properties that is in this unique setting, and it seems to her they look like hotel rooms. The kitchen and the common area look like one when you're staying at the Hampton Inn or something."

Councilor Bushee continued, saying it's very frustrating we're dealing with this and incompatibility is an issue, and I honestly feel this hasn't been a good process. She is sorry it came to us from the Planning Commission a Special Use Permit. She said this is such a unique piece of land. She is sure it's disheartening for the Elks, commenting she loves what they can do in the community. She introduced legislation as we go forward on raw pieces of land in significant corridors. She said it is significant the last one we voted on was on El Camino Real and this one is on the Old Pecos Trail.

Councilor Bushee said she doesn't like these political polemics. She felt disappointed in the polemic presented tonight by Councilor Dominguez. She said this isn't about north versus south. It is about, does this project work on this property and does it fit our Code. It's frustrating that we're down to politics tonight.

Councilor Maestas thanked the public for coming out. He knows people on both sides of the issue. He said we need a facility like this in Santa Fe, we have an aging population. But the issue is whether this Special Use Permit meets the Code. He represents this District, and this proposed location is not only at the heart of this district, and located at a significant gateway to many of the jewels in District 2 – Museum Hill a gateway to the Plaza area. He said if you look at the surrounding zoning, this could set a very dangerous precedent in our City. That's not what we want, but the Code doesn't speak about what may happen in the future. His concern is the compatibility.

Councilor Maestas continued saying he feels the Planning and Zoning Commission did not have reasonable minds in making the determination. The proposed facility is out of scale with the lot size, out of scale with the neighborhood. It is going to overwhelm this area, and the selected location is on a ridge. And we all know how much we value our vistas. He said many people moved here or live here because of the beauty of it. This proposed development will detrimentally impact the beauty, the unique character of this area. It will send a message to those who come in from other places, "Is this Santa Fe. This is not the Santa Fe that I heard about." Is that what it's going to become. It's going to become this city that is going to densify and commercially develop corridors that were once rural in nature and once residential. This is a big turning point for our City.

Councilor Maestas continued, "And I think I want to end by talking about the whole scenic corridors. We have two significant corridors identified. Granted, the Old Pecos Trail Corridor did not have adequate protections, but it was designated as a corridor anyway. And I don't think we ought to strictly look at whether protections were in place and specific standards were identified in conjunction with that designation. It means we value this corridor and this highway, not just the scenic beauty of it, as well as

the historic relevance of it. As a representative for District 2 it's completely incompatible with this area, it's too big, it's out of scale. And I use Calle de Sebastian, and if you look at the elevations and visualize the damage this could do to the gateway to that neighborhood. And I think we just emphatically made a statement as a community, by amending our Charter and committing as one community to preserve our neighborhoods. This does not preserve our neighborhoods and therefore, I cannot support this motion. Thank you."

Councilor Ives thanked everybody for coming tonight, commenting these end up being some of our most difficult decisions, but there is a vibrancy to them when people turn out on these issues which is rewarding in terms of community engagement and involvement of people across the City and what your Governing Body is doing.

Councilor Ives said he heard many friends and neighbors speak and friends and neighbors from the Elks Lodge speak, and from different neighborhood associations and from the Cathedral Basilica. He counts all those who have spoken on all sides of the issue as his friends. He said he wants to tell you his thinking on this.

Councilor Ives said, "I do agree with Councilor Lindell and how she views the word 'and' in the context of the definition of continuing care community. The language is very distinct, precise, it says, '*and a full nursing care unit with beds.*' And I'm not convinced on the basis of what has been presented here that the facility as proposed meets or satisfies that definition. In the Staff Memo it states that, *the use of the word and between A(1) and A(2) creates a plain meaning reading that the requirements can be made in congregate housing with full nursing care.*' A full nursing care unit with beds is the term that's used. It goes on to then say that, '*The term nursing unit is not defined and provides some flexibility to its use.*' The term is actually full nursing with beds, which, for me adds a greater context to what that term actually means, and it suggests a different type of care unit than I understand to be proposed by the Applicant in this instance. So from reading the plain language from that provision, I have to conclude that the facility as proposed actually doesn't meet that requirement."

Councilor Ives continued, "Turning to the issue of the Special Use Permit and some of the items there, we've been engaging in this discussion about what the Old Pecos Trail Scenic Corridor means. It seems everybody agrees that in 1999, there was a commitment made by the Governing Body to the citizens of the City that that meant something. To suggest that, and as the Memo does, the City Council... *a reference in the General Plan is the first step. The City Council must then take a second step and either adopt an ordinance creating certain protections or amend the official zoning map for certain protections, i.e. rezoning to a lower density.* The Memo suggested that was the action that needed to be taken by the City Council for that language to have any meaning in context. And with that, I respectfully totally disagree. On the one hand I do think there was a commitment made at some point in time to further delineate that. But even as it extends now, the suggestion that additional action was needed such as changing the zoning map for certain protections, i.e. rezoning to lower density. This is zoned R-1, do it appear there is a standard that is set there. I'm not sure what lower density you can have beyond R-1 in the City."

Councilor Ives continuing saying, insofar as the zoning exists there has been flesh put on the bones of what that Old Pecos Trail Scenic Corridor actually connotes at this point in time. It didn't come with all the protections in place in connection with the Central Highway Corridor Protection District. He said he is unclear on that point, when he consider that district lies 600 feet beyond the exterior right of way of Old Pecos Trail to St. Michaels Drive. He doesn't know whether or not any of the Elks property actually lies within the 600 feet boundary. If so, there is a question as to whether all those protections apply, can they apply to only half a property. He's heard nothing to suggest that the Elks property in its entirety is not part of the district, and therefore those protections might not apply in the first instance. So, he disagrees with a statement attributed to the City Attorney that nothing has been enacted and no standards have been adopted because there is R-1 zoning there, and that would appear to him to be a standard, especially when the earlier reference was to i.e. rezoning to lower density.

Councilor Ives said the second half of that argument is this commitment was made by the City to consider that and to put in place more in terms of restrictions. The fact it wasn't considered as part of the south highway doesn't mean it shouldn't have been done. He sees no evidence the Council in 1999 intended to forego permanently that opportunity, so he thinks there's a process that needs to be followed here to honor the commitment by this Council previously in the General Plan in connection with the Old Pecos Trail through Cordova to engage in a process similar to the South Highway Corridor plan which we haven't done, and which he thinks we need to do before we approve this kind of facility and any zoning changes or special use, especially one that is this dramatically different.

Councilor Ives said with regard to the third claim which is the project is compatible with and adaptable to adjacent properties. Again, the Staff Report talks about the changes made by the developer which he appreciates which shows good faith by the parties in these discussions. However, he disagrees with the Staff Memo that suggests that the fact that compromises were made, therefore means that there is compatibility or compatible with or adaptable to adjacent properties. It talks about using elevation and landscaping to buffer adjacent residential properties, but whether a buffer satisfies a requirement of compatible with and adaptable to he has serious questions about.

Councilor Ives said this is his thinking and why and he will yield the floor.

Councilor Rivera thanked everybody for coming out this evening and sharing your ideas, thoughts and concerns from both sides. This helps us to make good decisions. He heard concerns about lighting, and there are so many lighting options now which would have little impact on the neighborhood, and is sure the architect would do so. He heard concerns about Fire Department access and familiarity with the area, but doesn't believe that would be an issue even though it was brought up.

Councilor Rivera continued, "So really what we are here to decide is if the Special Use is okay. I think I've heard that it's not in the Scenic Corridor, and I think I'm satisfied with the answer from staff. I do believe it is compatible with the surrounding area. Across the street there are doctor's offices, office buildings, and down the street there is a Baptist Church, a Women's Club across the street. In reading the packet, it appears to me that MorningStar has made concessions to the requests of the neighbors and the Planning Commission with setbacks, second story setbacks, changing the style of the building to Spanish Pueblo Style. The one thing that I think that really when you're looking at special uses, what MorningStar said is

there would be nursing staff on duty 7 days a week, 365 days a week. If you don't have people that needs services 24 hours a day why would you need nursing staff 24 hours a day. I think the definitions of health care are changing constantly with the Affordable Care Act and many other things. I do believe they meet the special use. And again, hand it to our Planning Commission, I think they got it right again, so I'm in support of this and agree with some of the comments I've heard from Councilor Dominguez and others."

Councilor Trujillo said, "I can honestly tell you that these are the times that it's tough being on the City Council. I consider Santa Fe one community. The way we have these issues, it turns into separate little parts of the community. We have the south side, we have the east side, the west side, the Historic Districts. So unfortunately, it separates Santa Fe into different aspects different corridors. I hear this talk about the Old Pecos Trail Scenic Corridor, how special it is, and I think all of Santa Fe is special."

Councilor Trujillo continued, "I can remember when Quail Run was coming in. I wasn't on the Council, but I remember the bickering from people living around there. You bring Quail Run into this community, it's going to be detrimental to that historic corridor, and I heard one person talk about Quail Run that it's a gated community. But has it been detrimental, no, it hasn't. But that's the first thing I see on St. Francis if I'm getting of there. A few years ago we talked about affordable housing right on Old Las Vegas Highway. People came out against it, saying it is detrimental to the corridor, but because it was brought up as low income housing. He said some people think there are two different meanings to affordable housing and low income housing. Has that been detrimental to Old Las Vegas highway. No. You have housing there for people who make a lower income than some, but they're living on that side of town and that's a good thing."

Councilor Trujillo continued, "I also heard talk about how we want this town to develop. I do believe we want this town to develop, but truthfully, where does it develop. District 3 and District 4. That's where you see all the development. And I heard it constantly from a lot of people tonight, I'm not against MorningStar or this facility, but put it in a different place. Where would that place be is what I would like to know. District 3 and District 4, because truthfully that's where everybody wants to put things. That's unfortunate. I've been on the Council for 11 years and lived here all my life and I see this all the time. And I know people don't want to hear it. NIMBY. Not in my Back Yard, and I hate that, I really do."

Councilor Trujillo continued, "And I see this facility and you are going to have to pay to use it. Maybe it doesn't take medicare, but it's a needed facility in this town. Don't tell me people aren't getting older, because they are. The youngest part of town is in district 3, but we're all getting older. Like one person said, the time of having a lot of kids to take care of parents, that time is ended. Our kids are now leaving this community and going to California or Arizona. The jobs aren't here. Me and my wife, we're probably going to be in one of this facilities, because I want my kids to succeed and to do better. If they're not here to take care of us, but if I have to enter one of these facilities, I want to be able to enter it in my community in this town. I am in support of this. I'm just bugged that this always happens every time one of these issues comes before the City Council. You saw it two weeks ago. That was another unfortunate thing. But the thing is we as Councilors depend on the Planning Commission. I can only recollect a few times since I've been on the Council that we've gone against what the Planning Commission does. I think they do a helluva job. For the stuff they have to go through, they get us prepared, because I read the notes of what they've done, and that lets me get prepared for these meetings. The Planning Commission did their

job. It's just unfortunate that when we have these controversies, it pits one side of town against another. I don't think it's ever going to stop, but this is what Santa Fe has turned into."

Councilor Dimas said most people know that he isn't a big speech maker, commenting that his background is as a Judge. He doesn't make speeches, and makes his decision based on what he hears from the two parties and he made his decision based on what he heard tonight. He said he took no *ex parte* communication from either sides. He wrote emails to several people who sent emails in favor of and against, and he wrote several back and told them because this is a quasi-judicial issue he doesn't take *ex parte* communication. He said he will listen to both sides as he did this evening. He thanked everyone for being here, even at this late hour.

Councilor Dimas said he supports the Planning Commission decision as it came down after everything he heard. He thinks this will be a good project for Santa Fe. He said we are an aging community, and he is aging along with everyone else. He said he is in favor of the project and thinks it will be good for Santa Fe in the end.

Mayor Gonzales asked what is the neighborhood willing to accept.

Mr. Herdman said, in all due respect, he can't answer the question because he doesn't know. He said the neighborhood are all these people for the most part and it's not an easy question.

Mayor Gonzales said, "What keeps popping up is the Calle Medico complex that is almost adjacent to the Elks and what I am struggling with is the issue of the preservation of the corridor. But when the corridor has already been somewhat populated with commercial offices which staff says is 150,000 sq. ft. of commercial office space on the first part, is it the perspective of the neighborhood that that was the last one and now everything else should stop, or what are your thoughts about that."

Mr. Herdman said there may be others who can speak more accurately to that and he would welcome any comment to correct his understanding. He said, "My understanding that that side of Old Pecos Trail where this is being proposed is very low density residential and it was zoned as such. And there is an expectation that is how it will be used. And it will be used and developed in a manner that is consistent with that zoning. It is my understanding that the zoning on the other side of the street is completely different. In this particular area, the side where the site is proposed is clearly predominately residential. There's no question about that, and it should remain residential. It should remain what it is zoned. And again, I welcome anybody to correct me if I'm wrong."

Mayor Gonzales said comments are limited to Mr. Herdman because the public hearing has been closed.

Mr. Herdman said, "Sure. I understand. But that is my understanding, so there is an expectation and New Mexico law recognizes it that there is an expectation that property will be developed in accordance with its zoning. Again, I think if others were asked, they would say this project is even outrageously incompatible and grossly disproportionate to the commercial development that is across the street. This is a massive massive building that is incompatible with anything else out there today."

Mayor Gonzales said, "I just wanted to point out that what is on the other side of the street is 150,000 sq. ft., but the massing is different, obviously is what your point is."

Mr. Herdman said, "I don't know what the count is, but there are numerous buildings. If you wanted to add up the square footage of my neighborhood which is Casa Solana, it would exceed this building, but one wouldn't conclude that this building belongs in Casa Solana. Thank you."

Mayor Gonzales, "I have heard a lot from the neighbors about the mass and density, and I know the developer has reduced by 10%, but what I'm struggling with obviously is the scale of the building. Is the owner of the developer willing to accept a less square footage this evening, and I don't know that the maker would even agree. I just want to put it out there, that if there is an acceptance on your part to cut back either or most significant in height and on being able to address the issues of the visual side of the building itself."

Mr. Sommer asked for 2 minutes to confer with his team.

MOTION: Councilor Dominguez moved, seconded by Councilor Lindell, to suspend the rules and continue the meeting past midnight.

VOTE: The motion was approved on a voice vote with Mayor Gonzales, and Councilors Dimas, Dominguez, Ives Lindell, Maestas, Rivera and Trujillo voting in favor of the motion, and Councilor Bushee voting against.

Mr. Herdman said, "After Mr. Sommer has responded, I have had an opportunity to confer with my client regarding your questions and I can better answer them."

Mr. Sommer said, "It's very difficult if you can imagine. We can... I think Matt has been able to calculate that we can cut 3,000 sq. ft. out of the footprint, from the building in total itself, roughly. The project viability, we're at the edge, so that's what we're able to do in this short period of time to make that commitment to you."

Mr. Herdman said, "It's the position of the Southeast Neighborhood Association that the property should be developed in accordance with the existing zoning which is R-1, so residential. I'm reminded that the commercial buildings on the other side of the property are below grade and as consequence their visual impact is mitigated for that additional reason. And also on this side of the property where the proposed project is proposed, there is no commercial development except for the Old Pecos Trail Inn which was grandfathered in. So that is the answer to those questions."

Mayor Gonzales said, "This does not have to be an us versus them. It does not have to be that either we accept that the senior facility should be throughout the whole City, or not. I would like to see if the Council would remand it back to the Planning Commission to allow for more discussion. And where I'm coming from is I don't like the scale of this. I think it is too big for the corridor, but I get that there can be, hopefully,

a size that makes a little more sense because I do support the Elks in their efforts and what they want to do. But tonight, to say yes or no, it's a very difficult position for all of us to be in if we can keep both sides at the table trying to find a resolution to this. And I know it's concerning to many people because they have to put more time into it, but I think it's part of the process we have to go through because there is so much division that exists between neighborhoods and others like the Elks where they want a use that potentially can work. I don't know that the Council would be willing to do this, but if you could go back and give it another shot to see if you can find something.

Councilor Dominguez said, "As the maker of the motion I would like to say something about this. I certainly appreciate the efforts. We all want to try to make everybody happy. But what I'm hearing is, although you have the proponents willing to scale down a little bit, I'm hearing that the neighborhood just does not want that. So I'm not quite sure how much it does taking it back, because I think the neighborhood is adamant about not having it in their neighborhood, at least that's what I'm hearing. I'm willing to consider something to go back. I don't know if the Applicant wants to..."

Mayor Gonzales said, "That's a great perspective, though. But probably what we want to hear from Frank is if they're willing to go back to discuss the merits of the project, not whether it should exist or not. If they're not willing to do that, then we'll make the decision tonight."

Mr. Sommer said, "I would remind the Council in this regard, their claim is that the use is not allowable. It's not just compatibility. Their claim is this is not allowed, period, end of sentence. I don't care if it's 2 feet, 10 feet or 25 feet. That's the problem we have with the remand and we'll leave it in that quagmire."

Mr. Herdman said, "With regard to your question about remand. It is the position of the Southwest Neighborhood Association that this project should be denied this evening. The Applicant has said they are able to carve off 3,000 sq. ft., which is *de minimus*, and does not make a difference relative to the inappropriate size of this building. So we do request that the application as presented to you be denied because it is the application that is before this hearing tonight and this building is just too big for this area and the use is not permitted in any event for the reasons I stated."

MOTION TO CALL FOR THE QUESTION: Councilor Dimas moved, seconded by Councilor Trujillo to call the question.

VOTE: The motion was approved on a voice vote with Mayor Gonzales, and Councilors Bushee, Dimas, Dominguez, Ives Lindell, Maestas, Rivera and Trujillo voting in favor of the motion and no one voting against.

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

For: Councilor Bushee, Councilor Ives, Councilor Lindell and Councilor Maestas.

Against: Councilor Dimas, Councilor Dominguez, Councilor Rivera and Councilor Trujillo.

The resulting vote was a tie and Mayor Gonzales voted in favor of the motion to break the tie

Explaining her Vote: Councilor Lindell asked what is the motion and Councilor Dominguez restated his motion as follows: that the Planning Commission acted in accordance with law in reliance and substantial evidence and to dismiss the appeal in Case #2015-51, and adopting the Planning Commission's Finding of Facts and Conclusions of Law as our own. Councilor Lindell said, "Thank you. No."

Explaining Vote: Councilor Dominguez said, "I'm going to explain my vote real quick Mayor, since I'm the one that made the motion. I really respect what you said Councilor Bushee. You are the senior Councilor on this Council. The fact is, this is a tale of two cities, and my inability to minimize my voice creates that situation where we have a tale of two cities. Councilor Lindell I respect your opinion as well. I think this facility is going to provide a bunch of different levels of service and that, to me, is the difference. And Councilor Ives, I disagree the same way you did when the Southwest Area Master Plan was being considered, or parts of it, but I lost that argument just the same way that argument is being made tonight. And the one thing that Councilors Maestas did bring up that I agree with, the fact is that we need to redo our General Plan. We need to revisit the General Plan because this is the second case in a number of 4 weeks where the General Plan has not jived with the wishes of the community. So, yes."

Explaining his vote: Mayor Gonzales said, "So this is certainly one of those nights that I'll go to sleep wondering why I wanted to become Mayor. And part of it, I feel certainly the pain and the emotion that Councilor Trujillo expressed, that tonight we witnessed a community that was very divided. And we definitely talk about being one City, one City that serves our collective purpose, but when it's time to work on really difficult things we quickly draw lines in the sand, and that certainly bothers me. It's why, during the El Rio Project, I had hoped this Council would remand it back to the Planning Commission, so it wouldn't be a win or lose situation for members of the community and certainly why I had hoped for it to be tonight. I am concerned about the size of the property and struggled with how neighbors feel with, certainly the massing that may occur as the result of the facility. And I feel I'm somewhat limited in trying to drive the developer to reduce the size of it. Where I'm not limited, as Councilor Lindell indicated is in following the Code. And ultimately tonight, what it's come down to and many people have articulated it, you can remove the emotion if you just follow the Code and the way the law was set out. And I have a lot of respect for Frank and Karl and their legal opinions, but I do have to rely on the City Attorney who represents the City as a whole, and their viewpoint of whether this meets the Code or not. It does pain me a lot because the people who opposed it tonight are some of the folks that I rely on most heavily to help develop policy for the City and how we come together as a community on both sides. And I'm

hopeful as I cast my vote, that we think about what I said earlier, that we all live in the community, we all love it. Tonight, there will be people that certainly will go home hurt and upset by this decision, regardless of how the vote goes. But tomorrow, we get to wake up and figure out how we can work to continue to improve the lives of Santa Fe, and that's what I'm committed to as Mayor, and certainly this vote represents certainly what I believe is in the interest of the entire community and certainly represents my belief that the City Attorney did get it right in their statement that it is in compliance with the Code. So I'm going to vote with the maker of the motion, yes."

4) CONSIDERATION OF BILL NO. 2015-23. ADOPTION OF ORDINANCE NO. 2015-19 (COUNCILOR IVES). AN ORDINANCE AMENDING SECTION 11-12.1 SFCC 1987 TO MODIFY THE FORMULA BY WHICH THE GOVERNING BODY MAY AUTHORIZE FUNDS FOR TRANSFER FROM AN ENTERPRISE FUND TO THE GENERAL FUND. (OSCAR RODRIGUEZ)

The staff report was presented by Oscar Rodriguez, noting he sent his analysis via email. He said, "Basically our conclusion is looking back, even 21 years, it's a very clear pattern that Transit gets the lion's share of the 1/4 cent, on the average of 61%, and typically the way the City budgets for that is it asks Transit its wants and needs which are addressed and the balance is allocated to the other Quality of Life issues authorized by the Ordinance."

Mr. Rodriguez continued, "Another thing we found as a significant trend is that the ending balance is oscillated over the years, but lately we have been building up a significant ending balance. It's there now, and I have the chart so there are some resources potentially this year if you want to use some of those capital needs in transit."

Mr. Rodriguez continued, "I had Jon also to prepare a chart showing where federal grants have been for transit the ones that have been coming here, and he wasn't able to make an overhead of that. Anyway the chart showed it went basically at the start of the period from \$14 million and it is somewhere below \$2 million today which is part of what is exacerbating the problem."

Mr. Rodriguez said, "Basically on our analysis, I saw nothing that would lead me to recommend to you at this point, a rewrite of that. The majority of the resources are going to Transit. The way we budget is address Transit needs first and the remainder goes to the other sources. There isn't any balance there and at this point, again, I haven't seen anything to lead me to recommend a change in funding there."

Mayor Gonzales said, "For clarification, this is Item H(4), consideration of Bill No. 2015-23, adoption of Ordinance No. 2015-19."

Mr. Rodriguez said he was talking about a report that was called for in Resolution No. 2015-40. He said, "I apologize, I've gone out of order, I went to the one that followed that."

Mayor Gonzales said, "So this is Item H(4), Bill No. 2015-23, adoption of Ordinance No. 2015-19."

Ms. Brennan said, "This is the ordinance that permits the transfer of monies from the enterprise funds that will permit the balancing of the budget. This is the task that the Local Government Division has assigned in order to get the budget approval on July 31st, and the alternative would be to revisit the budget and find the X number of dollars that the transfer represents, \$3.8 million.

Mr. Rodriguez said, "On this item, Mr. Mayor, I've given you a lot of information. It was staff's recommendation, our budget is built on that. Really, I guess at this point, all I can say is I stand for any questions you might have."

Councilor Ives said, "As we all know, we approved a budget in May that called for this transfer, and nobody has come forward with the \$3 million in adjustments either by reduction of costs or services or staffing to address that potential difference, so this is needed at this point in time to be sure the budget we submitted to the State is a balanced one."

Mayor Gonzales asked if there are questions of Oscar regarding his presentation.

Councilor Maestas said he's made a lot of comments about this and will make just a few.

Councilor Bushee said this is a public hearing.

Councilor Maestas said, "Oh no, we can ask questions first, before."

Councilor Maestas said, "My concern is that we introduced the payments-in-lieu of taxes concept in conjunction with the budget development process, and I felt like the policy should have been developed prior to the incorporation of it into the budget development process, and we find ourselves basically almost forced to approve this. I don't feel the pressure to balance the budget with this transfer. I'm focused more on, not the concept, the practice of a payment in lieu of taxes. And I think it was very new when we introduced it. It's not precedent setting, the transfers, but what I would like for us to do over the course of the next 6 months is discuss payments in lieu of taxes and have adequate public involvement to show it is part of the state of the practice across the country within similar sized cities and to determine what is an appropriate payment in lieu of taxes without going through an exhaustive analysis, but I want to make sure the public understands this. I don't want to be here a year from now and say, yes, well you just used this payments in lieu of taxes for the purposes of balancing your budget, and once you got through that first year, you tossed it out the door. I accept this practice of a payment in lieu but I want to take the time over the next 6 months and have a debate about what it is and how it can become a permanent part of our City policy, so that's all I had for now, Mayor."

Public Hearing

Speaking to the Request

Mayor Gonzales gave each person 2 minutes for each presentation

Patrick Harris, 1002 Osage Circle, Chair of Art Department, University of New Mexico in Los Alamos. He has lived at this address for 35 years. He said his neighbor across the street for many years is Art Sanchez and he learned a lot about water from Art and how serious this issue is. He said, "Now, the voters of Santa Fe, under the leadership of Art Sanchez, purchased the water company. That was a really smart decision. A few years later, we the voters approved hideous rate increases in order to save water. So we are saving water. We are a model for other countries, we're in the New York times. So the voters are very smart. We put you all in your chairs here tonight, we're smart voters. So we need the opportunity to decide this issue of how these funds are going to be used, these surplus revenues. You are in a tight spot, so you've got to approve it this year. You know, say I'm a single guy and I meet a rich gal and we get married, but I'm in debt. In 12 months I ask that woman, I say, hey Martha, you know I'm about \$1.7 short this year, can you help me out with that. So she says, well yes, I love you hon. So she loans me \$1.7 million and things are hunkey-dorey. The next year, dear Martha, things didn't work out and I'm about \$4 million short now. So Martha's thinking she should have gotten a pre-nuptial by this time. But you can see where this marriage is going. It is not going to be sustainable. We're going to end up having a divorce because I'm hitting Martha for more money every year. And she's saying, I thought this man loved me, but he's in it for the money. So the voters of Santa Fe need to see on the ballot, 3 choices. We need a choice to get that money back to us, to invest it and create a megafund where we can do something else, or we need a fund where the interest goes back into the General Fund, but the voters get to decide."

Jim Lodus, 2009 Zozobra Lane, said a couple of years ago, certain things came out in the newspaper and for chuckles, he contacted the City, the Personnel Department at Las Cruces, Rio Rancho, Albuquerque and Roswell, and asked them the number of employees they have and he got a number. He divided it into the population. He said, "It was interesting to me that if you compare Santa Fe against those other communities, Rio Rancho has half the employees per capita, as does Santa Fe. The other 3 are all right around 75% as many employees as Santa Fe. You folks are struggling. You're doing things like putting people on Park Bonds, employing them through paying them with Park Bonds. You're putting 10-12 people on the Water Department payroll because they do things remotely related to, 20 then, the Water Department. I just submit to you that you may be trying to solve the problem with revenue, when in fact the problem is the expenditure. It's something you may need to look at, because if you don't, next year as the prior guy said, you'll be back for \$6 million or \$8 million or whatever."

Mr. Lodus continued, "The second point I'd like to make quickly is that if you read the City's Wastewater Plan, one of the things it says is that the major untapped source of water is converting wastewater. That's going to be a multi-million dollar project. This money could be used for that."

Sue Herrmann, 1305 Calle Ramon, said, "When she first heard about this proposed transfer, I neglected the first \$1.7 million transfer, but when I heard about this one, I went back and did some research into the purchase of the water utility way back when. I was reading an article in *The Reporter* that from September 1985, and I want you know what representations were made to the voters at that point in time. The first promise was that rates would drop by 46%. The other one is that there would be no more costly increases from PNM, the City would lower the cost of water through bonds by not having to pay taxes and by running the system beholding only to the local residents and not the stockholders of PNM. That initial Ordinance, the 1985 Ordinance did not pass, some of you may remember, but eventually it did

and we bought the water utility. And now we find ourselves in a position where.... I have to confess my memory is not that good, but I do remember a good deal about being promised lower water rates. And part of the reason for that is a lot of the costs PNM had to incur would not have to be incurred by the City. And that's precisely the reason the Municipal water utility isn't regulated by the PRC is because the Legislature thought the voters would be able to deal with whatever issues came up with the utilities and it would not have to go through the PRC.

Ms. Herrmann said, "I guess the point of this is you are now in a position where you are having to use funds that come from the forest people, because we all pay water rates. It's a very very regressive tax and I think it's going to come back to bite us in the butt."

Mary Schruben, 2199 Rancho Siringo Road, said I had a much longer sermon prepared for this item on the agenda. I just want you to all consider taking this pledge, "I shall not accumulate excess revenue in any enterprise fund for irresponsible members of the Governing Body to be attempted to appropriate these revenues for questionable legal balancing of budgets." She said, "To help you figure out a way to stick to this wisdom, I'm proposing you go on record, after you appropriate this \$3.8 million tonight that you commit in next fiscal year, which is our election year, to returning the \$3.8 to the ratepayers who have contributed this, by taking \$3 million and dividing by 12 billing periods and multiplying by the number of ratepayers on the bill and returning this money to the people who have paid it to you. This is not a good way to balance the budget. Our fiscal management in this City is pitiful and we all know we need to do a lot better. And in case you haven't figured it out yet, today is another good example of Mother Nature's unhappiness with us about your raiding our Water Fund. So you're going to take it this year and you're not going to take it the next year and we're going to make sure that you get a balanced budget and a better budgeting process. You've got 6 months to work on it, so figure it out. Thank you very much."

Former Councilor Karen Heldmeyer, 325 E. West Berger, said sometimes governments have to move money around, and I can't say I never voted, because I have voted to move money around Michael, when we didn't have any water billing so we had to pay for the water company. We took it from the General Fund as a loan which was paid back. What I think is important is that it not be a continual thing and it has to be something it isn't something you rely on every year. And one of the problems with the water, in particular is the people of Santa Fe have been very generous. They have voted for tax increases to fund certain projects. And when you take that money and you do something else with it, they are very perturbed. And when you go the next time to try to get voters to vote for a tax or a bond, they're going to say, forget it, you didn't use the money the way we thought you were going to and you're going to find yourself in bigger trouble because you're not going to have that confidence of the voters."

Former Councilor Heldmeyer continued, "So, I know you have to do it supposedly today, but very short term and not looking at kind of funny financing, which by the way, I think fee-in-lieu of taxes probably falls into that category. Because one of the things people were promised when the Water Company was purchased is, oh it will be less money. Nobody believed that, maybe not even Art Sanchez, but it will be less money, and one of the reasons is we won't have to pay taxes. Now we turn around and say to people, well you don't have to pay taxes, but you're going to pay a fee-in-lieu-of. People aren't going to be

happy with that and it's going to hurt not just the City, but other governmental entities that rely on voters to vote for bonds and taxes for them. So tread very carefully and get it fixed fast."

Kay Duckworth, 11 Pueblo Drive said, "I have stayed up very late tonight to address you all on a very very serious issue called you need to balance your budget. It's kind of taxation without representation. I didn't get a chance to vote on these taxes that you are taking over from here. I was told I had to pay a certain amount for my water, and I did so, and conserved. I was also told that the money in the Water Fund was to fix the infrastructure. I believe we had a major water problem on Water Street in April, not fixed. And you're now going to take money and start putting it in the General Fund. That money is for the water system. We all agreed to it. Sue Herrmann has an excellent memory, all of us do. We were told by our City Council and our Mayor if we bought the water system, our rates would go down, it would get fixed, we wouldn't have to pay taxes and that's not happening. And I have to balance my budget. I don't get to come to the Water Fund and say, well I need \$200,000 to pay off my mortgage, but my money goes to pay the Water Fund. And the thing that I think disturbs me the most are there are lot of people who let go of their landscaping because they couldn't afford the water rate. Shame on us. You've got to get the budget balanced. And if this is so out of control, you go back and fix it now. I don't think you should take the money. I think there was an option that you could go back and look at the budget. I think you should. Thank you.

The Public Hearing was closed

Mayor Gonzales asked how long as the Council, as part of the budgeting process, been transferring money from the Water Fund to the General Fund. Just the Water Fund transfers, how far does that go back.

Mr. Rodriguez said about \$900,000 total to date, that's for the 9 utility positions being billed to the Water Department. That's been going on, at least the staff in the Finance Department, they've been there for 16 years, but that's being going on at least to some extent. I think the \$900,000 is the height of it.

Mayor Gonzales said at least \$900,000 for the past 15 years have been part of the allocation of water funds toward the General Fund, that's been a budget practice by the Council.

Mr. Rodriguez said yes.

Mayor Gonzales said then going forward.

Councilor Bushee said that is not correct. Those are policies that may have gotten developed under Robert Romero. There were certain positions that were justified when Nick moved from Economic Development to Water. It wasn't something the Council was aware of, let's just say that.

Mayor Gonzales said, "But the Council voted on it."

Councilor Bushee said no.

Mayor Gonzales said, "You didn't vote on the budget."

Councilor Bushee said, "No, not on the paying of these positions. There has been no transfer out of the Water Enterprise Fund yet. There was a one-time transfer out of the Wastewater Fund of \$1.7 million in 2011."

Mayor Gonzales said, "So I'm confused on that, in terms of the actual transfer. Was it just a use of water funds to cover General Fund payments. Is there a Budget Adjustment Request that showed this 15 years of money leaving the Water Fund into the General Fund."

Mr. Rodriguez said, "No, not as such. What there is are back charges to the Water Fund for these positions. The City didn't get to 19 in a couple of years, it built up slowly over the years."

Mayor Gonzales asked, "So was part of that the repayment plan for the \$20 million that was initially loaned, or is that above and beyond. Because I understand the transfers that have been made to date, went to cover a \$20 million loan originally by the General Fund to the Water Company."

Mr. Rodriguez said, "That is another transaction. First of all, it's a different fund. That fund was going to 3201 the Capital Outlay Fund the City has. So the General Fund did not loan the Water Utility this money, but fund 3201, the General Municipal GRT lent it, \$19.6 million. And the Water Fund paid all that back..."

Mayor Gonzales said, "That was repaid through water rates over a period of time. And this is a separate transaction from the \$900,000 that has been transferred for some period of time. So what you brought forward this year if I understand correctly, was an attempt to shed light, bring more I'm assuming transparency in really what's been going on, but also what we're facing today."

Mr. Rodriguez said yes.

Mayor Gonzales said based on what Councilor Bushee has indicated, the Council really wasn't in the know that these funds were moving, it was just kind of an administrative issue that was done.

Mr. Rodriguez said yes.

Mayor Gonzales said, "So this Ordinance itself, just to be clear, has a time set on it right, in terms of this is one year.

Councilor Ives said yes.

Mayor Gonzales said, "So I just want to ask Councilor Dominguez real quick, just for the record in terms of, as the Chair of the Finance Committee, as we prepare for, obviously, the upcoming budget, we know there are significant revenues that are less through the General Fund revenues that are naturally in place to support services, so can you just lay out for us, as we consider this tonight, what your plan is, along with the Finance Committee to begin to deliver a budget where there is true alignment between

funds and services that are being paid for out of those funds so the public really understands what's going on here.”

Councilor Dominguez said, “I’ll do my best Mayor. The reality is that we do not have the level of revenue we need to sustain the services we are providing today. That’s really the bottom line. We just don’t have enough money to continue to provide the level of service we have today. I think that one of the things that has to happen is that the administration needs to get straight which people are being paid out of what fund. There are a ton of funds, and I think staff has started working on that. Some of that was exposed during the previous budget cycle, but there is still more work that needs to be done. So the statements that Oscar just made about the monies that were being paid out of water into the General Fund that we didn’t know about, don’t happen again. Essentially, what management did, is say here’s a pool of money. We need to pay this person in the General Fund. They kind of work in the water realm, and we’ll use that money in the Water Fund to pay for that cost, that salary and benefits.”

Councilor Dominguez continued, “My plan is that, given the discussions we’ve had is that this community is going to have to make some tough choice and it comes either in the form of cuts, revenue enhancements, or a combination of both. I think we can do some things organizationally to find some efficiencies, but not to the tune that we really need next year which is about \$11 million.”

Mr. Rodriguez said, “Including the hold harmless, about \$12 million.”

Councilor Dominguez said, “So about \$12 million, which is what the gap is next year. So that means we’re going to have to make some tough choices. So my plan, Mayor, is to subject the Governing Body, primarily the Finance Committee, to some sort of public process where we can meet with stakeholders and start to do some priority based budgeting. We have to change the way we budget in the City to be able to sustain budgets. We cannot continue to do what is being proposed tonight. I’m in support of it, but it’s not sustainable. That’s the bottom line, and we need to make some drastic changes. I hope that answers your question, Mayor.”

Mayor Gonzales said it did. He said, “The only thing I would like to ask you guys to consider for the Finance Committee is to agree to a calendar that can be published for the public by when we would expect to have a true understanding of the funds and that way we can hit the baseline of where we are. And then a calendar of when the consideration of cuts or prioritizations will be taking place so that the public understands what a review might be. I would love to make sure, going into the first of next year, we’re actually starting to talk about what the budget’s going to look like that would be adopted in April.

Councilor Maestas said he is going to support this, but “I just can’t help but feel embarrassed that adopted a budget with such a huge contingency and it put me in a very difficult position. And I hope that we never, ever ever do this again. He said regarding payments-in-lieu of taxes, as written the legislation provides it will be a percentage of whatever is left over after the necessary capital improvements and a 3 year reserve.

Councilor Maestas continued, "The concept of payment-in-lieu of taxes would relate to a fixed operating budget, a fixed entity, not a percentage of a variable excess. I already think the way the legislation is written, I think it misses the mark in terms of whether or not this is a true payment-in-lieu of taxes. It looks like we're looking like we're asking for whatever is left over of an amount that could vary. And so, I must admit, I didn't have the history some of my colleagues had on some of the promises that were made when the Water Company was purchased. And I even get more embarrassed about that, and so, I think this has got to be a high priority, whether within the Finance Committee or the Governing Body, we need to take this head on and head it off before we enter into another budget development cycle. So let's not wait, let's not put this on the back burner, let's address it head on."

Councilor Maestas continued, "We have an election coming up and we have a long way to go to restore trust to get folks to not just believe what we say, but adopt any kinds of initiatives we plan to put on the ballot. And lastly I want to state that since the Water Company was acquired, we did build the Buckman Direct Diversion. We added a significant source of water to the portfolio of the City, putting our surface water rights to beneficial use which is a significant enhancement to the entire City Water system that folks need to understand and realize. I'm going to support this, but I'm going to be very vocal that we address this. The original legislation called for this to sunset in 2019, and we changed it to 2016, so let's get to work."

Councilor Bushee thanked the handful of folks that stayed to attend a public hearing at 12:30 p.m. She voted against amending the rules to do this hearing at this point. She said she is going to stay consistent and vote against this, and continue to make remarks. She asked when the Finance Committee meets that it be a committee of the entire Governing Body if we're going to address these issues. And I think it needs to be more than looking at where to cut. We need to look at some of our other tax revenues and other sources of revenue that potentially could sunset that could be switched around. This needs to be a big picture effort.

Councilor Bushee continued, "My one last speech on this one is truly, in 1997, the Council, including Art Sanchez who brought it forward, in their infinite wisdom saw this potentially happening and wanted to forestall this. And I think that was the right thing to do then and I think it's right thing to do now. I don't think we should be raiding any of the enterprise funds. We should be managing them better and I think we should be more transparent and accurate in how we shift things. We've been a little fast and loose with figures. Staff, really I don't think the Council knew all of it. I just want to make it really really clear, we've never raided the Water Fund. We've paid for some positions out of the Water Fund that should be paid from the General Fund. The Water Fund already pays for the uses of the overhead of the City. But in 2011, there was some funding that should have been spent otherwise, was sitting around, and that's the one-time transfer from the Wastewater Fund that got built into this Ordinance of the \$1.7 million and now we're bumping that up close to \$4 million. I think it's the wrong policymaking we're setting precedent for here tonight and I hope we reverse this and go back to our 1997 Ordinance intentions of not transferring out of enterprise into the General Fund for whatever purpose. But we have to do a lot of work, and I'm happy to join the Finance Committee in that work."

Mayor Gonzales asked Councilor Bushee, "In your opposition, do you have any proposals tonight that would allow us to consider any reductions that could go in-lieu-of. I know this is something you've

been talking about for several weeks since the issue came forward. If the decision is no, let's not move it tonight, what would be a motion we could consider.

Councilor Bushee said, "Mayor, as you may have heard me say now a few times, if you attended some of the budget hearings. I was very concerned about the way we were doing things, and thought we should have that deep discussion we chose not to have about how we were going to have a more sustainable budget. That may include cuts, they may include ways, as I just mentioned of transferring.... not transferring, but we have different tax or revenue streams we could take a look at to see, perhaps there may be some debt service we can pay down minimally. There are lots of possibilities, but it's going to take a real patchwork of different approaches to do this. What I did ask was that we do that work during the budget hearings rather than punting down the road and doing this easy rate on the water fund."

Mayor Gonzales said Councilor Dominguez also allowed us to be there and to offer input and suggested changes. And we also went through a series of Council meetings. And what I consistently hear from you was your opposition to it, and this really is a message to all of us, because if we are committed to bring this to an end is step 1. But step 2, is we can't just throw it onto the staff to say, I'm opposed to this, now bring me something back that will be in line with the budget. We actually have to lead and offer ideas on how to cut or to raise revenues. It's not meant to get into discussion tonight, outside of saying for all of use, because I believe it is the collective intent of this Council to put an end to using water funds to supplement the General Fund. But it's got to go beyond that opposition. We have to get into that discussion of right-sizing City Hall in a way that reflects the current amount of general revenues that are coming in."

Councilor Bushee said she feels the Mayor interrupted her, commenting she wasn't finished.

Mayor Gonzales said, "I have not interrupted what you're saying. All my point is, as we go forward through this process, I do look forward to your 20 years of experience and participation in several budgets and understanding how the City has function as an entity to help drive the discussion on what services should be prioritized, or not. That's the only point that I have on this."

Councilor Bushee said, "What I was saying is that I would like us to meet as an entire Governing Body, that I'm happy to join the Finance Committee in exploring in great detail with the public, how we're going to right size this ship. And somewhere in there, you took it upon yourself to debate me about what we should cut this evening, which is not at all what we're here to do this evening. I'm going to continue to be consistent and say that I think we're creating bad policy and precedent with this transfer and undoing the Code intent that we passed in 1997. I'm also going to remind you that in 2009, many folks sat there and said, okay, yes, we need to go ahead and raise rates. We had \$70 million reserves in the Water Fund. I voted against those rate increases because we didn't need them. It was a divided Council and the Mayor had to break the tie then. I feel like I have been very consistent about how we should operate our enterprise funds absolutely. And Mayor, as you know, you make the appointments, I'm not on the Finance Committee. I'm happy to work with the Finance Committee and do whatever we need to do to make this ship right size."

Mayor Gonzales said Councilor Dominguez has always invited us which he appreciated.

Councilor Rivera said we've known about this for about 2 ½ months, but nobody came up with any proposals for cuts, including himself. He thinks we do have some work to do. He's supporting this because we're only looking at \$3 million right now, and no one wants to look at increasing revenues or what we're going to cut. Next year, when start having to make up \$11 million, and it's fair that the public understands this now, we're going to have to look at ways to generate revenue, which means increased Gross Receipts Taxes or increased Property Taxes. Or, we're going to find ways to decrease our expenditures which means letting go people or letting go services, which is easy to see and easy to hear, but eventually something's going to touch everybody, whether we cut a library, recreational facilities. Something's going to have and eventually it's going to effect every one of us, but that's what it takes to balance a budget. And he thinks it's fair the public start understanding that now – revenues or expenditures or a combination of the two will mean some tough decisions for us, and some tough things the public is going to deal with as well. He stands in support of the motion because it is just for one year and agrees with all of you that it is something we can't continue to do.

Councilor Trujillo said, "I agree with everything you said, Councilor Rivera. It's unfortunate we're doing this, but you Councilor Bushee, I remember we had those discussions. Everybody wanted the 8%, let's put 8% to the taxpayers for water. I remember Councilor Ortiz, well let's come up with 4%, let's do a 4%, and no, everybody wanted the 8%, and we were on that losing side because we voted against it. The fact is Councilor, I can remember Councilor Ortiz said you're going to have a windfall of money in a few years. And sure enough, this is the year it came up. It's \$3 million, we have to balance the budget. I think that's what everybody needs to understand. If we send something to the State if it isn't balanced we're not in compliance, so we have to do this. It's a must."

Councilor Trujillo continued, "I think over the course of this next year, we are going to come up with some policies, and some way we don't do this all the time, because we don't want to do this. We want to have that surplus to fix things within the Water Company, that's what the money was intended for. But at the same time, too, right now, like Councilor River said, what are we going to cut. Are we going to lay people off, are we going to raise your taxes, and if we start doing that, we're going to have another hearing here at Santa Fe High School. The entire City is going to be here, and they're going to be bickering about it because they're not going to want it. It's going to play off the same way it always does. Let's balance the budget with this transfer, let's moving on this year, and during the course of the year, in Finance or wherever we have these discussions, we'll come up with ways. I know we will."

MOTION: Councilor Maestas moved, seconded by Councilor Dimas, to adopt Ordinance No. 2015-19, as presented.

DISCUSSION: Councilor Maestas said you asked for solutions, and he did introduce legislation to conduct a financial stress test on the Water Enterprise Fund to determine if it can be self-sufficient without the 1/4 GRT dedicated by the voters. He isn't advocating that be done in a vacuum. If the enterprise fund can stand on it's own without \$7.5 million, there is a potential new revenue source for other priorities that can be reallocated and that certainly will draw down the surplus and make the Water Fund much more of a manageable fund. He said this is just a financial exercise, noting part of the GRT proceeds are backing current debt that cannot be called and he understands that, but not all of it is backed by debt that can't be called. We just paid off a couple of NMFA loans backed by the GRT, and we're moving in that direction

which he thinks is smart government – recognizing changed situations and priorities. He reiterated he is putting forth some solutions to address multiple needs of the City. He asked that be included the robust debate how best to manage our enterprise funds and balance our budget without these transfers.

Councilor Ives noted that everybody on the Governing Body has expressed their desire to address these issues in the next budget cycle, so folks should be very clear that everybody is committed to that. He certainly appreciates the admonitions, but if you have been to all the meetings where this has been discussed, the position of wanting to tackle this issue and figure out how to resolve it has been affirmed by each member of the Governing Body. He noted nobody has proposed cuts, and we have talked about realigning revenue in terms of our tax base with various programs, and we look forward to that discussion and something all of us will be engaging in. Hopefully, we will see everybody there to participate as well.

Councilor Dominguez said he already has staff working on policy to take us through this public process and he will be looking for help to determine a good process. He said, “To kind of give everyone a little flavor of what we’re talking about in terms of potential cuts, 49 layoffs with an average salary of \$77,000 including benefits, is \$3.8 million. These are preliminary numbers and not something he’s suggesting, but it’s a way to look at what we’re talking about and apply the math. When you start applying the math it will be an interesting discussion. He said, as the saying goes, we are at a tipping point and we need to go there.

The motion was approved on the following Roll Call Vote:

For: Mayor Gonzales, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

Against: Councilor Bushee said, “I protest voting at close to 1:00 a.m., in the morning, and no.”

- 5) **CONSIDERATION OF BILL NO. 2015-18: ADOPTION OF ORDINANCE NO. 2015- ____ (FINANCE COMMITTEE). AN ORDINANCE AMENDING SUBSECTION 11-9.1 SFCC 2987 AND SECTION 18-9 SFCC 1987, TO REQUIRE THAT PRIOR TO AUTHORIZING A REALLOCATION OF PROCEEDS FROM A VOTER-APPROVED GENERAL OBLIGATION BOND OR TAX THAT DEVIATES MATERIALLY FROM THE INFORMATION PROVIDED TO THE ELECTORATE THAT THE GOVERNING BODY AUTHORIZE SUCH REALLOCATION THROUGH THE ADOPTION OF AN ORDINANCE. (OSCAR RODRIGUEZ) (Postponed to July 29, 2015 City Council Meeting)**

This item is postponed to the Council meeting of July 29, 2015.

- 6) CONSIDERATION OF BILL NO. 2015-20: ADOPTION OF ORDINANCE NO. 2015-____ (COUNCILOR BUSHEE). AN ORDINANCE AMENDING SECTION 14-2.3(D) SFCC 1987; ESTABLISHING MEMBERSHIP REQUIREMENTS FOR THE PLANNING COMMISSION. (LISA MARTINEZ) (Postponed to July 29, 2015 City Council Meeting)

This item is postponed to the Council meeting of July 29, 2015.

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 1:00 a.m.

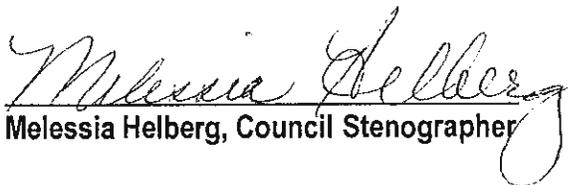
Approved by:

Mayor Javier M. Gonzales

ATTESTED TO:

Yolanda Y. Vigil, City Clerk

Respectfully submitted:


Melessia Helberg, Council Stenographer

CITY COUNCIL MEETING
EXECUTIVE SESSION
July 8, 2015

The Governing Body of the City of Santa Fe met in an executive session duly called on July 8, 2015 beginning at 6:32 p.m.

The following was discussed:

- 1) In Accordance with the New Mexico Open Meetings Act §10-15-1(H)(7) NMSA1978, Discussion Regarding Pending or Threatened Litigation in Which the City of Santa Fe Is or May Become a Participant, *City of Santa Fe, et al. v. County Commission of Santa Fe and New Mexico Department of Revenue*, First Judicial District Court, No. D-101-CV-2015-01396.

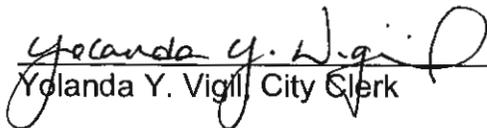
PRESENT

Mayor Gonzales
Councilor Bushee
Councilor Dimas
Councilor Dominguez
Councilor Ives
Councilor Lindell
Councilor Maestas
Councilor Rivera
Councilor Trujillo

STAFF PRESENT

Brian K. Snyder, City Manager
Kelley A. Brennan, City Attorney
Yolanda Y. Vigil, City Clerk

There being no further business to discuss, the executive session adjourned at 7:04 p.m.


Yolanda Y. Vigil, City Clerk