



**SUMMARY INDEX  
SANTA FE CITY COUNCIL MEETING  
Wednesday, February 24, 2016**

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE</u>
<b><u>AFTERNOON SESSION</u></b>		
CALL TO ORDER AND ROLL CALL	Quorum	1
APPROVAL OF AGENDA	Approved	1
APPROVAL OF CONSENT CALENDAR	Approved [amended]	2
CONSENT CALENDAR LISTING		2-3
APPROVAL OF MINUTES: REGULAR CITY COUNCIL MEETING – FEBRUARY 10, 2016	Approved	3
PRESENTATIONS	None	3
<b><u>CONSENT CALENDAR DISCUSSION</u></b>		
CONSIDERATION OF RESOLUTION NO. 2016-19. A RESOLUTION DIRECTING STAFF TO USE THE WATER ENTERPRISE FUND TO REPAY IN FULL THE BALANCE OF THE 2006 WATER CAPITAL OUTLAY BOND IN THE AMOUNT OF THIRTY- THREE MILLION SIX HUNDRED NINETY THOUSAND DOLLARS	Approved	3-8
<b><u>REQUEST TO PUBLISH NOTICE OF PUBLIC HEARING ON MARCH 30, 2016:</u></b>		
BILL NO. 2016-11: AN ORDINANCE AMENDING SUBSECTION 11-12.1 SFCC 1987, TO REMOVE THE PROVISION PERMITTING PAYMENT TO THE CITY IN LIEU OF TAXES FROM ENTERPRISE FUNDS; AND REMOVING THE SUNSET CLAUSE	Approved	8-9
BILL NO. 2016-13: AN ORDINANCE ADOPTING A MUNICIPAL GROSS RECEIPTS TAX	Approved	9
BILL NO. 2016-13: AN ORDINANCE ADOPTING A MUNICIPAL GROSS RECEIPTS TAX *****	Approved	9-11
<b>END OF CONSENT CALENDAR DISCUSSION</b> *****		

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE</u>
MATTERS FROM THE CITY MANAGER	None	11
<u>MATTERS FROM THE CITY ATTORNEY</u>		
EXECUTIVE SESSION	Approved	11-12
MOTION TO COME OUT OF EXECUTIVE SESSION	Approved	12
MATTERS FROM THE CITY CLERK	Information/discussion	12
COMMUNICATIONS FROM THE GOVERNING BODY	Information/discussion	13-20
<u>EVENING SESSION</u>		
CALL TO ORDER AND ROLL CALL	Quorum	21
PETITIONS FROM THE FLOOR		21-26
<u>APPOINTMENTS</u>		
Bicycle and Trail Advisory Committee	Approved	26
Airport Advisory Board	Approved	26
City Business & Quality of Life Committee	Approved	26-27
North Central Regional Transit District	Approved	27
<u>PUBLIC HEARINGS</u>		
CONSIDERATION OF RESOLUTION NO. 2016-20. A RESOLUTION PROVIDING PUBLIC APPROVAL OF THE PUBLIC FINANCE AUTHORITY'S REVENUE BONDS (ST. JOHN'S COLLEGE PROJECT) SERIES 2016	Approved	17-28
<u>CASE #2016-07.</u> APPEAL OF THE HISTORIC DISTRICTS REVIEW BOARD'S DECISION ON JANUARY 12, 2016, CONCERNING PROPERTY LOCATED AT 1244 CAMINO DE CRUZ BLANCA IN THE HISTORIC REVIEW DISTRICT AS CASE #H-15-106. SOMMER, KARNES & ASSOCIATES, AGENTS FOR JENNIFER DAY, REQUEST THAT THE GOVERNING BODY RESCIND THE DENIAL OF AN EXCEPTION TO APPLY GREEN STUCCO TO THE RESIDENTS	Appeal denied	28-47
ADJOURN		47

**MINUTES OF THE  
REGULAR MEETING OF THE  
GOVERNING BODY  
Santa Fe, New Mexico  
February 24, 2016**

**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, February 24, 2016, 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 Bushee, to approve the agenda as presented.

**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 none against.

**7. APPROVAL OF CONSENT CALENDAR**

**MOTION:** Councilor Dominguez moved, seconded by Councilor Bushee, to approve the following Consent Calendar, as amended.

**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.

**10. CONSENT CALENDAR**

- a) **REQUEST FOR APPROVAL OF BID NO. 16/23/B – LED COUNTDOWN PEDESTRIAN HEAD INSTALLATION AT VARIOUS INTERSECTIONS AND AGREEMENT BETWEEN OWNER AND CONTRACTOR; M.W.I., INC. (RICK DEVINE)**
- b) **REQUEST FOR APPROVAL OF BUDGET INCREASE IN THE AMOUNT OF \$242,802 FROM CASH BALANCE; ADDITIONAL PREVENTATIVE MAINTENANCE AND REPAIR OF RESIDENTIAL AND COMMERCIAL COLLECTION UNITS FOR THE ENVIRONMENTAL SERVICES DIVISION. (LAWRENCE GARCIA)**
- c) **REQUEST FOR APPROVAL OF PROFESSIONAL SERVICES AGREEMENT – COLLABORATIVE ARTS MARKETING PROGRAM FOR ARTS COMMISSION; MUSEUM OF NEW MEXICO FOUNDATION. (DE3BRA GARCIA Y GRIEGO)**
- d) **CONSIDERATION OF RESOLUTION NO. 2016-17 (COUNCILOR IVES AND COUNCILOR TRUJILLO). A RESOLUTION AMENDING RESOLUTION 2014-96 TO DIRECT STAFF TO COORDINATE FREE TRANSPORTATION AND PARKING OPTIONS FOR PATIENTS AND VOLUNTEERS OF THE MISSION OF MERCY PROGRAM SPONSORED BY THE NEW MEXICO DENTAL FOUNDATION. (NOEL CORREIA, JON BULTHUIS AND DAVID SILVER)**
- e) **CONSIDERATION OF RESOLUTION NO. 2016-18 (MAYOR GONZALES, AND COUNCILOR IVES AND COUNCILOR TRUJILLO). A RESOLUTION DIRECTING STAFF TO DEVELOP A PLAN TO SPONSOR AND IMPLEMENT A “PERFORMANCE ENCORE” IN OCTOBER 2017. (RANDY RANDALL)**
- f) ***[Removed for discussion by Councilor Maestas]***

- g) **REQUEST TO PUBLISH NOTICE OF PUBLIC HEARING ON MARCH 30, 2016:**
  - (1) **BILL NO. 2016-10: AN ORDINANCE AMENDING SUBSECTION 12-9-3.9 OF THE UNIFORM TRAFFIC ORDINANCE RELATING TO ADA ACCESSIBLE PARKING VIOLATIONS REQUIRING A MANDATORY COURT APPEARANCE (COUNCILOR LINDELL). (NOEL CORREIA AND SARA SMITH)**
  - (2) *[Removed for discussion by Councilor Bushee]*
  - (3) *[Removed for discussion by Councilor Bushee]*
  - (4) *[Removed for discussion by Councilor Bushee]*
- h) **PURSUANT TO RESOLUTION NO. 2015-63, UPDATE ON THE DEVELOPMENT OF A LONG-TERM CULTURAL PLAN. (DEBRA GARCIA Y GRIEGO). (INFORMATIONAL ONLY)**
- i) **REQUEST FOR APPROVAL OF PROFESSIONAL SERVICES AGREEMENT – WATER RESOURCES AND CONSERVATION PUBLIC RELATIONS AND PUBLIC OUTREACH PROGRAM (RFP #16/13/P); PK PUBLIC RELATIONS. (RICK CARPENTER) (Postponed at January 27, 2016 Meeting of the Governing Body). (Withdrawn)**

**8. APPROVAL OF MINUTES: REGULAR CITY COUNCIL MEETING – FEBRUARY 10, 2016**

**MOTION:** Councilor Trujillo moved, seconded by Councilor Bushee, to approve the minutes of the Regular City Council meeting of February 10, 2016, as presented.

**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 against.

**9. PRESENTATIONS**

There were no presentations

**CONSENT CALENDAR DISCUSSION**

- 10 (f) **CONSIDERATION OF RESOLUTION NO. 2016-19 (COUNCILOR MAESTAS, COUNCILOR RIVERA, AND COUNCILOR IVES, COUNCILOR BUSHEE, COUNCILOR LINDELL AND COUNCILOR TRUJILLO). A RESOLUTION DIRECTING STAFF TO USE THE WATER ENTERPRISE FUND TO REPAY IN FULL THE BALANCE OF THE 2006 WATER CAPITAL OUTLAY BOND IN THE AMOUNT OF THIRTY-THREE MILLION SIX HUNDRED NINETY THOUSAND DOLLARS. (OSCAR RODRIGUEZ)**

Councilor Maestas asked Mr. Rodriguez to describe the action being taken and the benefits to the City. Councilor Maestas read the caption of this agenda item into the record.

Mr. Rodriguez said, by taking this action, the City will save almost \$8 million in interest costs over the life of the bonds, and we won't have to pay \$3.50 million next year in debt service, and those funds can stay in the operating fund of the Water Division. He said June 1, 2016, is the first date the bonds could be called without a penalty. The earliest the 2009 bond can be called is 2019. It will make the Water utility self sustaining and able to pay for its operations with its water revenues.

Councilor Bushee asked if Mr. Schiavo weighed-in on this proposal and if he is in favor of this action.

Mr. Rodriguez said Mr. Schiavo helped to write the Resolution.

Councilor Bushee wants to be sure there are no other large infrastructure needs coming down the pike in the short term. She asked if there is a plan for the Water Division.

Mr. Rodriguez said yes, noting it was approved by the Governing Body as part of the Capital Improvement Plan in January.

Councilor Bushee said, "So for the record, everything is copacetic."

Mr. Snyder said, "Nick Schiavo has worked diligently with Councilor Maestas, Oscar and myself on this, and feels comfortable with it. As you mentioned, we have an approved Capital Improvement Plan, a 10-year plan for water and the City for all projects we foresee in the near future, which in the long term are identified in that Plan. So from a funding standpoint everything is in order, and the payoff of this bond will free-up approximately \$3.5 million."

Councilor Bushee asked if the \$3.5 million will go to the General Fund.

Mr. Rodriguez said no, it will stay in the Water Fund.

Councilor Bushee asked if it would be free if the Council chose to put it there.

Mr. Rodriguez said all money in any fund is free for the Council to move it as it wants to.

Councilor Maestas asked Mr. Rodriguez the current balance in the Water Fund, what it will be after the 2006 Water Bonds are paid.

Mr. Rodriguez said, "The current balance in the Water Fund is \$91 million, and according to the information in the last Monthly Performance Report, it is projected by the end of the year the Water Utility will have close to \$95 million in cash. And so if we take the \$34 million from that, it would be some \$46 million, no \$56 million."

Councilor Maestas asked the amount owed on the 2009 bonds.

Mr. Rodriguez said, "In 2019, the balance we can call will be \$56 million."

Councilor Maestas said and that would be on June 1, 2019, and Mr. Rodriguez said yes.

Councilor Maestas said, "With the proceeds that would normally go to pay debt service that we're going to free-up by paying the 2006 Bonds, can we pay additional debt service payments on the 2009 Bonds."

Mr. Rodriguez said, "Yes, but it won't make any difference. They're all the obligations that we have. In essence, it would just be using cash that they wouldn't be able to earn interest on."

Councilor Maestas said, "Let's say we're willing to explore also paying the 2009 bonds. What would be the penalties?"

Mr. Rodriguez said, "The interest. We're obligated to make those interest payments until 2019. And so if we pay it off early, we have to pay the interest that we owe from now until 2019."

Councilor Maestas, "So there's no other putative penalties on top of pay that."

Mr. Rodriguez said, "No. We would just have whatever obligations we would have at that time."

Councilor Maestas said, "I just wanted to make sure that the members of the public understand that this is one bright spot in the way we're managing our Water Fund. We're bringing the balance down, we're paying off bonds without incurring unnecessary penalties, saving the Water Fund a lot of interest, and freeing-up \$3.5 million in debt service payments that can be used for capital improvement or anything related to the Water Fund. So I see this as a win-win all the way around."

Councilor Dominguez said, "Just so we can talk a little more, so the public is truly aware of the implications of this. I agree with you, it's a good thing, anytime we can do that – bring that interest down and pay off sooner than later, that's a good thing. But to speak to the General Fund, since that is the fund that is in trouble, one, this money would not be available to the General Fund until when."

Mr. Rodriguez said it would be July 1, 2016, and clarified that Councilor Dominguez is talking about the \$3.5 million.

Councilor Dominguez said, no he's thinking of the whole entire debt, "but we can start with that and then get to the other."

Mr. Rodriguez said, "Let me answer it this way, the money that we are going to save, we're not going to have to pay in debt service for the Bond, that will be available starting July 1, so that can be budgeted in the next fiscal year. It you're talking about the \$34 million, we are right now moving around our cash investments so the \$34 million will be available within days of... we're going to execute this of June 1, 2016."

Councilor Dominguez asked the source of funds to pay the \$34 million.

Mr. Rodriguez said, "The ending balance. The balance that is right now available in what is known as the Water Utility Operating Fund. About \$91 million right now."

Councilor Dominguez asked again, "The revenue comes from where."

Mr. Rodriguez said, "The revenue comes from two sources. Rate revenue and gross receipts subsidy that they receive, about \$7.8 million of that."

Councilor Dominguez said the gross receipts tax subsidy doesn't end until when.

Mr. Rodriguez said until we pay all of the bonds. The earliest we can pay them off would be in 2019.

Councilor Dominguez said, "So 2019 is the earliest that we would have access to that money."

Mr. Rodriguez said, "Yes sir, well with one correction and that is obviously, you are considering a franchise fee payment-in-lieu of taxes. You can transfer money that way as well."

Councilor Dominguez asked, "In terms of the operation of the water utility as it pertains to this, if there were an option for us to pay this debt off tomorrow or this next fiscal year without penalties or having to pay interest or the other details that go along with that debt, would the utility still be able to operate."

Mr. Rodriguez said, "Yes sir. Absolutely. And the utility would also be able to assume debt as well. You will recall I circulated a Memo responding to Resolution the Governing Body passed, asking for a plan to make the water utility self sustaining. I sent you a memo back in October where I was working with the Financial Advisor to let you know that even without the \$7.8 million subsidy, the Water Utility could still assume a debt of up to \$81 million."

Councilor Dominguez, "But yet that GRT subsidy, we can't really..."

Mr. Rodriguez said, "Not right now.."

Councilor Dominguez continued, "... can't do anything with it until, aside from what some of us are favoring, and some of us are not favoring."

Mr. Rodriguez said, "Right. Yes sir."

Councilor Dominguez said, "I think it's a good thing. We need to do it sooner, rather than later, but sure I agree, and also foot the bill."

Councilor Maestas said, "On Councilor Dominguez's point, if we were to pay the 2009 Bonds, there is no unnecessary penalty. We would be paying the interest, and I think we have enough to cover that, then that would make the gross receipts tax increment whole, the 1/4% and it would be open for rededication. But if the Municipal Infrastructure Gross Receipts Tax Increment can't go to the General Fund, it can go to other more contemporary priorities that maybe might require it more."

Councilor Dominguez said, "My point is exactly like yours, is that we have more options available to us than we do right now at that time."

Councilor Maestas said, "The thing I wanted to mention Mayor, too, is by reducing the total debt service, it reduces the debt service coverage requirements. Could you explain very briefly what that is and how much we're going to reduce that as well."

Mr. Rodriguez said, "Yes sir. It's a complicated maneuver, but here it is. Whenever the City issues bonds, we promise to cover them with cash at the beginning of the year. Not just in the amount equal to the debt service, but a little bit more, it's called times coverage. And the minimum required is 25%, so 1-1/4 times coverage. But the City has had the policy for some time, in order to secure a good rating, to cover it twice, so two times. By lowering the amount of debt that has to be covered, then that two times coverage is the cash we have to place ultimately is less. That means we would not have to keep \$7 million in times coverage to cover the \$3.5 million debt service a year."

**MOTION:** Councilor Maestas moved, seconded by Councilor Bushee, to adopt Resolution No. 2016-19.

**DISCUSSION:** Councilor Bushee asked to be added as a cosponsor.

Mayor Gonzales said, "To enhance a little what Councilor Maestas was talking about, with this first payment the amount of GRT tax that was being used to support the two times coverage, is not free to be used, or could not be reallocated toward addressing the \$15 million deficit that exists. Correct."

Mr. Rodriguez said, "The way we would do that, the way that can be done....you can't do it directly. In other words you can't promise that GRT somewhere else, because it's promised. But the way you do that, is transfer in the form that you've been doing that with the franchise fee payment-in-lieu-of taxes. You can transfer it that way. That means it resources available to the City. The Governing Body speaks for all of that completely."

Mayor Gonzales, "I guess I don't understand. But I think the point is that paying this off now, as you said Councilor Maestas, which I think it's important that we stay in the alleys that you stated is that this was meant, by the voters, to be an Infrastructure Gross Receipts Tax to initially support the capital projects of our Water Company. I don't think by us paying it off it gives leeway or freedom to the Council to change

that intent. And I think we go into dangerous areas once again if we start thinking that this freed-up capacity in revenues could now be allocated toward other uses that fall outside of what the voters intended which was an Infrastructure Tax to support infrastructure. If the conversation moves during the budget cycle that allows for new debt to be issued as a result of the freed-up capacity for infrastructure, maybe that makes sense, but I think we have to be careful about putting this in the bank through a reallocation strategy under the guise of a Franchise Fee. I think it's the wrong intention with that tax, and that tax was meant to support infrastructure, and it should continue to support that as we go forward. But we can have that debate and discussion during the budget and Finance Committee meetings."

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

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

**Against:** None.

**Explaining her vote:** Councilor Lindell said, "Yes. And would you add me on as a sponsor."

**Explaining his vote:** Councilor Trujillo said, "Yes. And add me on as well."

**Explaining her vote:** Councilor Bushee said, "Yes. And I want to thank Councilor Maestas for dogging this since the last budget hearings. He has been talking about this, and I'm good that he followed up with it and with staff."

**10 (g) REQUEST TO PUBLISH NOTICE OF PUBLIC HEARING ON MARCH 30, 2016:**

- (2) **BILL NO. 2016-11: AN ORDINANCE AMENDING SUBSECTION 11-12.1 SFCC 1987, TO REMOVE THE PROVISION PERMITTING PAYMENT TO THE CITY IN LIEU OF TAXES FROM ENTERPRISE FUNDS; AND REMOVING THE SUNSET CLAUSE (COUNCILOR DOMINGUEZ). (OSCAR RODRIGUEZ)**

Councilor Bushee said the biggest concern she has with the items she removed for discussion is with 10(g)(2), and perhaps it's something along the lines of what the Mayor just mentioned. She said, "When we approved, well I didn't, but when the majority... the tie broken by Former Mayor Coss, to support rate increases starting in 2009 of about 8% for 4 years, we made promises then. We didn't send it out to the voters, but we made promises why we needed to raise rates which was for infrastructure for our Water Company. And so my concern again, is falling outside the lines of what we're trying to.... just to follow... have some integrity with what we said we would use those funds for. So, of course, I've been objecting to this use."

Councilor Bushee continued, "I don't object *per se* to a franchise fee in concept, but the one that is listed here in this current Ordinance is a 12% Franchise Fee. And to be honest, I serve on Public Utilities, and I see no rational nexus or correlation as to why 12%, when the other main utilities in the City, PNM and

New Mexico Gas Company pay 4%. So, I'm really interested in taking the time to do it right, and make sure that we have before.... again I won't be here, so I know these are tough times and tough decisions, but I would really like to see the \$4 million in cuts in front of the Council, maybe even more than that, as a sort of balanced approach. So I'm going to be voting against both... all three of these actually, but more in particular, I'm really unhappy, or really unsure, why you would move forward with a 12% franchise fee at this juncture. And I think there needs to be a lot more debate on that. So that's really why I brought it off, and somebody else will have to make the motion to move that forward. I know it's just for publication."

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

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

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

**Against:** Councilor Bushee, Councilor Dimas and Councilor Maestas.

**10 (g) REQUEST TO PUBLISH NOTICE OF PUBLIC HEARING ON MARCH 30, 2016:**

**(3) BILL NO. 2016-13: AN ORDINANCE ADOPTING A MUNICIPAL GROSS RECEIPTS TAX (COUNCILOR DOMINGUEZ). (OSCAR RODRIGUEZ**

Councilor Bushee said, "I will be a little shorter, briefer on Item 10(g)(3). I had similar concerns when it came to Public Works. I think that is particularly premature, this Hold Harmless Gross Receipts Tax, given that we really don't know how the State, in the end, is going to deal with this. And I really do believe that should be off the table at this juncture, so I will vote against this as well."

**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 Dominguez, Councilor Ives, Councilor Lindell, Councilor Rivera and Councilor Trujillo.

**Against:** Councilor Bushee, Councilor Dimas and Councilor Maestas.

**10(g) REQUEST TO PUBLISH NOTICE OF PUBLIC HEARING ON MARCH 30, 2016:**

**(4) BILL NO. 2016-13: AN ORDINANCE ADOPTING A MUNICIPAL GROSS RECEIPTS TAX (COUNCILOR DOMINGUEZ). (OSCAR RODRIGUEZ**

Councilor Bushee said, "I made similar remarks at the recent Public Works Committee. I really, truly, honestly believe that going to the maximum on our gross receipts tax at this point is a business killer,

small business killer, in particular. I know many businesses that have chosen to not conduct business here if they could in other communities, lawyers for instance, because of our pretty exorbitant gross receipts tax, and I consider it to be a regressive tax, so again, that would not be something I would consider.”

Councilor Maestas said, “I’m not going to be repetitious here, but I think I’ve got to speak on the process regarding what will be, I think, very significant decisions that will affect, you know, families within our City, at least when it comes to any possible gross receipts tax which is quite regressive. And so far in our policy process, we’ve only had one committee meeting, and there was no public hearing, no petitions from the floor, and we’re already taking action to publish these laws. And so I think it’s a disservice to our community when we haven’t given them the opportunity to weigh-in on this. And I think that’s the disadvantage that we’re in, and that we ran out of time and we’re trying to keep all options on the table, but despite the reasons for doing this, we’re doing a disservice to the community. That’s all I had Mayor.”

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

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

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

**Against:** Councilor Maestas, Councilor Bushee and Councilor Dimas.

**Explaining his vote:** **Mayor Gonzales** said, “Yes. And then just for the record, on all 3 of these items, and maybe Councilor Dominguez you can answer the issue. But this action tonight, from what I understand, does not implement, it moves it to the level of a public hearing process to allow the public to weigh in. **Councilor Dominguez** said, “It does a couple of things Mayor. There are some timing issues that the State has imposed on us with regard to some of this, and so we need to make sure that we get it through the process, at least at this level, before we can really even implement it. And so, there is going to be, I want to reassure the public, that there is going to be ample time to be able to discuss whether or not we want to use these options to help balance our budget. It is not, in any way intended to be a work-around. It is just so we have at our disposal all of these options because of the timing constraints that the State has.” **Mayor Gonzales** said, “So the option of not instituting any of these, and being able to address a balanced budget through other means, or to address a budget in a balance way through other means, still exists. **Councilor Dominguez** said, “Absolutely. If we, through the budget process come up with \$15 million in cuts, and we don’t have to implement any of these things, then we don’t have to. **Mayor Gonzales** said, “Thank you for the clarification.”

Councilor Bushee said, “Can I ask the Chair, why he has... I know you’re not required to, but if you are going to have these put out as options, why the property tax wasn’t listed as a public hearing as well.”

Councilor Dominguez said, “I think a question for staff. I know there are different....”

Councilor Bushee said, "It's not required, but it would just seem if you're putting them all out as options...."

Councilor Dominguez said, "I think it's because we have to at least have the option approved at the Council level on some of these, but that's not true for property tax. So at the time that we begin to build and debate and balance our budget, there will be opportunities then to consider that, if that is something that is even on the table at that time."

Councilor Bushee, "So that's all I would just really recommend. I get the distinction as to why you don't have to publish it. I would suggest that.... it was the same thing when they had it at Public Works, was that all options should be on the table, including what cuts are being proposed with some specificity so people have an understanding of what we're looking at, and what that would mean to them."

Councilor Dominguez said, "And just for clarification for the public knowledge, the other Resolution that both Councilor Ives, Councilor Lindell and myself, and even Councilor Maestas to some degree, worked on very hard, throughout the course of time, and really worked hard on it, there are options there that are pretty detailed on where we can get some cuts as well. To simply say we're not expanding the list of tools we have available to us to implement some of these cuts is not entirely accurate, they're there in that piece of legislation."

Councilor Bushee said, "I just suggested that when you get to the public, if you can provide them as many possibilities of how it might affect them, at least they have an opportunity for input. It's not a requirement on your part, but I would just suggest it as an overall approach."

\*\*\*\*\*  
**END OF CONSENT CALENDAR DISCUSSION**  
\*\*\*\*\*

**11. MATTERS FROM THE CITY MANAGER**

There were no matters from the City Manager.

**12. MATTERS FROM THE CITY ATTORNEY.  
EXECUTIVE SESSION**

**IN ACCORDANCE WITH THE NEW MEXICO OPEN MEETINGS ACT §§10-15-1(H)(7)AND (8) NMSA 1978, DISCUSSION REGARDING THREATENED OR PENDING LITIGATION IN WHICH THE CITY OF SANTA FE IS A PARTICIPANT, INCLUDING, WITHOUT LIMITATION, PENDING MATTERS RELATING TO THE MARKET STATION CONDOMINIUM; AND DISCUSSION OF THE PURCHASE, ACQUISITION OR DISPOSAL OF REAL PROPERTY OR WATER RIGHTS BY THE CITY OF SANTA FE, INCLUDING THE LEASE OF 29,490 SQUARE FEET OF REAL PROPERTY ADJACENT TO 786 CALLE MEJIA. (MARCOS MARTINEZ)**

**MOTION:** Councilor Rivera moved, seconded by Councilor Ives, that the Council go into Executive Session, in accordance with the Open Meetings Act §§10-15-1(H)(7) and (8) 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, including, without limitation, pending matters relating to the Market Station condominium; and discussion of the purchase, acquisition or disposal of real property or water rights by the City of Santa Fe, including the lease of 29,490 square feet of real property adjacent to 786 Calle Mejia.

**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 5:35 p.m.

Mayor Gonzales said the Governing Body will return at 7:00 p.m.

### **MOTION TO COME OUT OF EXECUTIVE SESSION**

**MOTION:** At 7:00 p.m., Councilor Rivera moved, seconded by Councilor Bushee, 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.

### **13. MATTERS FROM THE CITY CLERK**

Yolanda Vigil, City Clerk, said next Tuesday, March 1, 2016, is the Regular Municipal Election, urging people to come out and vote. She said she is using Voting Convenience Centers for this election, and noted the locations. She said any voter can vote at any of these Centers. She said early voting will be conducted until Friday, at 5:00 p.m., on February 26, 2016 in the office of the Municipal Clerk and at the Genoveva Chavez Community Center.

Ms. Vigil invited everyone to attend the inauguration ceremony for the newly elected municipal officials, on Monday, March 7, 2017, at 5:30 p.m. at the Santa Fe Community Convention Center.

#### **14. 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 February 24, 2015, is incorporated herewith to these minutes as Exhibit "1."

##### **Councilor Dimas**

Councilor Dimas said, "I don't know quite what to say. This is my last meeting being on the Council. I do want to thank all the voters who voted me into District 4, and thank them for the opportunity of serving you for the last 4 years. It's been a pleasure. I can't say it's always been fun, but I want to thank you for allowing me the opportunity to serve you in District 4, and for the City of Santa Fe, because it's not just District 4 that City Councilors serve. I think we serve the entire community and I think that's what we need to be doing. I do want to congratulate Mike Harris; I do believe he will win the election, and he has my full support and my endorsement. And I wish him the very best of luck."

Councilor Dimas continued, "And I want to thank the Governing Body for allowing me to sit with you for the last 4 years for the most part and 2 years for others, but I've grown to love each and every one of you and I consider each and every one of you my friend. And I just want to remind you that Public Safety is still and should be one of the main priorities of this City, and that's taking care of our citizens. And I will still remain active in taking every drug dealer off the streets here in Santa Fe, and not allowing them to take the lives of our young people, and even some of our older people, away from us. I encourage you to continue to fight and to take these predators off our streets, and remember that Public Safety, once again, is a priority here in this City."

Councilor Dimas continued, "Once again, thank you. I have learned a great deal about our City. When I was elected, I came in pretty green, having been on the bench for so many years, and it was all a new experience for me because, being on the bench, every time I made a decision, it was my decision, and only my decision. So it is a lot different now. Everyone gets to vote and there's 9 votes now that the Mayor is allowed to vote, so I thank each and every one of you for your friendship and your guidance during this period of time. And I wish each and every one of you the very best of luck. And you're going to be dealing with budgets and that type of thing coming up. I won't be around, but I hope you will take into consideration all of us seniors, all of us older people who are living on a fixed income, and take that into consideration in your deliberations, because I certainly can't afford to pay higher property taxes, as I'm sure a lot of people my age who are under the same circumstances, won't be able to afford to do that. So think carefully about that and all I have to say is the best of luck, and I know you will do what's best for the City of Santa Fe. And once again, thank you for allowing me that opportunity."

##### **Councilor Maestas**

Councilor Maestas said, "I want to start by thanking Councilors Bushee and Dimas for their public service. As we all know, it's an incredible sacrifice, not just of your own time, but the sacrifice by your families, and it's just an incredible commitment. And I was honored to serve with both of you. You're my neighbors. I'm going to lose my neighbors. But I know you're not done yet and will be significant voices in

our community, and I think you should. You have incredible insight into the City and the process, and I have no doubt that we haven't seen the last of both of you. So again, from the bottom of my heart, thank you for all your service to the City."

Councilor Maestas introduced the following:

1. An Ordinance authorizing an amendment to the *2012 General Obligation (GO) Bond Parks and Trails Implementation Plan* to reallocate \$311,354 currently designated for various City park improvements to other City parks with high maintenance needs. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "2."
2. An Ordinance amending Section 14-6.2 of the Land Use Development Code to remove certain limitations on short-term rental dwelling units; amending the Fee Schedule for a Short Term Rental Permit; and requiring that Permit holders pay all applicable taxes or be subject to certain penalties. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "3."
3. A Resolution establishing the number of short-term rental permits the City of Santa Fe Land Use Department may issue. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "4."

### **Councilor Bushee**

Councilor Bushee said, "I have served 22 years on this Governing Body, so my speech is going to be about 22 minutes long, so just sit tight. No. As you know I have served now under 4 different Mayors, 4 different administrations. All were different. Each makeup of the Governing Body is very different. And I started out when I was 33 years old. I don't even know what happened to my 30's, 40's and part of my 50's. but, a lot of it was days, meetings, and hours in this space right here. And the space hasn't changed a whole lot in 22 years, let me just say that. But, each and every one of you I have valued, all very differently, in your approaches. And I was going through my desk, which many of you know, I had to take a backhoe to recently. But I did find 'this.' My very first weeks on the Council we kicked-off Community Days in Santa Fe, and 'this' was something we designed for the first tee-shirts."

Councilor Bushee continued, "And a lot of folks in the community have supported me through my time, and of course the voters of District 1 for many years. And I grew up with you all, if you think of growing up from your early 30's. There's a part of my life that is here in this room and in this building. I value all the lessons I've learned. I've grown a lot as a person. There are a lot of challenges ahead. And I know we need to think a lot and think for the community, but make sure you use your heart when you make these decisions. Keep in mind the folks that really are struggling, whether from an addiction, or poverty or issues of aging. There are so many different areas of our community that need help. We are the front lines of politics and the people they can reach out and touch. So remember these folks when you make decisions. These are the folks I carried with me each time I had to make a difficult decision. And not all of it's sexy, some of it is filling the potholes and making sure the sewer system is working. A lot of what

we do here really impacts people and just remember that, and make sure you do our best for our community. We are an international gem, but just remember that it comes down to who we're serving. Public service is an important thing to do in life and everywhere I have thought that I did it for two decades. And I can't say I've enjoyed every minute of it, but I can say the overall experience has changed who I am. Do not expect tears, I've gone a quite a few years and not one tear was shed, but tonight it's catching up with me, so thank you for everything."

### **Councilor Dimas**

Councilor Dimas said he is amazed that Councilor Bushee is crying, because he's usually the one that gets emotional about everything. He said, "I neglected to say one thing and that is how much I appreciate the staff, and the great job that you do. I can't remember a time I had to call Brian, or Yolanda, or whoever, on staff and everything didn't get done that I asked for. I don't think I ever asked for anything impossible or out of the ordinary. You served this community well, and I really want to recognize the staff for the City of Santa Fe. I think we have the hardest workers anywhere in the country and I want to recognize them."

Councilor Dimas continued, "And I want to invite everyone, and I forgot to do this. I forgot to invite everyone on Saturday night, Camel Rock Casino, On The Rocks Lounge, it's a brand new lounge there. And my band The Springs will be playing 60's and 70's oldies. We're booked there from 9:00 p.m. to 1:00 a.m., and I expect to see each and every one of you there dancing the night away. I think you'll have a good time."

### **Councilor Ives**

Councilor Ives said he would like to cosponsor the Ordinances relating to short term rentals and permits.

Councilor Ives said, "I want to express my great thanks to Councilor Dimas and Councilor Bushee, not only for the years of service, but for the friendship. We have both been aligned on many issues during my first 4 years on Council. We've been opposed on some issues, but I think we have always set a good standard for public participation, public discourse, because we deal with each other always civilly, very straightforward, with respect for the position each of us holds on this Governing Body as well as respect for the position each holds as City Councilors. I think that civility is something that, in this country at least in levels beyond the local municipal seems to have been so totally forgotten, forsworn or given up on, but I think we've always maintained that here. And that provides the type of example that not only radiates outward from Santa Fe, saying Santa Fe is a special place where we can work together and disagree agreeable, which is such an important aspect of the public debate, public discourse doing the public's business."

Councilor Ives continued, "I want to thank both of you especially for the passion you have brought to particular areas while I've been serving with you here on City Council. You are focused on public safety, on issues relating to drugs. You have been such a constant and strong champion of fighting the scourge that plagues our City, our Country and our world. That has been inspirational to me, and I would hope to be able to continue that focus and emphasize that and see it play out even more strongly in years to come."

Councilor Ives continued, "And Patti, your passion for trails, and parks, for the cycling community and your leadership on those issues has been phenomenal and taken this City to new heights in terms of becoming a silver certified, working on gold certified, biking community. And both of those topics, both fighting the terrible problem of drugs and promoting wellness through trails and parks are two items that are so significant in resonating the public health and wellness across our community. And the passion both of you have brought to that have been inspirational and I would hope to be able to continue in that vein. So thank you, thank you, thank you for that for leading us in that regard over your years on Council, and we hope you will continue to insist that we focus on these issues as we move into the future. So thank you."

### **Mayor Gonzales**

Mayor Gonzales introduced a Resolution authorizing staff to collaborate with the Santa Fe Farmers Market to stage a Plaza Farmers Market one Sunday a month during June, July, August and September 2016; collaborate on a Southside Farmers Market; and provide complimentary parking during the week. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "5."

Mayor Gonzales said, "I want to begin by saying I didn't join this Council under the best of circumstances with Councilor Dimas and Councilor Bushee because of the previous election. But what I want to say to each of you is a heartfelt thanks for the kindness you showed me upon my coming onto the Governing Body, the willingness to provide counsel when I sought it, and always staying focused on the City's interest and needs first before anything else. And I think that allowed us to move forward as a City, so I wanted to say thank you for that."

Mayor Gonzales continued, "I grew up around Councilor Dimas, and in many respects.... Councilor Dimas you were running for the Magistrate position when I was running for County Commission. So our political careers started very early, but I know our family's ties have gone beyond that. And it was personally a struggle during the campaign. But I am thankful for your continued kindness as my term began."

Mayor Gonzales continued, "So both you are a part of this City's history in important ways that will be remembered not only by your actions, but by what we see every day. Councilor Dimas for your efforts to fight to support programs like LEAD and assure that communities felt safe, that they knew there would always be a public safety component to the City's priorities and made families feel they could live in our community and send our kids to school and they would be safe, because there was a Councilor that was constantly watching to make sure that would happen. Your relentless pursuit of eradicating drugs from our

community, understanding, sharing with us how difficult it could be on a family in a very personal way, has moved all of us to be focused on that area and I certainly commit to you to continue to honor that focus of protecting our community but also being very vigilant and aggressive against those who want to come in and do harm to our City. So that legacy will live on, and I think there are lives that are being saved because of your leadership in that area”

Mayor Gonzales continued, “And Councilor Bushee, your relentless push for biking trails is something I think a lot of us maybe didn’t understand because we were used to driving cars wherever we went, or having to walk the frontier and the front lines. You were part of the frontier that understood for a community to be healthy and pulled together, there were ways outside an automobile that could make that happen. And today 300 plus miles of trails exist in this community that came into play largely under your watch, and because of your efforts to make that happen. So every time a kid is able to get on a safe trail to get from one place to another, you contributed to that, and that legacy will live on. And I pledge to you to continue to support those quality of life issues like bike trails, like making sure that people have a true relationship with their City beyond just having to come into a government office to pay for a parking ticket, or show up to [inaudible] like this, but they could have a relationship that is very positive. And so I want to thank you for your efforts.”

Mayor Gonzales continued, “One of the things I’ve asked staff to do this year and during the inauguration of the new Councilors, is it just seemed like we have to do something a little more than a plaque for you guys. I don’t think even the time we’re spending tonight can properly honor the two of you for your service outside of the words we were able to share briefly. I picked up on a tradition we did at New Mexico State when I was on the Board of Regents, and hopefully this will continue into the future. I have asked the staff to work with each of you to pick a Santa Fe appropriate tree that will work, and then we will plant the tree in a park of your choosing. So that would be a long term symbol of your service to our City and your relentless dedication to making sure that we are a City for everybody. If you ever long for the good old days, you could go and hang out by your tree.”

Councilor Bushee asked the Mayor to promise to water the tree even if there is a drought.

Mayor Gonzales said yes. He said, “There truly isn’t enough that a community can do for those who have served it, yourselves and others. But hopefully, that small symbol will be a reminder to you every time you pass the park of your choice where it is that the City will remember your service long and into the future. So thank you both.”

### **Councilor Dominguez**

Councilor Dominguez said he would like to cosponsor the Mayor’s Resolution regarding the Farmers Market, would like to be added as a cosponsor on the reallocation of Park Bond funds.

Councilor Dominguez sent congratulations to Capital High School that placed 3<sup>rd</sup> in the State Wrestling Tournament. He congratulated his two nephews who are State champions, representing Capital High School – one is a four-time State champion as a Junior, and the other is a first-time State champion as a Freshman. The older nephew is on line to be one of only nine 5-time State champions in the whole State. He said, “Congratulations to them.”

Councilor Dominguez said, “There’s not much more to be said regarding my two colleagues who are leaving. I want to thank you both for your friendship and service you provided to this community. Of course, thank you to your families as well, because it is a huge commitment. On a personal note, I remember Councilor Dimas, when I first started my career as a School Board member, he swore me in and as a City Councilor as well. Of course we have family relationships that go way back, so thank you very much for your service this time around, your service as a judge, and your service as a previous City Councilor as well. I think this community sometimes forgets its history and lots of things that we have today are because of the work you had done back then. So thank you very much for all that.”

Councilor Dominguez continued, “And then Councilor Bushee, it has been interesting and fun. I have certainly learned a lot from you. You are right, with that tenure comes experience. There are things I have learned to do, and things I’ve learned not to do. But I also want to remind the community, and we’ve talked about this before. Much of the progressive attitudes that we have in this community are because of you, and you were able to get a lot of things done at a time when we had a very conservative City Council. I think that speaks to your tenacity, your vision and really the service you dedicated or the efforts that you made and the time that you dedicated to this community. And so I want to thank you for, in many ways, blazing that trail that so many people really didn’t realize we needed. So thank you for that.”

Councilor Dominguez continued, “I can’t make it on Saturday, Councilor Dimas, but I will be thinking of you all in spirit.”

### **Councilor Lindell**

Councilor Lindell said, “I would like to start by thanking Councilor Dimas who, when I first started as a Councilor, you extended such genuine friendship to me. It really won’t be forgotten and people have remembered you for public safety, I’ll remember you for that also. But I really will remember you for is a great sense of humor and that you never had a need to make a lot of speeches, and I try to emulate you on that. I really appreciate that you told us things that you thought were necessary and you used your time very judiciously and I appreciate that. In those first months, the way you extended friendship to me was so genuine that I really will never forget it.”

Councilor Lindell continued, “Patti. How about you. We’ve been friends for over three decades, which is a lotta lotta time. And in speaking to you it’s not as a fellow-Councilor, it is as your constituent. For 20 years, you represented me. And I just can’t thank you enough for the amount of time that you’ve put on this job. I had no idea the amount of time it takes. It is a really hard job and you did it for 22 years. I think that is an astounding run. Thank you so much. To single out any one thing would really seem trivial for me, because what it really is about is over two decades of service. Whatever came up was dealt with.

The thousands of emails and calls. And you did it with good humor and very respectful with people. I've seen you deal with people so many times in such a respectful way and it sets a great example. So thank you for 22 years of doing this job. That's astounding to me. As your constituent, I am very deeply grateful. Thank you Patti.”:

### **Councilor Trujillo**

Councilor Trujillo said he wants to cosponsor the Mayor's Resolution regarding the Farmers Market.

Councilor Trujillo said, “To my colleague from district 4, Bill, thank you these past 4 years. I appreciate your dedication to the District. I appreciate the conversations we had dealing with the District. I learned the District better. I think all the constituents know you had a big part in it. As somebody said, your compassion for getting rid of the drugs in the community is outstanding and something that is needed. And your dedication and compassion for that has always shone through. I can honestly say that I have had the honor of working with two great Councilors in my District, Councilor Ortiz and you. We have a friendship that will always be there. I can echo what has been said about you, you are one helluva a Judge, one helluva Councilor and one helluva musician as well. I wish you the best of luck. I too probably can't make it on Saturday. I can also tell you his sister lived across from me, so The Sports used to always practice across the street, so we heard them until 10-11-12:00 p.m. jamming and there was Bill. Thank you. Thank Candy for allowing us to have you these past 4 years, and I wish you the best of luck.”

Councilor Trujillo continued, “Councilor Bushee, my old neighbor when I first got on the Council. I got to sit by Patti and I learned a lot from you as the 'old gal,' on the Council. Councilor Carmichael and I will now become the old geezers on the Council. We have a phenomenal trail system in this community and it is because of you and your compassion for the trails for bicycles. I see a compassion for the City overall, and not only District 1. And we haven't agreed on everything, and we've had our tussles here and there, but we've always compromised, and everything in the best interest of the community and the City. I just want you to know I think we have a great friendship which I will continue. Your friendship means a lot to me and I know that will continue for 6 years out of 22 years. You have accomplished a lot in 22 years and written a lot of Santa Fe's history and definitely will go down in the history of Santa Fe. I wish you a speedy recovery on your leg and wish you the best for your plans in the future. Congratulations. You've done your time on the Council and enjoy the rest of your time.

### **Councilor Rivera**

Councilor Rivera said he also would like to cosponsor the Mayor's Resolution regarding the Farmers Market.

Councilor Rivera said, "Bill, we were elected 4 years ago together at the same time. I think our families became close during this time, became close with Miss Candy and my family adores her. My wife and my kids adore her and adore you. I know you were friends with my father first. I think you guys went to school together right here in this building, I think. So I, too, am fortunate to call you friend. Your friendship has meant a lot, and my first two years were spent with Councilor Maestas, and was able to spend a lot of time with both of you and learned a lot during that time. So thank you, enjoy your family, enjoy your grandchild now. Take the time to make those times special. And keep going to the Lobo games, they need your help."

Councilor Rivera continued, "Councilor Bushee you talked about growing up with staff. I feel like one of those people you've grown up with. I was in the Fire Department when you started. I was the Union President when you went through your first election. And it's funny what we remember. But I remember doing a radio spot with you. And I remember you pulling me to the side, and saying, 'Can you do something about your voice.' So you made me practice so I have more tone than I normally have. I'll always remember that. I really appreciate everything you've done for the City. I grew up in District 1, so all the work you've done on behalf of District 1 and my family, which still lives in District 1, and have supported you throughout. To get my family's support says a lot about you. So just thank you for everything. I won't repeat everything everyone else has said, but you've done a great job for this City and for your constituents, and for that you should be proud. And same to you. Enjoy your family, your second home and really take some time for yourself."

Mayor Gonzales asked everyone to join him in a round of applause of thanks for Councilor Dimas and Councilor Bushee.

**END OF AFTERNOON SESSION AT APPROXIMATELY 7:35 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 7:35 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 Gonzales gave each person two minutes to petition the Governing Body.*

**Marilyn Bane** said she is here tonight to wish Bill Dimas and Patti Bushee the best in the future, noting she doesn't live in the District. She thanked Councilor Dimas for putting in such good time on behalf of the Community. It is greatly appreciated. She may not be there on Saturday night, but she wishes him well and thanks him for the service. She has known Councilor Bushee for 18-20 years, and Patti has been a friend and Councilor, looking after people whether or not in her District, and they are mighty grateful for that. She doesn't know what we will do without Councilor Bushee's institutional memory. She thanked both of them very much for their service to the City.

**David McQuarie, 2997 Calle Cerrado**, said he is here to speak about a budget request of \$500,000 by Roads and Trails for funding for the ADA ramps. He said some think it is a big joke, because on the Funding 14 they show ramps on intersections at Palace and Hillside that were done in 2004 in response to a federal ADA complaint and these were approved. He asked the reason they want money for doing this again. He said another place is on Otero and on Palace [he said something about the anti-donation clause of the City Charter].

**Rebecca Fitten, 2316 Brother Abdon Way**, said she wants to address budget issues and the discussions held at the 5:00 p.m. meeting. She said it's extraordinarily important for the citizens understand that the proposals to raise taxes and fees are a procedural issue, but doesn't think that is a known understanding in the community. She said also, the priority in the conversation really needs to be about how we can live and work within the budget and really demand that staff look at whatever dollar figure or percentage that needs to be cut from the budget to be fiscally responsible, and that they do that work and present it to Council. She said the other issues then can fill-in at the end, but not have a conversation mostly about those tax and fee issues. She thinks you will know before the public hearing March 30<sup>th</sup> what people really think about it. The budget is important and she wishes the Governing Body "all the wisdom in the world."

\*\*\*\*\*

**VERBATIM TRANSCRIPT  
OF THE REQUESTED PORTION OF PETITIONS FROM THE FLOOR, ITEM #F  
CITY COUNCIL MEETING  
February 24, 2016**

*Mayor Gonzales gave each person 2 minutes to speak*

**STEFANIE BENINATO:** Stefanie Beninato, P.O. Box 1601, Santa Fe. I want to thank both Councilor Dimas and Councilor Bushee for their years of service to the City in their capacity. I'm not going to go on about all their contributions. It's been said many times tonight, but I do thank you very much. We're here to think about budget and make some comments. I'm really concerned about unnecessary charges at the water company. It feels like a shell game we're playing. And you should be looking into collecting water and sewer fees, and water bills that haven't been paid, ambulance and traffic tickets that haven't been paid. The property tax will be very difficult for many people. And as Councilor Dimas said, there are many people on fixed incomes, and all of us see all of our tax bills getting longer and longer, due to charter schools being added without our ability to vote on them. And when there is a vote, the school board elections are so poorly attended that the percentage of people deciding our taxes is amazingly small. But I'm here today to talk a little bit about the short term rentals. I really wonder where it is in Randy Randall's job description as head of Tourism that he's supposed to be a technical expert, because that's what he's been running around talking about. And I understand that the occupancy is up 1.8% over all, 8.2% in downtown, that as of last December 2015, that gross receipts was up 2% from the [inaudible] seen before that, and Lodgers' Tax was up, I can't remember if it was 6 or 8% above. So again, I am understanding there are people that are abusing the Airbnb, but I don't think that should be of particular attention, and maybe going up for certain people. You have the Airbnb here, but it's

being treated as a new source of [inaudible] information. If the amendment is to pay the Lodgers' Tax, why should you have to register. It's really a matter of privacy.

*I certify that this is a true and accurate transcript of the requested portion of Petitions from the Floor, Item #F, City Council Meeting, February 24, 2016.*

  
Melessia Helberg, Council Stenographer

\*\*\*\*\*

**Marg Beneclossen, 205 Williams**, said she has lived for 54 years at this address. She said in the beginning there were 3 houses on the street and at the bottom of the street was the high school football field. She said she loved hearing the band and everything, it was wonderful. And then the high school moved to the south side and she thought good, she could use it for a soccer field which she did immediately. And one day, somebody called her and said the School Board is selling that field and somebody wants to put condos on it. She said she and her husband went to see Art Trujillo, the Mayor at the time, and told him the City just had to buy it and he said okay, and they did and that's where Ft. Marcy Park is. She said it isn't that simple anymore. She thanked everyone for what they do. She said Councilor Bushee has been her Councilor for over 20 years, and she always returned her calls, and always represented her constituents no matter what it was. She said she is real proud of her.

**Karl Sommer** said he would like to thank Councilor Dimas and Councilor Bushee, noting he appeared before Councilor Dimas when he was a Magistrate Judge 30 years ago, and before Councilor Bushee as a different kind of judge 22 years ago. He said, "You both exemplify good will, hard work and fair play always. You have treated all of my clients as applicants and not supplicants and that has been appreciated. Your commitment is going to be difficult to replace. Thank you."

**Miles Conway, 495 NM 592**, congratulated Councilor Bushee and Councilor Dimas and thanked them for their service. He said you have kept Santa Fe City government accessible, and we've all been participatory in it which is a golden thing we have in Santa Fe. He said he is here to address the budget, the \$15 million deficit we will all struggle with. He thanked the Governing Body for taking a balanced approach, commenting his 'brothers and sisters behind him in line, also will echo his sentiments. He said this is a huge mountain we have to climb. He said you are doing the hard work to look at all options – fees, taxes, uncollected tickets. And we're at the point where we are about jump into the difficult work of looking at cuts.

Mr. Conway continued, saying he is carrying pages and pages of Excel spreadsheets looking to find where the wiggle room is on the employee roster, and where we can eliminate vacancies to find vacancy savings. He said of 200 vacancies, 82 are AFSCME vacant, full time positions – good jobs that you can raise a family on. 73 of the vacancies are temporary part time and you can eliminate 5-6 of those

positions to get savings to cover the holes in the budget. He said 46 of the vacancies are Police, Fire & Management. He said AFSCME feels there is a gigantic target on their backs, and hope to be at the table as we move forward to identify where that wiggle room is. He said as his brothers behind him will tell you, those vacancies won't be as clear cut to get rid of as you might imagine. The City already is running in many agencies at bare bones, skeleton staff on the front lines. He said it will be a cautious endeavor to identify what positions can be eliminated. He said AFSCME will encourage, as you look at attrition, people retiring, or take 25 years and buy them out, to look at this very carefully. He said the last thing AFSCME wants is to start a divisive situation between front line and management. He said you need to look at the span of control, noting, for example, Tucson has gone from a 5-1 to 8-1 ratio of managers to front line employees. It is imperative that the City carefully look at this, and as we see management attrition can we bring that job back to a front line position for critical services and important needs. He said the Union wants to help and be solution-finders with the Governing Body.

**Tony Ortiz, 21 years with City**, thanked Councilor Bushee and Councilor Dimas for their service. He said in the past, the City had to scale back services, and there have been 6 years where he didn't get a raise and he dealt with it. He hears complaints from Transit, some of whom are running scared. He said there is crying because there is no work. He said there is wisdom here, and heart and courage to make the right decision. He said he is sure there are bonds that can be searched out. He said, "This is your responsibility and we believe in the process, and appreciate that you would consider some of those factors, and some of the workers that are on the front line that our City would not suffer." He noted there are a lot of tourists that love our City and we want to continue to maintain that service for them.

**Erik La Monda** said he is a citizen of Santa Fe, born and raised here, having lived here for 35 years. He has been lucky to work for the City for 13 years, starting as a laborer at the Canyon Road Water Treatment Plant, and thanked the Governing Body for taking a balanced approach on the budget and the \$18 million deficit. He said if you are looking to cut positions we don't have enough people now, noting when he started there was a full crew and over the years they have lost more and more people. The thing that is hard is they work 12 hours days and cutting more positions will mean they will have to continue to work 7-12 days before a day off because of lack of staff currently. It makes it hard for him to be able to spend time with his family, cutting more positions will make it harder for them. He asked them to look at other ideas and solutions.

**Felipe Vigil** said he would like to thank the Governing Body for trying to help us balance the deficit. He said they do agree on some things, some things they are looking into, and want to help on their side as unions to help the City balance the budget. He said he has been with the City for 12 years with Streets and Drainage, and currently is the Supervisor of the Grading Section. He said they notice in their department that the manpower is down, noting 12 years they were fully-manned with mostly full-time employees and very few temporary employees. He said it seems they have more temporary employees now than in the past, and there is a quick turnaround because of competitive jobs – Los Alamos, Rio Rancho and other departments in the City. He said several years ago, 7 positions were taken away, and they already are stretched thin in the face of possibly more cuts. Some of the equipment they use is old,

marginal, from the 1990's and falling apart. He wishes Councilor Maestas could see what they deal with daily in terms of equipment. Some of the snow equipment is from the 1990's and falling apart. He said some of the garbage trucks are unsafe, and should be red-tagged. He said they are making it work with what they have, but sometimes it affects the morale. He said if they had more people and better equipment it would be great. He thanked Councilor Lindell who during snow removal several years ago rode along with them on snow equipment, and got to see what they deal with in terms of snow removal. He encourages all the Councilors to join them on a ridealong to see what they do in terms of snow removal, or a ridealong on the garbage, recycle trucks and see what they do and how. He said it is a lot of labor. He reiterated they are stretched in terms of staff and are losing several people to Los Alamos, Rio Rancho or to another department. He said the temps work well, but they would like them to become full-time employees.

**Patrick Romero, 1161 Maes Road**, said he lives in the heart of Santa Fe and was born and raised here, noting Councilor Bushee is his parents' Councilor. He said he goes back a long time with Councilor Dimas. He said, "Thank you for not deciding to balance the budget on the backs of City employees. We are doing more with less." He talked about street lights, signals, signal, sign shop and paint shop which have more and more duties because of annexation and expansion on the south and west side. They just took on the interchange at Jaguar to 599, and are doing that with 5 guys and the signal shop. He talked about the age of the equipment and what happens if one of them is down saying this is a public safety issue. He said they are first responders. It takes everybody on the front line and the services provided to keep this "international gem polished" as our esteemed Councilor put it. He asked if they would like to see the workers of Santa Fe maintaining the trails which goes all the way, eventually to Buckman, Diablo Canyon which is amazing. He grew up using the trails before they were built up. He encouraged the Governing Body to work jointly with them. He said he believes we are at a critical point in terms of positions, and if they start losing positions, even through attrition, we are at the tipping point where the services will be weakened and severely impacted. He said we need to work together to make things happen.

**Timothy Montoya, 1731 2<sup>nd</sup> Street**, said he has lived there all his life, noting his family owned a business in town for more than 50 years. He is one of the last of his peers living in Santa Fe, noting many of his peers live in Phoenix, Rio Rancho and such. He has had a commercial license since 2004, noting he has been employed by the City for about 26 months. He is happy working with the City. He is speaking for himself as a citizen as well as for AFSCME. He said there needs to be action on behalf of the people with whom he works that throw trash all day, often exposed to needles and other contaminants. He said there is a growing animosity among workers that live paycheck to paycheck. He is happy with what he is earning because he inherited his parents' house that he grew up in, although he doesn't know if he can pay the taxes on it, commenting he barely puts food on the table. He said he earns \$15.31 per hour and makes too much money to get food stamps. He said if they don't see "movement happening, shaking, moving and shaking happening, then we're just all going to look at each other and say they don't care about us. All they care about is the City behind the area there with the *[inaudible]*." He said they are up early in the morning when you are in your bed sleeping, throwing trash, dealing with old equipment that probably would be red-tagged by public safety officers or the DOT. He said when the Mayor went on the

ride along it was in a new truck, not one that he was driving. He said if you stay complacent and stagnant, people are going to start getting upset and furious, and these are the people are holding up the City. He has 4 supervisors above him, and when they're not there, they are out throwing trash anyway. This has been happening for two years. He doesn't think he will work for the City for 30 years and retire from the City in view of everything that is happening.

**G. APPOINTMENTS**

**Bicycle and Trail Advisory Committee**

Mayor Gonzales made the following appointment to the Bicycle and Trail Advisory Committee:

Jennifer L. Wellington – to fill unexpired term ending 06/2017.

**MOTION:** Councilor Bushee moved, seconded by Councilor Dimas, to approve this appointment.

**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.

**Airport Advisory Board**

Mayor Gonzales made the following appointment to the Airport Advisory Board:

Troy A. Padilla – Reappointment – term ending 02/2017.

**MOTION:** Councilor Dominguez moved, seconded by Councilor Ives, to approve this appointment.

**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.

**City Business & Quality of Life Committee**

Mayor Gonzales made the following appointments to the City Business & Quality of Life Committee:

Camilla M. Bustamante – to fill unexpired term ending 03/2017; and

Holly Bradshaw Eakes – to fill unexpired term ending 03/2018.

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

**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.

### **North Central Regional Transit District**

Mayor Gonzales made the following appointment to the North Central Regional Transit District:

Isaac J. Pino, Public Works Director – alternate.

**MOTION:** Councilor Bushee moved, seconded by Councilor Dimas, to approve this appointment.

**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) CONSIDERATION OF RESOLUTION NO. 2016-20 (MAYOR GONZALES). A RESOLUTION PROVIDING PUBLIC APPROVAL OF THE PUBLIC FINANCE AUTHORITY'S REVENUE BONDS (ST. JOHN'S COLLEGE PROJECT) SERIES 2016. (MARCOS MARTINEZ)**

Marcos Martinez, Assistant City Attorney, presented information regarding this matter from material in the Council packet, noting by law, the Governing Body is required to approve these bonds before St. John's can proceed with this project.

Mayor Gonzales welcomed the President of St. John's College, Mark Roosevelt.

Mark Roosevelt, President, St. John's College, said these bonds are issued to cover some old debt, as well as to have \$5 million in which to do some work on the campus, so there will be jobs and work associated with that. There is cost to the City, nor any obligation of the City, it just an activity they need to go through with the Governing Body to get approval to issue the bonds. He said the Treasurer of the College is in attendance to answer further questions in detail.

Councilor Ives said he would like to affirm the importance of St. John's in the community. It has been a mainstay of higher education in the City and performs a wonderful function, and a delight to have it in District 2. He congratulated them on making this a vital institution in Santa Fe and looks forward to many, many more years.

Councilor Maestas said we have a partnership, and congratulated Mr. Roosevelt on his appointment. He said the programming at St. John's is a great benefit to the City and the region. He said it is a beautiful venue and he bicycles by there often. He said we are glad to be a partner and to help St. John's in taking care of its business with regard to improvements to its campus.

### **Public Hearing**

There was no one speaking for or against this request.

### **The Public Hearing was closed**

**MOTION:** Councilor Ives moved, seconded by Councilor Maestas, to adopt Resolution No. 2016-20.

**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) **CASE #2016-07. APPEAL OF THE HISTORIC DISTRICTS REVIEW BOARD'S DECISION ON JANUARY 12, 2016, CONCERNING PROPERTY LOCATED AT 1244 CAMINO DE CRUZ BLANCA IN THE HISTORIC REVIEW DISTRICT AS CASE #H-15-106. SOMMER, KARNES & ASSOCIATES, AGENTS FOR JENNIFER DAY, REQUEST THAT THE GOVERNING BODY RESCIND THE DENIAL OF AN EXCEPTION TO APPLY GREEN STUCCO TO THE RESIDENTS. (THERESA GHEEN AND DAVID RASCH)**

A Memorandum prepared February 15, 2016, for the February 24, 2016 City Council meeting, with attachments, from Theresa Gheen, Assistant City Attorney, to Members of the Governing Body, regarding Case is incorporated herewith to these minutes as Exhibit "6."

A series of color photographs entered for the record by David Rasch are incorporated herewith to these minutes as Exhibit "7."

A series of color photographs used by Karl Sommer in his presentation, entered for the record by Karl Sommer, are hereby collectively incorporated herewith to these minutes as Exhibit "8."

A map of the *H-J-Districts*, from the City's GIS, entered for the record by Karl Sommer, is incorporated herewith to these minutes as Exhibit "9."

A copy of *Code Excerpts Appeal of 1244 Camino Cruz Blanca*, entered for the record by Theresa Gheen, is incorporated herewith to these minutes as Exhibit "10."

Ms. Gheen presented information from her Memorandum. Please see Exhibit "6" for specifics of this presentation. Ms. Gheen noted she included two motions for the Governing Body in making its decision, depending on the conclusion of the Governing Body – to uphold or to deny the appeal.

David Rasch, Historic Preservation Division, using the overhead, presented 3 photographs [Exhibit "7"] as follows:

- #1 "The house in question is 'this' one right here with green stucco. In front of it, is another house that is a light brown stucco. You may find that neither of those stucco colors truly harmonize with the pinon-juniper woodland that surrounds it. The pinon-juniper woodland appears to be much more of a yellow green tone, whereas the stucco in question is a bluish green, kind of a different green. You may find that 'this' house in the back, kind of a darker earth tone color harmonizes with the ground, but not necessarily the vegetation. So this shows you 3 different colors in this same local vicinity within the woodland."
- #2 "Just to reiterate with the Council said regarding the visibility from actually Camino de Cruz Blanca, there are two locations in which the building is visible from the street. The first one is directly down the driveway from Cruz Blanca. You can see a larger chimney that is stuccoed and then a parapet, and then here is the standing seam roof. So that is one visibility right down the driveway."
- #3 And the second one is slightly west of the property, also from Cruz Blanca. You can see the top of the house as well. I would probably add a note that if we ever have another drought where we have the bark beetle, many of the pinon pines could be lost and more visibility could be granted from Camino de Cruz Blanca."

Mayor Gonzales asked Mr. Rasch if the house in question in photo #1, is the one in the middle or the darker green house.

Mr. Rasch said that is correct.

Mayor Gonzales said then basically the Applicant didn't follow the Historic Code when it came to the color, and asked if that is correct.

Mr. Rasch said, "In the Historic Review District, earth tone stucco is required."

Mayor Gonzales said then the house above and below would have been acceptable.

Mr. Rasch said those do meet the criteria.

Mayor Gonzales said then there was an exception opportunity if they met certain criteria and asked him to explain what that criteria would have been.

Mr. Rasch said, "Yes. Anytime anyone wants to vary some of the Historic Code, any given standard. They have a remedy to apply for an exception to the Historic Districts Review Board that requires an additional fee and meeting the criteria. Each one needs to be gone through and met. It's kind of hard to say for the hardship that you need to have a green building instead of a brown building, but you have to meet each one of the criteria, so that's the remedy my board can give to vary from anything in the Code. So one of the remedies is to prove there is a hardship. The second one is what else... it would be that it does not damage the character of the District. And the third one would be that it is allowing for people to live in the District by providing a full range of design standards. That one, I usually look at as, okay, what design standards were available to you and why did you choose this one."

Mayor Gonzales said, "So in this particular case, could you argue that the green that chosen, met a definition of a broader array of a design standard, or am I looking at that wrong?"

Mr. Rasch said, "I think in this case if the Applicant truly wanted the building to harmonize more with the local pinon-juniper woodland, maybe a more yellow green tone would have been a better color. This color does not harmonize with that vegetation."

Mayor Gonzales said, "The presence of color and tone in the Historic District... could you maybe provide a little bit of 101 for why we want to pay attention to color when I always thought it was more the structures, the presentation of design, but had never really thought about the issue of color. I know we had an issue of materials here recently, but help me understand the issue of color as it relates to the Historic District."

Mr. Rasch said, "So the Historic Districts are set up by this Governing Body because of State legislation that gives you the power to create historic districts for the public good. And in this case, our Historic Districts have both design standards and preservation standards. In the 'Historic Review Historic District,' the standards are much more about design. There are very few listed historic buildings. And those design standards can be given to property owners by staff without going before the H-Board. An applicant would only have to go before the H-Board in this District if the standards were violated and the property was publicly visible."

Mr. Rasch continued, "Now in terms of requiring an earthtone stucco, it goes back to traditional architecture. The reason earthtone stucco is required to Santa Fe Style buildings, is if you think about traditional structures built with adobe bricks and mud plaster from the site, it harmonizes with the landscape by using the soil at which the building is built. So that earthtone stucco harkens back to the mud plaster that buildings had."

Councilor Maestas said he has a few questions about process. He said, "The Applicant constructed the portal and put the green stucco without a permit. Correct."

Mr. Rasch said that is correct.

Councilor Maestas said, "Typically, as in similar cases, our long-standing policy has been if someone does that and they want to seek a retroactive permit, they have to pay twice the fee, and it's not meant to be putative, where they would have to tear down the portal. Right. So did that occur."

Mr. Rasch said, "That did occur at some point. We're still in the process. So, first of all, because it violated the standard, I had to take it to the Historic Districts Review Board to request an exception. The Board granted unanimously construction of this portal. It meets Santa Fe style standards. They did not find that the green stucco met the exception standard. So at this point in time, the Applicant is fully capable of going forward to apply for a building permit for the portal, and yes, there will be a double permit fee associated with it."

Councilor Maestas said, "Okay. So the process is, if you don't have your permit and you're in the Historic District, you have to go through the Historic District Board first, before you can get your permit."

Mr. Rasch said that is correct.

Councilor Maestas said, "So really, the portal is, for all intents and purposes, approved. Right."

Mr. Rasch said yes.

Councilor Maestas said, "And so for that portion of the work, the Applicant can now go and get a retroactive permit and pay twice the fee."

Mr. Rasch said correct.

Councilor Maestas said, "So, there was, in effect, some kind of a penalty associated with the construction portion of it, and now we're just dealing with the color of this. Correct."

Mr. Rasch said correct.

Councilor Maestas said, "I just wanted to get that straight on the record. There are separate issues, but I think that knowing that a penalty would be assessed, I think it is germane in this case. I think when someone makes a mistake, there needs to be some kind of atonement and maybe some kind of a payment. And it wasn't mentioned in here in terms of the sequence of the process and what additional penalty the Applicant may be subject to for building the portal without a permit. So I just wanted to kind of get that straight, and how this all works."

## **Public Hearing**

### **Presentation by Appellant**

*Mayor Gonzales gave the Appellant minutes to present to the Council.*

Mayor Gonzales said he assumes Mr. Sommer will go specifically to why your client chose that color when the Code said no.

*[Mr. Sommer's response here is inaudible because he was away from the microphone]*

Mayor Gonzales said, "But, you will get to the point as to why you chose a different color from what the Code called for."

**Karl Sommer, Attorney for the Appellant, was sworn.** Mr. Sommer presented information from Exhibits "8" and "9." Please see Exhibits "8" and "9," for more specific information about Mr. Sommer's presentation.

Mr. Sommer said, "My name is Karl Sommer. My mailing address is P.O. Box 2476, Santa Fe, New Mexico. I'm here on behalf of Ms. Jennifer Day and her husband, Jim Day, they live in District 2 and in the Historic Review District. I've handed to you two documents. One is stapled together and it's a series of photographs. The other is a simple map right out of the City's GIS Department, and I go through that in just a minute."

Mr. Sommer continued, "This case is about two questions. One, a factual issue – whether this property is visible from a public way, and what is a public way or public place under the Ordinance. The City Attorney's office spent a great deal of time talking about a public way, and if you look at the Code, they've mis-applied that. The second question is whether or not this Applicant has met the criteria for this color in the Historic District. We submit to you that because of the policy of the Board, they have met the criteria for that hardship."

Mr. Sommer continued, "I handed out to you this map [Exhibit "9"] which has a little 'x' on it. That's where this house is located. What's relevant about this map also, is you will note it is in the Historic Review District. It is not the Historic Downtown Eastside Santa Fe District, and it's not the West Side Guadalupe District. Why do I say that. Because our Ordinance is divided into two kinds of regulations. One is just strictly style, the other is preservation. This District and this case does not involve preservation issues. There isn't a single house shown on this map in the Review District, where this is, that is a contributing or significant structure, and we're not talking about preservation issues."

Mr. Sommer continued, "And part of the definitions that were talked about, with respect to public way, referred to preservation issues. We're dealing with a District that is not in the core, that doesn't deal with historic preservation, is not on the National Register of Historic Place, and we're dealing simply with our styles. And all of you are familiar with the area. I grew up here in Santa Fe like many or almost all of you did, and there was nothing up there. It is not part of the core Historic District. That's important, because in the core Historic District, the Historic Design Review Board has granted an exception for this color, right on Garcia Street, right in the core, saying they met the exception requirements. There in the core, a parting of the exception requirements on this color, a color very closely associated with it. And they said out here, where it's more rural and more wooded, that is not an acceptable color. We submit to you that's arbitrary."

Mr. Sommer continued, "So the question in this case is, is this property visible from a public way, a public street, a public way or other public place. And the City Attorney spent a great deal of time there. There is a dispute about the facts. Ms. Day will tell you she's driven up there over and over and over for years and years, and her property is not visible from Camino Cruz Blanca, and that the pictures you have seen are not taken in a place where you can see this. So I can't testify about facts, but Ms. Day certainly can. So, if I can Mayor, just have her acknowledge that indeed that is what you would say. She has been placed under oath. Go ahead."

**Jennifer Day, 1240 Camino de Cruz Blanca [previously sworn]**, said, "The major issue that I see right here is that you have been presented with the 2<sup>nd</sup> photograph that went by you, and it's been said that's visible from Camino de Cruz Blanca. That photo was taken in the driveway, about maybe 100 yards off of Camino de Cruz Blanca. So that photo is erroneous in the way it's being described."

Mr. Sommer said, "Turn to the City Attorney's memo and they're saying this. Well look, this property is visible from St. John's College. And the public goes into St. John's College, and therefore, we can regulate, because it is visible from there. And the photograph, the one that David showed you, Mr. Rasch showed you, that you got this straight on view. That's from St. John's College. That is the visibility of this property from St. John's College. So you have to ask this question and answer this question, does your ordinance mean public place to include a private college. It talks about in the Code, and this is in the memo specifically references this language, your Code says, '*Publicly visible is defined. The portions of a structure visible from a public street or way, or other access to which the public has legal access. It has legal access.*' People, members of the public, who go park in their parking lots or walk across their property cannot tell you, with a straight face, they have legal access. What they have is permission, unenforceable permission, to be on that site. If tomorrow that property was sold to, let's say a convent, the Carmelites bought it, and they walled it off and they said, we're not going to have anybody up here anymore, the public couldn't get up and say, hey, you know what, I have the right to be there. The public is invited in there. It is not what a public way is, and the public could not maintain, no member of the public could maintain that they have legal access to be on St. John's property. And I submit to you, that is the only way to read your Ordinance with any logic at all.

Mr. Sommer continued, "Let's look at why that is. If today you say St. John's College is a place where there is a public place, and tomorrow it goes private and the public doesn't have it, then all of your regulations that were based on that public way immediately disappear, because it is no longer a public way or public place. That is not the way your Ordinance is written. That is not the way the law operates, and that is not a logical reading and it is not the way this Ordinance has been applied by the Board. Because this property is not visible from a public way, the regulations don't apply. If the regulations don't apply, then there is no color violation."

Mr. Sommer continued, "I've handed out to you a series of photographs [Exhibit "8"]. There are 11 of them. 'This' is from down below. 'This' the house from down below. It's on their property. And if you can see the colors and what they do with respect to blending in and the like, and you go through these photographs that I've given you of 'this' home, you will see that it blends and is harmonious with this area of this District. It is far more harmonious if you look at exhibit 2, than the pitched roof that is red, right next

to it. If you go to exhibit 3, you will see again, the contrast between 'this' house next door that has the tan color. So the question, Mayor, when you asked why did they pick this. This color blends in more perfectly with this wooded sort of semi-rural area. It was simply a matter of preference. And I think when you look at the photographs, you say to yourself, exhibit 4, that's taken from St. John's College. If you look at the photograph, the house you cannot see is the house in question."

Mr. Sommer continued, "I've handed you on exhibit 5 other houses in this district, in this area that have a similar tone and green color. And you will notice almost to a tee, every one of those colors blends in, in the fashion I have described. It is part of the character of this section of this District, to have this kind of color that matches the vegetation in the area. It does not contrast or do violence or harm or anything to a negative character to the District. So that takes you, if you say this property is visible from a public way, that takes to the exception criteria. What is really really interesting about this case is City staff recommended approval of this to the Board of the exception criteria. Now City staff is having to defend the Board's position, but I ask you, why is that. Because City staff has to deal with the Board, and on Garcia Street, green is okay. Green and gray is okay, but up in the Review District, it's not okay. So I submit to you that the staff is following what the long standing practice of the Board is -- to best guess what is okay and what is not okay. If in the heart of the most important section of this community, this color is acceptable, why wouldn't it be acceptable in an area in which the house would blend in more fully with this color. I submit to you that, in this case, the Applicant has met the criteria. It does not do damage to the character. It is to prevent a hardship in this case, dealing with the expense of having to redo it."

Mr. Sommer continued, "And then finally, it strengthens the unique character of this particular area of this District. The City Attorney said, well it's hard to find a color that would make it more livable. Well that's the very same standard that the Board applied on Garcia Street, and said, hey, they met that criteria, and I'll tell you why. What they're talking about is strengthening the unique character to provide a full range of options. That's the emphasis of their regulation and they've applied it in the heart of the District and they've said it's okay. The long and short of it, is this property is not visible from a public way and these regulations don't apply. St. John's is not a public way and it is not a logical reading of your Ordinance to apply it that way. And if you find that this is a public way that is visible from a public way, then being consistent and applying the Ordinance the way the H-Board has applied it in the heart of this District where all of the factors that the City Attorney said are important -- tourism, economic development, values of properties -- is there in the heart of the District where people come to see the character of this town, this color is acceptable, then it should be acceptable here under the same criteria. We would stand for any questions you might have, and I thank you for the time."

### **Speaking to the Request**

*All those speaking were sworn en masse*

**Marilyn Bane, 622 ½ B Canyon, was sworn.** Ms. Bane said she would like to follow up with the Governing Body on what has been said. First, the approval on the house on Garcia Street that is green was in 2011. The reason it was allowed, is that you can't see it from the street. With regard to whether you can see this house from a public access, the City Attorney took the position and we agreed, that it is public accessed buy trails. People park there and go to the library. It is open to the public. She said as to whether anyone has a legal right to be there, it would seem to her that it is logical, that if you have

permission you are there legally. She said this Code was written in 1957, and at that time, the railroad had been in town for quite some time, and the people who wrote this had options. And given, other materials that came into the area, there are a lot more options. Given all those options, the decision that it was best for the City and best for holding up a City different, being the City different, so that we would not Peoria, or Tucson, we would be different. So we gave only a limited number of choices. In terms of color, the choice was earthtones. This is not an earth tone, so quite rightly, the Historic Districts Review Board upheld the Ordinance and said it has to be earth color. They didn't have time to warn the applicant because the Applicant did not ask for permission or for a permit, which she thinks is at the heart of this. She said it would all have been avoided if they did what they needed to do, which was to go to the H-Board, which they didn't do. The H-Board said the portal works, but on the other hand, the color is wrong, and in this case it's a non-conforming building. The point of all of this is that there are laws, rules and Ordinances, and the H-Board did its job, the City Attorney did her job in saying they didn't meet the criteria and didn't grant an exception. She said it can be painted, which isn't the cost to restucco and isn't a hardship. She said she just needed to clarify some of what was said.

**Bill Loeb, Member of the Board, Old Santa Fe Association [previously sworn]**, said we think that Councilor Bushee serving for 22 years is a very long time, but the Old Santa Fe Association is now 90 years old. And just imagine, the thing that caused the Old Santa Fe Association to come into existence was 3,000 acres to be preserved around St. John's. So 90 years ago the land in question was declared by the City to be preservable. He said the Old Santa Fe Association believes the HDRB decision should be upheld. The HDRB is asked to consider in depth and reach considered conclusions in accordance with the Ordinance which they have done, so we look like Santa Fe, rather San Diego. He said for 90 years this has been going on, noting it is a practical thing. He said at the last meeting, he pointed out that the Association surveyed employment in Santa Fe. And the fact that Santa Fe looks like Santa Fe instead of San Diego accounts for something like 15,000 jobs in Santa Fe for historic preservation. He said one of the criteria is the hardship. As he read the findings, the H-Board, in response to the hardship exemption, approved painting over the green stucco of an approved brown color. He reiterated that the Old Santa Fe Association, recommends that you support the HDRB decision.

**Brad Perkins, 3 Camino Pequeno, Member of the Old Santa Fe Association Board, [previously sworn]**. Mr. Perkins said Ms. Bane made most of the essential arguments. He wants to narrow the focus a bit. This is about color, not the view from a public way. The color of Santa Fe is brown, and the Code defines that. He said Mr. Sommer is an excellent attorney and he has tried to hire him to defend some of his cases. He said what Mr. Sommer has tried to do is to shift the attention from color to views from a public way. He said the more essential issue here is the color. There is a certain element involved in the way the owner got to this color, which is distasteful and should be distasteful to everyone. He said the grounds from St. John's College as used are public for people who go to classes and to visit in the summer for public activities. He said purchase he described to make it private hasn't happened. It is an argument that has nothing to do with the decision you have to make. Lastly, he doesn't know what the photographs look like that you saw, but the one he saw was grainy and it may be a function of the projections system, saw, but those photographs are sophistry. They are so bad they shouldn't be used in any kind of discussion about color and harmony.

**Penn LaFarge, 647 Old Santa Fe Trail, President, OSF Association [previously sworn].** Mr. LaFarge said he wants to address the notion of color, since it is being mentioned by the Counsel for the owner of the house keeps saying there is a green house on Garcia Street. He said that the green house on Garcia Street isn't this color and it is not visible from the public way. There are other green colored houses that are above this in the wilderness area which also are illegal. He said, and more importantly, you have a case before you that went before the H-Board. This Board is here to protect this City and has been given a mandate by the City by rule to keep Santa Fe authentic. It unanimously turned down this case. It unanimously decided that the 3 criteria necessary to find a hardship did not apply and do not apply. He said it is up to the Governing Body to uphold the Historic Design Review Board, its findings and the good of Santa Fe and its authenticity which is crucial. It is important that you support your own boards, especially boards constituted with expertise and have equipped itself with expertise. He said, "So we ask you, please to uphold the Historic Design Review Board and its reasonably come to a decision. This is your Board. This is your town, and these things need to be upheld. Thank you."

**Stefanie Beninato, P.O. Box 1601, Santa Fe [previously sworn],** said she is here to speak to uphold the decision by the H-Board here. She believes if you go to St. John's there must be some kinds of easements given to access the trails, that it is public. She said she has attended the H-Board meetings, there are a distressing number of people who come in after the fact, who get caught and come in after the fact and then want approval. She said the portal was approved and will go forward, with a double fee which is based on the value of what was done which is a portal. She said this shade of green isn't an earthtone. She said as Mr. Rasch pointed out they are using the same dirt to make the stucco, which is the color of the earth, which varies from very light to very dark, but you do not find green in the stucco. She has a problem with people doing this without asking and then coming and saying it's a hardship. She said the criteria have to be met. She said hardship determination is difficult, and she has urged the Board to come up with a definition and standard for hardship.

Ms. Beninato continued saying, Mr. Sommer said it is a matter of convenience that they wanted to paint it green, but it was only after they got caught and they had to do something about it that it became a hardship. It's supposed to be a hardship before you start, not after you are caught. She doesn't understand a hardship not to have a green house. She doesn't think a reasonable person could think not having a green color is a hardship. The last criteria is to promote diversity of architecture to allow people to live in those buildings. She doesn't think the hardship is consistent with any of the standards for exception in her opinion and you need to uphold the Board. She said Mr. Sommer tries to be divisive. She said the staff supports the Board. She said administrative case law said it's the Board's expertise you are relying on, not the expertise of the staff. She said you have appointed Realtors, architects, builders to the Board. These are people with expertise, and it is their decision you should be looking to, not what staff recommends. It is a recommendation by somebody who is doing technical review. She said Mr. Sommer's background in architecture is one course in college, so it doesn't make him an expert, and even if it did, he is one voice the Board hears and considers. He said "It is the Board's decision you should uphold according to case law."

## **Rebuttal by Appellant**

Mr. Sommer said he has additional remarks regarding the testimony.

Mayor Gonzales said Mr. Sommer can make his remarks, and then we will close the Public Hearing and the Governing Body can ask its questions.

Mr. Sommer said, "I'll be very very brief. Thank you all for your time. I would like to address just a couple of things that were said because they bear directly on what your job is. One gentleman said that I had gotten up here and tried to divert your attention from what we're really talking about – that what we're talking about here is color, green or brown, that's what this case is about. That is not what this case is about. This case is about how your regulations are applied. Property owners have to live in this town under your regulations, and your regulations say, if it's not visible, these standards don't apply. And guess what. In this District, this color is allowed. This is a permissible color under your Code if it's not visible from a public way. He said it isn't that this is a horrendous color, it's just ridiculous. In the Historic District of Garcia Street, this color is prohibited. All of the colors on Garcia Street have to be an earthtone. They have two choices and it was approved. And it wasn't approved because it wasn't visible, they had to get an exception for that. They had to prove this color met the exception criteria because it's not allowed in that District, and they allowed it. And I submit, they did for a reason, and the same reasoning applies here.

Mr. Sommer continued, "Under the discussion that one of the speakers talked to you about. Color. You could never have a hardship for color. Well the Board does it quite often, applies these quite often and there is the standard of color, often. So, if it's not possible to get an exception for color, then the Board is not doing it's job. I submit to you, it is possible. They are the ones applying this standard. They just misapplied it in this case."

## **Closing Argument**

Theresa Gheen said, "Just a quick point to close. We heard a lot of testimony from members of the public that were really concerned about upholding the purpose of the Design Standards. Particularly because brown and earthtones are what makes Santa Fe architecture and what makes the place special. It reflects how the houses blend into the hillside. It reflects the traditional structure of the traditional adobe house. Green obviously does not fit into that intimate category. I want to mention that there's definitely been a lot of discussion about whether or not this is visible from a public place. The St. John's roadway is accessible to the public. The agency that has been charged with administering the Code, the Historic Preservation Division, as well as the Board charged with granting the exceptions. They have consistently applied this part of the Code as meaning a place which is generally accessible to the public which this Code is triggering. Once an agency that is charged with administering the Code makes consistent interpretations it becomes public policy. To reflect, one of the cases by the New Mexico Supreme Court [*inaudible*] case, and in order to deviate from that administrative gloss, from that City policy, the City Council actually moved to adopt an Ordinance changing that. That is a very significant fact."

Ms. Gheen continued, "In addition, if you have been on the Atalaya Trail run, it is easily accessible from that trailhead itself. In fact if there is anything that is considered public, I would say that would certainly be it, in addition to the *[inaudible]* already discussed. I also wanted to note that the pictures that were taken, that you saw on overhead and were passed around, those actually were taken by David Rasch. And while it's not the policy to have staff members testifying, he did take those pictures and is willing to be sworn-in to declare the truth of the location of where those pictures were made. And last but not least, to clarify, I believe there were sworn statements about how green is an acceptable color in the core of the Historic District. I don't believe there are any green stucco houses in the core Historic District, and that statement isn't correct. The green color was actually in the same District, so it's different from what was stated. And last but, but not least, if this board does want to grant this, clearly the board does need to find that all 3 exception criteria has been met, which the board is required to do under the Code, and the Governing Body, if they decide to do that, should make sure that all 3 of those exceptions have been met."

Mayor Gonzales asked Mr. Rasch if he has further remarks in closing, or if he just wants to wait to see if there are questions.

Mr. Rasch said he has no further remarks and he will wait for questions.

**The Public Testimony portion of the public hearing was closed.**

Councilor Dominguez asked Mr. Rasch what color is his jacket.

Mr. Rasch said, "I would like to point something out. The color green, this green the Board noticed is as different as the other greens in the same District, as the green of my jacket. The color green they did is like my shoes. All the color greens, including the green that was opposed by exception is like my jacket."

Councilor Dominguez said it is intriguing to him how emotional these kinds of cases can get at time. It is also intriguing how much time, energy and public resources we spend when we've got budget issues to deal with, but it's important. So we are here and we have to deal with it. He asked Mr. Rasch if he wrote the memorandum.

Mr. Rasch said he did not write the memorandum.

Councilor Dominguez said he has questions for whomever wrote the memorandum.

Ms. Gheen said she drafted the memorandum.

Councilor Dominguez said in the memorandum, Ms. Gheen indicates that there is no historic status, the building has no historic status.

Ms. Gheen said that is correct.

Councilor Dominguez asked if the purpose was to point that although it was in the Historic District, it doesn't have contributing status.

Ms. Gheen said it was just a core point where the building is concerned to the Board. She said it is also because it is non-status, it could be painted, but if it was a contributing structure, that would not be the case.

Councilor Dominguez said in terms of legal access he understands the argument on both sides, noting he drove up to St. John's College. He said although he wasn't chased away, he was asked by someone what he was doing there which was an interesting experience. He said he isn't going to get into the legal access portion in the Memorandum. He quoted from paragraph 2 under V., which provides, "...*There is also limited visibility from Camino Cruz Blanca...*'

Ms. Gheen said that is correct.

Councilor Dominguez asked Ms. Gheen her definition of "limited visibility."

Ms. Gheen said it would be something which is visible, but not fully visible. As opposed to the highly difficult view from the main road going through St. John's. I believe that David Rasch showed a picture of what the visibility is like from Camino Cruz Blanca, which means there is some, but you can't see the....

Councilor Dominguez asked Ms. Gheen to point to him in the Code where "limited visibility," is defined like that.

Ms. Gheen said she doesn't have that off the top of her head, but she is unsure it is defined, but she can research it.

Councilor Dominguez said it's obviously an important factor because the Appellant brought it up and people are talking about visibility. He said in her memorandum, Ms. Gheen is talking about limited visibility from Camino Cruz Blanca. He said if we're going to place an emphasis on visibility, limited or not, and you just gave a definition of limited visibility, we probably should have it codified.

Ms. Gheen said, "I believe I checked that before, but David Rasch is checking visibility as we speak.

Councilor Dominguez said he wants limited visibility defined.

Ms. Gheen said, "Limited visibility is not defined in the Code."

Councilor Dominguez said we are placing a bunch of emphasis on visibility and limited visibility, but we don't have a definition for that."

Ms. Gheen said, "I think the issue is whether it's publicly visible."

Councilor Dominguez said, "My question is, is that in your Memo, those are your words, limited visibility. Correct."

Ms. Gheen said, "If something is visible, whether or not it is fully visible..."

Councilor Dominguez said, "I understand everything you are telling me, and I understand what you're saying. But my point is that you have been able to give me a definition of what limited visibility means, but we don't have that codified."

Ms. Gheen said, "That is the case, a plain definition. But I think in this case, whether the visibility is limited or not, is actually irrelevant. If it is visible, it is visible."

Councilor Dominguez said, "It's relevant, quite frankly, with all due respect, because it's in your Memorandum."

Ms. Gheen said, "If something has limited visibility, it is visible. So it would be triggered. It's like whether or not you are....."

Councilor Dominguez said, "So there is no difference between visibility and limited visibility."

Ms. Gheen said, "In the case of whether or not the Code is triggered, that would be correct. I think one could argue whether or not this limited visibility would lead one towards determining whether or not it would damage the character of the District. However, the Code is triggered."

Councilor Dominguez said, "So you're an attorney, and you've given me this definition and that kind of this stuff, how are laypeople, aside from the applicants, supposed to be able to understand that."

Ms. Gheen said, "I would say that if it was a question, a quick call to the Historic Preservation Division is warranted."

Councilor Dominguez asked, "And limited visibility could be if I stand on my tiptoes I can see. If I don't stand on my tiptoes, I can't see it. There's a lot of factors that contribute to visibility, and if we're going to place a lot of emphasis on visibility and we're going to use, as part of our argument, that from Camino Cruz Blanca there is limited visibility, then we need to make sure we have that clarified and clear."

Councilor Dominguez continued, "So, I'll move on to the next point, and it's really my last question, it's on page 2 of the Memo, starting with the paragraph that begins 'On December 8,' and it's the last sentence, and it has to do with Garcia Street. There has been lost of testimony here about the colors of buildings on Garcia Street, both by the proponents and opponents of this particular exception of application. It says, '*...an exception granted for a house on Garcia St., was for a color that was more grey than green...*' Who determines what is more gray and what is more green. Is that subjective or is there Code that we use that everyone has access to."

Ms. Gheen that was “news” she picked up from the HDRB, and that was a part of the discussion at that meeting.

Councilor Dominguez asked if the HDRB decided what was more gray than green. He said, “Again, I’ll just like it like this, is there a color chart that is referred to or some definition that someone holds up and says this color is more gray than green, and this color is more green the gray. I mean, how do we determine.

Ms. Gheen said she believes it is a matter of common sense.

Councilor Dominguez said, “I have common sense and his jacket looks brown to me.”

Councilor Bushee suggested he might be color blind.

Councilor Dominguez said, “Maybe so, but that’s discriminatory.”

Mr. Rasch said, “The point that was made by the H-Board was, yes, we did approve an exception for a green stucco, but that green was much lighter and grayer than this green. It was a comparison of the two. It wasn’t trying to find if one is gray or not. It was comparing, and they said, this is just way too green compared to what we approved previously.”

Councilor Dominguez said, “So, I understand that you’re applying it to Garcia Street in that context. But when I’m reading it here, it’s just kind of, to me it seems like there is some subjectivity in some of the way this is being interpreted. Okay so those were just the technical questions I had Mayor. Thank you very much.”

Councilor Lindell said, “I actually think in the Memo it was charitable to use the word limited visibility, because the *[inaudible]* actually just uses the word visible. So whether it is completely visible or limited visible, it says visible.”

Ms. Gheen said, “If you want to be accurate in the description of the fact, yes.”

Councilor Lindell said, “My problem with this is that we have a Code, and the Code has meaning and we have this Code for a reason. And, was this house red-tagged when it was completed or when it was in process.”

Ms. Gheen said, “I think the house was actually built about 20 years ago. But that portal had been constructed, partially, I believe, by the time it had been red-tagged. The green stucco, I believe, already had been applied.”

Councilor Lindell asked, “Can you say Mr. Sommer.”

Mr. Rasch said, "I'll tell the predicament that caused the situation. My inspector was doing an inspection on a nearby property. He heard hammers. He drove to this property, found the portal under construction and green already applied to the building."

Councilor Lindell said, "I'm going to ask Mr. Sommer a couple of questions about this, or I can ask the Applicant, it doesn't matter to me. The Applicant states that they own 3 houses here. Have they done work on other houses here."

Mr. Sommer said he doesn't know.

Councilor Lindell said, "You own 3 houses in a compound here. Have you done any other work on any of the other houses."

Ms. Day said, "On the house that we live in, which is on Camino de Cruz Blanca, we did some work on that yes."

Councilor Lindell asked, "Did you get a permit."

Ms. Day said, "Yes."

Councilor Lindell said, "I just don't know why we're here, other than there was no permit on this construction project. If you had a permit on a different project, it would seem that the process of getting a permit means coming downtown, getting a permit, going through Historic, and we wouldn't have these questions. Because it is clear enough that the Code does not allow green on this home in this historic area."

Mr. Sommer said, "I submit to you, we would have the same problem. If they had denied the color, we would be appealing it, for the same reasons that are in front of you. That the Code doesn't apply to this property."

Councilor Lindell said, "I'm sorry Mr. Sommer, but that seems that it doesn't apply to our current situation. Our current situation is that... I cannot imagine... was this completed by a licensed contractor."

Mr. Sommer said, "Yes."

Councilor Lindell said, "I can't imagine that the contractor didn't suggest that stuccoing an entire house would need a permit. That is beyond the pale for me, that that would happen. And I'm... you talk about the time in this, it's a huge amount of time for a lot of, lot of people over a house whose owner didn't bother to go and get a permit. And that's really, to me, why we're here. And I think that it, again, we ask the Historic Review Board to do a lot of work. I think it's a really hard board to sit on, and it takes a huge amount of time and work. And their recommendation, they unanimously have said that they don't think that this meets the exception. And again, I just have a great amount of frustration that we're here because there was no permit. And really to me, it's much more about that, than whether we're talking about green or earthtone colors. So that's all I have Mayor. Thank you."

Councilor Ives said, "I want to give you my take on all of what we're discussing here, but one question first for staff, and that's maybe answered at the bottom of packet page 5, but in this area of what colors are permitted."

Ms. Gheen provided a copy of the relevant sections of the City Code to the Governing Body [Exhibit "10"].

Councilor Ives said, "So I take it, by what you have handed us, that the answer is, '*The color of stuccoed buildings shall predominantly be brown, tan or local earth tones...*' And it goes into various exception, and based on that plain language, green would not appear to be a color that is permitted in these areas."

Ms. Gheen said that is correct.

Councilor Ives continued, "So let me first, comment on our discussions about Garcia Street, and you'll understand my position on that as I explain my position here. I have absolutely no clue as to why green would have been approved on Garcia Street, if these are the colors that are permitted in the Districts that we are talking about."

Councilor Ives continued, "We've talked a lot about visibility, and I suppose my quick answer to the difference between the various characteristics, or degrees of visibility, would be simply demonstrated with this cup, which is this cup is now fully visible to everybody in this room. Now this cup is partially visible to the Councilors who sit to the left of me, while it remains fully visible to the Councilors that sit on the right of me, but it is visible in each instance, regardless of whether it's fully visible or only partially visible, in my estimation in terms of interpreting this language under the Code."

Councilor Ives continued, "So I think the better argument, based upon what we've been presented is that the house is visible, and I would certainly be inclined to provide some deference to the Board on that particular issue, given their need to consider that issue time and time and time again."

Councilor Ives continued, "On the issues of whether or not an exception should apply, the first one is whether or not it damages the character of the District. In this case, we have a clear definition of what is permitted in the District. And so, in that sense, I just don't understand how we begin to argue that something other than what is permitted doesn't damage the District. Because, presumably, the stylistic requirements were put in place specifically because they did characterize the District, and therefore that which is not in keeping with what is in the definition, must therefore damage the District in some way. And again, I don't mean to suggest that many of the other green homes up there... again, I don't know what any of the specifics are there, but I don't think the presence of other structures that fail to comply should dictate the rule here, and I'll come back to that point in a few moments."

Councilor Ives continued, "The third item in the exception is that this question of creating a capacity to continue to reside within the District.... and I have to, at some level, agree that color is not necessarily the type of design criteria that this particular rule was meant to touch upon. So, I'm not clear that that particular portion of the exemption is met, and I do read that as an inclusive 'and,' in terms of the 3 requirements that have to be met."

Councilor Ives continued, "With regard to hardship, I'm not one who feels that hardship cannot be based on dollars alone, but I just don't have enough information here about the pros and cons and costs to be able to say whether or I think that portion of the exception has been met. But I don't find it being met on the basis of the first and third components of the exemption. So I think again, there is a better sense that visibility has been satisfied as a criteria, but there is a failure to meet two portions of the exemption, 1 and 3."

Councilor Ives continued, "And I will say in some of these cases folks proceed not knowing there are processes or struggled with presumptions of approval, based on their homes being stuccoed with elastomeric stucco previously, as we have seen in at least one prior case recently. In this case, again the points Councilor Lindell was making with regard to the fact that there had been other construction projects where you had gotten building permits, suggests that sorts of equitable arguments don't really provide a compelling reason to say that we can avoid all of this, and go ahead and approve it. So in the basis of the record that has been presented here, on the basis of the testimony that has been presented, from my perspective, visibility has been met, two of the necessary components for an exemption have not been met, so I'm afraid I cannot vote in favor of approving the appeal. But rather, would support the decision of the Historic Design Review Board."

Councilor Rivera said, "Theresa, in your opening remarks, I thought I heard you say something about there being other houses up in the area that were of a green or grayish color that you thought maybe did not meet the Code as well."

Ms. Gheen said, "I'm basing it on what was discussed at the hearing, and also from statements of David Rasch, so I'm only visiting facts that were given to me, but from what I understand, besides that one house on Garcia Street, the other houses that have a greenish hue, but not as dark a green as the current house, but those actually are illegally colored houses."

Councilor Rivera asked, "Is it our plan to look into those as well?"

Mr. Rasch said, "The most recently green stuccoed building in the lighter green at the end of the road, not like this green, has already been given a notice of the violation. I know of one other one right on the road. I don't know when that was stuccoed, but this one was stuccoed recently. *[inaudible]* has seen that the contract said that contractor had to follow City Code, so he's on notice. I'm waiting to hear the outcome of this case before I look into all the other violations."

Councilor Rivera said, "Thank you, and thank you for that consistency as well. You know, personally, I really don't care about the color of your house, but what I do care about is the Code. And I'm not going to repeat too much. I agree with a lot of what Councilor Lindell has said. I think had the Applicant gone through the process of getting a permit that... we may be here, but it might be under different circumstances, and potentially not be here at all."

Councilor Rivera continued, "So unless we're willing to really follow the Code the way the HDRB has put it in front of us, maybe we should do away with the color swatches and allow any color to be out there. Otherwise, I think we need to support the Code, and support the HDRB, I'll just leave it at that."

Councilor Bushee said, "I wanted to just clarify from what I understood from tonight's discussion for Councilor Ives, on the Garcia Street building, so what we're reading from is the full and structural standards should be complied for buildings or structures subject to public view from any public street, right of way, or public place. And I know you've agreed that this would be considered a public way. But what I understood from this evening's testimony is that the Garcia Street building, which is a different green was not visible from a public way and that they applied for the exemption. Correct. David wants to give me an answer."

Mr. Rasch said, "The building on Garcia Street is in the Historic Review District, just like this structure, not in the core Historic District as Council suggested. That building is even less visible, but it is visible or I wouldn't have taken it to the H-Board."

Councilor Bushee said, "But they applied for it."

Mr. Rasch said, "Yes. It is very much less visible than this building is visible from Cruz Blanca."

Councilor Bushee said, "So they applied for the exception and it was granted."

Mr. Rasch said, "Right."

Councilor Bushee said, "The Code allowed discretion of the H-Board and all of that."

Mr. Rasch said yes.

Councilor Bushee said, "I just wanted to clarify that, that I think it was a different situation."

Councilor Bushee said, "And honestly, did I want my last hearing to be 2 hours long about the color of stucco, not necessarily. But you know what, what I can say is that this is significant that we have an Ordinance. I've been here for tiny teeny little fenestrations or the height of a fence. The worst case scenario for the Appellant is when they don't get a permit, when they know better, when they actually have 2 other structures in the same compound and gone through this process. It seems to me that this is after the fact, and the whole forgiveness thing. Sometimes it works, but it usually doesn't work in the H-District. You know when you buy a property in that zone that you've got to comply with specific things, and the idea that you're going to be okay with that, and that you're going to do the kinds of things that are needed when

you remodel or add onto those structures that are in those zones that we have this Ordinance for a reason. And that it is, in the long run, actually supporting Santa Fe's future and it's past. So I would just suggest that we really need to... the thing about color might seem insignificant, but I will say that I really think it actually matters in this case. So I am going to support the motion that has been made."

Mayor Gonzales said there is no motion on the floor, but since it is her last meeting, he will ensure Councilor Bushee is able to make the motion.

Councilor Trujillo said, "This is the first time I've ever heard nobody wants a green building. I could care less what color your house is. I've got red, green, brown, black, you name it, in District 4. I've got them all. But the fortunate thing is, there is a Code, and I feel the same as Councilor Rivera. We have laws in place and if we don't abide by them.... I don't think... to me, when I saw the pictures, this is an earth tone. I guess I'm having confusion on what I consider earth tones – the trees, the rocks, the grass, the dirt – to me those all are earth tones. But the way it is defined in the Code, *'This does not include chocolate brown colors or white except dull or matte off-white (yeso).'*' So, because there is a Code in place and because this is the law in Santa Fe, I must go with what the H-Board said."

Councilor Maestas said, "Just a quick comment. I'm not going to repeat what has been said and I agree with a lot of what has been said. But with regard to the Staff Memo, I think in the future the Garcia Street approval should have been treated as a case study and incorporated into the case synopsis. Because, in reading the minutes to the HDRB, they wanted to know that, oh wait, there is one home that's got a different color. What were the circumstances, and what were the facts behind the approval. And I think that's totally relevant and I really expect that from staff, to have those as prominent case studies in the case synopsis. And I didn't see it there. I think that really would have benefitted us greatly had that been in the staff information. So just some advice for the future, going forward."

Councilor Dominguez said, "Just a real quick comment. I just want to clear, since I brought up the full discussion about what is visible, or reasonably visible, whatever the language is. I was under the assumption that there was a definition about that, because it's pretty explicit in the Memo, but it doesn't sound like that is the case. And that's why I'm asking, because I think if we're going to look at these sorts of things we need to be as clear as possible."

Marcos Martinez, Assistant City Attorney, said, "There is a definition of publicly visible, and it's cited in the Memo, but the definition is, *'a portion of a structure visible from the public street, way or other area'*."

Councilor Dominguez noted he is referring to the limited visibility clause.

Mr. Martinez said, "I guess I would say that the portion part means if a portion of it is visible, it is publicly visible under the definition. It says *'portion of a structure,'* not entire structure."

Councilor Dominguez said, "Okay, I didn't see that in the packet or in the information that I've been give, unless you can point it out to me. What page."

Mr. Martinez said, "In the Memo, it's on page 3 of the packet."

**MOTION:** Councilor Bushee moved, seconded by Councilor Lindell, with regard to Case #2016-07, to deny the appeal and affirm the decision of the Historic Districts Review Board, finding that the Appellants failed to meet all the exception criteria, and adopting the Findings of Fact and Conclusions of Law as our own.

**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.

**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 10:00 p.m.

**Approved by:**

---

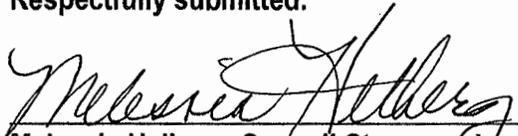
**Mayor Javier M. Gonzales**

**ATTESTED TO:**

---

**Yolanda Y. Vigil, City Clerk**

**Respectfully submitted:**

  
**Melessia Helberg, Council Stenographer**

CITY COUNCIL MEETING  
EXECUTIVE SESSION  
February 24, 2016

The Governing Body of the City of Santa Fe met in an executive session duly called on February 24, 2016 beginning at 5:40 p.m.

**The following was discussed:**

In Accordance with the New Mexico Open Meetings Act §§10-15-1(H)(7) and (8) NMSA 1978, Discussion Regarding Threatened or Pending Litigation in Which the City of Santa Fe is a Participant, Including, without Limitation, Pending Matters Relating to the Market Station Condominium; and Discussion of the Purchase, Acquisition or Disposal of Real Property or Water Rights by the City of Santa Fe, Including the Lease of 29,490 Square Feet of Real Property Adjacent to 786 Calle Mejia.

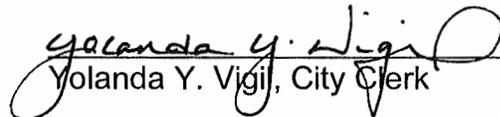
PRESENT

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  
Yolanda Y. Vigil, City Clerk  
Marcos Martinez, Assistant City Attorney  
Matthew O'Reilly, Asset Development Director  
Oscar Rodriguez, Finance Director (left at 6:15 p.m.)

There being no further business to discuss, the executive session adjourned at 6:45 p.m.

  
Yolanda Y. Vigil, City Clerk