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BOARD OF ADJUSTMENT MEETING  
Tuesday, August 4, 2015**

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**MINUTES OF THE  
CITY OF SANTA FE  
BOARD OF ADJUSTMENT  
City Councilors Conference Room  
August 4, 2015**

**A. CALL TO ORDER**

A regular meeting of the City of Santa Fe Board of Adjustment was called to order by Gary Friedman, Chair, at approximately 12:00 noon, on August 4, 2015, in the City Councilors Conference Room, 200 Lincoln Avenue, Santa Fe, New Mexico.

**B. ROLL CALL**

**Members Present**

Gary Friedman, Chair  
Colleen Dearing  
Patricia Hawkins  
Douglas Maahs  
Donna Reynolds  
Daniel H. Werwath

**Members Excused**

Rachel L. Winston, Vice-Chair

**Others Present**

Dan Esquibel, Staff  
Zachary Shandler, Assistant City Attorney  
Elizabeth Martin for Melessia Helberg, Stenographer

**B. PLEDGE OF ALLEGIANCE**

### **C. APPROVAL OF AGENDA**

**MOTION:** Douglas Maahs moved, seconded by Daniel Werwath, to approve the Agenda, as presented.

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

### **D. APPROVAL OF MINUTES – JULY 7, 2015**

**MOTION :** Douglas Maahs moved, seconded by Colleen Dearing, to approve the minutes of the meeting of July 7, 2015, as presented.

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

### **E. FINDINGS/CONCLUSIONS**

A copy of the City of Santa Fe Board of Adjustment Findings of Fact and Conclusions of Law in Case No. 2013-116 and Case No. 2014-82, is incorporated herewith to these minutes as Exhibit "1."

A copy of a letter dated July 17, 2015, with attachment, to Kelley Brennan, City Attorney, from Arthur Firstenberg, is incorporated herewith to these minutes as Exhibit "2."

A copy of Neighborhood Appellant's Restated Findings of Fact and Conclusions of Law, in Case No. 2013-116 and 2014-83, submitted by Stephen Durkovich, is incorporated herewith to these minutes as Exhibit "3."

A copy of the City of Santa Fe Board of Adjustment Findings of Fact and Conclusions of Law in Case No. 2015-62, 802 Canyon Road Special Use Permit, is incorporated herewith to these minutes as Exhibit "4."

#### **1. CASE #2013-116 & 2014-82 CELLULAR PHONE TASK FORCE.**

Chair Friedman noted Arthur Firstenberg had proposed his own Findings of Fact and Conclusions of Law.

Zachary Shandler, Assistant City Attorney, said both documents go in the record, noting the side that doesn't prevail usually doesn't submit their own Findings of Fact and Conclusions of Law.

**MOTION:** Colleen Dearing moved, seconded by Douglas Maahs, to approve the Findings of Fact and Conclusions of Law in Case #2013-116 and 2014-82, Cellular Phone Task Force, as presented.

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

**2. CASE #2015-62 802 CANYON ROAD SPECIAL USE PERMIT.**

**MOTION:** Donna Reynolds moved, seconded by Patricia Hawkins, to approve the Findings of Fact and Conclusions of Law in Case #2015-62, 802 Canyon Road Special Use Permit, as presented.

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

Ms. Hawkins asked if we know when he will be opening the restaurant.

Chair Friedman said no.

Mr. Werwath said there is an Ethiopian restaurant that was in their competition this year that is going to open in Santa Fe in 1-2 weeks.

**F. NEW BUSINESS**

There was no new business.

**G. STAFF COMMUNICATIONS**

Mr. Shandler said there may be an upcoming meeting of the BOA, noting an appeal has been filed on the property at 818 Gonzales Road. He said staff is trying to resolve the matter prior to it coming before the Board of Adjustment. He said it is an appeal of building permit, noting it is an interesting building with terrain issues. He said the appeal was filed by a Mr. Fuller, an architect and another party.

Chair Friedman asked if it is Guy Fuller and Mr. Shandler said yes.

Mr. Friedman said he litigated a case on the property, and won't be able to participate on that case if it comes forward to the Board of Adjustment.

Mr. Werwath asked, when we get communications such as letters addressed to our homes from appellants, if there is a proper protocol to deal with that in terms of the implications of *ex parte* communications. He asked if we should send them back unopened. He said when he saw who the letter was from, he didn't open it.

Mr. Shandler said when you get a letter you can send it back to them unopened, or you can take it to the Case Manager, commenting both things are correct. He said when you get an email and you read the first line and it is on a case before the Board, you should forward it to the case manager in the case with an "old fashioned" letter.

Mr. Werwath said then he should forward it to Dan Esquibel and Mr. Shandler said that is correct.

Ms. Hawkins asked, with regard to the letter from Mr. Firstenberg, and the document from Stephen Durkovich, if there is anything in them that we need to pay attention to, commenting that both are very hard to read.

Mr. Shandler said, "Those documents... everything.... and the parties know to route everything through staff so it will be in the packet, with the idea that every member received the identical information. That is the proper protocol. Unfortunately, some people don't follow that protocol."

Ms. Dearing asked if perhaps there is some attempt to create an *ex parte* situation, so that they can have another cause for appeal.

Chair Friedman said, "You wouldn't want to respond, that's for sure."

Ms. Dearing said she understands, she is just wondering if there wasn't some sort of "method behind the madness."

Mr. Shandler said, "I think these particular letters are not a problem, because they are all cc'd to him. If I sent the letters to the Judge alone, then I'm in trouble. I send the letter to the Judge and I cc my opponents, then I'm going to be okay. It's just beyond the protocol but does not create an impermissible or an appealable issue."

Mr. Werwath said, "Let the record reflect that that is not the way to win the hearts and minds of the Commission."

**H. MATTERS FROM THE BOARD**

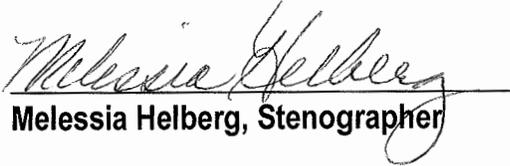
There were no further matters from the Board.

**I. ADJOURNMENT**

There was no further business to come before the Board, and the meeting was adjourned at approximately 12:20 p.m.

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**Gary Friedman, Chair**

  
**Melessia Helberg, Stenographer**