



Agenda

REGULAR MEETING OF
THE GOVERNING BODY
MARCH 12, 2008
CITY COUNCIL CHAMBERS

AFTERNOON SESSION – 5:00 P.M.

CITY CLERK'S OFFICE

DATE 3-7-08 TIME 4:10 pm

SERVED BY

RECEIVED BY

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. INVOCATION
4. ROLL CALL
5. APPROVAL OF AGENDA
6. APPROVAL OF CONSENT CALENDAR
7. APPROVAL OF MINUTES: Reg. City Council Meeting – February 27, 2008
8. ORGANIZATIONAL SESSION
 - a) Appointment of Mayor Pro-Tem
 - b) Appointment of Parliamentarian (No Vote Required)
 - c) Appointment of City Council Committees
9. PRESENTATIONS
 - a) Employees of the Month for March 2008 – Henry Romero, Marcial Ruiz, Jose Sanchez, Manuel Franco, Michael Ortega, Gerald Quintana, Steven Romero, Stephen Sanchez, Isaac Martinez and Andrew Encinias; Public Works Department/ CIP. (5 minutes)
 - b) Muchas Gracias – Finance Department Remodel Project. (5 minutes)
 - c) Santa Fe High School Students Travel to the Peoples Republic of China. (Sylvia Montoya-Wiuff) (5 minutes)
 - d) Santa Fe Trends 2008. (Reed Liming) (5 minutes)



Agenda

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10. CONSENT CALENDAR

a) Request for Approval to Publish Notice of Public Hearing on March 26, 2008:

- 1) Bill No. 2008-16 – An Ordinance Approving and Ratifying an Ordinance of the Santa Fe Solid Waste Management Agency Which Authorizes Execution and Delivery of (1) a Loan Agreement by and Between the Agency and the New Mexico Environment Department in the Amount of \$2,000,000 and (2) A Loan Agreement by and Between the Agency and the New Mexico Finance Authority in the Amount of \$1,000,000, Each for the Purpose of Acquiring, Constructing, Extending, Enlarging, Bettering, Repairing or Otherwise Improving or Maintaining Solid Waste Disposal Equipment, Equipment for Operation and Maintenance of Sanitary Landfills, Solid Waste Facilities or and Combination of the Foregoing; and Ratifying Action Previously Taken in Connection Therewith. (Randall Kippenbrock)

11. Request for Approval for the Governing Body to Review, Pursuant to Section 14-2.2(A)(2) SFCC 1987, the February 26, 2008 Decision of the Planning Commission's Approval of Case # M 2008-01, "PNM I-25 and Galisteo Street Transmission Line Relocation, Request by Public Service Company of New Mexico for Determination of Consistency With Adopted General Plan for The Relocation of Existing 46kv and 115kv Distribution Line Due to The Rail Runner Phase 2 Project", and to Set a Date For The Matter to be Noticed and Heard. (Councilor Ortiz)

12. MATTERS FROM THE CITY MANAGER

13. MATTERS FROM THE CITY ATTORNEY

EXECUTIVE SESSION:

Consideration of Real Property Purchase – Nava Ade Park; Pursuant to §10-15-1 (H) (8) NMSA 1978.

14. MATTERS FROM THE CITY CLERK

a) Canvass of Election Results – March 4, 2008 Regular Municipal Election



Agenda

REGULAR MEETING OF
THE GOVERNING BODY
MARCH 12, 2008
CITY COUNCIL CHAMBERS

15. COMMUNICATIONS FROM THE GOVERNING BODY

EVENING SESSION – 7:00 P.M.

- A. CALL TO ORDER
- B. PLEDGE OF ALLEGIANCE
- C. INVOCATION
- D. ROLL CALL
- E. PETITIONS FROM THE FLOOR
- F. APPOINTMENTS
- G. PUBLIC HEARINGS:
 - 1) **Case # BCD 2006 – 02.** Appeal of the Business Capital District Design Review Committee's Action on October 11, 2007 Regarding the Placement of Rooftop Solar Panels and Mechanical Equipment for Building A1 (Art Yard Project) on Parcel A1 of the Santa Fe Rail yard Development Project (North Rail yard Area at Paseo de Peralta). Mitch Davenport, Agent for the Wivco Co. Requests that the Governing Body Rescind the Denial. (Robert Siqueiros) **(Postponed at February 27, 2008 City Council Agenda)**
 - 2) **Case #A 2008-02.** Janet Urian Lot Split And Access Variance Appeal. Janet Urian, Owner/Agent Appeals the Planning Commission Decision to Deny Division of 0.406± Acres into Two Tracts and to Deny a Variance to Allow Access to the Subdivision Via an 18 Foot Private Road Where a 38 Foot Private Road is Required. The Property is Located on Agua Fria Street, West of Alejandro Street and is Zoned R-5 (Residential, Five Dwelling Units Per Acre). (Donna Wynant, Case Manager)



Agenda

REGULAR MEETING OF
THE GOVERNING BODY
MARCH 12, 2008
CITY COUNCIL CHAMBERS

- 3) **Case #M 2007-36. 1312 Agua Fria Street General Plan Amendment.** Derrick Archuleta, Agent for Evangeline Herrera, Requests Approval of a General Plan Future Land Use Map Amendment to Change The Designation of 0.306± Acres of Land From Low Density (3-7 Dwelling Units Per Acre) to Office. The Area is Located Between Agua Fria Street and Hickox Street. (Lou Baker) **(Request by Applicant to Postpone to March 26, 2008 City Council Agenda)**
- 4) **Case #ZA 2007-13. 1312 Agua Fria Street Rezoning.** Derrick Archuleta, Agent for Evangeline Herrera, Requests Rezoning of 0.306± Acres of Land From R-5 (Residential, Five Dwelling Units Per Acre) to C-1 (Office and Related Commercial). The Property is Located Between Agua Fria Street and Hickox Street. (Lou Baker) **(Request by Applicant to Postpone to March 26, 2008 City Council Agenda)**

H. ADJOURN

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

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

*Translator for the hearing impaired available through the City Clerk's Office upon 5 days notice.

**SUMMARY INDEX
SANTA FE CITY COUNCIL MEETING
March 12, 2008**

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
<u>AFTERNOON SESSION</u>		
ROLL CALL	Quorum	1
APPROVAL OF AGENDA	Approved [amended]	1-5
APPROVAL OF CONSENT CALENDAR	Approved	5-6
APPROVAL OF MINUTES: Reg. City Council Meeting – February 27, 2008	Approved	6
ORGANIZATIONAL SESSION		
APPOINTMENT OF MAYOR PRO-TEM	Mayor Pro-Tem Elected	6-7
APPOINTMENT OF PARLIAMENTARIAN		7
APPOINTMENT OF CITY COUNCIL COMMITTEES	Approved	7-11
<u>PRESENTATIONS</u>		
EMPLOYEES OF THE MONTH FOR MARCH 2008 – HENRY ROMERO, MARCIAL RUIZ, JOSE SANCHEZ, MANUEL FRANCO, MICHAEL ORTEGA, GERALD QUINTANA, STEVEN ROMERO, STEPHEN SANCHEZ, ISAAC MARTINEZ AND ANDREW ENCINIAS – PUBLIC WORKS DEPARTMENT/CIP		11-12
MUCHAS GRACIAS – FINANCE DEPARTMENT REMODEL PROJECT		12
SANTA FE HIGH SCHOOL STUDENTS TRAVEL TO THE PEOPLES REPUBLIC OF CHINA		12-13
SANTA FE TRENDS 2008		13-14
CONSENT CALENDAR LISTING		14

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
REQUEST FOR APPROVAL FOR THE GOVERNING BODY TO REVIEW, PURSUANT TO SECTION 14-2.2(A)(2) SFCC 1987, THE FEBRUARY 26, 2008, DECISION OF THE PLANNING COMMISSION'S APPROVAL OF CASE #M-2008-01, "PNM I-25 AND GALISTEO STREET TRANSMISSION LINE RELOCATION. REQUEST BY PUBLIC SERVICE COMPANY OF NEW MEXICO FOR DETERMINATION OF CONSISTENCY WITH ADOPTED GENERAL PLAN FOR THE RELOCATION OF EXISTING 46kv AND 115kv DISTRIBUTION LINE DUE TO THE RAIL RUNNER PHASE 2 PROJECT," AND TO SET A DATE FOR THE MATTER TO BE NOTICED AND HEARD	Request w/d by C. Ortiz	14-15
MATTERS FROM THE CITY MANAGER	None	15
MATTERS FROM THE CITY ATTORNEY		
EXECUTIVE SESSION	Approved	15
MOTION TO COME OUT OF EXECUTIVE SESSION	Approved	15
<u>EVENING SESSION</u>		
CALL TO ORDER AND ROLL CALL	Quorum	16
PETITIONS FROM THE FLOOR		16-17
APPOINTMENTS	None	17
<u>PUBLIC HEARINGS</u>		
<u>CASE #BCD 2006-02.</u> APPEAL OF THE BUSINESS CAPITAL DISTRICT DESIGN REVIEW COMMITTEE'S ACTION ON OCTOBER 11, 2007, REGARDING THE PLACEMENT OF ROOFTOP SOLAR PANELS AND MECHANICAL EQUIPMENT FOR BUILDING A1 (ART YARD PROJECT) ON PARCEL A1 OF THE SANTA FE RAILYARD DEVELOPMENT PROJECT (NORTH RAILYARD AREA AT PASEO DE PERALTA). MITCH DAVENPORT, AGENT FOR THE WIVCO CO., REQUESTS THAT THE GOVERNING BODY RESCIND THE DENIAL	Removed & remanded to BCD	17-18

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
CASE #A 2008-02. JANET URIAN LOT SPLIT AND ACCESS VARIANCE APPEAL. JANET URIAN, OWNER/AGENT APPEALS THE PLANNING COMMISSION DECISION TO DENY DIVISION OF 0.406± ACRES INTO TWO TRACTS AND TO DENY A VARIANCE TO ALLOW ACCESS TO THE SUBDIVISION VIA AN 18 FOOT PRIVATE ROAD WHERE A 38 FOOT PRIVATE ROAD IS REQUIRED. THE PROPERTY IS LOCATED ON AGUA FRIA STREET, WEST OF ALEJANDRO STREET AND IS ZONED R-5 (RESIDENTIAL, FIVE DWELLING UNITS PER ACRE)	Appeal denied	18-34
CASE #M 2007-36. 1312 AGUA FRIA STREET GENERAL PLAN AMENDMENT. DERRICK ARCHULETA, AGENT FOR EVANGELINE HERRERA, REQUESTS APPROVAL OF A GENERAL PLAN FUTURE LAND USE MAP AMENDMENT TO CHANGE THE DESIGNATION OF 0.306± ACRES OF LAND FROM LOW DENSITY (3-7 DWELLING UNITS PER ACRE) TO OFFICE. THE AREA IS LOCATED BETWEEN AGUA FRIA STREET AND HICKOX STREET	Postponed to 03/26/08	35
CASE #ZA 2007-13. 1312 AGUA FRIA STREET REZONING. DERRICK ARCHULETA, AGENT FOR EVANGELINE HERRERA, REQUESTS REZONING OF 0.306± ACRES OF LAND FROM R-5 (RESIDENTIAL, FIVE DWELLING UNITS PER ACRE) TO C-1 (OFFICE AND RELATED COMMERCIAL). THE PROPERTY IS LOCATED BETWEEN AGUA FRIA STREET AND HICKOX STREET	Postponed to 03/26/08	35
MATTERS FROM THE CITY CLERK		
CANVASS OF ELECTION RESULTS – MARCH 4, 2008 REGULAR MUNICIPAL ELECTION	Informational/Approved	35
COMMUNICATIONS FROM THE GOVERNING BODY	Information/Discussion	35-38
ADJOURN		38

**MINUTES OF THE
REGULAR MEETING OF THE
GOVERNING BODY
Santa Fe, New Mexico
March 12, 2008**

AFTERNOON SESSION

A regular meeting of the Governing Body of the City of Santa Fe, New Mexico, was called to order by Mayor David Coss, on March 12, 2008, at approximately 5:00 p.m., in the City Hall Council Chambers. Following the Pledge of Allegiance and Invocation, roll call indicated the presence of a quorum, as follows:

Members Present

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

Others Attending

Galen Buller, City Manager
Kelly Brennan, Assistant City Attorney
Yolanda Y. Vigil, City Clerk
Melessia Helberg, Council Stenographer

5. APPROVAL OF AGENDA

Councilor Wurzbarger said she has a question on the first case on the evening Public Hearing Agenda, Case G(1), the appeal on the rooftop solar panels. She said she has reviewed the packet. She said the City Attorney's opinion is, by State law, the Council can't do anything. She is confused as to why this is on the Agenda, and asked an interpretation from the City Attorney as to whether we should proceed with this item.

Kelly Brennan, Assistant City Attorney, said §3-18-32 NMSA 1978, the statute on the point is clear, and quoted in part from that statute as follows:

"A county or municipality shall not restrict the installation of a solar collector as defined pursuant to the Solar Rights Act, except that the placement of solar collectors in historic districts may be regulated or restricted by a county or municipality."

Ms. Brennan said the subject site is not in an historic district.

Councilor Wurzbarger quoted in part from the City Attorney's Memorandum of February 27, 2008, on page 45 of the staff report in the Council packet for this agenda item, as follows:

"While I am unwilling to say that this new law entirely prevents a municipality from restricting the installation, say, of a 20-story-high solar collector, it clearly does prevent a municipality from restricting the installation of a state-of-the-art solar collector that does not extend higher than the top of the building."

Councilor Wurzbarger said it is her opinion that the City is preempted by State law from restricting the installation of the four-by-four solar collectors that the Art Yard has proposed. She asked again, given this opinion, why we are hearing this case.

Councilor Calvert said point 2 of that same Memorandum provides:

"While the City cannot restrict the installation of the solar collectors, a landowner or landlord can. If the SFRCC chooses to restrict the installation of collectors on buildings constructed on its leases, it may do so."

Councilor Calvert believes this opens the door slightly. He asked upon what the City Attorney based his opinion, observing that it isn't addressed in §3-18-32 NMSA 1978. He asked if it based on something in general law.

Ms. Brennan said she believes it is based on general principles of contracting and leasing law, and that the Santa Fe Railyard Community Corporation ("SFRCC") has addressed the issue of screening with the Art Yard.

Councilor Calvert said it isn't just a matter of screening, it is a matter of whether they can "put them up there," or do they have the ability "to say, across the spectrum, either you have to screen them or you can do it or you can't do it or any of those issues."

Ms. Brennan said she thinks there is a distinction between controlling the installation, i.e. saying you cannot install solar collectors and in making restrictions around their installation which would be reasonable under the circumstances. She believes this is the basis for him saying you might be able to regulate a 20 foot high solar, saying this is something which can be looked into further.

Councilor Bushee quoted the second sentence of point 2 in the City Attorney's Memorandum as follows:

"If the SFRCC chooses to restrict the installation of collectors on buildings constructed on its leases, it may do so."

Councilor Bushee asked what authority this is based on.

Ms. Brennan said she presumes this would be based on general principles of contract law, and it would depend on the agreement between the SFRCC and the Art Yard through its lease.

Councilor Bushee asked Ms. Brennan what she would recommend regarding this case.

Ms. Brennan said she thinks if the Council believes that the installation of solar collectors is preempted by the State under the statute, it would be logical to vote that the City does not have the authority to control the installation of the collectors.

Councilor Bushee asked Ms. Brennan if she believes the City does not have the authority to control the installation of the collectors.

Ms. Brennan said she does, noting this is Frank Katz's opinion and with which she thoroughly agrees.

Councilor Wurzburger moved to remove this item from the agenda because we do not have jurisdiction over this issue, and to approve the agenda as amended.

Discussion before the second: Councilor Chavez asked what this does for the project and for the specific installation of this solar application. He believes we should support the solar application. It is something for which we have been working and it speaks to sustainability. If the State law does preempt us in some fashion, it speaks to installation and he believes they have addressed that and the screening. His question is whether we are going to support the solar application on this particular project and in general, or not, commenting he believes this is a test.

The motion was seconded by Councilor Bushee with the understanding that the motion includes ensuring that this goes back to the SFRCC for any future discussions with regard to the application of the solar.

Response to the condition for second: Councilor Wurzburger said by inference the City has no authority, therefore it goes back where it should be in the first place, which is the SFRCC.

Clarification of second: Councilor Bushee said then it is being returned to the SFRCC specifically to deal with screening and/or other issues related.

Clarification of motion: Mayor Coss clarified that the motion is that the Council won't hear this item, to remove this item from the agenda, to refer it back to the SFRCC, and to approve the agenda as amended.

Discussion: Councilor Calvert said he wants clarification that the SFRCC has jurisdiction. We are implying that they might, but we are saying the City is preempted, and asked if this means the City's agent, SFRCC, is preempted as well, or does it have the authority to act in requiring any kind of screening whatsoever.

Councilor Ortiz said his question is what is the practical result of not hearing this case, and what would happen to this project as the result of the Governing Body not hearing this case.

Ms. Brennan said the preemption is merely of the City's right to say it cannot install solar collectors. In fact, the Railyard Master Plan encourages sustainable design and solar collection and the use of the industrial look. She believes the SFRCC and the Art Yard have been in

discussions about screening, and understands they have agreed to some form of screening. However, she thinks it would not restrict the installation of solar collectors.

Councilor Ortiz said then the practical result of the Governing Body not hearing this case is that they will build solar panels on the project.

Ms. Brennan said yes, assuming they continue to want to do so.

Councilor Chavez believes the City should encourage them to continue to do that instead of getting in the way.

Councilor Dominguez asked if there is a distinction between the land owner and the landlord with regard to this case.

Ms. Brennan said the issue is with regard to the City restricting the installation of solar collectors, and there is no mention of reasonable controls around that. She said she is not entirely clear on all of the relationships in the Railyard project, but she believes the SFRCC has a direct lease with the Art Yard to which the City is not a party, and this would be the contract between them which would control their agreement on this matter.

Councilor Calvert said he is in favor of renewable energy sources and green building, but he also is looking at the options the developer had in terms of the type of solar installation which was used. He said throughout the record, which he read, it discusses reducing greenhouse gasses, but he believes photovoltaic ("PV") would blend better and would reduce greenhouse gases more than a solar thermal system.

Councilor Calvert said, "Now, I'm not going to debate them on, you know, the efficiency of solar thermal versus PV, but if they're concerned about greenhouses, then with solar PV what we're replacing is coal fired power plants versus natural gas in the hot water heating area. So, it isn't just a simple 'do we encourage this,' but it is what are we trying to accomplish,' and at the same time could they do something that would accomplish one of our goals and still work with the neighborhood to fulfill that mission that they have promised to do."

Mayor Coss reminded the Council that the motion is to not hear the case.

Councilor Bushee said she just wants to get "up to speed" on the history. She understands the BCD/DRC denied the application, and that is the reason it is being appealed. She asked when the new law was passed about solar.

Ms. Brennan said the statute was passed by the Legislature in 2007, and became effective in June 2007.

Councilor Bushee asked if the BCD/DRC has the right to deny this request.

Ms. Brennan said if the Council doesn't have the right, then she believes the BCD/DRC did not have the right.

Councilor Bushee asked if the BCD/DRC got legal advice in this matter at the time.

Ms. Brennan said she is unsure because she wasn't at the meeting.

Councilor Bushee said, "I guess what I'm asking for is a more expedited process from our Legal Department, because this is about the third or fourth situation where we've been up here, some of which we have heard previously, and then the next meeting they say, nope, we're not allowed to hear this. It would just... help everybody, I think, a lot, to try to be out on top of some of those issues."

Councilor Wurzbarger said, given the testimony of legal counsel, it appears the appeal is an inappropriate appeal, which makes an even stronger case that this Council doesn't continue that inappropriate action, and should remand this back and "they proceed to do what they're doing."

Councilor Chavez said, "They are implementing the master plan for the Railyard Community Corporation; they've already entered into a contract for this particular develop to do this project. It has the solar applications and height questions that I guess are hanging it up, so if it goes back to the BCD/DRC or the Railyard Community Corporation, is it going to come back here again. Is it going to be this 'ping pong' ball going back and forth and is it limited to just the application and those limited questions, because that's, I think, what I'm hearing, but I wanted some clarification on that."

Clarification of motion by maker: Councilor Wurzbarger said, "It is my understanding that we subcontracted those decisions... those are not our decisions to make, so I would consider it an end of the discussion, based on the relationship and agreement that we have with the Railyard Corp."

Councilor Calvert said he would like to clarify that the SFRCC and its Board did make certain conditions of approval, and asked if those conditions still would apply.

Councilor Wurzbarger said, "It's their job."

Councilor Calvert said, "If they held to those, they could still restrict, but not prohibit. Okay. And it goes back to them, maybe they could find otherwise, I don't know."

The motion was approved on the following Roll Call vote:

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

Against: None.

6. APPROVAL OF CONSENT CALENDAR

Councilor Wurzbarger moved, seconded by Councilor Bushee, to approve the Consent Calendar, as published. The motion was approved on the following Roll Call vote:

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

Against: None.

7. APPROVAL OF MINUTES: Reg. City Council Meeting – February 27, 2008.

Councilor Dominguez moved, seconded by Councilor Wurzburger, to approve the minutes of the Regular City Council Meeting of February 27, 2008, as presented. The motion was approved on a voice vote, with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Trujillo and Wurzburger voting for the motion, none against, and Councilor Romero abstaining because she was not on the Council at that time.

8. ORGANIZATIONAL SESSION

A copy of a Memorandum dated March 12, 2008, to the City Council, from Mayor David Coss, regarding Appointments, is incorporated herewith to these minutes as Exhibit "1."

a) APPOINTMENT OF MAYOR PRO-TEM

Councilor Chavez said the Mayor has put a lot of thought into his appointments, and he has tried to meet with Councilors, one-on-one, but that didn't go completely as the Mayor had planned. He said at this time he is going to withdraw his name for consideration for the positions of Mayor Pro-Tem. He is going to go back to what he has been doing, which is to focus on the District needs. He is comfortable with the other Committee assignments and will dedicate his time to those Committees as well. He said he wants to be sure that he has ample time to structure neighborhood meetings, and to do outreach which really addresses the needs that still exist out there.

Councilor Chavez said he would respectfully withdraw his name from consideration for Mayor Pro-Tem, and pledged to work with the Mayor over the next two and four years to help him to do whatever he needs to do.

Councilor Bushee said she is sorry Mayor Pro-Tem Chavez will not be able to serve in this position.

Councilor Bushee moved, seconded by Councilor Ortiz, to nominate Councilor Wurzburger to fill the position of Mayor Pro-tem.

Discussion: Mayor Coss said this is a little out of the ordinary, and requested to take this under advisement and bring it back to the next meeting.

Withdrawal of Motion: The maker and second withdrew their motion and second.

Following the completion of the approval of all Committee Appointments, Councilor Ortiz asked to be recognized to speak to the Council as follows:

Councilor Ortiz said, as a point of order, when Councilor Chavez declined his appointment as Mayor Pro-Tem, the City Code requires the Council to elect a Mayor Pro-Tem. Councilor Ortiz quoted from Section 2-1.8 SFCC, as follows:

"The members of the City Council shall at their first meeting after the election, elect from their own body a mayor *pro tempore* to act in the absence of the Mayor, except as may otherwise be provided by law or ordinance."

Councilor Ortiz said he believes, if Councilor Chavez does not want to serve in this capacity, this provision of the City Code compels the members of the Governing Body to elect one of the Councilors from us as the Mayor Pro-Tem at this meeting.

Councilor Bushee asked if the Mayor would like to postpone this to the Evening Session.

Mayor Coss said no, because he just appointed Councilor Ortiz to serve as the Parliamentarian and this is the reason, so he would accept another motion.

Councilor Bushee moved, seconded by Councilor Chavez, to approve Councilor Wurzburger to fill the position of Mayor Pro-tem. The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzburger voting for the motion and none against.

b) APPOINTMENT OF PARLIAMENTARIAN (NO VOTE REQUIRED)

Mayor Coss appointed Councilor Matthew Ortiz to serve as Parliamentarian, providing he is willing to accept the appointment, noting a vote of approval isn't required.

Councilor Ortiz said he accepts the appointment.

c) APPOINTMENT OF CITY COUNCIL COMMITTEES

Mayor Coss thanked the Councilors with whom he met to develop the appointments to City Council Committees, noting it is a lot of work, commitment and responsibility to Chair and serve on one of these Committees.

Mayor Coss submitted the following appointments to City Council Committees for approval:

1) Finance Committee

Councilor Ortiz, Chair
Councilor Calvert
Councilor Chavez

Councilor Dominguez
Councilor Wurzburger

Councilor Bushee moved, seconded by Councilor Calvert, to approve these appointments. The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzburger voting for the motion and none against.

2) Public Works/CIP & Land Use Committee

Councilor Bushee, Chair
Councilor Calvert
Councilor Chavez
Councilor Romero
Councilor Trujillo

Councilor Ortiz moved, seconded by Councilor Calvert, to approve these appointments. The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzburger voting for the motion and none against.

3) Public Utilities Committee

Councilor Wurzburger, Chair
Councilor Calvert
Councilor Ortiz
Councilor Romero
Councilor Trujillo

Councilor Bushee moved, seconded by Councilor Chavez, to approve these appointments. The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzburger voting for the motion and none against.

4) Bicycle and Trail Advisory Committee

Councilor Bushee, Chair

Councilor Ortiz moved, seconded by Councilor Wurzburger, to approve this appointment. The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzburger voting for the motion and none against.

5) Buckman Direct Diversion Board

Councilor Calvert
Councilor Wurzburger

Councilor Bushee moved, seconded by Councilor Trujillo, to approve these appointments. The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzburger voting for the motion and none against.

6) **Business Capital District/Design Review Committee**

Councilor Bushee, Chair

Councilor Calvert moved, seconded by Councilor Wurzburger, to approve this appointment. The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzburger voting for the motion and none against.

7) **City Business and Quality of Life Committee**

Councilor Wurzburger, Co-Chair
Councilor Dominguez, Co-Chair

Mayor Coss noted that these appointments are to serve as Co-Chairs of the Committee.

Councilor Calvert moved, seconded by Councilor Bushee, to approve these appointments. The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzburger voting for the motion and none against.

8) **Community Development Commission**

Mayor Coss

Councilor Bushee moved, seconded by Councilor Chavez, to approve this appointment. The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzburger voting for the motion and none against.

9) **Ethics and Rules Committee**

Councilor Dominguez, Chair
Councilor Ortiz

Councilor Chavez moved, seconded by Councilor Trujillo, to approve these appointments. The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzburger voting for the motion and none against.

10) Extraterritorial Zoning Authority

Councilor Chavez
Councilor Romero

Councilor Bushee moved, seconded by Councilor Wurzbarger, to approve these appointments. The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzbarger voting for the motion and none against.

11) Mayor's Youth Advisory Board

Councilor Dominguez

Councilor Calvert moved, seconded by Councilor Bushee, to approve this appointment. The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzbarger voting for the motion and none against.

12) Public Safety

Councilor Trujillo, Chair

Councilor Bushee moved, seconded by Councilor Calvert, to approve this appointment. The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzbarger voting for the motion and none against.

13) Regional Juvenile Justice Board

Councilor Dominguez

Councilor Chavez moved, seconded by Councilor Calvert, to approve this appointment. The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzbarger voting for the motion and none against.

14) Regional Planning Authority

Councilor Bushee
Councilor Ortiz
Councilor Romero
Councilor Wurzbarger

Councilor Chavez moved, seconded by Councilor Bushee, to approve these appointments. The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzbarger voting for the motion and none against.

15) Regional Transit District

Councilor Chavez

Councilor Bushee moved, seconded by Councilor Trujillo, to approve this appointment. The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzbarger voting for the motion and none against.

16) Solid Waste Management Joint Powers Board

Councilor Romero
Councilor Trujillo

Councilor Bushee moved, seconded by Councilor Chavez, to approve these appointments. The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzbarger voting for the motion and none against.

Responding to Councilor Bushee, Mayor Coss said according to the City Clerk there are two missing appointments to this Committee, but this is sufficient for a quorum. His recommendation to the Council and the County is that if two are sufficient for the BDD, that two should be sufficient for SWMA, but it will necessitate changing the agreement.

17) Transportation Policy Board

Mayor Coss
Councilor Chavez
Councilor Ortiz

Councilor Bushee moved, seconded by Councilor Trujillo, to approve these appointments. The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzbarger voting for the motion and none against.

18) Water Conservation Committee

Councilor Calvert

Councilor Bushee moved, seconded by Councilor Dominguez, to approve this appointment. The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzbarger voting for the motion and none against.

9. PRESENTATIONS

a) EMPLOYEES OF THE MONTH FOR MARCH 2008 – HENRY ROMERO,

**MARCIAL RUIZ, JOSE SANCHEZ, MANUEL FRANCO, MICHAEL ORTEGA,
GERALD QUINTANA, STEVEN ROMERO, STEPHEN SANCHEZ, ISAAC
MARTINEZ AND ANDREW ENCINIAS – PUBLIC WORKS DEPARTMENT/CIP**

Mayor Coss introduced the Employees of the Month for March 2008, and read their nomination letter into the record, noting the nomination was made by Chip Lilienthal. Mayor Coss presented the employees with a plaque, certificates and a gift certificate for \$200. Mayor Coss said this recognition is for their outstanding work and commitment on working to make the remodel of the Finance Department the least disruptive possible, and congratulated them for doing a great job.

Mayor Coss also presented Muchas Gracias Certificates to Chip Lilienthal and Richard Fiedler for their outstanding work on the project.

Mayor Coss thanked all those who made this remodel such a success.

b) MUCHAS GRACIAS – FINANCE DEPARTMENT REMODEL PROJECT.

Mayor Coss presented Muchas Gracias Certificates to Tom Boyston, E.J. Duran, John Vigil, Manuel Velarde, Richard Medina, Chris Archuleta, Leo Montoya, Dimensions Flooring Services, and Creative Interiors, Inc., for their work on this project.

Mr. Lilienthal said there was a very short time frame to do the remodel, as well as it was necessary to keep the Finance Department up and running during the remodeling. He said everyone worked together to complete the project in just under four weeks, which is an incredible undertaking. He thanked Kathryn Raveling for "heading up" this effort.

Mayor Coss reiterated his thanks to all who worked so hard to complete this project.

**c) SANTA FE HIGH SCHOOL STUDENTS TRAVEL TO THE PEOPLES
REPUBLIC OF CHINA. (SYLVIA MONTOYA-WIUFF)**

Mayor Coss said he wanted to acknowledge this endeavor, noting Paul and Anita Gurlac and are sponsoring this trip. He presented the students in attendance with Muchas Gracias certificates as follows: Alina Montoya, Johnny Boles and Faith Griego. He noted he also has certificates for Daniel Terrango, Josh Bachelli, Lee Merrill, and Paul and Anita Gurlac, all of whom were unable to be at the meeting today.

Councilor Chavez wished the students a safe trip.

Councilor Dominguez congratulated the students. He said when he was in high school he traveled to Russia, during the height of the cold war. He said that trip changed his outlook on things.

Councilor Ortiz suggested the City prepare gift packets from the City of Santa Fe for the students to present during their travels.

The students spoke about how they raised money for the trip, and said they intend to learn as much as possible about China, its culture and its people, and to share the same about New Mexico with them. They agreed to report back to the Council on their trip when they return.

d) SANTA FE TRENDS 2008. (REED LIMING)

A copy of "Santa Fe Trends 2008," is incorporated herewith to these minutes as Exhibit "2."

Reed Liming presented highlights from the information in Exhibit "2" He noted it also is on the Santa Fe website.

Responding to Councilor Chavez, Mr. Liming said the enrollment is down overall, noting the total enrollment is down from 13,600 to 13,500.

Councilor Dominguez said some school districts find ways to bump up attendance on certain days, and next year will do the count at 80 days, and asked if Mr. Liming will be staying at 40 or take whatever data the schools provide.

Mr. Liming said he will talk to the school district and see what it feels is the better figure, noting he relies on the agencies or districts for the information.

Responding to Councilor Chavez, Mr. Liming said he may be able to add additional data. He said historically the information was based on new permits, and the permits for single family homes which were designated as affordable. He said the sales of affordable housing could be something which could be added.

Councilor Wurzbarger asked how the document is used and distributed.

Mr. Liming said it is for the public. It is an attempt to give an overview and track what is happening in the City on a number of different issues. It is available through the Housing & Community Development Department, in the Post Office, or people can call him at 955-6610. It is on the City's website on the home page. It is meant to be a public document used by anyone who wants statistics from the City.

Responding to Councilor Bushee, Mr. Liming said once the City starts monitoring the reduction of the carbon footprint, it can be added. He is working with Ms. McCormick to expand it to include indicators.

Responding to Councilor Bushee, Mr. Liming said the increase in GRTs is due to the tourist industry, noting construction is also a part of it and perhaps some of the dollars from tourism more than compensate for what we may have lost.

Councilor Bushee said she is concerned about the increase in burglaries from 751 in 2006 to 1,048 in 2007. She would like this to be broken down further when there are hearings on this.

Councilor Chavez believes a good chunk of the GRTs might end up in Albuquerque, because there are a large number of subs which travel daily between Albuquerque and Santa Fe. He commented that the GRT has always been "fickle" and would like to flag some of the activity.

Councilor Bushee would like to add a Trails Section to the document.

10. CONSENT CALENDAR

a) REQUEST FOR APPROVAL TO PUBLISH NOTICE OF PUBLIC HEARING ON MARCH 26, 2008:

- 1) BILL NO. 2008-16 – AN ORDINANCE APPROVING AND RATIFYING AN ORDINANCE OF THE SANTA FE SOLID WASTE MANAGEMENT AGENCY WHICH AUTHORIZES EXECUTION AND DELIVERY OF (1) A LOAN AGREEMENT BY AND BETWEEN THE AGENCY AND THE NEW MEXICO ENVIRONMENT DEPARTMENT IN THE AMOUNT OF \$2,000,000; AND (2) A LOAN AGREEMENT BY AND BETWEEN THE AGENCY AND THE NEW MEXICO FINANCE AUTHORITY IN THE AMOUNT OF \$1,000,000 EACH FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING, EXTENDING, ENLARGING, BETTERING, REPAIRING OR OTHERWISE IMPROVING OR MAINTAINING SOLID WASTE DISPOSAL EQUIPMENT, EQUIPMENT FOR OPERATION AND MAINTENANCE OF SANITARY LANDFILLS, SOLID WASTE FACILITIES OR AND COMBINATION OF THE FOREGOING; AND RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH. (RANDALL KIPPENBROCK)**

END OF CONSENT CALENDAR

- 11. REQUEST FOR APPROVAL FOR THE GOVERNING BODY TO REVIEW, PURSUANT TO SECTION 14-2.2(A)(2) SFCC 1987, THE FEBRUARY 26, 2008, DECISION OF THE PLANNING COMMISSION'S APPROVAL OF CASE #M-2008-01, "PNM I-25 AND GALISTEO STREET TRANSMISSION LINE RELOCATION. REQUEST BY PUBLIC SERVICE COMPANY OF NEW MEXICO FOR DETERMINATION OF CONSISTENCY WITH ADOPTED GENERAL PLAN FOR THE RELOCATION OF EXISTING 46kv AND 115kv DISTRIBUTION LINE DUE TO THE RAIL RUNNER PHASE 2 PROJECT," AND TO SET A DATE FOR THE MATTER TO BE NOTICED AND HEARD. (MATTHEW ORTIZ)**

Councilor Ortiz said he spoke with representatives from the State Department of Transportation as well as some of the affected neighbors. Based upon some of the comments made by the community relations people at DOT, and their commitment and work they have been done to listen to the Las Estancias neighborhood and to address its concern, and after

clearing up two technical issues, he got the answers he needed from a review of the minutes. Therefore, he said he is withdrawing this request.

12. MATTERS FROM THE CITY MANAGER

There were no matters from the City Manager

13. MATTERS FROM THE CITY ATTORNEY

EXECUTIVE SESSION

- a) **CONSIDERATION OF REAL PROPERTY PURCHASE – NAVA ADE PARK; PURSUANT TO §10-15-1(H)(8) NMSA 1978.**

Councilor Wurzburger moved, seconded by Councilor Dominguez, that the Council go into Executive Session for the purpose of consideration of real property purchase – Nava Ade Park, pursuant to §10-15-1(H) (8). The motion was approved on a Roll Call vote as follows:

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

Against: None.

Absent: Councilor Chavez.

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

MOTION TO COME OUT OF EXECUTIVE SESSION

At 7:10 p.m., Councilor Bushee moved, seconded by Councilor Calvert, that the City Council come out of Executive Session and stated that the only items which were discussed in executive session were those items which were on the agenda, and no action was taken.

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

END OF AFTERNOON SESSION AT 7:10 P.M.

The Council moved directly into the Evening Session without a break

EVENING SESSION

A. CALL TO ORDER AND ROLL CALL

The Evening Session was called to order by Mayor David Coss, at approximately 7:11 p.m. Roll Call indicated the presence of a quorum as follows:

Members Present

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

Others Attending

Galen Buller, City Manager
Kelly Brennan, City Attorney
Yolanda Y. Vigil, City Clerk
Melessia Helberg, Council Stenographer

E. PETITIONS FROM THE FLOOR

Stefanie Beninato, regarding 610 Galisteo. She said she is here because she came about a month ago and Councilor Ortiz had said she should come back and let the Council know what is happening. She spoke with the City Attorney who asked her "if I was only concerned that it was a limited liability company who is actually owning 610 Galisteo." She said she has learned that one of "their" agents which isn't identified by the City or registered with the City, also is a corporation that "they" may own, but "again now, we have yet another layer of corporate layering on a owner builder permit."

Ms. Beninato continued, "Under that ordinance that I read last time, that 14-27-2(a)(2), again the board, the H-Board was supposed to hear the appeal of us who are aggrieved by the Land Use's, excuse me, approval or denial, and they did not, and we came to you and we've come to the Board a couple of different times and we went to Mr. Hiatt, I went to Mr. Hiatt, I showed him the petition with the 28 people. Now, under 14-11.5(a) under Remedies, it says that the Governing Body may institute any appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, repair, maintenance or use, and they may also connect, excuse me, correct or abate such violation which is a violation of the Chapter 14. And, at this point, again, there is no appeal right now, you could send it back to the H-Board... yours is permissive at whether you want to do it, but this is mandatory and we've asked it to go back and you're the highest body here, so you could send it back. You could wait for the appeal to come in on this, but we're probably still going to want you to do something, and it would seem like you would want some recommendations from the H-Board, so maybe you'd

want to send it back now and start having that process happen, as old business, to the H-Board. In any event, I am going to ask, since you can restrain this construction, if you don't want to red tag it, the least I'm going to ask you to do is to order the staff not to do any more inspections until the appeal is heard at City Council...because this has gone on illegally through February of this year, again, under the Board of Adjustment, they needed a certificate, they didn't have the certificate. They've been building without the certificate and they've been getting inspections, unconditional seemingly... inspections from the City. And I think it's time to at least stop the inspections so that you could, you know, be able to determine some things before more building occurs, when in fact some of the building may have to come undone. I apologize for not being able to stay all the way through this meeting to when you discuss that, but I hope that you will consider my request. Thank you."

Lois Taylor, Guadalupe Historic District, Duran Street, said a house at 127 Duran is being renovated. She said in the course of that renovation it has become obvious that there is a "no man's land" area, because the H-Board has control over certain aspects of the building. However, it has no control over the service pipes which brings the electrical wires from the house to PNM's lines. This is an area where there are a lot of elderly people who will, sadly, die and those houses will be sold and more renovation will go ahead, and they will again be confronted by very large pipes which are shooting eight feet into the air from people's roofs. She presented photographs of the subject building (Exhibit "3"). She feels nobody seems to be in charge of this. The Planning & Building Department give the permits, the Historic Department says you can't have solar panels and such, but no one is looking at what is essentially a very ugly structure which is destroying the whole character of the street. So, either you have a Historical Board which protects the historical look of the street, or perhaps why bother. She said she gathers it would require this Council to give the Historic Board the opportunity, not to tell them where to put the wires, but where you could install a meter in the most sensitive place and make the best of a bad situation. She said the streets are full of wires everywhere, but she would like the meter to be installed in a place where the wire would be less intrusive, less conspicuous.

Five color photographs entered for the record by Ms. Taylor are incorporated herewith to these minutes as Exhibit "3."

F. APPOINTMENTS

There were no appointments.

G. PUBLIC HEARINGS

- 1) **CASE #BCD 2006-02. APPEAL OF THE BUSINESS CAPITAL DISTRICT DESIGN REVIEW COMMITTEE'S ACTION ON OCTOBER 11, 2007, REGARDING THE PLACEMENT OF ROOFTOP SOLAR PANELS AND MECHANICAL EQUIPMENT FOR BUILDING A1 (ART YARD PROJECT) ON PARCEL A1 OF THE SANTA FE RAILYARD DEVELOPMENT PROJECT**

(NORTH RAILYARD AREA AT PASEO DE PERALTA). MITCH DAVENPORT, AGENT FOR THE WIVCO CO., REQUESTS THAT THE GOVERNING BODY RESCIND THE DENIAL. (ROBERT SIQUEIROS) (Postponed at the February 27, 2007 City Council Meeting)

The Governing Body removed this item from the agenda and remanded it to the Santa Fe Railyard Community Corporation.

- 2) **CASE #A 2008-02. JANET URIAN LOT SPLIT AND ACCESS VARIANCE APPEAL. JANET URIAN, OWNER/AGENT APPEALS THE PLANNING COMMISSION DECISION TO DENY DIVISION OF 0.406± ACRES INTO TWO TRACTS AND TO DENY A VARIANCE TO ALLOW ACCESS TO THE SUBDIVISION VIA AN 18 FOOT PRIVATE ROAD WHERE A 38 FOOT PRIVATE ROAD IS REQUIRED. THE PROPERTY IS LOCATED ON AGUA FRIA STREET, WEST OF ALEJANDRO STREET AND IS ZONED R-5 (RESIDENTIAL, FIVE DWELLING UNITS PER ACRE). (DONNA WYNANT, CASE MANAGER)**

Memorandum prepared March 4 for March 12, 2008 meeting, to Mayor and City Council, with attachments, from Donna Wynant, Senior Planner, is incorporated herewith to these minutes as Exhibit "4."

A copy of "14-3.7 SUBDIVISIONS OF LAND," entered for the record by Greg Smith, Planning & Land Use Department, is incorporated herewith to these minutes as Exhibit "5."

Three letters entered for the record by Felix Pino, dated May 10, 2008, to Mayor David Coss & City Councilors from Alice M. Pino, Marcella Faye DiPalma and Felix L. Pino, are incorporated herewith to these minutes as Exhibit "6."

The statement read into the record by Socorro Pino Ortiz, dated March 12, 2008, entered for the record by Socorro Pino Ortiz, is incorporated herewith to these minutes as Exhibit "7."

A copy of the Family Transfer Plat of Survey for Nicolas Pino & Jesusita R. Pino dated October 21, 1987, entered for the record by Karl Sommer, is incorporated herewith to these minutes as Exhibit "8."

A copy of a letter dated January 15, 2008, to the City of Santa Fe, Current Planning Division, Planning and Land Use Department, with attachments, from Michael T. Pino, entered for the record by Karl Sommer, is incorporated herewith to these minutes as Exhibit "9."

A color aerial photograph of the area, entered for the record by Karl Sommer, is incorporated herewith to these minutes as Exhibit "10."

The staff report was presented by Greg Smith which is contained in Exhibit "4."

RECOMMENDATION: The Council should deny the appeal and uphold the decision of the Planning Commission to deny the lot split application. Denial of the appeal should be based on the findings adopted by the [Planning] Commission:

1. The minimum width of 20 feet as required by the Fire Code and Chapter 14 standards could only be provided on the subject property and not continuously from Agua Fria.
2. The variance appeared to only benefit the applicant and would set a precedent to allow new lots to access a driveway that is substandard in width adversely affecting the public health, safety and welfare.

If the Council decides to uphold the appeal, the record must include specific references to the facts that support the required findings for the requested variance, or the basis for finding that no variance is required. The attached staff report to the Commission includes appropriate conditions of approval.

Disclosures by Councilors

Councilor Calvert disclosed that he was "playing phone tag," with the Appellant for a while until he realized this was a case which would be before the Council, so in a phone message he left for her, he said it wasn't proper that they have a discussion because it is a case the Council would be hearing. He got a phone message back which said they didn't know there was a rule against that because they had spoken with several Planning Commissioners and Councilors. He said he isn't trying to get anyone in trouble. He is asking that the City Attorney clarify the rule on this issue, and to make it clear to the public and what the policy is and how it applies to the Council.

Ms. Brennan said the general rule embodied in the current code appeal provision to the Governing Body, allows *ex parte* or one sided contacts up to 7 days before matter is heard. However, she believes the 7-day period is fundamentally arbitrary. Typically, *ex parte* discussions would not be proper at all when a matter is known to be on an agenda to be heard. The new draft of the Appeal provision anticipates this, and forbids *ex parte* discussions or communications starting at the moment an appeal is filed, and it will apply to all boards and commissions which is more in line with what the general rule would be. She reminded the Council that *ex parte* communications include not only discussions, but independent investigations, site visits and such. The idea being that a matter should be decided on the information that comes out at public hearings so that everyone is acting on the same information.

Councilor Chavez said he said he did not speak to the Appellant, but he did speak to some of the adjoining property owners, the existing family members. He doesn't know if that falls under an *ex parte* communication. He said also took a tour of the site because it is

Councilor Bushee said this would be helpful, stating that she drives by places to see the location and what the impact might do. She said she never liked the 7-day rule, because it didn't make any sense to her, so she has always observed her own rule and doesn't talk to people outside of the meeting. She wants to be able to continue to do the drive by of the site.

Councilor Dominguez believes it is important to be able to do site visits.

Councilor Romero disclosed that she got a telephone call, but she did not return it.

Councilor Wurzbarger disclosed that she received an email, and only read part of it and didn't return it. She said she may or may have not gotten a telephone call, but she doesn't remember, and if she did, she is quite sure she didn't return it.

Public Hearing

Speaking in favor of the Appeal

Presentation by the Appellant

Karl Sommer, representing the Appellant, was sworn. Mr. Sommer said, with regard to *ex parte*, it comes down to whether or not the Council and individual Councilors can provide a fair hearing in light of the testimony and the information they have. Mr. Sommer said for the record, he has not contacted any of the Councilors about this case, either before or after the 7-day period, because he adheres to the rule in a quasi-judicial setting. It isn't appropriate at any time, at least for him or anybody involved in the case, to talk to the Council about the merits of the case. For the record, Mr. Sommer said he has not called any of the Councilors, nor spoken with the Council, nor sent any emails or information. Mr. Sommer said, on behalf of his client, based on anything he has heard here, he does not believe anybody is unable to provide his client with a fair hearing based on the evidence. He said Councilor Chavez probably spoke with some of the members of the Pino family. He believes the site is well known to almost all of the Council. He said, for the record, he doesn't believe there is anything which would detract from the Council's ability to hear this case fairly. It isn't a concern for him, and he appreciates the disclosures.

Mr. Sommer said the case raises a straightforward issue, which is the application of Chapter 14 in this setting, with respect to a confusion in the Code which is, he believes, a misapplication of the Code and the Fire Code. He said this Application should have been approved without a variance necessary with respect to access, because the Code doesn't say anything that the minimum standard for an access to this particular subdivision has to be one way or another. He said it applies to roads within the subdivision. He noted staff has provided a reference. The variance request is from Section 14-9.2(e). Staff has said his client needs a variance to that, and the reason they were before the Planning Commission. Mr. Sommer said Section 14-9.2(e) deals with streets, and two sections deal with access. One is if a subdivision abuts or contains an existing proposed arterial street which isn't this case. The other is where a subdivision borders or contains a railroad or limited access highway or right of way, which isn't

necessary to get the visual impact to really know the existing conditions and limitations.

Ms. Brennan said under the current 7-day rule, disclosure is required. She heard a lot of discussion at the Planning Commission about the importance at times of seeing visually the site. She said the Historic Board does this by a field trip if there is an interest in seeing a site, which is noticed to the public. This would be one way to do this, the other would be to ask staff to do video and make it available at the hearing.

Councilor Chavez asked the City Attorney if his statements were sufficient as a disclaimer.

Ms. Brennan said it is if it falls outside of the 7-days.

Councilor Chavez said he believes it was.

Ms. Brennan said then it is proper under the current rule.

Councilor Wurzbarger said Ms. Brennan implied a new rule is coming, and we will get this in writing.

Ms. Brennan said it is for the new Appeal provision which has been revised. She believes this will be coming before the Council soon.

Councilor Wurzbarger said in order to understand an Appeal she drives out to look at the property so she has her own image, and if we aren't allowed to do that, she would like clear suggestions in the new rule for how the Council deals with making an informed decision. She said people don't respond as well to two-dimensional plans.

Councilor Trujillo disclosed that he was contacted by the Appellant last Tuesday, and was given a small packet containing the Plat and showing what is going on. This was prior to the seven days.

Councilor Bushee disclosed contact by the Appellant within the 7-days, but told her she couldn't speak to her about the issue, but advised her she could send her an email. She received an email which she can't open on her phone which was just the other day, so she hasn't read it. She was looking for minutes and spoke with Planning Commissioners, and was told they had told the Appellant that she shouldn't be contacting the Commissioners or the Councilors, and assumes her attorney has advised her of that as well. She said the whole site visit thing is odd, and asked how that is a communication.

Ms. Brennan said, "It provides information that one person, one of the decision makers has that the others do not, is outside the...this is by the way only for quasi judicial hearings, legislative matters. " She said this is a difficult issue, and different jurisdictions have developed different methods to do this, one of which is doing clear videos of the site which are presented as part of the packet at every meeting.

this case. These are the only two provisions in the Code dealing with roads that are access to a subdivision.

Mr. Sommer said staff said it applies generally, that the access standards apply generally, but the Code doesn't say that, although staff may have been applying it that way for years. The Code does not require that access to this subdivision across a private easement be a particular width. In this particular case, the roadway is dirt in places and paved in places, and it is 17 feet in some places, and wider in other places, and probably is typical of lots of private lanes leading to lots of properties in Santa Fe. He noted this has been glossed over by staff. The Code does not say on its face that it applies to this subdivision. He made this point at the Planning Commission.

Mr. Sommer said the next step is that the Fire Marshal has said no, the Fire Code requires an access to this subdivision of a particular width. He pointed out that the Fire Code does not apply to subdivisions, and no one has said anything to the contrary, and the staff report still does not say anything to the contrary. The Fire Code applies to the construction of homes. He said he is not applying to construct a home. The Fire Code provides that for the construction of any home on the property there has to be a fire access roadway whether the property is divided or not. It does not say that property shall not be subdivided unless there is a fire access roadway, which is a road which is a certain width and meets a certain standard to be able to deal with emergency vehicles.

Mr. Sommer said, within the property, Ms. Urian is providing a turnaround which the Fire Department requires which is fully within the Fire Code. He reiterated that the Code does not say subdivisions shall have a fire access, but says all construction. The Fire Marshal is saying the City can't allow this subdivision because it doesn't have a fire access. He said that is a variance question which will arise at a different time, when his client comes in to build anything on the property, and the Fire Marshal will have to say it has to have a fire access road or you can't use this property. That will raise the issue of what the City is going to do because the Fire Code says these two lots cannot be accessed. He said the Council is familiar with the claims of whether or not it can deprive someone of all use of their property under City Code, and this is what variances under those circumstances are for.

Mr. Sommer said first of all, the access subdivision requirements do not apply in the way staff says they apply, and it is missing from the staff report in this regard. Secondly, the Fire Code doesn't say this lot cannot be split. He said we are dealing with a property where right now, with or without a subdivision, Ms. Urian can build two single family dwellings. She would like the subdivision because it creates a convenience to her in terms of its marketability and people dealing with condos and not dealing with condos. He reiterated two houses could be built currently on this property, without a variance to the access requirements or others. He said she isn't talking about adding more houses, or less houses, but we're talking about whether or not the property is going to be divided and it is plainly and simply that.

Mr. Sommer said disallowing Ms. Urian to subdivide the property will not lessen the density, and they aren't requesting a variance from density because Ms. Urian meets the density requirements. He said she can do the turnaround requirements for the Fire Department

on her property, and she can do everything she can otherwise do without the subdivision. She would like the subdivision because the Code allows it. This is what this case is about. It is straightforward and simple.

Mr. Sommer said this property, parts of which have been in the Pino family for a long time, has been divided and divided and divided in a manner exactly consistent with this subdivision. He said on the east side of the lane, the Pino property has been divided six times, and on "this" side it has been divided three times. He said he isn't talking about something which is out of character with the neighborhood, not susceptible to being divided and has been divided on the east to the exact or greater densities.

Mr. Sommer said this case is straightforward. The Code does not require an access, as indicated by staff, and now they're using an interpretation, but the interpretation language isn't found in the Code. The Fire Code does not prohibit a subdivision, but prohibits any development on this lot, and all we are asking is a division of the lot right now. He said if they come for a building permit, they will have to deal with Barbara Solis on the issue of whether or not anything can be built here. Finally, they aren't requesting anything which isn't allowed by the Code. They aren't trying to get a waiver of density, or anything on-site which the Fire Code would allow.

Mr. Sommer said the subdivision should have been granted, and no variance should have been required. If it is required, it is not found clearly in the basis of the Code. He said if a variance did apply, Ms. Urian has addressed all of the criteria for a variance. Staff says they need a variance from the access to the property. That is not created by the Applicant, is a pre-existing condition, and it isn't anything which she did. Therefore, all of the variance criteria, which are in the Council packet, which have been addressed, have been met if a variance was required.

Mr. Sommer believes we are running into opposition from the Pino family about the division of property by somebody who is not a member of this family. This has been made clear to Ms. Urian on several occasions – that the previous division was done by one of the relatives of the Pinos and the property left the family, and they would like to see it not divided and sold to anybody. He said this isn't a standard upon which the Council should judge this case, and how anybody should be accepted in this community.

Mr. Sommer said, "This division...there was an argument made at the Planning Commission by the Pino family that the original division of this property and sold off to a family member, who I think was a nephew, after 12 years, they got up and said that division was illegal when it was in the hands of Ms. Urian, and I think that belies the fundamental disagreement or opposition to this division."

Speaking against the Appeal

Stephanie Beninato was sworn. Ms. Beninato said, "I just want the Council to note tonight that Karl Sommer has said that practices should not be disregarded and that it should be the ordinance that's looked at, because in January in front of the Board of Adjustment, he

made exactly the opposite argument. And although he's supposed to be representing his client to the best of his ability, I think that there needs to be some sort of ethical or principles stance on when you.. you know, are practices okay. My stance is that practices, especially unwritten practices, are not okay when they conflict with clearly written ordinance. And again, that'll come up later on, but I just want that noted for the record."

Michael Pino, 1709-B, Agua Fria Street, was sworn. Mr. Pino said he is opposed to the proposal based on the fact that there is already too much traffic and everything else. He has an eight year old daughter who can't even go out to play unless he is there is there to watch her, because the road is part of his yard, and hopes the Council will vote with what Donna has recommended, that at least a 38 foot road is needed for this.

Felix Pino, 1709 Agua Fria, was sworn. Mr. Pino said he is here to echo what the Planning Commission has decided simply because there was a safety and hazard issue. He said the impact of splitting this lot would create more traffic. He said it is a very dangerous driveway. If she is willing to dedicate 17 feet to the road, then he would be willing to work with her. He said his father dedicated 18 feet, and believes she can dedicate the other 17 feet, and then she can accommodate as many people and units as she wants there. He said right now, it is like "grand central station," and worse than the Juarez crossing. He said they don't need to be impacted any more. He said it is easy for Mr. Sommer to quote the law and say it has no impact. He said she is an absentee owner and has never resided there. She has one house there. She is totally removed from the situation as an absentee owner, and she has no regard for any of us. Mr. Pino submitted three letter for the record from him and two of his sisters in opposition to the lot split as proposed [Exhibit "7"]. He asked the Council to uphold the Planning Commission decision.

Javier Rael was sworn. Mr. Rael said his mother resides at 1709 Agua Fria and this is the house which he will inherit, and more than likely will heir to his children. Mr. Rael said he grew up on the road and it used to be a playground. It is now it is a bypass off Agua Fria, and any more traffic will push it. He said this driveway is very narrow, and is concerned about getting a fire truck up this street. He said he adamantly denies this Appeal.

Nick Pino, 1709-C Agua Fria, was sworn. Mr. Pino said he is opposed to this Appeal, mainly because the driveway is so narrow that emergency vehicles will be unable to enter the property. He said as you drive up the hill, there is a blind spot which makes it dangerous. He said it is dangerous to exit onto Agua Fria. He said at the end of the lot Ms. Urian owns, the sewer line narrows and bottlenecks at the beginning of the property next to her, so they might even have some sewer backup there. He said he is opposed to the variance that Ms. Urian wants. He wants the Council to uphold what the City Planning Commission did, saying it would be muchly appreciated..

Socorro Sena Ortiz, Agua Fria, was sworn. Ms. Ortiz read her statement into the record requesting the Council to uphold the decision of the Planning Commission, and in strong opposition to the lot split proposal. [Exhibit "7."

Raymond Herrera, 377 Hillside Avenue, was sworn. Mr. Herrera has been

associated with the Pino family for more than forty years. He said he enjoyed Mr. Sommer's presentation. However, when the issue affects the health, safety and welfare of the people, it has to be taken into consideration. He said allowing this appeal will affect the Pino family and their safety. He said he hopes the Council will uphold the Planning Commission's decision and deny the appeal.

Summation by the Appellant

Mr. Sommer said there are relevant issues in terms of the testimony, one of which is what is the density in this area. He said a gentleman said this was a sandlot when he grew up, but it is now a by-pass onto Agua Fria. Mr. Sommer said this is a dead end road, and there should be no confusion and there is no thruway. He said with regard to the sewer, there is a brand new sewer trunk which runs adjacent and through this property. The City Sewer Department has signed off, saying there is adequate capacity for the two residents which would go there with or without the subdivision.

Mr. Sommer said, with regard to density, the Pino family has divided the property by virtue of family transfers, and not one of these issues has ever been raised. Mr. Sommer, using the Plat, demonstrated the arrangement of the site. He said all of the lots along the road are 0.2 acres, the exact size we are discussing this evening, and not once when the Plat was done, was an issue raised about whether or not there was traffic, sewer, backups and such. There never has been one complaint ever about any of the divisions done by the Pino family pursuant to a family transfer. Mr. Sommer entered the Plat for the record. [Exhibit "8"]. He said the density proposed is exactly as they enjoy and their family has enjoyed up and down the street.

Mr. Sommer said at the Planning Commission, the objections for the lot split were presented by Michael Pino who testified earlier. Mr. Sommer entered for the record Mr. Pino's document presented at the Planning Commission, dated January 16, 2008 [Exhibit "9"]. He said this letter attacks the previous division as being illegal some 12-13 years later. Mr. Sommer said their objection has to do with Ms. Urian fundamentally, because it was never made before with any other family member dividing property up and down the road. He believes this is fundamentally unfair, and wrong under our system. He believes the Code has been misapplied here and in a way which simply bows to the pressure of a particular group of people who would like not to see Ms. Urian use this property the way they are using their own. He said this isn't anything new, but it is still wrong, and this subdivision should have been granted with the requirement for a variance. However, if this Council finds that a variance was necessary, then every one of the criteria has been met under the Code. He said this has been submitted in writing, and assumes this is part of the record in the Council packet, so that the variance criteria are part of the record on appeal.

Ms. Brennan said she believes that they are.

Mr. Sommer believes this case is straightforward. He has known Ms. Urian for almost twelve years, and has watched her work in Santa Fe, become a part of the community and help lots of people. Just like the Pino family, Ms. Urian has made herself part of this community and deserves fundamentally to be treated just like anyone else would be under the law.

The Public Hearing was closed

Point of clarification for the record. Mr. Smith said he just wanted to note for the record that on page 32 of the packet, the applicant's material restating the variance criteria and the variance criteria response from Ms. Urian at the ENN meeting is presented there.

Mr. Smith said a question was raised regarding the original subdivision of the property. He is unsure what Code provisions were in effect at that time. The Code provisions currently applying to family transfers have different standards for access than are contained in Chapter 14-9, which applies the standards that staff is citing, on which staff is relying in its analysis in the staff report and the report to the Planning Commission.

Mr. Smith noted for the Council that there is a Memorandum from the Fire Marshal which states that the Fire Code, in her judgment, requires an access road all the way to Agua Fria. Again, it is the staff's analysis that the access requirements in the subdivision regulations are meaningless if they are not applied to access within and to the subdivision.

Councilor Dominguez asked, with respect to the size of the drive, if there are issues pertaining to the slope, or the profile of the driveway. He said he has visited the property, and it appears there may be issues with the slope.

Mr. Smith said standards for private driveways and roads state that the maximum slope allowed is 15%. He said the steepness of that segment of the driveway did not come to staff's attention until the Planning Commission hearing. He said there is not a measurement by staff or by the applicant or the applicant's engineer, and it may well exceed 15 %, but he can't testify that it does.

Councilor Dominguez asked if this is something which would be applicable to this case.

Mr. Smith said the analysis of the Fire Marshal and the Land Use staff is that it is relevant both to the Fire Code and to the subdivision regulations.

Councilor Dominguez said there were statements that two primary dwellings are allowed, and asked if there could there be accessory dwellings as well.

Mr. Smith said the zoning regulations allow division of land, construction of dwellings at a maximum rate of five dwelling units per acre of land. The access standard is slightly different for multiple units on one lot than it is for subdivisions, which is the case that we are looking at here. In any case, the standard in the zoning regulations is that 5 units per acre is the maximum that can be built when compliance with all other applicable standards is achieved. While the subdivision regulations have different provisions for multi-family and for single-family. Staff's conclusion is that the intent of the subdivision regulations is clear that if it's not possible to develop the land in conformance with other applicable codes, that subdivision should not be approved.

Councilor Dominguez asked if he is speaking about 14-3.7.

Mr. Smith said this correct, the purpose and intent and approval criteria.

Councilor Dominguez asked, regarding the statement in the staff report, how was the width of 17 ft. established. He said in looking at the packet, there is a Plat from Paul Serna which is not signed or dated.

Mr. Smith said his assumption is, regarding data provided on the Plat provided by Mr. Serna which was intended to be approved and subsequently recorded, that he relied on the previous plats, including the one which Mr. Sommer submitted into the record this evening.

Commissioner Dominguez said it seems the discussion so far is about access, emergency and fire access. He asked what happens if the lot split isn't approved, and the Applicant builds her dwelling, and how will they get emergency access. He said in the past, for example, we have allowed a sprinkler system to be applied. He said this was done at the development plan phase and not necessarily at the time of subdivision.

Mr. Smith said the subdivision regulations state that the access requirements for multi-family development which would include construction of two houses on an existing lot, are subject to the approval of the Fire Marshal, the Land Use Director and the City Traffic Engineer. They are not as explicit for multi-family as they are for subdivisions. The Fire Code, as he understands it, does not distinguish between multiple houses on one lot, or individual houses on individual lots. He said the Fire Marshal has in the past approved variations to the access standards in the Fire Code based on alternate means of protection. The Fire Marshal's Memo does not address this issue specifically in this case, and he doesn't believe an application of this nature has been filed, and he said he isn't the expert on how that would apply in the Fire Code.

Councilor Dominguez said then they would have to address that at the appropriate time.

Mr. Smith said this is correct. If they were to apply for multi-family for a second building permit on the existing lot, they would have to get approval under the Chapter 14 regulations of the Fire Marshal, the Traffic Engineer and the Land Use Director. They would also have to get approval of the Fire Marshal under the Fire Code to find that it complied with the access standards in that Code.

Councilor Chavez said this is one of those infill projects which depends on old infrastructure, and although there is a new sewer line, there isn't an adequate street network in place.

Responding to Councilor Chavez, Mr. Smith said this Applicant can build two units with or without a lot split and with or without a formal subdivision plat, subject to compliance with the access setback, parking and other requirements which were the issues the Planning Commission relied on in denying the lot split.

Councilor Chavez said the existing slope of the street has to be greater than 15%, and asked who is responsible for maintenance, observing he hoped that would be spelled out as well. He said the existing conditions and the condition of the roadway will limit what can be

done there by either the Applicant or the Pino family. He believes everyone needs to adjust and make it safer for everyone.

Mr. Smith asked if the Council has received the two color photographs which were in the Planning Commission packet, saying he can distribute those. *[There was no verbal response]*

Responding to Councilor Wurzburger, Mr. Smith said five dwelling units per acre would allow two principal dwelling units on the 0.4 acre, and would be allowed on accessory dwelling unit per lot of record. If the Applicant were to meet all requirements, they might be able to build two principal dwellings and one accessory dwelling unit on the one existing lot. After the lot split, they could build two principal dwellings and two accessory dwellings.

Councilor Wurzburger asked if there were to be a proposal from the opposite side of the street, if the Council would be looking at the same issues and requiring the road to be expanded to 38 feet.

Mr. Smith clarified that the family transfer rules allow an unlimited number of lots on a 20 foot road for family transfer subdivisions only. If there is a pre-existing road which is less than 20 feet, but more than 15 feet, there can be an unlimited number of lots.

Councilor Wurzburger said then the public policy position is that if it is a family transfer, issues of safety do not matter.

Mr. Smith said he isn't prepared to defend the intent, but the rules do say that the access standards are less for family transfer subdivisions than they are for other subdivisions.

Councilor Wurzburger said the main argument is being made about safety, with regard to the size and width of the road, and the ability of fire trucks to get into the area. She is hearing Mr. Smith say this will always be a problem, at least for one side of the street by the nature of the way it was created.

Mr. Smith said it is unclear that under the density rules they could do any more family transfer subdivisions. If they could, the access standards would be different under the subdivision rules. The access standards would not be different under the Fire Code as he understands that Code.

Councilor Wurzburger said then under the family transfer rules which were applied, 1 or 2 units could be built on each of the 0.2 acre lots.

Mr. Smith said the family transfer rules do not have different standards for density.

Responding to Councilor Wurzburger, Mr. Smith said they could build 5 principal dwelling units per acre and one accessory dwelling unit per lot. He said, on the family transfer side, a 0.2 acre a lot would support one principal dwelling unit and one accessory dwelling unit, presuming they could meet access standards enforced by the Fire Marshal in the Fire Code.

Councilor Wurzburger said the real potential for this problem in the future is much more possible on the property that was done as a family transfer than this particular, single lot which can have only one more unit.

Mr. Smith said the net effect of approving the lot split would be to add one accessory dwelling unit on the cul de sac.

Councilor Wurzburger said the net effect of the existing conditions and what already has been approved, which is not yet built, is that there could be how many potential houses on the same 17 foot road.

Mr. Smith said there could be multiple accessory units, depending on how the Fire Marshal enforced the access requirements.

Councilor Wurzburger asked the range of lots.

Mr. Smith said there could be one accessory unit per lot count, but he doesn't know how many accessory units already exist.

Councilor Wurzburger understood there were eight vacant lots.

Mr. Smith said he doesn't recall.

Councilor Wurzburger said she is very concerned about the public safety aspect – emergency vehicle access, narrow roads – but because it is a family transfer the issues seem not to be of concern, and she doesn't understand that aspect of the law.

Councilor Trujillo said then no matter what we decide, the Appellant still can build two houses and an accessory unit.

Mr. Smith said this isn't an accurate conclusion. The second dwelling unit on the existing lot would depend on getting the approval of the Fire Marshal, the Land Use Director and the Traffic Engineer, and it's not clear whether they would approve that because they have not been asked to do so.

Councilor Trujillo said if it were to be approved it would bring more traffic if Ms. Urian were to rent the two units.

Mr. Smith said, "That would presumably be a safe assumption Councilor. If you would indulge me just for a moment. I share, and I'm sure the Fire Marshal shares, Councilor Wurzburger's and the other Councilors' concern with the overall public health, safety and welfare. And, I don't think that the Fire Marshal or Land Use would recommend approval of a family transfer with that number of lots and that steep of a driveway under the standards that we currently have today. I just wanted to make that clear for the record."

Councilor Trujillo asked if we are saying this would be a problem for a fire truck to get down and up the road.

Mr. Smith reiterated that the Fire Marshal's Memorandum is in the staff report "recommending that it not be approved." The Fire Marshal has testified previously that they have difficulty negotiating slopes steeper than 15% with the equipment that they operate.

Councilor Wurzbarger asked if she heard in the testimony that the Fire Marshal had approved a turnaround for the lot split on appeal, and that there was no question of the 17 feet, and that within the property a turnaround could be provided.

Mr. Sommer said currently, as it sits right now, there is no turnaround for any fire trucks on this lane. If this lot is divided there will be a fire turnaround on this property that would accommodate fire trucks in a public easement on any part of the lane, so the fire trucks could turn around on this property if they went down the lane, or any other emergency vehicle could use it.

Councilor Wurzbarger said one could argue that it might be safer if this was approved, because the fire trucks trying to service the other side of the street could come down and turn around.

Mr. Sommer presented an aerial photograph from the City's data base, which he believes might address Councilor Wurzbarger's question about the number of lots [Exhibit "10."] He said the photograph shows the lots along the lane and the paved portion on the hill, which he believes puts in the record the number of lots which are shown in the photograph.

Councilor Chavez moved, seconded by Councilor Calvert, to uphold the decision of the Planning Commission and deny the appeal, based on the findings of the Planning Commission at its meeting of January 17, 2008.

Discussion: Councilor Bushee said she is hearing a concern that there is already a bad situation at the subject site. She asked, if the lot split is denied and only two homes are put on the lot, would they have to get the Fire Marshal's approval for the two homes, and would there then be consideration of a condition asking for the same turnaround.

Mr. Smith said he assumes this is correct, noting the Fire Marshal's Memorandum is on page 23 of the packet, which says, as required by the International Fire Code 2003 Edition, a 20 foot fire apparatus access road is required along the entire drive as it begins at Agua Fria, although the Memorandum doesn't state explicitly that this would also apply to any new construction at the end of the existing road.

Responding to Councilor Bushee, Mr. Smith said anyone on any tract who applied for a lot split which was not a family transfer would be required to get a variance to the access standards.

Councilor Bushee said she is concerned about any potential to exacerbate what people are saying is an unsafe situation.

Mr. Smith said in the family transfer situation, they would apply for approval to the

Summary Committee or the Planning Commission, and the 15 foot access road is the minimum standard for family transfers.

Councilor Bushee asked who owns Lot 512 and the other one which says zero.

Mr. Sommer said one is within the Pino family, the other is not, but if they were to apply for a family transfer within their own family, it would raise the same issue about which she is concerned.

Councilor Bushee asked who owns the lot directly behind Ms. Urian.

Mr. Sommer said it is accessed by another street, and he believes it is owned by a Garcia.

Councilor Bushee said, "But it could be potentially accessed from this street."

Mr. Sommer said potentially.

Responding to Councilor Bushee, Mr. [Nick?] Pino said the lot in question, along the river, is owned by Rita Vigil who is part of the family.

Councilor Bushee said an issue has been raised that this is an equity issue, a fairness issue, an issue of an old family sort of trying to reject someone that is not from the family because the land was sold. The Council is trying to look at the actual safety, access, Fire and Emergency access arguments which the staff, Planning Commission and Fire Marshal is making to it. She said it would be bothersome to have family come in later for a family transfer and saying all of their concerns don't apply if it is family.

Mr. Pino reiterated that the lots "way down there" belong to Rita Vigil, his sister, who didn't attend this evening. He doesn't know if she has access by the river, or what, but he knows the City is going to do something such as a park going down by the River.

Councilor Bushee said it is quite a large lot. She understands the family has developed the property over time through lot splits, but if they come in for further family lot splits the concern would be the same, she would assume, for the family that it would result in more traffic and the other problems which would be exacerbated. She asked if they understand that the arguments they all are making perhaps preclude their family members from pursuing similar lot splits, given the circumstances.

Councilor Wurzbarger said it could preclude development in general.

Mr. Pino said, "Right. Yeah. We're just looking at the situation right now, you know. It is going to create more traffic there, and it's going to create more danger."

Councilor Bushee presumes that the Fire Marshal would have the same concerns whether or not it is a family lot split, commenting that those concerns don't go away in the future.

Councilor Dominguez said he has the same concerns as Councilor Bushee. He told Mr. Buller it is obvious that fire access was the main issue, yet that person isn't in attendance to give the Council that information, which disturbs him. This wasn't a long agenda, and he believes it would not have been too much to have the proper personnel to attend for the right reasons. He said he trusts that Mr. Smith has given the Council the information which they would have given to the best of their knowledge.

Councilor Chavez said the Fire Marshal did provide information which is in the Council packet, and he sees a little discrepancy between what Mr. Smith has presented so far, and what is on page 23. He said, "There is a difference of about five points of the fire apparatus access roads. Under Section D101, General Purposes, it says that the grade, under D103.2 Grade, Fire Apparatus Access Roads shall not exceed 10% grade and you referenced a 15% grade earlier. Where is that difference?"

Mr. Smith said the 15% standard is in the subdivision regulations and was in the Fire Code previously, but the current standard is 10% unless the Fire Marshal waives the 10% requirement.

Councilor Dominguez said it is obvious that the Council was asking questions of Mr. Smith which might have been clarified by the proper personnel.

Councilor Wurzbarger said, from a public safety point of view, she has a problem that who lives on the street and how the property was transferred determines whether or not there is a public safety issue. She has a logic problem with this. She said perhaps this is the way the law was passed. However, when someone from the family comes forward to build eight more houses, the same arguments could be made. She doesn't understand the logic of a 15 foot access if it's not safe. She believes this is more than an equity issue, it is an issue of public safety. She asked Councilor Chavez to help her to better understand this issue.

Councilor Chavez said it also is an issue of affordability, and we've wanted to be sensitive to the local families and try to accommodate them through family transfers. He said perhaps it isn't the right thing to do, but this is what we've been doing. He would like to see a program for the families who already own the land to help them build the houses they need to keep the next generation of the family in the City which their ancestors founded. He said this was the intent and it wasn't against anyone, although he questions that intent now. He commented that it is difficult for these families to stay in Santa Fe.

Councilor Chavez said it is a family compound which is a built-in neighborhood watch they and will police it better than anyone else, and that will add a little to it, but it doesn't remove the fire issue.

Councilor Wurzbarger said she is concerned only about the fire issue.

Councilor Chavez believes with fire hydrants and sprinklers he believes even this type of situation can be accommodated.

Councilor Wurzbarger asked why we would accommodate it for one side of the street

and not the other, saying she doesn't understand. She would like to explore options. She said the whole area needs to be examined with respect to what the road requirements would be.

Mayor Coss said he doesn't believe anybody else will build a house or dwelling on that road without a variance, based on his understanding of the presentations this evening. He understood Mr. Sommer to say that whether or not there is a lot split, another house couldn't be built without a variance because of the Fire Marshal rule on the road.

Mr. Smith said this is his understanding of how the Fire Marshal would apply the Code, but unfortunately that isn't explicit in the Fire Marshal's Memorandum, which addressed the lot split proposal, but not a proposal for a second unit without the lot split.

Mayor Coss said then Councilor Dominguez's point is well taken, because it appears there is a lot of open space down there, and unless a variance is granted to somebody it isn't buildable anymore because of the narrowness of the private road.

Councilor Calvert said, although he doesn't disagree with Councilor Wurzbarger, this Council has to make its determination based on the existing laws now, and not what we think they should be or what they should be changed to. He understands the argument, and this is one of those areas which "cries out" for planning to get ahead of these piecemeal subdivisions. This kind of situation will only get worse in this and the adjacent areas.

Councilor Calvert said in his statement before the Planning Commission in the public hearing, Mr. Sommer stated, "He does not think the addition of one home will be a health, welfare or safety hazard." He said everyone who comes after him could make that same argument, and it would become more and more of a mess, and every lot would be developed. He doesn't believe Mr. Sommer can rest his argument on that fact.

Councilor Bushee asked why we can't get improvements to the Road in this approval process, if its narrowness is the concern, saying she is concerned about the future.

Mr. Smith said he can't speak on behalf of what judgment the Planning Commission would have had on the variance if they had proposed a 24-28 foot road with a slope of 10-15%, because this isn't in front of the Commission. He said if the subdivider had proposed that they could bring the road to standards back to Agua Street, staff would have recommended approval and no variance would have been required, and we probably wouldn't be here this evening. However, at the Planning Commission public hearing, the applicant did not discuss whether or not some compromise standard might be accepted in terms of a variance application. He believes the Applicant did state they didn't think it was practical because so many other parties owned the land across which the easement is granted.

Councilor Wurzbarger said on page 11 of the packet, in the Recommendation, in the last paragraph was the supposition that "if the Commission determines that the variance findings are supported, which they didn't, that if they did, the following conditions would be appropriate: Obtain the proper approval from all property owners...." This would be the mechanism for doing what Councilor Bushee is talking about, but doesn't know why the Applicant didn't do this for whatever reason.

Councilor Bushee said her guess is that it is not in the Pino family's interest to do that, but it may be when some family member comes forward for an additional building permit, because it is on the record "loud and clear" that nobody wants to exacerbate an already bad situation. Her guess is that down the road that still will apply.

Councilor Romero said it seems to her that the intention of the family transfer law was to allow people to have access to their lands and to be able to split them to have family members stay closer. She said we are now hearing about the possibility of another lot split which exacerbates the problem. She said "we don't want to add any more problems, but to the Pino family, you have the potential to also add problems in the long run if you do a lot split. Now, that would bring it... you would have to come forward again, and you would be under the same scrutiny as anybody else who would want a lot split, because you were given the ability to split your land with less than quality standards. The road is, you know this, it's your road, so you were given kind of a free pass on that one. But, anybody coming forward now would be under the same rules about making the road safe. It's a quality issue. And so, I think we don't want to exacerbate the problem with any further lot splits. But, to you all, what I would say is, you can't either. You'd be under the same scrutinies of coming forward, and just so you understand that, it is a very tough situation for anybody coming afterwards."

The motion was approved on the following Roll Call Vote:

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

Against: Councilor Wurzbarger

Explaining his vote: Councilor Trujillo said he wants to say to the Pinos, if this is truly a safety issue as you're saying, he hopes they will try to make these improvements, because "you stated this about your children and making it safe." He votes yes.

Explaining her vote: Councilor Wurzbarger said she is voting no because she thinks it would be safer for the Pinos and everybody else if they are allowed to do this and build the turnaround so the fire truck could get down and save property and/or people who may be at risk. She said it hasn't been described to her as a safe situation, regardless of the precedent which was established with the law.

Explaining his vote: Councilor Dominguez said he's taking the language from 14-3.7(4)(b) literally, and will vote yes, but he wants to make the same "stressing points" to the Pino family that they will be subject to the same kinds of safety concerns which have been expressed here tonight. He is hoping in the future there won't be some sort of double standard which is applied. His whole intent was to look at the City Code, and based on his interpretation of it, he votes yes.

- 3) **CASE #M 2007-36. 1312 AGUA FRIA STREET GENERAL PLAN AMENDMENT. DERRICK ARCHULETA, AGENT FOR EVANGELINE HERRERA, REQUESTS APPROVAL OF A GENERAL PLAN FUTURE LAND USE MAP AMENDMENT TO CHANGE THE DESIGNATION OF 0.306± ACRES OF LAND FROM LOW DENSITY (3-7 DWELLING UNITS PER ACRE) TO OFFICE. THE AREA IS LOCATED BETWEEN AGUA FRIA STREET AND HICKOX STREET. (LOU BAKER). (Request by Applicant to postpone to March 26, 2008 City Council meeting)**

This item was postponed to the meeting of March 26, 2008.

- 4) **CASE #ZA 2007-13. 1312 AGUA FRIA STREET REZONING. DERRICK ARCHULETA, AGENT FOR EVANGELINE HERRERA, REQUESTS REZONING OF 0.306± ACRES OF LAND FROM R-5 (RESIDENTIAL, FIVE DWELLING UNITS PER ACRE) TO C-1 (OFFICE AND RELATED COMMERCIAL). THE PROPERTY IS LOCATED BETWEEN AGUA FRIA STREET AND HICKOX STREET. (LOU BAKER). (Request by Applicant to postpone to March 26, 2008 City Council meeting)**

This item was postponed to the meeting of March 26, 2008.

14. MATTERS FROM THE CITY CLERK

- a) **CANVASS OF ELECTION RESULTS – MARCH 4, 2008 REGULAR MUNICIPAL ELECTION.**

Yolanda Vigil, City Clerk read the results of the Canvass of the Election into the record. The Official Results are included in the Council packet.

Councilor Calvert moved, seconded by Councilor Wurzbarger, to accept the Official Results of the March 4, 2008 Regular Municipal Election into the record, as presented. The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero, Trujillo and Wurzbarger voting for the motion and none against.

Mayor Coss thanked Ms. Vigil and staff for doing another fine job on this election, which happened very well.

15. COMMUNICATIONS FROM THE GOVERNING BODY.

Councilor Calvert

Councilor Calvert thanked City Clerk Yolanda Vigil and staff for another smooth election.

Councilor Dominguez

Councilor Dominguez thanked the City Clerk for a successful election. He congratulated Councilors Bushee, Ortiz and Chavez for being reelected, and new Councilor Rosemary Romero on being elected to the City Council.

Councilor Dominguez introduced an ordinance amendment regarding Industrial Pretreatment Regulations and Procedures. A copy of the proposed ordinance is incorporated herewith to these minutes as Exhibit "11." He asked that it go to the Public Utilities and Finance Committees.

Councilor Wurzbarger

Councilor Wurzbarger thanked Ms. Vigil for her outstanding service to the City which met her expectations. She congratulated Councilors Chavez, Ortiz and Bushee for being reelected and welcomed new Councilor Rosemary Romero, saying she believes they will do a good job together in representing District 2.

Councilor Wurzbarger introduced a Resolution on how to deal with the Land Use Committee, and asked that it go to Public Works and Finance Committees.

Councilor Wurzbarger introduced a Resolution on clarifying the minimum rental period for Short Term Rental Units. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "12." She asked that the Resolution just come back to the City Council.

Councilor Trujillo

Councilor Trujillo congratulated Councilors Ortiz, Bushee and Chavez, and welcomed Councilor Romero to the City Council.

Councilor Trujillo said while in Dallas recently, he met with the CEO of the City of Dallas, and wants to share some of the things he learned with the Council.

Councilor Ortiz

Councilor Ortiz wished everyone a blessed Holy Week and a Happy Easter.

Councilor Bushee

Councilor Bushee welcomed Councilor Romero to the Council, and welcomed back the Councilors who were reelected.

Councilor Bushee introduced a Resolution to hold a contest to name the new Civic Center, saying she believes the name needs to more closely reflect the rich cultural heritage of this community. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "13."

Councilor Bushee said she has a concern that in the BCD/DRC, fractionals are being considered as commercial and bypassing our affordable housing ordinances and regulations. She believes fractionals should be included in the Affordable Homes Program.

Mr. Buller said he will work with the City Attorney's Office and the Land Use Department to determine how this can be done.

Councilor Bushee said at the last meeting she asked staff to look for additional funds for the Summer on the Plaza Bandstand Program.

Mr. Buller said he has been working with Ms. Pratt on this, and he will get back with her on the results.

Councilor Bushee said she has submitted an application to declare Yolanda Vigil the City Clerk of the Year, and invited others who would like to assist to provide testimonial to the City Manager's Office.

Councilor Romero

Councilor Romero thanked the Mayor and Council for making her feel welcome this evening. She said Ms. Romero went above and beyond in her work on the election, and she especially appreciated Yolanda's helping her to work through the issues during the election.

Councilor Chavez

Responding to Councilor Chavez, Ms. Romero said the Candidates' Final Reports are due by March 18, 2008.

Councilor Chavez said the dead end of Jaguar Road, next to new Fire Station #8, still is being used as a staging area by area contractors, and it will only get worse.

Mr. Buller said he has been working with Mr. Hiatt and staff on this issue.

Councilor Chavez said there will be a Flea Market in Tierra Contenta on Saturday, 9:00 a.m. to 1:00 p.m., in the Plaza.

Councilor Chavez asked Mr. Buller to look at the Night Sky Ordinance, noting the Tesuque School is under question about its night lights. He said the public schools and other

public facilities need to put filters on their lights or do something else, because they aren't complying with the Night Sky Ordinance.

Councilor Chavez would like the curbs on Maes Road to be painted yellow, noting the painting has worn away.

Mayor Coss

Mayor Coss distributed an Ordinance amendment regarding the development in flood plain and hazard areas, cosponsored by Councilor Bushee. A copy of the Ordinance amendment is incorporated herewith to these minutes as Exhibit "14."

Mayor Coss congratulated the Councilors who were reelected, and our new colleague, Councilor Romero on being elected to the Council. He thanked Yolanda Vigil for the manner in which she ran the election. He thanked Mr. Garcia, Mr. Dobyns and Mr. Lujan for running good campaigns and helping to make democracy work.

H. ADJOURN

There being no further business to come before the Governing Body, and upon completion of the Agenda, the meeting was adjourned at approximately 9:00 p.m.

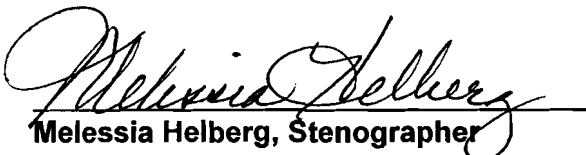
Approved by:

Mayor David Coss

ATTESTED TO:

Yolanda Y. Vigil, City Clerk

Respectfully submitted:


Melessia Helberg, Stenographer