



Agenda

REGULAR MEETING OF
THE GOVERNING BODY
JULY 9, 2008
CITY COUNCIL CHAMBERS

AFTERNOON SESSION – 5:00 P.M.

CITY CLERK'S OFFICE

DATE 7-3-08 TIME 12:48 pm

SERVED BY _____

RECEIVED BY J. Dominguez

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 – June 25, 2008
8. PRESENTATIONS
 - a) Employee of the Month for July 2008 – Rubel Gallegos, Lead Rink Attendant – Genoveva Chavez Community Center – Ice Arena. (5 minutes)
 - b) Contributions to the Santa Fe Water Fund and Otter Water Pledges; Earths Birthday Project. (Clifford Ross) (5 minutes)
9. CONSENT CALENDAR
 - a) CONSIDERATION OF RESOLUTION NO. 2008-_____. (Councilor Dominguez)
A Resolution Encouraging the State of New Mexico to Develop a Program to Assist State Employees in Obtaining Affordable Housing. (Kathy McCormick)
 - b) CONSIDERATION OF RESOLUTION NO. 2008-_____. (Councilor Bushee and Councilor Wurzbarger)
A Resolution Directing Staff to Research the Possibility of a Carsharing Program to be Located at the Railyard. (Jeanne Price)
 - c) CONSIDERATION OF RESOLUTION NO. 2008-_____. (Councilor Ortiz)
A Resolution Aiming to Reduce the City of Santa Fe's "Carbon Footprint". (Nick Schiavo)



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- d) Request for Approval to Publish Notice of Public Hearing on August 11, 2008:
Bill No. 2008-45 – An Ordinance Amending Section 24-1.1 SFCC 1987 Regarding the City of Santa Fe Uniform Traffic Code; Amending Section 12-6-12.2 of the City of Santa Fe Uniform Traffic Code Regarding Operating a Motor Vehicle Under the Influence of Intoxicating Liquor or Drugs and Section 12-6-13.13 of the City of Santa Fe Uniform Traffic Code Regarding Mandatory Seat Belt Use. (Councilor Trujillo) (Chief Eric Johnson)
- e) CONSIDERATION OF RESOLUTION NO. 2008-_____. (Councilor Chavez, Councilor Dominguez, Councilor Trujillo, Mayor Coss, Councilor Ortiz and Councilor Calvert)
A Resolution Acknowledging *National Hispanic Heritage Month* and Encouraging our Community to Recognize the Great Contributions of Hispanics to Our City. (Fabian Trujillo)
- f) Bid No. 08/39/B – City Wide Water Utility Pavement Restoration Contract for Water Division; Sub Surface Contracting, Inc. (Shannon Jones)
- g) Request for Approval of Engineering Directive and Change Order No. 2 – Canyon Road Water Treatment Plant Sanitary Sewer Extension; RMCI, Inc. (Michael Gonzales and Brian Snyder)
- h) Request for Approval of Professional Services Agreement – Replacement of Natatorium and Office Lighting at GCCC; HEI, Inc. (Bob Siqueiros)
- i) Request for Approval of Change Order No. 3 to Agreement – Mager's Field Park Phase 2 Improvements; Accent Landscaping. (Ben Gurule)
- j) Request for Approval of Procurement Under State Price Agreement – Paved Street Rehabilitation Program. (David Catanach)
 - 1. Pavement Resurfacing; Cutler Repaving, Inc.
 - 2. Slurry Seal Treatment; IPR, Ltd
- k) Request for Approval of Professional Services Agreement – Design, Fabrication and Installation of Artwork on East Plaza of Santa Fe Community Convention Center (RFP #08/07/P); Colette Hosmer. (Debra Garcia Y Griego)



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- l) Request for Approval of Professional Services Agreement – Design, Fabrication and Installation of Artwork in Exterior Entry of Southside Library (RFP #08/05/P); State of New Mexico and Randy Walker D/B/A Walker Design Studio. (Debra Garcia Y Griego)
- m) Request for Approval of Amendment No. 1 to Professional Services Agreement – Landlord/Tenant Hotline Services; New Mexico Landlord Tenant Hotline. (Kathy McCormick)
- n) Request for Approval of Sole Source Procurement and Professional Services Agreement – Maintain Accreditation Status of Police Department; Nigel Bridger. (Chief Eric Johnson)
- o) Request for Approval of Procurement Under State Price Agreement – Digital Video Systems for Police Department; First-In, Inc. (Chief Eric Johnson)
- p) Request for Approval of Professional Services Agreement – Advertising Sales and Website Content Management for GCCC (RFP #08/40/P); Wolfman Brothers. (Liz Roybal)
- q) Request for Approval of Lease Agreement – Café Paris Located at 31 Burro Alley; Paul Perrier and Rahera Perrier. (Edward Vigil)
- r) Request for Approval Of Terminal Auto Concession Lease Agreement – Automobile Rental Concessions For Santa Fe Municipal Airport. (RFP #08/23/P) (Jim Montman)
 - 1) Avis Rent a Car System, LLC
 - 2) The Hertz Corporation
- s) Request for Approval of Emergency Procurement Under State Price Agreement – Airport Runway and Taxiway Painted Markings at Santa Fe Municipal Airport; San Bar Construction Corporation. (Jim Montman)
- t) Request for Approval of Amendment No. 4 to Professional Services Agreement – Public Relations Services for Santa Fe Convention and Visitors Bureau and Convention Center; Locas, Inc. (Keith Toler)



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- u) Request for Approval of Amendment No. 3 to Professional Services Agreement – Advertising Services for Santa Fe Convention and Visitors Bureau and Convention Center; Vaughn Wedeen Creative, Inc. (Keith Toler)
 - v) Request for Approval of Amendment No. 3 to Professional Services Agreement – Website Redesign, Redevelopment and Ongoing Maintenance for Santa Fe Convention and Visitors Bureau; Studiox, Inc. (Keith Toler)
 - w) Request for Approval of Amendment No. 12 to Professional Services Agreement – North Railyard Infrastructure Improvements; Santa Fe Railyard Community Corporation. (Frank Romero)
 - 1) Request for Approval of Budget Adjustment – Railyard Infrastructure Fund
 - x) Request for Approval of Sole Source Procurement – Fire Rescue Equipment for Fire Department; Safety Instructions Ltd. LLC. (Tim L'Esperance)
 - y) Request for Approval of Two (2) Part-Time Positions for Utility Billing Division. (Peter Ortega)
 - z) Request for Approval of State of New Mexico Audit Contract – Financial and Compliance Audit Contract for Fiscal Year Ending June 30, 2008 (RFP #08/41/P); Atkinson & Co. (Teresita Garcia)
 - aa) Adoption of Findings of Fact and Conclusions of Law in the Matter of Catherine Ann Murdy v. Historic Design Review Board; City Appeals Case #H-06-18A and Case #H-06-18B. (David Rasch)
 - bb) Approval of Certificate of Correction for Typographical Errors in Ordinance No. 2008-5 Regarding Short Term Rental Units. (Councilor Wurzburger) (Jeanne Price)
- 10. Request for Approval of Proposed Civic Center Parking Rates. (Bill Hon)
 - 11. MATTERS FROM THE CITY MANAGER
 - 12. MATTERS FROM THE CITY ATTORNEY



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13. MATTERS FROM THE CITY CLERK
14. 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) Pursuant to §60-6B-10 NMSA 1978, a Request for a Waiver of the 300 Foot Location Restriction and Approval to Allow the Serving/Consumption of Alcoholic Beverages at El Museo Cultural de Santa Fe, 1615 B. Paseo de Peralta, Which is Within 300 Feet of Alvord Elementary School, 551 Alarid and Located on City Property. The Request is for the Following Events: (Tina Y. Dominguez)
 - a) Whitehawk Antiquities Show to be held on Friday, August 15, 2008 from 4:45-8:30 p.m.; Cowgirl BBQ.
 - b) Whitehawk Antiquities Show to be held on Monday, August 18, 2008 from 4:45-8:30 p.m.; Cowgirl BBQ.
 - c) Indian Market Preview to be held on Friday, August 22, 2008 from 5:30-7:30 p.m.; Cowgirl BBQ.
 - 2) Request from La Choza Inc., for a Transfer of Ownership and Location of Dispenser License #203 from Estate of Jose Sef Trujillo, dba El Duende Enterprises, .4 Mi. from Int. Hwy 84 & 285, San Juan Pueblo, New Mexico to La Choza Inc., dba La Choza, 905 Alarid Street, Santa Fe. (Tina Y. Dominguez)



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- 3) Request from Wild Oats Markets, Inc., for a Transfer of Ownership (Business Merger) of Dispenser License #0094 to Wild Oats Markets, Inc., dba/ Wild Oats Market. The License will Remain at 1090 S. Saint Francis Drive. (Tina Y. Dominguez)
- 4) Request from Flying Daggers, LLC for a Restaurant (Beer & Wine) Liquor License to be located at Wild Wild Wok, 3470 Zafarano Drive, Suite C. (Tina Y. Dominguez)
- 5) CONSIDERATION OF BILL NO. 2008-25: ADOPTION OF ORDINANCE NO. 2008-_____. (Councilor Ortiz)
An Ordinance Amending Section 12-6-12.18 of the City of Santa Fe Uniform Traffic Code 2007 to Repeal Subsection (6) Regarding the Prohibition of Hand-Held Cellular Phone Usage While a Vehicle is in Motion. (Chief Eric Johnson)
- 6) **Case #A 2008-03. 610 Galisteo Street Building Permits Appeal.**
Stephanie Beninato Appeals to the Governing Body of the City of Santa Fe the Board of Adjustment Decision Denying her Appeal of the Issuance of Building Permit Nos. 07-203- 07-204, and 07-205 for the Remodeling and Repair of Two Existing Dwelling Units and the Demolition of an Existing Garage at 610 Galisteo Street. (Jack Hiatt) (**Postponed at June 25, 2008 City Council Meeting**)
- 7) CONSIDERATION OF BILL NO. 2008-44: ADOPTION OF ORDINANCE NO. 2008-_____.
Case #M 2008-12. Chamisa Hills Professional Plaza Development Plan Amendment. Gregg Way, Agent for Branch Design and Development, Requests Development Plan Amendment to Allow for Construction of an Office Building Addition Consisting of 13,029 Square Feet on 2.76± Acres. The Applicant Also Requests a Variance from the Height Restriction of 25 Feet in the South Central Highway Corridor Protection District to Allow Construction Up to 31 Feet, and Requests that the Requirement for Approval by the Planning Commission of a Separate Final Development Plan be Waived. The Property is Zoned C-1-PUD (Office and Related Commercial, Planned Unit Development Overlay District) and is Located at 440 St. Michaels Drive. (Donna Wynant)



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- 8) CONSIDERATION OF BILL NO. 2008-43: ADOPTION OF ORDINANCE NO. 2008-_____.
Case #M 2008-08. Colores del Sol Preliminary Development Plan Amendment. Jennifer Jenkins, Agent for Centex Homes, Requests Approval to Amend Ordinance No. 2005-27, which Amend the PUD Preliminary Development Plan to Increase the Density From 286 Units to 287 Units. The Property is Located North of Airport Road and South of Agua Fria Road, West of Jemez Road and East of Morning Drive and South Meadows Road and is Zoned R-6 PUD (Residential District- Six Dwelling Units Per Acre, Planned Unit Development Overlay District). (Lou Baker)
- 9) Consideration of Adoption of 2008-2013 Five (5) Year Consolidated Plan. (Melisa Collett) (**Postpone to July 30, 2008 City Council Meeting**)

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.

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SANTA FE CITY COUNCIL MEETING
July 9, 2008**

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APPROVAL OF MINUTES: Reg. City Council Meeting – June 25, 2008	Approved	5
<u>PRESENTATIONS</u>		
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<u>CONSENT CALENDAR DISCUSSION</u>		
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CONSIDERATION OF RESOLUTION NO. 2008- 59. A RESOLUTION ACKNOWLEDGING NATIONAL HISPANIC HERITAGE MONTH AND ENCOURAGING OUR COMMUNITY TO RECOGNIZE THE GREAT CONTRIBUTIONS OF HISPANICS TO OUR CITY	Approved a/a	6-7

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
ADOPTION OF FINDINGS OF FACT AND CONCLUSIONS OF LAW IN THE MATTER OF CATHERINE ANN MURDY V. HISTORIC DESIGN REVIEW BOARD; CITY APPEALS CASE #H-06-18A AND CASE #H-06-18B	Approved	7-8
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REQUEST FOR APPROVAL OF PROPOSED CIVIC CENTER PARKING RATES	Approved [amended]	8-16
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<u>EVENING SESSION</u>		
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<u>PUBLIC HEARINGS</u>		
PURSUANT TO §60-6B-10 NMSA 1978, A REQUEST FOR A WAIVER OF TH3 300 FOOT LOCATION RESTRICTION AND APPROVAL TO ALLOW THE SERVING/ CONSUMPTION OF ALCOHOLIC BEVERAGES AT EL MUSEO CULTURAL DE SANTA FE, 1615 B. PASEO DE PERALTA, WHICH IS WITHIN 300 FEET OF ALVORD ELEMENTARY SCHOOL, 551 ALARID AND LOCATED ON CITY PROPERTY THE REQUEST IS FOR THE FOLLOWING EVENTS:	Approved	26-27

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
WHITEHAWK ANTIQUITIES SHOW TO BE HELD ON FRIDAY, AUGUST 15, 2008, FROM 4:45-8:30 P.M.; COWGIRL BBQ	Approved	26-27
WHITEHAWK NTIQUITIES SHOW TO BE HELD ON MONDAY, AUGUST 18, 2008, FROM 4:45-8:30P.M.; COWGIRL BBQ	Approved	26-27
INDIAN MARKET PREVIEW TO BE HELD ON FRIDAY, AUGUST 22, 2008 FROM 5:30-7:30 P.M.; COWGIRL BBQ	Approved	26-27
REQUEST FROM LA CHOZA, INC., FOR A TRANSFER OF OWNERSHIP AND LOCATION OF DISPENSER LICENSE #203 FROM ESTATE OF JOSE SEF TRUJILLO, D/B/A EL DUENDE ENTERPRISES, .4 MILES FROM INT. HWY. 84 & 285, SAN JUAN PUEBLO, NEW MEXICO, TO LA CHOZA, INC., D/B/A LA CHOZA, 905 ALARID STREET, SANTA FE	Approved	27-28
REQUEST FROM WILD OATS MARKETS, INC., FOR A TRANSFER OF OWNERSHIP (BUSINESS MERGER) OF DISPENSER LICENSE #0094 TO WILD OATS MARKETS, INC., D/B/A WILD OATS MARKET. THE LICENSE WILL REMAIN AT 1090 S. SAINT FRANCIS DRIVE	Approved	28
REQUEST FROM FLYING DAGGERS, LLC. FOR A RESTAURANT (BEER & WINE) LIQUOR LICENSE TO BE LOCATED AT WILD WILD WOK, 3470 ZAFARANO DRIVE, SUITE C	Approved	28-29
CONSIDERATION OF BILL NO. 2008-25; ADOPTION OF ORDINANCE NO. 2008- ____ . AN ORDINANCE AMENDING SECTION 12-6-12.18 OF THE CITY OF SANTA FE UNIFORM TRAFFIC CODE 2007 TO REPEAL SUBSECTION (6) REGARDING THE PROHIBITION OF HAND-HELD CELLULAR PHONE USAGE WHILE A VEHICLE IS IN MOTION	Denied	29-34

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CASE #A 2008-03. 610 GALISTEO STREET BUILDING PERMITS APPEAL. STEPHANIE BENINATO APPEALS TO THE GOVERNING BODY OF THE CITY OF SANTA FE, THE BOARD OF ADJUSTMENT DECISION DENYING HER APPEAL OF THE ISSUANCE OF BUILDING PERMIT NOS. 07-203, 07-204 AND 07-205, FOR THE REMODELING AND REPAIR OF TWO EXISTING DWELLING UNITS AND THE DEMOLITION OF AN EXISTING GARAGE AT 610 GALISTEO STREET

Appeal denied

34-93

CONSIDERATION OF BILL NO. 2008-2008-44; ADOPTION OF ORDINANCE NO. 2008- 40.
CASE #M 2008-12. CHAMISA HILLS PROFESSIONAL PLAZA DEVELOPMENT PLAN AMENDMENT. GREGG WAY, AGENT FOR BRANCH DESIGN AND DEVELOPMENT, REQUESTS DEVELOPMENT PLAN AMENDMENT TO ALLOW FOR CONSTRUCTION OF AN OFFICE BUILDING ADDITION CONSISTING OF 13,029 SQUARE FEET ON 2.76 ± ACRES. THE APPLICANT ALSO REQUESTS A VARIANCE FROM THE HEIGHT RESTRICTION OF 25 FEET IN THE SOUTH CENTRAL HIGHWAY CORRIDOR PROTECTION DISTRICT TO ALLOW CONSTRUCTION UP TO 31 FEET, AND REQUESTS THAT THE REQUIREMENT FOR APPROVAL BY THE PLANNING COMMISSION OF A SEPARATE FINAL DEVELOPMENT PLAN BE WAIVED. THE PROPERTY IS ZONED C-1-PUD (OFFICE AND RELATED COMMERCIAL, PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT) AND IS LOCATED AT 440 ST. MICHAELS DRIVE

Approved

93-96

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
<p>CONSIDERATION OF BILL NO. 2008-43; ADOPTION OF ORDINANCE NO. 2008- 41. CASE #M 2008-08. COLORES DEL SOL PRELIMINARY DEVELOPMENT PLAN AMENDMENT. JENNIFER JENKINS, AGENT FOR CENTEX HOMES, REQUESTS APPROVAL TO AMEND ORDINANCE NO. 2005-27, WHICH AMEND THE PUD PRELIMINARY DEVELOPMENT PLAN TO INCREASE THE DENSITY FROM 286UNITS TO 287 UNITS. THE PROPERTY IS LOCATED NORTH OF AIRPORT ROAD AND SOUTH OF AGUA FRIA ROAD, WEST OF JEMEZ ROAD AND EAST OF MORNING DRIVE AND SOUTH MEADOWS ROAD AND IS ZONED R-6 PUD (RESIDENTIAL DISTRICT – SIX DWELLING UNITS PER ACRE, PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT)</p>	<p>Approved [amended]</p>	<p>96-101</p>
<p>CONSIDERATION OF ADOPTION OF 2008-2013 FIVE (5) YEAR CONSOLIDATED PLAN</p>	<p>Postponed to 07/30/2008</p>	<p>101</p>
<p>COMMUNICATIONS FROM THE GOVERNING BODY</p>	<p>Information/discussion</p>	<p>101-104</p>
<p>ADJOURN</p>		

**MINUTES OF THE
REGULAR MEETING OF THE
GOVERNING BODY
Santa Fe, New Mexico
July 9, 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 July 9, 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 Rebecca Wurzburger, Mayor Pro-Tem
Councilor Patti J. Bushee
Councilor Christopher Calvert
Councilor Miguel Chavez,
Councilor Carmichael A. Dominguez
Councilor Matthew E. Ortiz
Councilor Rosemary Romero
Councilor Ronald S. Trujillo

Others Attending

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

5. APPROVAL OF AGENDA

Councilor Bushee moved, seconded by Councilor Chavez, to approve the agenda as presented.

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. APPROVAL OF CONSENT CALENDAR

Councilor Calvert moved, seconded by Councilor Wurzburger, to approve the following Consent Calendar, as amended. 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.

- a) ***[Removed for discussion by Councilor Dominguez]***
- b) **CONSIDERATION OF RESOLUTION NO. 2008- 56. (COUNCILOR BUSHEE AND COUNCILOR WURZBURGER. A RESOLUTION DIRECTING STAFF TO RESEARCH THE POSSIBILITY OF A CARSHARING PROGRAM TO BE LOCATED AT THE RAILYARD. (JEANNE PRICE)**
- c) **CONSIDERATION OF RESOLUTION NO. 2008-57 (COUNCILOR ORTIZ). A RESOLUTION AIMING TO REDUCE THE CITY OF SANTA FE'S "CARBON FOOTPRINT." (NICK SCHIAVO)**
- d) **REQUEST FOR APPROVAL TO PUBLISH NOTICE OF PUBLIC HEARING ON AUGUST 11, 2008: BILL NO. 2008-45 – AN ORDINANCE AMENDING SECTION 24-1.1 SFCC 1987, REGARDING THE CITY OF SANTA FE UNIFORM TRAFFIC CODE; AMENDING SECTION 12-6-12.2 OF THE CITY OF SANTA FE UNIFORM TRAFFIC CODE REGARDING OPERATING A MOTOR VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS AND SECTION 12-6-13.13 OF THE CITY OF SANTA FE UNIFORM TRAFFIC CODE REGARDING MANDATORY SEAT BELT USE (COUNCILOR TRUJILLO). (CHIEF ERIC JOHNSON)**
- e) ***[Removed for discussion by Councilor Chavez]***
- f) **BID NO. 08/39/B – CITY WIDE WATER UTILITY PAVEMENT RESTORATION CONTRACT FOR WATER DIVISION; SUB SURFACE CONTRACTING, INC. (SHANNON JONES)**
- g) **REQUEST FOR APPROVAL OF ENGINEERING DIRECTIVE AND CHANGE ORDER NO. 2 – CANYON ROAD WATER TREATMENT PLANT SANITARY SEWER EXTENSION; RMCI, INC. (MICHAEL GONZALES AND BRIAN SNYDER)**
- h) **REQUEST FOR APPROVAL OF PROFESSIONAL SERVICES AGREEMENT – REPLACEMENT OF NATATORIUM AND OFFICE LIGHTING AT GCCC; HEI, INC. (BOB SIQUEIROS)**
- i) **REQUEST FOR APPROVAL OF CHANGE ORDER NO. 3 TO AGREEMENT – MAGER'S FIELD PARK PHASE 2 IMPROVEMENTS; ACCENT LANDSCAPING. (BEN GURULE)**

- j) **REQUEST FOR APPROVAL OF PROCUREMENT UNDER STATE PRICE AGREEMENT – PAVED STREET REHABILITATION PROGRAM. (DAVID CATANACH)**
 - 1. **PAVEMENT RESURFACING; CUTLER REPAVING, INC.**
 - 2. **SLURRY SEAL TREATMENT; IPR, LTD.**
- k) **REQUEST FOR APPROVAL OF PROFESSIONAL SERVICES AGREEMENT – DESIGN, FABRICATION AND INSTALLATION OF ARTWORK ON EAST PLAZA OF SANTA FE COMMUNITY CONVENTION CENTER (RFP #08/07/P); COLETTE HOSMER. (DEBRA GARCIA Y GRIEGO)**
- l) **REQUEST FOR APPROVAL OF PROFESSIONAL SERVICES AGREEMENT – DESIGN, FABRICATION AND INSTALLATION OF ARTWORK IN EXTERIOR ENTRY OF SOUTHSIDE LIBRARY (RFP #08/05/P); STATE OF NEW MEXICO AND RANDY WALKER D/B/A WALKER DESIGN STUDIO. (DEBRA GARCIA Y GRIEGO)**
- m) **REQUEST FOR APPROVAL OF AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT – LANDLORD/TENANT HOTLINE SERVICES; NEW MEXICO LANDLORD TENANT HOTLINE. (KATHY McCORMICK)**
- n) **REQUEST FOR APPROVAL OF SOLE SOURCE PROCUREMENT AND PROFESSIONAL SERVICES AGREEMENT – MAINTAIN ACCREDITATION STATUS OF POLICE DEPARTMENT; NIGEL BRIDGER. (CHIEF ERIC JOHNSON)**
- o) **REQUEST FOR APPROVAL OF PROCUREMENT UNDER STATE PRICE AGREEMENT – DIGITAL VIDEO SYSTEMS FOR POLICE DEPARTMENT; FIRST-IN, INC. (CHIEF ERIC JOHNSON)**
- p) **REQUEST FOR APPROVAL OF PROFESSIONAL SERVICES AGREEMENT – ADVERTISING SALES AND WEBSITE CONTENT MANAGEMENT FOR GCCC (RFP #08/40/P); WOLFMAN BROTHERS. (LIZ ROYBAL)**
- q) **REQUEST FOR APPROVAL OF LEASE AGREEMENT – CAFÉ PARIS LOCATED AT 31 BURRO ALLEY; PAUL PERRIER AND RAHERA PERRIER. (EDWARD VIGIL)**
- r) **REQUEST FOR APPROVAL OF TERMINAL AUTO CONCESSION LEASE AGREEMENT – AUTOMOBILE RENTAL CONCESSIONS FOR SANTA FE MUNICIPAL AIRPORT (RFP #08/23/P). JIM MONTMAN.**
 - 1) **AVIS RENT A CAR SYSTEM, LLC.**
 - 2) **THE HERTZ CORPORATION**

- s) **REQUEST FOR APPROVAL OF EMERGENCY PROCUREMENT UNDER STATE PRICE AGREEMENT – AIRPORT RUNWAY AND TAXIWAY PAINTED MARKINGS AT SANTA FE MUNICIPAL AIRPORT; SAN BAR CONSTRUCTION CORPORATION. (JIM MONTMAN)**
- t) **REQUEST FOR APPROVAL OF AMENDMENT NO. 4 TO PROFESSIONAL SERVICES AGREEMENT – PUBLIC RELATIONS SERVICES FOR SANTA FE CONVENTION AND VISITORS BUREAU AND CONVENTION CENTER; LOCAS, INC. (KEITH TOLER)**
- u) **REQUEST FOR APPROVAL OF AMENDMENT NO. 3 TO PROFESSIONAL SERVICES AGREEMENT – ADVERTISING SERVICES FOR SANTA FE CONVENTION AND VISITORS BUREAU AND CONVENTION CENTER; VAUGHN WEDEEN CREATIVE, INC. (KEITH TOLER)**
- v) **REQUEST FOR APPROVAL OF AMENDMENT NO. 3 TO PROFESSIONAL SERVICES AGREEMENT – WEBSITE REDESIGN, REDEVELOPMENT AND ONGOING MAINTENANCE FOR SANTA FE CONVENTION AND VISITORS BUREAU; STUDIOX, INC. (KEITH TOLER)**
- w) **REQUEST FOR APPROVAL OF AMENDMENT NO. 12 TO PROFESSIONAL SERVICES AGREEMENT – NORTH RAILYARD INFRASTRUCTURE IMPROVEMENTS; SANTA FE RAILYARD COMMUNITY CORPORATION. (FRANK ROMERO)**
 - 1) **REQUEST FOR APPROVAL OF BUDGET ADJUSTMENT – RAILYARD INFRASTRUCTURE FUND.**
- x) **REQUEST FOR APPROVAL OF SOLE SOURCE PROCUREMENT – FIRE RESCUE EQUIPMENT FOR FIRE DEPARTMENT; SAFETY INSTRUCTIONS, LTD, LLC. (TIM L'ESPERANCE)**
- y) **REQUEST FOR APPROVAL OF TWO (2) PART-TIME POSITIONS FOR UTILITY BILLING DIVISION. (PETER ORTEGA)**
- z) **REQUEST FOR APPROVAL OF STATE OF NEW MEXICO AUDIT CONTRACT – FINANCIAL AND COMPLIANCE AUDIT CONTRACT FOR FISCAL YEAR ENDING JUNE 30, 2008 (RFP #08/41/P); ATKINSON & CO. (TERESITA GARCIA)**
- aa) ***[Removed for discussion by Councilor Bushee]***
- bb) **APPROVAL OF CERTIFICATE OF CORRECTION FOR TYPOGRAPHICAL ERRORS IN ORDINANCE NO. 2008-5 REGARDING SHORT TERM RENTAL UNITS (COUNCILOR WURZBURGER). (JEANNE PRICE)**

7. APPROVAL OF MINUTES: Reg. City Council Meeting – June 25, 2008.

Councilor Bushee moved, seconded by Councilor Chavez, to approve the minutes of the Regular City Council Meeting of June 25, 2008, 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.

8. PRESENTATIONS

a) EMPLOYEE OF THE MONTH FOR JULY 2008 – RUBEL GALLEGOS, LEAD RINK ATTENDANT – GENOVEVA CHAVEZ COMMUNITY CENTER – ICE ARENA.

Mayor Coss read the letter of nomination into the record and presented Mr. Gallegos with a plaque and a check for \$200 from the Employee Benefit Committee.

Mr. Gallegos presented Mayor Coss with two hockey jerseys from the Chavez Ice Arena, telling him is signed up on Nick Schiavo's hockey team, and invited him to come and play hockey when he is ready.

b) CONTRIBUTIONS TO THE SANTA FE WATER FUND AND OTTER WATER PLEDGES; EARTH'S BIRTHDAY PROJECT. (CLIFFORD ROSS)

Clifford Ross said he is representing 1,000 kindergarten kids of Santa Fe in celebrating the return of the river otter to New Mexico, noting they will be released in the river above Taos in September 2008. He said 1,000 children took the Otter Water Pledge to save water for otters. He said La Comunidad de los Ninos involved all 75 of their families and they collected money to buy water for the Santa Fe River, and he presented the funds which were raised in coin to Mayor Coss.

Councilor Trujillo said his daughter attends Kearney and collected money from family and went throughout the neighborhood to gather money.

Mayor Coss said as a wildlife student at the agricultural school in 1976 his senior thesis was on how feasible it would be to bring otters back to the rivers in New Mexico.

[Mr. Ross's remarks here were inaudible because he was away from the microphone]

Councilor Romero said this is a cause which brightens people's faces, and this will mean a lot to the life of a river and the community. She thanked Mr. Ross for the bracelet, noting she has a River Otter necklace.

CONSENT CALENDAR DISCUSSION

9(a) CONSIDERATION OF RESOLUTION NO. 2008- 58 (COUNCILOR DOMINGUEZ). A RESOLUTION ENCOURAGING THE STATE OF NEW MEXICO TO DEVELOP A PROGRAM TO ASSIST STATE EMPLOYEES IN OBTAINING AFFORDABLE HOUSING. (KATHY McCORMICK)

A copy of amendments to this Resolution proposed by Councilor Dominguez, is incorporated herewith to these minutes as Exhibit "1."

Councilor Dominguez said the proposed amendments capture and clarify that this is for employees working in Santa Fe and not throughout the state.

Councilor Bushee asked to cosponsor this Resolution.

Councilor Dominguez moved, seconded by Councilor Romero, to adopt Resolution No. 2008-58, as amended.

Discussion: Mayor Coss thanked Councilor Dominguez saying it is an important part of the City's economy, history and culture to have our State employees to be able to live in Santa Fe as well.

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.

9(e) CONSIDERATION OF RESOLUTION NO. 2008- 59 (COUNCILOR CHAVEZ, COUNCILOR DOMINGUEZ, COUNCILOR TRUJILLO, MAYOR COSS, COUNCILOR ORTIZ AND COUNCILOR CALVERT). A RESOLUTION ACKNOWLEDGING NATIONAL HISPANIC HERITAGE MONTH AND ENCOURAGING OUR COMMUNITY TO RECOGNIZE THE GREAT CONTRIBUTIONS OF HISPANICS TO OUR CITY. (FABIAN CHAVEZ)

Councilor Calvert said he pulled this item to bring attention to the amendment sheet, saying he appreciates all of the cosponsors to the Resolution.

Councilor Bushee would like to cosponsor this Resolution.

Councilor Chavez moved, seconded by Councilor Trujillo, to adopt Resolution No. 2008-59, with the two amendments. 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.

9(aa) ADOPTION OF FINDINGS OF FACT AND CONCLUSIONS OF LAW IN THE MATTER OF CATHERINE ANN MURDY V. HISTORIC DESIGN REVIEW BOARD; CITY APPEALS CASE #H-06-18A AND CASE #H-06-18B. (DAVID RASCH)

Councilor Bushee said she removed this because she wants to be consistent in how she voted when this was before the Council. She said, with regard to the findings of fact, she wanted to point out that she feels there was, to some degree, staff issues around the confusion. She does not feel this is something which she can vote to approve.

Councilor Bushee moved to deny this request. The motion died for lack of a second.

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

Discussion: Councilor Calvert asked the City Attorney to explain this in context of other minutes which were provided as well which didn't agree with your opinion at the time.

Frank Katz, City Attorney, said the hearing was rather confused, and the whole matter was rather confused. He said as initially presented to the Land Use Department, the description was that the fence would be flush with this retaining wall which was on the neighbor's property. So, from the neighbor's side, the highest grade, it would be six feet tall, but on Ms. Murdy's property it would be 9½ feet tall. It turns out that was not an accurate representation, and in fact, the retaining wall was at no point on the property line adjacent to the fence, and in fact sloped substantially toward the neighbor's property, so that it was at 9½ feet from both sides. There was this issue of vested right because she was given a permit, but his understanding of what the Council voted on "and was finding was that in fact that the initial representation was not accurate since she was not granted a permit on what was in fact the situation, and that would not give her a vested right. It would give her a vested right to the situation that they understood to be the case, and that she represented to be the case, but not the facts as they turned out to be the case, and were, I believe found by the Council at the hearing."

Councilor Bushee asked, "So, Frank, in the Historic District, this is correct"

Mr. Katz said yes.

Councilor Bushee said, "Staff does not go out and check out things."

Mr. Katz said he doesn't know whether or not staff checked it out, and doesn't know whether they always do that or not.

Councilor Bushee said, "Again, I wasn't going to get into the details, but I think it begs the question now that I think there was, I'm going to say kindly, a lot of confusion. Because I think what was submitted by the Appellant was very clear and if it is incumbent on staff and the Historic District to review that, I feel there is a vested interest... or vested right in this building permit, so I'm going to have to continue to vote against it."

The motion was approved on the following roll call vote:

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

Against: Councilor Bushee.

Explaining his vote: Councilor Calvert said he will vote yes, although he agrees partly with Councilor Bushee, and believes initially he thought there might be a vested right. However, he thinks a vested right is only pertinent if the representation of material that went into that permit was accurate. Since it doesn't appear it was, he doesn't believe that adheres to this case, so he's voting yes.

END OF CONSENT CALENDAR DISCUSSION

**10. REQUEST FOR APPROVAL OF PROPOSED CIVIC CENTER PARKING RATES.
(BILL HON)**

Bill Hon presented information from his Memorandum of May 27, 2008, to the Public Works Committee.

Mr. Hon said since the recommendations in the Memorandum were submitted to the Public Works Committee, the number of names on the list for monthly parking has increased from 417 to 788. He said he would like to recommend in the peak season, May 1 through November 1, 150 monthly parking permits and 100 City employees parking in the garage for free. In off season, November 1 through May 1, 200 monthly parking permits and 150 City employees.

Mr. Hon said as the spaces allocated for City employees fill, the employees would go to the second designated lot which would be the Masonic Temple/Montezuma Lodge lot, and if that fills, then the third alternative would be the Ft. Marcy lot and would shuttle.

Mr. Hon said we are still running the shuttle because it being utilized by several downtown merchants and employees, so we can't stop it because it would displace those who are using it.

Mr. Hon said this is the recommendation of the Parking Division, along with the lottery system and capping the number of monthly parking spaces in the garage.

Mayor Coss noted there is a different recommendation from the Parking Advisory to the Public Works and Finance Committees

Mr. Hon said the Parking Advisory, Public Works and Finance Committees recommended not allowing City employees to park in the City Garage.

Responding to Councilor Bushee, Mayor Coss said this is a request for approval of the Parking Division recommendation.

Responding to Councilor Wurzbarger, Mr. Hon said the staff recommendation which went to the Parking Advisory, Public Works and Finance Committee never changed. Staff's recommendation to those Committees was to put these numbers of employees in the lot and staff has never changed that recommendation through the Committee process.

Responding to Councilor Chavez, Mr. Hon said the requested action is on page 8 of the packet.

Mayor Coss noted the parking for employees would be on a first come-first served basis, and asked if that would start to cause traffic problems when the lot filled.

Mr. Hon said as City employees come in, they would be counted by the computer. Once it reaches 100, the computer would turn on a red light at the entrance noting there is no longer parking available for that group. They could come into the facility and take a ticket, but they would be liable for the normal daily rate on exiting.

Councilor Chavez asked how this differs for City employees previously and as proposed.

Mr. Hon said there were approximately 170 spaces available for City employees and the governing body at Sweeney year-round, Monday through Friday, noting those spaces were open for transient parking on the weekend.

Councilor Chavez said this makes sense in order to accommodate transient parking.

Mr. Hon said staff felt strongly about capping the total number of monthly parking and employee parking to a total of 250 spaces in the summer and 350 in the winter, because we don't know what the parking patterns will be when the facility opens.

Councilor Chavez asked if there was a discussion that this would be implemented during a grace period, and the numbers could be changed as time goes by.

Mr. Hon said yes.

Councilor Bushee said then it could be adjusted upward if space was available.

Mr. Hon said yes, if the transient parking wasn't filling the entire garage during the one year period, it could be adjusted up or down. He said he wants to make clear that the memorandum also states that if a big convention comes in, the employees would have to be bumped to accommodate the needed parking, noting that was the case at Sweeney.

Councilor Bushee said this will be difficult, but this is a start.

Councilor Wurzburger asked Mr. Hon if staff looked at the option to have cars available people could share for those who might need to come and go for various reason.

Mr. Hon said that has been discussed, but there has been no conclusion. He said they are looking at car sharing and providing space for car sharing. There was also discussion about designating 2-3 spaces to be utilized for electric cars to park and recharge with a metered system.

Councilor Wurzburger said a key complaint she hears from constituents of all districts is that they don't come downtown because they can't find a place to park which was true during construction. She is concerned to what degree this will interfere with people starting to come back downtown again.

Mr. Hon said he does know the need for parking in the downtown area is demonstrated by those on the waiting list to move into the facility.

Councilor Wurzburger said then we have 788 requests for space we can't meet, but we're taking 100 for employees for which we will receive no money.

Councilor Ortiz said he doesn't see this as taking from the people on the wait list, and sees the wait list as a function of the relatively inexpensive cost of getting a monthly permit, and perhaps some lax enforcement in terms of requiring these downtown businesses to provide parking for their own employees.

Councilor Ortiz said when we had this discussion about the Civic Center and the new parking facility, there was a lot of discussion about the employee parking. At the time, when we told our employees to sacrifice, we told them that when the facility was going to come back on line, we would make sure that we had the same parking available for them. So, we don't want to be in the situation of going back on our word. He respects that Councilor Wurzburger has always been in the same place on this issue. We needed this interim period because we didn't have a gauge for how people were using this facility.

Councilor Ortiz said we are asking people to come downtown, and yet our employees are downtown every day, and we are asking them to sacrifice to let the businesses have the access for the parking facility. This doesn't make sense to him. He thinks staff developed a reasonable compromise. He noted he read the language from the union contract. He said previously in the surface parking, the parking was reserved for "higher ups" in City vehicles and didn't give ample opportunity or access for regular employees.

Councilor Ortiz said the union contract says it's got to be "first come-first serve." He would like to see these spaces distributed through a lottery by everyone, including the City Manager, so the spaces are equitably distributed. He said we do have an obligation to our employees. He said if we were coming into the downtown for the first time, we would have to provide spaces for our employees. He said it doesn't make sense to say that we're going to make this temporary situation semi-permanent by saying all employees will be shuttled. He voted against this because it's not the right thing to do to the employees.

Councilor Ortiz moved, seconded by Councilor Bushee, to approve the Parking Plan as originally drafted by staff on an interim basis to be studied at the end of the year, with 100 spaces for employees during peak season and 150 spaces for employees during the winter; and that in six months we look at the parking rates and consider increasing prices.

Discussion: Councilor Ortiz believes all employees should have the same access or "shot" at getting to City parking as everyone else, and hopes that would be by lottery.

Councilor Calvert said he respects the position of the employees and the union, and wouldn't anticipate they would do other than advocate for the employees. He has a different outlook, however. He said the union contract provides that the City "shall provide, without charge to employees, parking on a first-come, first-served basis at City facilities or at parking lots identified by the Parking Division." He said he has talked with Mr. Hon about parking at the Masonic Lodge, which is 100 in the upper and 100 in the lower, which could be allocated for free employee parking. He said we have been providing shuttles for employees from Ft. Marcy. He said there will be more parking with the construction workers leaving.

Councilor Calvert said we have been pushing alternative means of transportation, shuttles, improved biking arrangements, free passes to employees. He said we are trying to reduce our carbon footprint in the City, improve healthy lifestyles, and believes that we should set the example and lead by example.

Councilor Calvert said the primary job at City Hall is provide customer services to the community. He said the community includes those who come downtown as well as City Hall. He said reserving 50% of the leasable spaces isn't the best customer service we can provide to the community. He doesn't believe it is too much to ask employees to walk from the Masonic Temple in order to provide better service to the public which is our primary purpose. He believes we have an obligation to the community and customer service not to do this.

Councilor Trujillo said everyone has talked about the "primo" spaces, and asked who is the backbone who runs the City. He said without these workers things don't get done. He said he hears no revenue will come from these spaces, but the revenue we will be making will be from the services our employees are providing to the community. He said it isn't always about money, and we need to provide for the community and the employees. He said there is a large parking lot where he works. He said this is first come, first serve and it is 100 spaces out of the 500. He said tourists will find a place to park. He said the businesses need to provide spaces for their employees. He said we need to provide these spaces for our employees because they do provide a service to the community.

Councilor Dominguez said he understands the economics behind this, and appreciates the initiatives which have taken place, the excellent job of the shuttles and the service we provide to employees. He said, however, we're not just about customer service, and it isn't acceptable to displace our employees. He can understand the position of employees, because quite frankly it "would suck."

Councilor Romero agrees with Councilor Calvert, with due respect to staff. She believes we have a fiduciary responsibility. She said we have a system which has been working with the

shuttles. We have asked staff and committees to make their best recommendation. She said none of these choices are ever easy, and it is a balance between the various perspectives. She said it is hard to say we are going to reduce our carbon footprint and ask people to take a hit in a lot of perspectives, but not follow through with all of the perspectives. She said the plan that has come up is the best thing we can do, given the circumstances. She said we will be reviewing this, so it's not set in stone. She said in all fairness we are all taking the brunt. She said her parking is at her house, but when she comes downtown, she tries to change her behavior to walk to meetings and do what she can to reduce the carbon footprint. She believes it is a matter of personal responsibility, and she hopes others will join her in trying to change their behavior.

Councilor Wurzbarger asked what does "first come first serve" mean. Does that mean we'll see a daily change. How will it work.

Mr. Hon said it means that every day it will be first come first serve. The intent was not to do a lottery, but to give everyone an opportunity park in the garage on a daily basis.

Councilor Wurzbarger asked if there have been major employee complaints about being shuttled.

Mr. Hon said there have been complaints about the shuttles, but we have had comments that people enjoy riding the shuttles. There have been complaints about the shuttles being older vehicles, difficult to get into and hard to manage. He said there are funds in the budget to purchase three brand new airport-type shuttle buses for easy access, and are more comfortable. He said we scrambled to get the shuttle running, and purchased old vans from the State to make this work. We recognize the need to replace the equipment.

Councilor Wurzbarger asked what percentage of the parking is for transient people.

Mr. Hon said there will be 250 spaces left for transient parking.

Councilor Wurzbarger said her vision for Santa Fe, and herself, is that we are a very small city and we would focus on peripheral parking and the kinds of things we've talked about at the Railyard – shared cars and such. She remembers, when we passed the Resolution supporting the new Civic Center, that we were going to relook at this, and this is one way to do that. She said she thinks the City would be better downtown if there were no cars at all downtown. She doesn't see that happening in the short run. She said she is concerned about the precedent this sets in terms of leadership. She is comfortable with people having to come in and out. She said she doesn't feel the businesses should have employees who come down and spend eight hours in the stores also taking up space. She said the parking facility needs to be recognized as a scarce resource rather than a resources that is adequate.

Councilor Bushee said we have to keep things in perspective. This is the first parking garage downtown to come on line, but there are several others which will be coming on line. She doesn't believe we will have the tight parking situation we are anticipating. The other facilities coming on line are the new Courthouse, the Archdiocese, the Drury Hotel, all of which will have underground parking. She said we have talked for a long time about peripheral shuttles for downtown employees, but we've dropped the ball because we don't have a place to put them. However, she wants that to continue to be a part of the mix.

Councilor Bushee said there is a lot of talk about good customer service. The City employees get a one hour lunch, and if ½ hour of that is getting shuttled back and forth, they're not here to deliver the good customer service you expect them to deliver. We need to keep this in perspective. We made promises, from the start, of how we would portion out some spaces, and that always included City employees. She said we keep City Hall downtown to keep a vital downtown and we have to provide the spaces for the people who live and work here who are providing the services. This is the bottom line.

Councilor Bushee said carsharing doesn't really work because it costs, and it essentially is renting a car by the hour, and we can't count on City employees to have to put that in their budget. She said 20 years ago we tried to have an assessment district downtown, and people fought it "tooth and nail." That should have happened then, but it didn't. She asked where the new condos being developed across the way will park.

Councilor Bushee said she is concerned about employees, such as inspectors, who need to come and go constantly, and asked the mix for these kinds of vehicles and City owned vehicles that stay around downtown.

Mr. Hon the Parking Division allocates space at the Masonic Temple for those people to come and go, as well as those from satellite offices with vehicles coming downtown, and they can stay as long as necessary. At one point they were allowed to park on the street at meters with a permit, but since the parking has gotten tighter that has been rescinded. He noted another eight meters were removed on Federal because of the construction. As it gets tighter, it gets harder to manage. He said they recognize the need. He said there are designated times for Planning & Land Use where vehicles aren't ticketed around City Hall - 8:00 a.m. to 9:00 a.m., 11:00 a.m. and 1:00 p.m., and beginning at 4:00 p.m.

Councilor Bushee said she relies on Bill, because he has worked "several miracles" already and the Railyard will be the first of the new parking facilities. She wants him to keep pace with what the other private garages are charging when they come on line. She wants us to stay competitive if the issue is about making us stay in the black on an enterprise fund. She wants to see the employee spaces increase, and she hopes that will be the case when some of the other facilities come on line.

Councilor Chavez said he agrees with most of what Councilor Calvert said. He believes it is a little unfair to compare City employees with State employees. He said it would be nice to give free parking to everyone, but we can't. He said if we can't embrace public transportation, it's not going to happen. He said we need to reward employees, but the employee has to be willing to invest in that business. He said Mr. Hon has agreed to work on the numbers as we move through the next 2-3 years and see how it balances. He believes the alternatives offered are sound, commenting that we can't please everyone all of the time.

Councilor Chavez said Councilor Calvert spoke about leading by example. We have done that, and in 2000, we decided to stop watering the parks because we were in a drought and we're paying dearly for that. He said at Public Works he would be willing to give up his space at City Hall, because we're all going to have to give a little to make this work, so that we generate the revenue to be able to pay the salaries and benefits to our employees.

Councilor Chavez asked Councilor Ortiz if his motion differs from staff's recommendation.

Councilor Ortiz said it for the staff recommendation, with a six month review of the monthly permit fees and an annual review to see if we need to move that number forward.

Councilor Dominguez said the one thing City and State employees have in common is that they are both public employees who are there to serve the public. He said our employees have and will continue to go above and beyond the call of duty for the most part. He believes we owe it to the City employees to give them the resources and amenities they need to be able to provide that service. He said, as a public employee, if he had to pay for parking as a public employee, it would not be good.

Councilor Ortiz said the issue on carbon footprint has been bandied about this evening. He said reducing our carbon footprint is something we have to do as a function of government. To say that we have the ability to impose that same obligation on our employees as a reason for them to be shuttled to their place of business is a bit of a "red herring" and a bit of a stretch. He said, with regard to customer service, the same constituents and customers we're talking about are also City employees. He said we still have City employees who are City residents and these people are just as able as a monthly permit holder to utilize the facility.

Councilor Ortiz said with a wait list of 788 people on the monthly permit list, if we did not allocate or carve out any spaces for employees now, all of the spaces would be filled, there would be a wait list, and we wouldn't be able to carve out spaces for City employees in six months. He pointed out that City employees are customers and constituents. He said the first come-first serve is defined in the contract, noting this is a subject of negotiation and Mr. Hon's interpretation isn't necessarily the right one, and it needs to be negotiated.

Councilor Ortiz said, with regard to the macro issue, it is okay for us to say we need to take a leadership position in the downtown area in terms of taking people out of cars completely, or a shuttle system, electric cars, etc.. However, it is something else to say that we're going to do this and the first step we're going to do is to impose this burden and obligation on our employees and make them the "guinea pigs" for this grand new vision we've yet to formulate is just not fair. He said we do need to study all of the issues, and there is more work to be done, even after we pass these rates, because there will be new circumstances – new parking garages and new competitors for our Civic Center. We could find that we have a lot of empty spaces in the parking garage, in such case we would look to increase some of them. He said, as a percentage, roughly ½ of the parking spaces allocated for some kind of permanent parking going to City employees seems about right, which is really 1/4 of the spaces which will be used in the new facility.

Councilor Ortiz said in the future, some Council might decide employees would pay for parking at some reduced rate. Right now, we're talking about bringing us as close to the status quo as possible when we had a surface parking facility, now that we have an underground facility.

Councilor Calvert said he would like to clarify that no one is advocating that employees pay, especially since that is contrary to the union contract. He said he has been discussing the matter of where we provide the free spaces. He said other garages will come on line, but this is

the first, so all the current demand is focused on this one, commenting the others are years in the future and doesn't see this as a solution. He said we are all guessing what our needs will be. He said we did adopt a policy for the Railyard that there would be no free parking, and we will wait a year to see how parking patterns are established. He believes we would want to do that same policy here to be consistent. We have no idea what the demand will be. He understands some of the businesses have not been responsible in providing parking. He trusts Mr. Hon's judgment in how much to allocate for business.

Councilor Calvert said he has the deepest respect for our employees, but the businesses in the community pay the salaries of our employees. We need to consider this in terms of how we allocate spaces and where the demand is. He isn't saying don't provide free parking. He said for the first year the parking at the Masonic Temple isn't a bad deal.

Mayor Coss said he agrees that \$60 per month is far too inexpensive if there are almost 1,000 people waiting for those spaces, and we need to look at that, commenting that won't be popular either. He said to him, it is as important to have good customer service as it is that the City is a good place to work. He said the Parking Division 100 spaces is a compromise, noting at one time there were 200 spaces, and we will still leave 250 employees riding the shuttle every day. He said what swayed him, is that \$60 per month times 100 is \$6,000 per month, which isn't a really big benefit under the AFSCME contract. However, we may be creating a past practice the next time we bargain.

Mayor Coss said it is great that we have ordered new shuttles, but believes we need to do a better job on safety in the lots. He said we have had too many break-ins, and he heard two cars were stolen. He said he tried to set an example and park at Ft. Marcy and ride the shuttle, which worked great for him. However, when he was leaving his City unit, he was told he might not want to do that because they have been having trouble.

Mayor Coss said we need something for employees, especially moms and dads that is a guaranteed ride home in an emergency. He said as a parent he wouldn't want to be waiting for a shuttle or having to run across for his car.

Mayor Coss said all of the reserved parking has been taken away, and none of the Councilors complained. He said that is leadership. He said the employees have been forced into this leadership role as well. However, he hasn't seen other employers and other groups of employees follow suit at all. He said the proposed employee parking is 1/5 of the lot, which he believes is a fair compromise. However, we still need to work on the shuttle and we need to push other employers to participate and assist in the cost and make it work better.

The motion was approved on the following roll call vote:

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

Against: Councilor Romero, Councilor Wurzbarger and Councilor Calvert.

Explaining his vote: Councilor Ortiz said, except for the property tax bond we passed, we all pay the salaries for all of us. He said his business, Councilor Romero's business, any

businesses are just a pass through for the tax that we pay. We pay ourselves. It's not businesses that pay our salaries and so he votes yes.

Explaining her vote: Councilor Wurzburger said she is going to vote no. [The balance of her explanation is inaudible because her microphone was not turned on.]

Explaining his vote: Councilor Chavez said the reason he tried to bring a comparison between one group of employees and the others, is that the City has a parking division which is an enterprise fund, and the State doesn't have that same structure, so we're different. He didn't want to cause any rift between groups of employees. He said we want to respect all of the employees, and he respects Mr. Hon for the work he's done. He said in this case, he's going to vote yes because he thinks Mr. Hon has done a good job in working with the City employees, and has agreed to adjust things as we move forward, and this is the way he thinks it should be done, so he is going to vote yes.

Mayor Coss asked Mayor Pro-Tem Wurzburger to assume the duties of the Chair "for a little while."

11. MATTERS FROM THE CITY MANAGER

There were no matters from the City Manager.

12. MATTERS FROM THE CITY ATTORNEY

There were no matters from the City Attorney.

13. MATTERS FROM THE CITY CLERK

There were no matters from the City Clerk.

Mayor Pro-Tem Wurzburger moved "Communications from the Governing Body" to the end of the agenda. She said the Evening Session will convene at approximately 7:00 p.m.

END OF AFTERNOON SESSION AT 6:27 P.M.

EVENING SESSION

A. CALL TO ORDER AND ROLL CALL

The Evening Session was called to order by Mayor Pro-Tem Wurzbarger, at approximately 7:05 p.m. Roll Call indicated the presence of a quorum as follows:

Members Present

Mayor David Coss [arrived shortly after the Call to Order]
Councilor Rebecca Wurzbarger, Mayor Pro-Tem
Councilor Patti J. Bushee
Councilor Christopher Calvert
Councilor Miguel Chavez ABSENT
Councilor Carmichael A. Dominguez
Councilor Matthew E. Ortiz
Councilor Rosemary Romero
Councilor Ronald S. Trujillo

Others Attending

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

E. PETITIONS FROM THE FLOOR

A copy of a Memorandum dated March 10, 2008, to the Governing Body of the City of Santa Fe, from Dave McQuarie, Chair, Mayor's Committee on Disability, regarding Project Procedures: 2006 Pavement Rehab Project, is incorporated herewith to these minutes as Exhibit "2."

A copy of a letter dated July 3, 2008, from Erica M. Elliott, M.D., regarding Felicia Trujillo, is incorporated herewith to these minutes as Exhibit "3."

David McQuarie, Chair of Mayor's Committee, referred to Exhibit "2," in which the Committee requested certain information. However, they have not received these plans for review, noting it is required that they do so. He said Public Works said \$300,000 was to address the DOJ complaint, but there are still a few outstanding: the intersection of Water and Sandoval, for example. He said another \$600,000 was for the 2006 pavement rehabilitation. He said last year Public Works got another \$1 million to do the same thing. He asked where is the \$600,000. He asked when there will be a plan for the 2007 job they are supposed to do, as well as the 2008 job. He asked the Governing Body to get involved. He asked what this Governing Body is going to do. This is their money and this Governing Body is in charge of it.

Gloria Mendoza said her granddaughters, Isabella Mendoza and Gabriella Mendoza, also will be speaking for the record. She asked that her statement be entered verbatim into the record of these minutes. Ms. Mendoza's statement is as follows:

"On June 12th I emailed all of you concerning an incident at the Genoveva Chavez Community Center kiddy pool. As explained, I have been diagnosed with degenerative joint disease and have had a vertigo problem for quite some time. As a caregiver for four of my granddaughters during the summer and school year, even though disabled, I try my hardest to make sure that they're able to participate in healthy activities, such as swimming, at your sanctioned pools. Since your bleachers at Genoveva are facing only the lap pool and there are no bleachers facing the kiddie pool, many of the people who are there as chaperones are either standing or sitting on the top bleacher which is approximately 6 inches from the floor. This is an impossible seating accommodation for someone with my disabilities and probably very inconvenient for most parents, grandparents and disabled people who want to keep an eye on their children while they enjoy the pool. If they're like me, they want to be able to keep their eyes on their children for safety reasons and to make their children feel safe, knowing they are being watched.

"Since there were no seating accommodations for me, I decided to ask a young man, a lifeguard who was collecting the stubs to afford me a chair. He was very nice. He went to the staff office and retrieved a chair for me. After about a half hour, a different lifeguard approached me and told me that I had to give him the chair back because those chairs were not allowed to be used by anyone except staff. He got the chair, sat it next to him, while he sat on the table. For the remainder of the swimming session, I painfully stood waiting for my grandchildren to finish enjoying their time in the pool. At the end of the session, I approached the lifeguard and told him that I could not understand why he took my chair, sat it next to him and nobody used it all the time that he had it. He told me the manager of the pool, Mr. Ron Robinson, had told him to retrieve the chair, and that he was only doing what he was told to do. I asked him to page Mr. Robinson. Mr. Robinson and I had a slightly heated discussion. I explained my disability, and he told me [quote], 'That's too bad. The chairs are for staff.' And walked away from me as I spoke. He was not very nice. I told him that we as taxpayers built that pool. That pool belonged to us. I told him our taxpaying money also pays your salary and all your staff, because I don't want them to forget that. He stated that this was the policy of the facility, although he never showed me the policy. At this point, I told him I was going to make sure that his policy changed.

"I emailed each one of you, the Mayor, the City Manager, Councilors, and Councilors Dominguez, Ortiz, Trujillo and Wurzbarger were the only ones who responded. I wonder why? Evidently, the Mayor, City Manager and the rest of your Councilors felt this issue was not important. Finally, Ms. Roybal, Director of the Genoveva Chavez Center contacted me a couple of times. The first time, she was somewhat patronizing, stating that they would make an exception and only accommodate me. I explained that I was not seeking personal accommodations and that I wanted accommodations for any senior citizen or disabled person to be available around the pool area. She assured me that these accommodations would be available the next time someone needed them.

"I believe in giving the benefit of the doubt to those who are there to serve the people of

this town. I decided that month, almost to the day, would certainly give the City of Santa Fe the time needed to change their policy and make accommodations for the elderly and disabled more accessible than what it was.

"Yesterday, June 8th, my granddaughters and I decided to go back to the Genoveva Chavez Center for a session of swimming. Of course, my granddaughters were anxious to know if I would be provided a chair as we went over there. As 8, 10 and 11 year olds, their intellect and caring personalities understand my disabilities, so they want to make sure their grandmother is not uncomfortable while they enjoy a fun session of swimming. As soon as they entered the pool, I went to the staff office and requested a chair, explaining my disability. I've never, never in my lifetime, and I've lived here in Santa Fe 61 years, have been so disrespected by a young man, like I was by a lifeguard who refused to accommodate me with a chair. I asked him to get me a chair. He said, I can't do that, he says, the chairs are for staff only. And I said, well I have disabilities, I says, and he said, I still can't give you a chair. And I said, well would you please call Ms. Roybal on your telephone, I says, and she'll explain to you, I says, that we should be accommodated. And he said, you want to talk to her, there's the phone, you call her. That's the way your employees talk to this community. By the way, his name was David. I was floored and told him I did not appreciate his rudeness and that I would make sure that the mayor would hear about this. This is what he thinks of you David. He said, tell him, I don't care.

"After standing a half hour in pain, I went back to the office and asked the young lady there to call Ms. Roybal for me. She rolled her chair back, away from the desk, pointed to the phone and told me, go ahead, call Ms. Roybal. She gave me the extension, and I disgustedly dialed and left a message to Ms. Roybal was not there. By the way, that young lady had tattoos and piercings. I don't know her name, but I thought I would give you a description. I told Ms. Roybal about the refusal of a chair by her staff and also about how her staff refused to even dial her office and page her for me, and I left it on her answering machine.

"By this time, I was furious. I hobbled my way to Mr. Robinson's office in the pool area. He was not there. I then proceeded to Ms. Roybal's office from the first floor via elevator to the second floor. Ms. Roybal was not there. I finally decided to just sit on the top floor and hope that my granddaughters were safe swimming and would not freak out that I was not around the pool area waiting and watching them, which they did. They felt pretty scared when they didn't see me around. As I sat there, Mr. Robinson hobbles over to me with a set of crutches and a brace on his left leg. I sort of smiled, because, I thought to myself, hmmm, you know our Lord works in strange ways, you know. Here he is disabled, and so, he immediately started apologizing about the first incident on June 12th, and [quote] said, that he was sorry about starting off on the wrong foot. I couldn't help looking at his foot at that time. I told him I hope he understood how inconvenient it is for someone not to be able to have the full use of one's leg, again staring at his disabled leg. He said he fully understood. I then told him how disrespectful his staff lifeguards treated me, and that I didn't understand why, in a month, his staff was not informed or given direction on how to handle accommodations

for the elderly and the disabled. He said that he would go down and talk to them right then.

"I told him that this was not a personal issue. This is an issue for any and all senior citizens and disabled people. The issue of respect and common courtesy was discussed. Mr. Robinson told me he was going to talk to the staff, and that I should feel assured that this would not happen again. He was very nice.

"I left very discouraged though, about the way some of the pool lifeguards are treating people. Is this a new trend in your facilities? Does management condone this type of attitude toward the community. Not only are many people struggling in this town to survive, but now they're being disrespected by the younger generation. I was always brought up to respect my elders. Where and when did we lose this value system? Does it no longer exist? Do these young people know that they are receiving a salary to provide a service to this community who owns and pays taxes to build that facility and also play the important part of paying their salaries? If not, then as representatives of this community, each and every one of you sitting there, need to make sure that people are treated with respect and common courtesies in any and all of your departments. Anything less than that should not be tolerated and should be reason for dismissal of employment by the City of Santa Fe.

"Because a majority of elected officials and your staff members made light of this situation, I am here to petition this Council to change policies regarding accommodating seniors and disabled people at your swimming pools, if needed. I demand that this be done in writing, and posting of such change in policy at all your pools. Why? This is a human rights issue. If not change, I believe that this is in violation of the American Disability Act. I really do not want to be forced to take this further, and hope that by the next Council meeting something has been done to change the policy and that the Mayor, City Manager, City Councilors, the Director of Recreation and your management team at the Genoveva Chavez Center have had a serious meeting with your staff about respect and common courtesy to the public at large in order to be employed by the City of Santa Fe. If you want to continue to not deal with me at every Council meeting, I urge a prompt action on this issue. Thank you. And now, my granddaughters would like to say something."

Mayor Coss said he neglected to advise Tina Dominguez at the beginning of petitions from the floor that he wants to limit remarks to three minutes.

Ms. Mendoza apologized for speaking longer than three minutes, but she felt she needed to tell you this, since most of the Governing Body didn't respond to the emails.

Councilor Bushee said many of the Councilors called Liz Roybal on her behalf.

Ms. Mendoza said she should first call the community.

Isabella Mendoza said, "Hi. I'm Isabella. I do not like the way the people at Genoveva treat elderly people. They were not nice to my grandma. My sisters and I are not going to the Genoveva until the people who work there treat all people with respect. Thank you."

Gabriella Mendoza said, "I'm Gabriella Mendoza. I think all parents from Santa Fe should be able to have a chair if they need one at the pool so they can watch and take care of us. Thank you."

Sagemaya Dandi, 1492 Upper Canyon Road, said there have been numerous meetings with the bicycle community about hiring a bicycle/pedestrian coordinator. He and his service dog were crossing on the Plaza and almost were hit by a bicyclist going the wrong way on a one-way street. He said many items need to be addressed. He believes it would be a good use of public funds to hire an expert to facilitate walking and bicycling. He said the behavior won't be changed until we have someone to work with the community to start a program educating what laws should be enforced. He said if we don't educate bicyclists, pedestrians, visitors, motorists, service vehicles and so forth on appropriate action, we are creating chaos. He would like to find out if the City plans on using any of the windfall money to hire a bicycle/ pedestrian coordinator or come up with a plan to do so.

Stefanie Beninato said, "My name is Stefanie Beninato, and I am going to be doing an appeal in front of you, I think it's Item #6. But, I would like to ask that Councilor Chavez, although he's not sitting here, he's some place in the building, that Councilor Chavez excuse himself from hearing my appeal. He had told me on March 30th that he had already made up his mind before the appeal was filed. He did not base, he was not going to base his judgment on the law, he was going to base it on personal standard that really had to do with blaming previous owners for the current owners actions. So, I am going to ask that he not hear or participate in my appeal. Whoops. I don't know if I turned it off, or if I just got cut off, but it doesn't seem to be working at this point."

Mayor Coss said the microphone is on, and asked her to make this request again when we start the hearing.

Ms. Beninato said, "Okay. And then, I want to ask that if anybody else has received donations, contributions from Karl Sommer, Joseph Karnes, Marty or Owen Nelson, Inside Out Design and Build, MoDo Group, LLC, any of the other LLCs they may have formed, any of their respective spouses or immediate families, that you also excuse yourself. And if you feel that you are sufficiently influenced by Karl Sommer, as some people apparently, some Councilors apparently were two weeks ago when he caught you out in the hall, and suddenly the real estate transfer tax provisions changed somewhat, well, then I'd leave that up to you to recuse yourself. So, Councilor Chavez, I have asked you to excuse yourself from hearing my appeal because you tell me you made up your mind based on personal standards before the appeal was filed that had nothing to do with the law, and that you were blaming previous owners.

Ms. Beninato continued, "And also, I have to point out that I have read the case that the City Attorneys keep supporting, or referring to, excuse me that say you have to have this certain

kind of meeting, but in fact, that case doesn't really have very much to do with procedure, it says, and I quote, "We will discuss quasi judicial..."

Mayor Coss advised Ms. Beninato to please bring this up at the hearing.

Ms. Beninato said, "Well, I only have a half hour, and these are technical points and this is not really something that actually..."

Mayor Coss advised Ms. Beninato she needs to get this on the record at her hearing.

Ms. Beninato continued talking, "...that actually applies to my hearing, because I'm being limited at the hearing, so this is why I'm using this three minutes. And again, that case only applies to quasi judicial versus legislative action, text amendments and zoning, uniformity a certain resolution, downzoning and change your mistake, and not laying it out exactly with a lot of procedure. Thank you."

Virginia Soto thanked the City for its job for the seniors at Ponce de Leon and Pasa Tiempo. She said the walk installed by the City so they can walk dogs across the street is fabulous, and it seems to have slowed the traffic. She said, secondly, she comes to advise the City that the AAA projected some figures for DSS for meals on wheels and transportation. She said "we surpassed their figures by a little over 1,000. She is petitioning the Governing Body, if there is any extra money, to be kind to them. She asked them to keep up the good work, "We are all pleased. Come by and see us. Thank you."

Arthur Firstenberg said, "I want to preface, before I read what I prepared, that a number of us called the City Manager's Office and the City Attorney's Office yesterday, requesting that the wifi be off for the seven o'clock session today, and this afternoon, I was told by a few of these people that they got a call back saying it would be off, and then there are three of us that showed up tonight and it's not off and they are refusing in that room to turn it off for us, so, there's not, we're not being accommodated. Okay, I'll read my remarks."

Mr. Firstenberg continued, "In last week's Reporter, Santa Fe Reporter, there was an interview with Councilor Rosemary Romero. Councilor Romero, in that interview, you said that our complaints are real, but that the Council voted to put wifi in anyway because, in your words, it was already here. When you open up your computer in these chambers, you get icons on your screen from half dozen wifi signals, so adding one more wasn't going to make any difference. I am here to tell you that you made your decision based on an illusion. I have here an article from last Thursday's New York Times. It explains that every wifi hot spot sends out a beacon signal identifying itself. And, I'm going to quote from this Times article [quote] 'Although you would need to be within 150 feet or so to actually get onto the internet, a laptop can detect this beacon signal from up to 1,500 feet away. So, when you open up you laptops in these chambers, you are seeing icons on your screens from hot spots that could be one-third of a mile away. Wifi was not in these chambers until you put it here. We told you that we could tell when there was no wifi here and you didn't believe us. You believed the illusion on your computer screens instead of live human beings. Why should we have to fight so hard for basis rights, rights that you wouldn't think of denying to women or blacks or people in wheelchairs, or

people sensitive to cigarette smoke, the right to visit the public library, the right to live in our own homes, the right to participate in a democracy. I have to make a choice whether to stay at home and quietly allow these things to happen, or whether to come to City Council meetings to fight for my survival, knowing that I'm going to be in pain when I'm here, that I'm going to suffer all night after I leave here and hope that my larynx doesn't spasm tonight and stop my breathing. Why should I have to do that? You have treated this environmental pollutant in a way that you wouldn't think of treating any other pollutant. There's asbestos in a lot of buildings. Let's put it in City Hall too. There's lead paint in many buildings. Let's paint City Hall with it too, but that's not how you protect public health. I urge you to reconsider your decision."

Astrid Webster, representing the Los Alamos Study Group. She was in the audience earlier with Sam Hitt when talking about the otters, and he said he has been working on this for 30 years. She said the City Council passed, and the Mayor has signed, four resolutions supporting the nuclear nonproliferation treaty, rejecting the building of new plutonium pits in Los Alamos for the safety of your community and well being of the state. She supports the City in doing this. She came here from Germany with the German rocket community and her sister lives here, and is a friend of Eric Kirschner. They have been working on this for some time. She said the House Appropriations Subcommittee on Energy and Water just passed, with one dissenting vote, that there would be no money for pit production at Los Alamos nor funds for a CMRR building, a chemistry-metallurgy research replacement. That building started at \$500,000 million, finally at \$2.7 billion. These funds would put renewable energy in every home in New Mexico. She applauds this Council for its progressive attitude, and asked everyone to call the House Appropriations Committee and the Senate Appropriate Committee in Washington, D.C., because they're trying to restore these funds.

Joseph Scordia started to speak on the proposed repeal of the cell phone law, but Mayor Coss advised this portion of the meeting is for petitions on items not on the agenda for public hearing, and he would have an opportunity to speak on this later in the meeting in the public hearing on this issue. Mr. Scordia advised he will wait and speak at that time.

Felicia Trujillo read her doctor's report into the record regarding the physical symptoms she suffered as the result of exposure to diesel fumes and excessive dust during construction adjacent to her home. Please see Exhibit "3" for the text of this letter. Ms. Trujillo said she is petitioning the Governing Body because you need to know "I'm the face of what happens to someone. I could have had a stroke. My blood was sticky, it was clotting. Just because a construction company didn't follow the rules and damp down the dust, and they were digging for ten months." She said she had the education and the wherewithal to get help, but many others don't, and doesn't know what is happening to them. She wants this on the record so that you all know that this really happens. She noted the diesel machines were running all day. She petitioned the Governing Body to see that there is someone more in control of this.

F. APPOINTMENTS

Transit Advisory Board

Mayor Coss appointed the following individual to the Transit Advisory Board:

Beverly Miriam Post (At-Large) to fill unexpired term ending 3/2009.

Councilor Calvert moved, seconded by Councilor Wurzburger, to approve the appointment.

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 none against.

Santa Fe Water Conservation Committee

Mayor Coss appointed the following individuals to the Santa Fe Water Conservation Committee:

Reese Baker (Water quality & water harvesting/water reuse); and
Stephen K. Wiman, Ph.D. (Water quality & water harvesting/water reuse).

Councilor Calvert moved, seconded by Councilor Chavez, to approve these appointments.

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 none against.

Public Campaign Financing Advisory Committee

Mayor Coss appointed the following individuals to the Public Campaign Financing Advisory Committee:

Patricio C. Larragoite, DDS, ASFO, Chair – term ending 12/2008;
Maria Christina Lopez – term ending 12/2008;
Ruth Kovnat – term ending 12/2008;
Richard J. Lass – term ending 12/2008;
James Edward Harrington, Jr. – term ending 12/2008; and
William W. Kilgarlin – term ending 12/2008.

Councilor Wurzburger moved, seconded by Councilor Romero, to approve these appointments.

Discussion: Councilor Bushee noted, although she isn't opposed to these appointees, there are four people from District 1 and two people from District 2. She understands the issue is larger than district-wide, but said if he was looking for equal geographic representation from districts, he doesn't have it in this mix.

Mayor Coss said he is looking City-wide, and there is one more appointment to make. He was trying to get people with an interest and a will to serve on this Committee to get it moving forward.

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

Planning Commission

Mayor Coss appointed the following individuals to the Planning Commission:

Estevan Gonzales – reappointment – term ending 06/2010;
Ken Hughes – reappointment – term ending 06/2010;
Signe Lindell – reappointment – term ending 06/2010; and
Boni Armijo – reappointment – term ending 06/2010.

Councilor Wurzbürger moved, seconded by Councilor Chavez, to approve these appointments.

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

Parks and Open Space Advisory Committee

Mayor Coss appointed the following individual to the Parks and Open Space Advisory Committee:

Daniel Corriz – to fill unexpired term ending 06/2011.

Councilor Dominguez moved, seconded by Councilor Trujillo, to approve the appointment.

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

Land Use Subcommittee

Mayor Coss said he is withdrawing these appointments, because there are ongoing discussions about this Subcommittee, and he will try to bring it back to the next Council meeting.

Councilor Bushee would like a copy of the enabling resolution in the packet at that time.

G. PUBLIC HEARINGS

- 1) **PURSUANT TO §60-6B-10 NMSA 1978, A REQUEST FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION AND APPROVAL TO ALLOW THE SERVING/CONSUMPTION OF ALCOHOLIC BEVERAGES AT EL MUSEO CULTURAL DE SANTA FE, 1615 B. PASEO DE PERALTA, WHICH IS WITHIN 300 FEET OF ALVORD ELEMENTARY SCHOOL, 551 ALARID AND LOCATED ON CITY PROPERTY. THE REQUEST IS FOR THE FOLLOWING EVENTS: (TINA Y. DOMINGUEZ)**
 - a) **WHITEHAWK ANTIQUITIES SHOW TO BE HELD ON FRIDAY, AUGUST 15, 2008, FROM 4:45-8:30 P.M.; COWGIRL BBQ.**
 - b) **WHITEHAWK ANTIQUITIES SHOW TO BE HELD ON MONDAY, AUGUST 18, 2008, FROM 4:45-8:30P.M.; COWGIRL BBQ.**
 - c) **INDIAN MARKET PREVIEW TO BE HELD ON FRIDAY, AUGUST 22, 2008 FROM 5:30-7:30 P.M.; COWGIRL BBQ.**

The staff report was given by Tina Y. Dominguez, who noted these special dispensers permits usually are approved administratively, however it had to come before the Council for approval of the waiver of the 300 ft. location restriction.

Public Hearing

There was no one speaking for or against this request.

The Public Hearing was closed

Councilor Bushee moved, seconded by Councilor Calvert, to grant the request for a waiver of the 300 foot location restriction to allow the sale of alcoholic beverages at El Museo Cultural de Santa Fe, for the following events: Whitehawk Antiquities Show to be held on Friday, August 15, 2008, 4:45-8:30 p.m., and Monday, August 18, 2008, 4:45 - 8:30 p.m.; and Indian Market Preview to be held on Friday, August 22, 2008 from 5:30-7:30 p.m.

Discussion: Responding to Councilor Bushee, Mr. Katz said it is the same licensee who is doing the special events so these can be approved at one time.

Councilor Bushee said she has been wanting to approve these "in a more blanket way," and asked if this the only way to do that if it's the same license.

Mr. Katz said he would look into it.

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.

- 2) REQUEST FROM LA CHOZA, INC., FOR A TRANSFER OF OWNERSHIP AND LOCATION OF DISPENSER LICENSE #203 FROM ESTATE OF JOSE SEF TRUJILLO, D/B/A EL DUENDE ENTERPRISES, .4 MILES FROM INT. HWY. 84 & 285, SAN JUAN PUEBLO, NEW MEXICO, TO LA CHOZA, INC., D/B/A LA CHOZA, 905 ALARID STREET, SANTA FE. (TINA Y. DOMINGUEZ)**

The staff report was given by Tina Y. Dominguez, noting staff reports are attached, regarding the litter, noise and traffic for this request and staff anticipates no unacceptable traffic impacts due to the approval of this request. She asked that it be noted that La Choza, Inc., will be required to comply with the City's litter and noise ordinances as a condition of doing business within the City.

Public Hearing

There was no one speaking for or against this request.

The Public Hearing was closed

Councilor Trujillo moved, seconded by Councilor Chavez, to grant the request for the transfer of ownership and location of Dispenser License #203 from Estate of Jose Sef Trujillo, d/b/a El Duende Enterprises to La Choza, Inc., d/b/a La Choza, 905 Alarid Street, Santa Fe.

Discussion: Councilor Bushee asked how far away El Duende is, and asked if there can be a transfer of license from one county to another.

Mr. Katz said the City only receive these after the State has approved them – the State reviews them first and then the City gets to vote on them. He said these have been through the State process already.

Responding to Councilor Bushee, Mayor Coss said San Juan Pueblo is about 30 miles.

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.

- 3) REQUEST FROM WILD OATS MARKETS, INC., FOR A TRANSFER OF OWNERSHIP (BUSINESS MERGER) OF DISPENSER LICENSE #0094 TO WILD OATS MARKETS, INC., D/B/A WILD OATS MARKET. THE LICENSE WILL REMAIN AT 1090 S. SAINT FRANCIS DRIVE. (TINA Y. DOMINGUEZ)**

The staff report was given by Tina Y. Dominguez, saying staff has noted there will be no impact with traffic, and staff has requested that the business be required to comply with all City ordinances as well.

Public Hearing

There was no one speaking for or against this request.

The Public Hearing was closed

Councilor Romero moved, seconded by Councilor Trujillo, to grant the request for the transfer of ownership of Dispenser License #0094 to Wild Oats Market, Inc., d/b/a Wild Oats Market, with the license to remain at 1090 S. St. Francis Drive.

Discussion:

The motion was approved on the following Roll Call Vote:

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

Against: None.

Absent: Councilor Bushee and Councilor Calvert .

- 4) REQUEST FROM FLYING DAGGERS, LLC. FOR A RESTAURANT (BEER & WINE) LIQUOR LICENSE TO BE LOCATED AT WILD WILD WOK, 3470 ZAFARANO DRIVE, SUITE C. (TINA Y. DOMINGUEZ)**

The staff report was given by Tina Y. Dominguez, saying that staff recommends that Wild Wild Wok be in compliance with all City ordinances, and that staff does not anticipate any unacceptable traffic as a result of this request.

Public Hearing

There was no one speaking for or against this request.

The Public Hearing was closed

Councilor Wurzbarger moved, seconded by Councilor Trujillo, to grant the request for a Restaurant (Beer & Wine) Liquor license to be located at Wild Wild Wok, 3470 Zafarano Drive, Suite C.

The motion was approved on the following Roll Call Vote:

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

Against: None.

Absent: Councilor Bushee, Councilor Calvert and Councilor Chavez.

Councilor Trujillo said he has eaten at the Wild Wild Wok, and the food is very good.

- 5) CONSIDERATION OF BILL NO. 2008-25; ADOPTION OF ORDINANCE NO. 2008- ____ (COUNCILOR ORTIZ). AN ORDINANCE AMENDING SECTION 12-6-12.18 OF THE CITY OF SANTA FE UNIFORM TRAFFIC CODE 2007 TO REPEAL SUBSECTION (6) REGARDING THE PROHIBITION OF HAND-HELD CELLULAR PHONE USAGE WHILE A VEHICLE IS IN MOTION. (CHIEF ERIC JOHNSON)**

Deputy Chief Wheeler said he doesn't have a lot of input. He said the Police Department has had discussions, and he has done some research. There are a number of different studies, noting Santa Fe was the trend setter in prohibiting using a hand held cellular phone while operating a motor vehicle. He said as a result, many cities in the nation as well as other countries have followed suit. She said the research between 2004 and 2006 was clear that it was felt that cell phone usage was the main contributor to accidents. He noted there are also other factors that impact driving. He said this is a hard law to enforce, because people see police in their marked unit and put the phone down. He said the Department is working on creative ideas about how to enforce the law, noting 242 citations were issued in June for cell phone violation, and from January through July 2008, the Department has issued an average of 145 citations per month.

Responding to Councilor Wurzbarger, Deputy Chief Wheeler said the citation is \$100.

Councilor Wurzbarger said then that is \$14,500 per month.

Public Hearing

Joseph Scordia said he rides a motorcycles, and many people using cell phones aren't paying attention to what they're doing. He has almost been hit too many times to talk about. He realize the police have enough to do, but he believes at least 80% of the public is driving and using a cell phone. He said he wants to voice his opposition to the repeal of this law, because if you do, as bad as it is, it will get worse.

Arthur Firstenberg said, "In the Journal of Experimental Psychology 2003, [inaudible] and Johnson reported that in simulated driving experiments, drivers were more impaired when they were talking on a cell phone than when they were legally drunk. Hands free phones were safer than hand held phones, but both were worse than being drunk. In The New England Journal of Medicine, I think that was 1997, Radelmeier and Tibsurani reported from actual police records, that cell phone users were four times as likely to have traffic accidents and that this risk was comparable to driving with the blood alcohol level at the legal limit. Now, most people assume that this is just because cell phones are just a distraction, and that's not the case. Reported in the International Journal of Neuroscience Cromarenko and Tann, 2003, examined brain waves of healthy volunteers during cell phone calls. 15-20 seconds into a cell phone call, slow waves appear in the brain at a frequency of 2.5 to 6 hertz in adults, and 1 to 1.5 in children. These are delta waves, and delta waves do not appear... normally only appear during sleep. The only time delta waves appear in awake human beings is when they're drunk. And that's what cell phones do to you. It's an effect of microwave radiation and not just a distraction. 45 countries in the world prohibit cell phone use while driving, including almost every country in Europe, some punish it like drunk driving." He spoke about those penalties ranging from points on the license and 6 months in jail.

Mr. Firstenberg said, "Repealing the ban would be a step in the wrong direction. The right direction would be to enforce the ban as rigorously as you enforce the ban on drunk driving as they're starting to do in the rest of the world. And to extend it also to ban hands free devices as is done in New Delhi, India and as is done for drivers under 18 years old in California and Connecticut. Thank you."

James Weaver said there is a faction that "flies below the radar," whose windows are so black you can't tell if they're on the phone and having a cocktail at the same time." He thinks this needs to be addressed. He talked to an officer about it who told him it is enforced. However, if it was enforced, he believes the tinting would come off the cars. He said not being able to see in the next car while driving is very distracting to him, because you don't know what people are doing. He believes the playing field needs to be level.

Stefanie Beninato is against repealing the cell phone ordinance, and believes it makes streets so much safer to drive on. She is interested in Arthur Firstenberg's information, because she doesn't think using a cell phone at all while driving is good idea. She now understands why people appear to be distracted and really "out of it." She has almost been hit while riding her bicycle several times by people using cell phones while driving. She said they don't pay attention. She would like the law to be more frequently enforced. This could be an alternative to the red light camera as Councilor Bushee and Wurzbarger commented.

The Public Hearing was closed

Councilor Ortiz thanked everyone who contacted him for and against the repeal. He did read the neuroscience article and he was interested in what it said, but he didn't understand it. He asked someone in the profession to explain it in detail, and it is that our brain can only do one thing at a time. We are either focusing on driving or on something else. He said we can get very adept at switching back and forth between things, but neuro-psychologically, we can do only one thing at a time. It doesn't matter whether we're talking hands free or if we're holding a cell phone, our concentration is focused only on one thing. He said that also applies whether you are eating a breakfast burrito while driving, or applying makeup, or fumbling for a CD.

Councilor Ortiz asked if we want to be a government that outlaws every particular thing, and if we, for example, are going to outlaw eating breakfast burritos while driving, or ban applying makeup. Or do we want to say, as before, that driver inattention is just that – not paying attention while driving, and give that discretion and authority to the Police Department to enforce. He is pleased the Police Department has figures, 145 citations a month in a town of 65,000 people.

Councilor Ortiz said when we took this step in 2001, we said the reasons we were doing it were for some of the reasons people have stated in speaking against the appeal – we need to be safe and it's not safe when you're driving while holding a cell phone. He asked if this ordinance really is enforceable. He said we really can't enforce it fully, even if we gave the Department five times the numbers of officers requested by the Police Chief. He said this problem isn't going away.

Councilor Ortiz asked if we are going to pick on every little thing that can do some amount of harm and make it its own separate ordinance and violation which we did in 2001 with this ordinance. He believes people should be focused on the road. If Councilors supporting keeping the cell ban are serious, then we need to look at outlawing hands free devices. He said we are building a false expectation when we tell them it's not okay to have a cell phone in their hand while driving, but it's okay to be talking and not paying attention to the road because you've got a "Blue Tooth," in your ear.

Councilor Ortiz doesn't see that this law is the right solution, and heard from many people, including police officers, that this is a law on the books that would be virtually impossible to enforce. He said we could try to enforce it, but it could easily overwhelm us. He said we did a review of the ordinances, and we've learned once something is on the books, it is hard to take it off. He said the discussions during the past three months have been more educational than the discussions we had when it was adopted. He reiterated that neuro-psychologically, it makes no difference whether it is a hand held device or a hands free device, because people can't focus on two things at one time. And, talking on a cell phone is no different than eating while driving, and asked if we are going to outlaw that.

Councilor Ortiz believes the sensible solution is to go back to what really is unsafe which is driver inattention, and call everything driver inattention and give the Police Department the authority to decide what is and what is not driver inattention, including cell phones.

Councilor Ortiz moved, seconded by Councilor Wurzburger, to adopt the proposed ordinance.

Discussion: Councilor Chavez said he introduced this ordinance in 2001, and we knew then it was the conversation more than the device and that has always been common knowledge. He said we decided to move forward because we were sending a message that we wanted safe streets and we wanted to include this.

Councilor Chavez said enforcement is hard in most cases, and asked if we should repeal every ordinance on the books that is hard to enforce, or because the public decides to ignore it. He said we need to do the best we can and comply with the law and not make the Police Officers' jobs any harder.

Councilor Chavez gave a history of the adoption of the ordinance.

Councilor Chavez believes there is a difference between talking on a cell phone and eating or applying makeup, because people don't eat or put on makeup all day behind the wheel, but people do talk on cell phones all day long. He said if it is part of a "catch all" it loses its effectiveness. He supports leaving it on the books, as hard as it is to enforce. He said we were one of the first cities in the Nation to ban operating hand held cell phones while driving.

Councilor Calvert said, in terms of the enforceability, the statistics speak for themselves, and will deter the behavior of those who have paid a fine. He believes it is enforceable, saying we can't catch everyone who violates speeding law, but we aren't going to repeal that. He believes we can work on making it more enforceable. He understands Councilor Ortiz's point about listing everything which might fall under driver inattention. However, once it has been specifically banned, if it is repealed, people will consider it rescinding the cell phone ban and this is the wrong message. He believes it should be left as is, and enforced.

Councilor Bushee said she was the only vote in opposition of the ban in 2001. She had a hands-free system at the time and knew it was no safer. She said when we adopted the ordinance there was no plan for educating the public and visitors, and there is still no plan. She said during the March 2008 election, she was in front of Gonzales from 7:00 a.m. until late in the evening, and more than 80% of the people driving through the school zone were talking on cell phones. She personally believes it is time for us to revisit the ordinance and consider deleting the exemption for hands-free systems. She said in 2001 it was an emotional-political decision, without any evidence. She there was law on the books when we passed this – driver inattention and driving to endanger. However, we still have no enforcement mechanism, and the inequitable enforcement is the "hardest thing to swallow," still. She said the handful of people who pay the fine may or may not pay a fine. She said the great majority of the people are disregarding the law.

Councilor Bushee said what we haven't discussed is the shortage of police officers, and even if we add 15 more officers, would this be the enforcement priority.

Councilor Trujillo thanked Councilor Ortiz for bring this for repeal, because it has

brought this to the attention of the public, noting we haven't enforced this law. He said it was discussed at Public Safety, and we will be doing some blitzes, and the Police are trying to get control of the situation. He said recently he has seen people driving and texting, and asked how "are you keeping track of what's in front of you and on the side of you. To me, that is extremely dangerous and that scares me."

Councilor Trujillo believes we need to keep this law on the books. He said the Chief wants to bring back the traffic units and enforce these laws, and put the additional officers where these violations are happening. He said we need to lead by example, saying he sees many City workers, especially those driving sweepers and semi trucks, talking on cell phones. He is concerned about this, and he would like Mr. Buller to send something to all departments that employees must wear seat belts and will not operate vehicles while talking on a hand held phone. He believes we will get a hand on this.

Councilor Wurzbarger said the question is whether we are more safe, and she would argue we are more safe because some people have been cited and won't do it again. She said the true virtue of this law is its potential deterrent effect. She would like to increase the fine to \$500 which she believes would be a deterrent, and believes we should expand the law.

Councilor Dominguez said this is a well intended law. He asked if someone is texting while driving, how would they be cited. Would it be driver inattention, or what.

Deputy Chief Wheeler said if someone is texting, they can be cited under "driver inattention," but that is usually a causative factor in an accident. He said the more appropriate citation would be prohibited activities while driving.

Councilor Dominguez asked if this ordinance wasn't in effect, and if someone was talking on their cell phone and weaving, could they be cited for driver inattention.

Deputy Chief Wheeler said yes or prohibited activities while driving. He said any activity which distracts the driver, such as animals sitting on the lap, is a prohibited activity.

Councilor Romero said she was cited in Albuquerque for red light violation, and it changed her behavior. She said sometimes people need this sort of "club" to change behavior. She said she sees people really endangering others lives in a significant way while talking on a cell phone. She supports keeping the ordinance as written, and would advocate for increasing the fine.

Councilor Ortiz thanked the community for this dialogue, saying we really don't have the opportunity to have this kind of philosophical discussion for criminal justice statutes. He sees the difference between laws created for motorcycle helmets or seat belts – laws which protect people against them selves, versus laws which protect the general public from unsafe driving practices. He said the reason for repealing this is to give importance to all kinds of inattention and not just cell phone use – equal attention and weight to all kinds of inattention.

Councilor Bushee asked if there is a way we can do a study or analysis on the safety of hands free systems, which to her is "splitting hairs."

Deputy Chief Wheeler said a lot of the research, which is available in the internet, is showing that it is just as difficult to pay attention with hands free devices. He said insurance companies have done studies which agree as well.

Councilor Bushee asked if it would be harder to enforce if someone were pulled over because they were just talking and you couldn't see the phone. Is this a harder enforcement issue.

Deputy Chief Wheeler said, "Definitely. If you're talking about the size of the hands free devices, the latest technology is that they're getting so minute that they are just barely picking up sound pieces of the inner ear and bone. So, it would be very difficult for us to try to enforce something to that degree.

The motion failed to pass on the following Roll Call vote.

For: Councilor Dominguez, Councilor Ortiz and Councilor Bushee.

Against: Councilor Calvert, Councilor Chavez, Councilor Romero, Councilor Trujillo and Councilor Wurzbarger.

Councilor Wurzbarger asked Mr. Katz to begin drafting an ordinance as discussed to increase the fines, particularly in the school zones.

- 6) **CASE #A 2008-03. 610 GALISTEO STREET BUILDING PERMITS APPEAL. STEPHANIE BENINATO APPEALS TO THE GOVERNING BODY OF THE CITY OF SANTA FE, THE BOARD OF ADJUSTMENT DECISION DENYING HER APPEAL OF THE ISSUANCE OF BUILDING PERMIT NOS. 07-203, 07-204 AND 07-205, FOR THE REMODELING AND REPAIR OF TWO EXISTING DWELLING UNITS AND THE DEMOLITION OF AN EXISTING GARAGE AT 610 GALISTEO STREET. (DAN ESQUIBEL). (Postponed at June 25, 2008 City Council meeting)**

A packet of information containing materials which were submitted by the City Attorneys Office, the Appellant and the Appellee, is incorporated herewith to these minutes as Exhibit "4."

Councilor Matthew Ortiz requested that this entire proceeding be transcribed verbatim

VERBATIM TRANSCRIPT OF AGENDA ITEM G(6) CASE #A 2008-03

MAYOR COSS: I want to say that the Appellant and the Appellees have both been provided by the City Attorney's Office the rules for the hearing tonight. We'll give the City, Jack, an introduction, five minutes, Appellant's opening statement, five minutes, Appellee's opening statement, five minutes, Appellant's presentation of her case up to thirty minutes, Appellees presentation of their case up to thirty minutes. Then, rebuttal

by the Appellant and the Appellees, and then closing statements of five minutes each.

COUNCILOR
ORTIZ:

Mayor, as a point of order, the Appellant raised a potential conflict of interest and don't we need to have Councilor Chavez make a decision on that before we proceed any further. I don't know where he is, he's probably out there enjoying his pyrrhic victor.

COUNCILOR
BUSHEE:

Mayor, in the meantime, I..

MAYOR:

Councilor Bushee.

BUSHEE:

I just want to disclose that the Appellant before she... the day before she had filed her appeal, attempted to contact me at work, and I let her know that I could not speak with her. That's a policy that I adhere to if I know someone's going to appeal, and the Appellees did not attempt to contact me.

MAYOR:

Thank you. I think Mr. Hiatt went to get Councilor Chavez.

FRANK KATZ:

It might be wise to have that statement on the record for the hearing about the challenge issue.

ORTIZ:

Oh, if the Appellant would repeat her statement for the record.

MAYOR:

Right. Yes. Let's wait for Councilor Chavez to get in here first, so he hears the objection.

JACK HIATT:

Mayor, I just ran into Councilor Chavez and he was headed in the other direction, and said he'll disclose but not recuse. And if you want him here, I'll act as the sergeant-at-arms and go get him.

MAYOR:

Yeah, please get him for this part so we can proceed. Thank you. Ms. Beninato, if you want to come make your objections again so Councilor Chavez can hear it and we can move on with this piece.

STEFANIE
BENINATO:

Yes, I'm asking that Councilor Chavez recuse himself because the day before I filed the appeal, I happened to run into him, we were both biking. And, we were talking about the case in a general way. And, Councilor Chavez told me that he had already made up his mind that if they thought it was better, that was the standard he was going to use, and that he really blamed previous owners for not maintaining the building, and that was really the case of the problem, and that if the wall fell over, who

cares, you could just wait until the wall fell over, and as for parking, well the parking was a problem everywhere. And again, it just didn't feel like he was actually going to look at what was given in the appeal or the law, and I really feel that having to go up against Karl Sommer, who virtually lives here, that it is difficult enough that he has a lot of influence and so, I would like to feel that I'm getting as a fair a hearing as I could imagine getting. Thank you very much.

MAYOR: Thank you Stefanie.

COUNCILOR
CHAVEZ: So, can I respond, Mayor.

MAYOR: Yes. Councilor Chavez, yes, please.

CHAVEZ: I don't remember what day it was, but it was on a weekend, Saturday or Sunday and I was on a leisurely bicycle ride. I rode to the Plaza. This person here approached me, wanted to talk to me. I said fine, if you want to talk to me, let's keep riding. We did not talk in a general way, because there were a lot of specifics that this individual was throwing at me about this project. I didn't want to get into those specifics, because I didn't think that was the time or the place, really.

As far as me making up my mind, I don't know what you remember me saying. I don't remember everything I said to you either, I will admit, okay. But, as far as me making up my mind, that is furthest from what I remember of the conversation. But what I did tell you, regarding the property, is that I thought it was better, in better condition than it was previously, because it had been neglected up until then. So, as far as me making up my mind: No.

So, I will disclose that I had a casual conversation, okay, but did not commit to anything, and certainly did not tell her that I made my mind up. So, casual conversation. I did not want to get into the specifics, and it was not the right place or the right time for you and I to be having that conversation. Thank you Mayor.

MAYOR: Thank you Councilor. Okay, so the request has been made, and the Councilor has declined and we move on to Mr. Hiatt.

JACK HIATT: Thank you Mayor and Council. I won't repeat the title and the number and the issues. I'll go into it in just a moment. The Board of Adjustment met on January 15th of this year and made a decision to deny the appeal of the issuance of the permits in question. There are two issues on appeal. Whether the permits were properly issued, and after issuance were the permits properly enforced.

The Appellant asserts that the Appellees have violated City and State laws and conditions of the permits. Also, she asserts that the City staff has waived code requirements, negligently failed to enforce the code, and falsified or failed to keep adequate records. Additionally, the Appellant alleges that the City is engaged in discriminatory enforcement, violated State and federal rights to due process and equal protection and has discriminated against her based on race and gender.

This is a quasi judicial matter. The Governing Body must review the decision of the Board of Adjustment to determine if their decision was arbitrary and capricious or otherwise contrary to law. The Governing Body must adopt findings of fact and conclusions of law to support its decision and order tonight.

The record on appeal is found in the documents before the Governing Body and it contains the appeal, the Board of Adjustment findings, the minutes of relevant meetings, the Appellant's photographs and other relevant documents.

The matters not subject to appeal, generally are those decisions that are related to the Historic Design Review Board which were contained in a Settlement Agreement previously entered into by the City and the Appellant.

The Appellant's claims and the City's responses are contained in your documentation pages A-4 through A-9, basically that the Appellees don't own the property, they don't qualify as owners-builders, they haven't obtained archaeology clearance permits, they didn't conduct an ENN and an issue involving lot consolidation. All those are addressed in the memorandum that's in your documents from the City Attorney to myself, Ms. Brennan.

Therefore, I call you attention to the findings of fact on B-23 in your documents, and I now ask that the Mayor and the Council hear the Appellant.

MAYOR: Thank you Mr. Hiatt.

ORTIZ: Mayor.

MAYOR: Councilor Ortiz.

ORTIZ: Mayor, as a point of order, despite what staff said, I know it's been past practice that we hear these appeals *de novo* and we don't hear on an arbitrary and capricious standard, we hear them *de novo*, given all of the information presented today. And so that's how I'm going to hear this hearing, despite what staff's reported that we are only hearing and basing

our decision on an arbitrary and capricious standard on whether or not the Board of Adjustment acted arbitrarily or capriciously. We're hearing this case *de novo* with all the information in front of us. I just want the record to be clear.

MAYOR: Okay, then we turn to the Appellant's Opening Statement. Five minutes.

TINA
DOMINGUEZ: State your name for the record.

BENINATO: Stefanie Beninato.

TINA
DOMINGUEZ: Raise your right hand. Under the penalty of perjury do you swear the testimony you are about to give is the truth, the whole truth and nothing but the truth.

BENINATO: Yes I do. I'd like to first raise some issues. I would like to keep for possible appeal to District Court, failure to recuse of Councilor Chavez. The impression I had was that he had actually was going to use the better standard and that was it... from our conversation.

I am also appealing, and I appreciate Councilor Ortiz's clarification. This should be *de novo*, and it should not be limited to the issues that the City Attorney decided that we should be talking about. I am also challenging the amount of time. I believe I can give you some summary, but I also gave you a fairly large packet as I believe the other side did, and a lot depends on how well you have reviewed that packet, because with half hour, it's really a summary.

I also am appealing, and I didn't hear you Mayor, talk about being able to ask questions of the witnesses and City staff. And, we were told to prepare such questions, but that the City Council was going to ask them, which I don't think is really cross examination, especially when we were supposed to have handed them in early. It seems much more like interrogatory ... mixture of interrogatory depositions. Doesn't allow me to follow up when answers are given, or they veer off, I can't make any adjustments if I have a list of questions that somebody else is reading.

So, saying that, I would now like to do an opening statement.

I have lived in the City of Santa Fe going into thirty-four years. I am a public historian. I have worked in that field for twenty-eight years. And, I am on the City's approved list of... list of approved historians to work with archaeologists to look at the architecture and title of historic properties. I chose to live in South Capitol and have lived in South Capitol for a majority of the time that I've lived in Santa Fe. I chose to live at 604

Galisteo, in part, because it was historic, and in part because it was a cluster of ten contributing buildings, which makes each of those buildings more valuable. In the past year, I have seen two of the ten buildings being destroyed. I have put in you packets, some diagrams showing the amount of destruction, unfortunately I could not afford to do color, so I will now show you when I have my presentation those color diagrams so you can more clearly understand the amount of destruction that occurred.

I will, I believe be able to show you tonight that in fact that the process, the permitting process was violated repeatedly by the owner of 610 Galisteo, that there was fraud committed in the plans. There is many discrepancies, misrepresentations. I believe that I will be able to show you that the City also violated its own processes. I will be able to show you that there is violation of law, particularly concerning demolition, alteration and additions, taking that power away from the H-Board, violation of other H-Board or H-District requirements, the loss of non-conforming status due to destruction of buildings, a violation of my solar, coming too close to my property line, which was again, not just a five foot setback because of zoning, but also an exception granted by the H-Board with my agreement as to that distance. And, also usurpation of my property to act as open space in that area near my back house.

I feel very strongly about this, although I have been castigated as a basically B word in the opening statement that I saw of Karl Sommer. I have not been in front of you on an appeal, ever in the thirty-four years that I've been here. I try to avoid, other than making public comments, coming in on such a matter. It was the first time I was going to H-Board, I was threatened by the City Attorney the day of that hearing, telling me that even though my plans for my back house were approved, and it showed backfill, making my height fourteen eight after backfill, that they didn't care, they were going to prosecute me to the fullest extent of the law. That was the first time I was there. It was also the first time I went to the Board of Adjustment.

So, I am a novice at this, I have some leniency because of it, but when, as a historian, I heard and saw over one hundred sixty cubic yards of adobe being removed, when only it was supposed to go down to the vigas, and when the demolition plan only calls for eight feet, that is what motivated me to go forward, despite the time and expense involved in coming to City Council. Thank you.

MAYOR: Okay. Thank you. Okay, Appellee opening statement.

TINA
DOMINGUEZ: Is there going to be more than one of the Appellees speaking.

JOSEPH
KARNES:

Yes.

TINA
DOMINGUEZ:

Can I swear them in at the same time.

KARNES:

Sure.

TINA
DOMINGUEZ:

When you speak you can say your name, but if you could all raise your right hand. Under the penalty of perjury do you swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth.

GROUP SWORN:

I do. *[Joseph Karnes, Karl Sommer, Owen and Marty Nelson and Ryan Allen were sworn]*

KARNES:

Joseph Karnes with Karl Sommer & Associates, appearing on behalf of the applicants. My apologies for trying to set up early. As with Councilor Ortiz, I'm not an engineer. I'm also not a computer technician, and so I was trying to get a little head start, but I hope I can get this going in just a moment. I have done this successfully before. Okay.

MAYOR:

There you go.

KARNES:

There we go. Thank you. Okay. I'm going to spend just a few minutes introducing our group here tonight, then giving a very brief description of the project, and then laying out a roadmap for our presentation initially here tonight.

MAYOR:

All in five minutes.

KARNES:

Yes, absolutely. Here tonight with us are Owen and Marty Nelson who purchased the property at 610 Galisteo in 2006 and put it in the ownership of the LLC in which they are the two managing members, MoDo Group, LLC. Recently, within your packet, there is documentation of an award that Mr. Nelson was recognized with by the City, with a Historic Preservation Award for the design of a historical rehab on Canyon Road. He has been at this purchasing dilapidated properties and rehabilitating them in this City for quite some time. With me are Karl Sommer and also Ryan Allen, the on site project manager.

This case is really very simple. It is about a property that was purchased in 2006, in a dilapidated condition. These photos are in your packet. For the ease of reference, we're handing them out to you so you can see what the property looked like when the Nelsons purchased it. And, let me just show a brief video. I took the exterior of the rehabilitation. It's

substantially complete. There's obviously some detail work and interior work still going on. But let me just show you what it looks like today. This is looking from the southeast corner of the property, the facade facing Galisteo Street. There will be discussion about the windows on the south facade of the structure, that's the main casita.

The second video shows, this is from more the northeast across Galisteo Street. I'm crossing Galisteo looking at the main facade of the main casita. In back and to the right is what we call the casita. It's a separate structure that was rehabilitated and added onto in the back, and you can see the entrance going back into the parking area, which is in the back part of the property.

And finally, the last video is taken from the west side, looking at the addition to the small casita. The parking area is really in front of you and that is the back of the main casita in the addition that was carried on, on the main casita. Right below you is a drainage area that's really in the center of the property. There will be discussion about that as well, as we go through the presentation.

So, I just wanted to give you a sense, if you hadn't had a chance to see it, of what the property looks like today. Again, the exterior is substantially complete, but not entirely so.

I want to emphasize there was discussion about the *de novo* aspect of the hearing. I would emphasize and think that the staff report supports the limitation of the consideration of this appeal to the building permit, to the issuance of the building permit and to the compliance with the building permit. The H-Board decision that was rendered quite some time before that, I do not believe is at issue before you tonight, despite any other aspects of *de novo* consideration of the Board of Adjustment's decision.

Where we'll go, once we have the main part of the presentation, Owen and Ryan were the main individuals responsible for carrying out the on site rehabilitation. They'll talk about some of the aspects and respond to some of the charges that have been raised. Karl and I will address some of the spurious we believe claims, and basically, we concur with City staff's analysis and the Board of Adjustment's determination that the issuance of the permit was proper, the building permit, and that the permit was fully complied with throughout the rehabilitation process.

And, in summary, we request that the Board of Adjustment decision be upheld, and we'll stand by after our presentation to answer any questions you might have.

MAYOR: Okay, Ms. Beninato for your presentation of your case. And, again, we're

going to allow up to thirty minutes, but that will include your rebuttal which would be your chance to also ask questions. The rebuttal time includes the thirty minutes, five minutes for closing statement.

BENINATO: It's going to take me a few minutes to set up if you all want to take a break or the bathroom or whatever, I need to connect the computers and open up.

MAYOR: Let's take a five minute break before we start Ms. Beninato's time.

***There was a break from 8:51 p.m. to 9:05 p.m.,
while Ms. Beninato set up for her presentation.***

MAYOR: Okay. Ms. Beninato, we're back and ready.

ORTIZ: Mayor.

MAYOR: Councilor Ortiz.

ORTIZ: Your honor, as a point of order, without objection from the parties, I would ask that this entire proceeding be transcribed verbatim.

BENINATO: I may have a little bit of a problem here because I have to, whoa, tell Joe that I'm switching back and forth... [inaudible on cassette tape and CD because Ms. Beninato inadvertently turned the microphone off] That was loud. Can you hear me now?

MELESSIA
HELBERG: You turned it off.

BENINATO: I'm going to quickly go through this again. I'm going to make references to what's in your packet, because ½ hour is just really a summarization as far as I'm concerned. I could probably sit up here for four hours and point out what's wrong, because there is so much wrong with this project. First of all, in terms of the Board.... and let me just be clear that when I speak about historic, what I am really going to focus on is the violation of the conditions that the H-Board imposed on this project that have been violated, and that have been ignored by the City of Santa Fe staff as well. I am also going to be looking at the H-District ordinances that have been over-run and over-riden by City staff approval, rather than by H-Board approval.

And, so, in terms of the process, what we see is the owner.... and let me just be really clear. Marty and Owen Nelson... first Marty was not on the witness list, so I'm a little surprised to see her being... going to testify. But, Marty and Owen Nelson never owned this property. MoDo Group,

LLC acquired it from Davos, LLC. There were no individual owners in between. And that owner, supposedly, went forward at their own risk after the BOA appeal was filed. It says quite clearly that it shall stop all proceedings. I know that Ms. Brennan would like to argue that means legal proceedings. But there's another section on City Council appeals that says legal proceedings, and again, the New Mexico Supreme Court is very clear, they like plain text. If it says proceedings and the other says legal proceedings, and there is a difference. And so, again I believed... and according to Mr. Karnes, it's the City who shouldn't have gone forward, which tells me the City shouldn't have done the inspections when they were called for.

They didn't have a lot of record when they submitted the permit application. That lot consolidation did not occur until ... it was not totally signed off on until three days after the permit was issued. The policy says that you have to have all necessary submittals, and that's also the law. Necessary submittals include a plat of record.

The lot consolidation is extremely problematic because the deeds do not translate as the surveyor has drawn them. And, in particular there is a deed from Chavez... and it's in your file, and again I'm just going to have to ask you that you go to your packet. It is marked there. It says lot consolidation. If you give me a minute, I can perhaps tell you the exact page. Well, instead of like taking a lot of time, because again I've asked you to look at this. The lot consolidation plat shows that the deed that Mr. Armijo relied on, it doesn't just cut off... it was 173 feet... it actually becomes... he says it becomes 163 feet, but in fact on that deed, you'll see a little drawing at the bottom and it translates and says that these... the dimensions are twenty...twenty seven on the bottom...uh twenty seven on the east, twenty seven on the west, one hundred seventy three on the north, and in the middle of the south line, it draws out a little keyhole and it says as drawn and made part of this record. It doesn't just dot, dot, dot out ten feet on the west side.

He then has another deed in which it only shows widths and he seems to just take out of the air the length, making it two lots, and then there's a third deed in which he says that that little keyhole that was taken out, even though he shows it as nine-by-nine-by-one-hundred and twenty-one, he now says "a" "d" that says its fourteen-by-seventeen-by eighty-six flows in that keyhole. So you have a lot of problems, just in that with the lot consolidation. The actual dimension of those two lots that he shows from the deeds do not amount to fifty-five feet of width. As you see on the diagrams that I've provided, he just draws some dot, dot, dots, put a question mark, says its fifty-five feet in width.

So the lot consolidation.... and it was intended to go to a Summary Committee meeting and then, according to Dan Esquibel's testimony at

the BOA, he helped him avoid that meeting. I believe it should have gone to the Planning Commission because, again, the lot consolidation itself is extremely problematic.

There was no water budget attached. And by the way you have some... you have a record of these plans given to you by the City, but when I saw those plans they were loose, they were not dated, they were not inscribed with the City of Santa Fe, incised with that. They were just a mess. And, when they were amended in September, there were duplicates of pages and a page missing, which tells me that whoever reviewed it didn't do a very careful job. So, water budget, the initial project had a five hundred ten square foot addition, it needed a water budget. There is no water budget. The law says that if you have more than twenty five hundred square feet of gross lot coverage, you need an archaeological clearance permit. There isn't one. David Rasch tells me there's some unwritten practice that it's thirty five hundred square feet. But, again, as you have in the packet, unwritten practices are unconstitutional, not only because they lead to arbitrary and capricious standards, but because it is a giving away of your legislative authority and you can't do that.

And, archaeology was required, and the application actually for the zoning permit says it's going to be thirty five hundred square feet of disturbed earth and adding onto and that is what the supposed trigger for the unwritten practice was, but they still didn't have to have an archaeological clearance permit.

There are no condo docs attached to this. So, it's supposed to be a condo development, but there are no condo docs attached. There is no approval attached from the water department showing that these condos are going to have three separate water meters which also is a requirement. This permit was actually issued conditional on having adequate parking, which is amazing, given how congested it is down there, and it was issued conditional on having a lot of record, which again I find amazing, because these are required materials that shouldn't even have been reviewed, let alone having a permit issued.

They never amended properly. All this time, in July and August, you have a petition from twenty-eight people. All that time we were told they were working to the permit, but in fact they did not amend the permit until September. So, they had the permit in, they had the application in, they made changes, mechanical changes, things like that, permit's issued in June, they have already destroyed walls at that point. You have the affidavit from Mr. Armijo who tells you he saw them, he witnessed them ripping the roof off around March/April on the south of the casita. Rain began, both on the thirteenth of May and on the twentieth of May, walls collapsed. They do have a, what was supposed to be a shoring up and repair permit, but is actually, really, it's called a demolition permit, and

Joe, I am going to have to switch over. I hope you can help me do that. Uh, it's not happening. Yeah, document please. Okay. Oh we lost it. Okay.

This is a shoring up and repair permit that was issued by the City in November eleventh. You will see here in...I am going to have to go away from the mike a little bit to talk about this... But what you're going to see here where it says Unit A and Unit B, this actually is main house unit A is how it's referred to now. This is where the wall falls in, right in this area. You have Mr. Armijo's drawing as part of your packet. It falls in on two different occasions. You have a letter in there from August sixth..excuse me, July sixth, from Mr. Nelson who says they extensively shored up the south wall here, because they knew it was in danger of falling. But in fact, there they had an engineer, Hands Engineer, come out in August and he did not find any structurally unsound walls, according to the engineer's specs that he provided. What he said is here's how you restore the walls and let me show you. Excuse me. So, this is... what they were supposed to do is not knock down walls because they were eroded, which is what they supposedly got permission from the staff to do, but repair the walls. And they were supposed to repair them by taking away the eroded adobe, then putting more adobe in there, four courses at a time only and allowing it to rest for forty-eight hours. That never happened.

There's also an amazing amount of engineer reports and architect's reports that their engineer specs called for, when they got the subgrade, when this restoration occurred, when the forms for the bond beams were poured, etcetera, etcetera. It's in your packet, and they never, ever had any of these inspections. I have asked the City, under Freedom of Information, where these reports are. They have none. The law requires that the City building inspector have all reports, all inspections, all pieces of paper that relate to this project. The building inspector didn't even have the lot consolidation in that file. It took Ms. Brennan over six weeks to find who had it and then to get me a copy of it.

And, again in January, they amend to change around what the back casita addition looked like. They'd just send in a fax and say, here's what we're doing. They don't fill out an amendment application, they don't pay the \$47, they don't wait. And when they put in the amendment in September, it took two weeks to get approved. They never stopped for a moment the work, even though again, the law requires that your plans conform to what you're doing on the ground. And, for four months they did not conform, because the demolition on the walls was extensive. And I'd like to show you some of that. Oh, and I'd like to point out a couple of things on this plan first. Here, they say they're going to shore up this wall that's falling in. You have in your packet under before... before construction begins... you have two newspaper photos. One shows the

wall right there by this particular window collapsing in. This is when I called the City and the newspaper in 05 about this house being destroyed. Down at the other end here, this is misdrawn. This window here is much closer, and you'll see about a foot of wall being removed on those photos that you have in your CD, that I've provided you, and again are in the folder marked before construction.

So, he is saying he is shoring all this up. He says there's a big crack over here, but even the pictures that you were shown the other... by Mr. Karnes and the photos that you have, both from Mr. Armijo before construction, show no shoring up of this at all. And other photos that I have provided you, show no shoring up. What this really is, is a demolition permit. Four out of the six items that are listed up here are in fact demolition. Demolition has to be approved by the H-Board. The City staff does not get to override the H-Board on demolitions, alterations or additions. They don't have that power.

When they finally come in to amend in September, four months, three months after this started happening... and let me just show you something here. Joe I need to switch back over. This is a photo taken by a neighbor from their porch, but I find really interesting, is if you look right in here, this is where that window was because it's by the apricot tree. If you look at that newspaper photo, this is where the wall was collapsing in. This is taken on June twenty-fourth. This entire wall is gone. You can see the foundation has been dug up. It looks like part of this wall is also missing. Meanwhile, I called Gary Moquino on June twenty-first and said they were removing too much of the northwest wall which you cannot see. The demolition plan that you have in your packet shows only eight feet of the north wall, starting in that northwest corner being removed.

When they came back in, in September, what they said is that they had removed... oh they just repaired a little hole over here. But, in fact, what they did is take down this entire wall. So this whole long north wall was destroyed sometime between May and September of 07. The clouding that you see, that's what they said they destroyed, but they didn't. They destroyed a lot more. And again, we have Mr...and on this side too, they're telling you there's destruction here, but in fact, and again you have photos, it is this whole entire wall. They say they're doing to repair this hole in the wall. There was no hole in the wall. Again Mr. Armijo's photos show no hole in the wall. They created this hole. They created trenches down here that took in water. You have photos showing that. They created a trench on the north side taking in water. They intentionally damaged this house, and again in the statement made by Mr. Nelson to the historic and to the legal, he says, gee, we've already destroyed thirty percent of the primary facade, we intend to destroy another twenty percent, but is there some way we can avoid going back

to historic. That is in your folder. And again, it is the Historic Board that has to approve demolition.

And I'd like to again, show you some more photos, so I'm going to have to switch back over Joe.

Again, here's this ditch that they dug and left open. It was for a water line, but it was down below the foundation, every time it rained it took water and this wall began to crack. Here is sixteen feet of wall that was taken away, this is what got me to call Gary Moquino when I saw them doing this sixteen feet. Again, the demolition plan's never been amended. The demolition plan only shows that eight feet of this wall was to be taken down. Nothing else. No exterior wall was to be removed. But what you see here again on this house is not only extensive demolition of the north wing facade, there is extensive demolition on the primary facade. This window has been moved up. It was administratively moved up. This is a primary facade window. Only H-Board can grant and exception to do that. They have changed the windows, and again the application is clear. They did not have casement windows. The far window on this primary facade is now a casement window. The windows on the north side of the casita are casement windows. They said they were double hung, they were going to replace them with double hung, but then they just did what they wanted, which is what Mr. Nelson tells me he gets to do when he gets the permit.

I want to go back and try to be a little more, excuse me, a little bit more systematic. In terms of violation of the code, they processed the application without the necessary submittals. There was inadequate... the condition of the adequate parking. They kept inspecting without sending a certificate to the Board of Adjustment. Again, there is no such thing as going forward at your own risk. If there is an appeal in to the BOA, you have to have a certificate to them to go forward. They failed to red tag the work when the work on the ground didn't match the plans. Again for four months they went forward before they amended these things. They amended again in December. You see just a fax sent in. Recently they put on two concrete pads that were shown in the photos that you saw by Mr. Karnes. Those are not on the plans. They have not been red tagged. Their drainage pit is supposed to be gravel, it's big boulders. They've change the height of the yard well, again on the main house.

They have violated H-Board conditions. They violated it and that the H-Board told them that all skylights were to be low profile. Low profile actually means that it attached to the roof. You don't create a box and put it up off the roof. They have violated H-Board, in that they told them to make the casita a shed roof. It began as a shed roofed building. You have those photos. They were... twice, they talk about that, you know,

we want parapets, we want it to be a flat roof building. Well, can't we make it a shed roof, but keep the flat roof. They didn't do that. They said no. Make it a shed roof building. There was nothing on the H-Board conditions that said you can have parapets around the shed roof. And again, the law requires that whatever architectural style the roof is, it has to be maintained. The same for windows and doors.... windows and doors on primary facades. You cannot change shape, size or type of those windows. This was done on almost every primary facade by this applicant.

MAYOR: Thank you. You've got about five minutes left.

BENINATO: Okay, thank you for telling me that.

They violated my solar, again I have shown you pictures in which my solar is blocked before four o'clock. My agreement with Davos was nine to four. This is a zoning ordinance, because, again, it's about, you get this protection in this height zone and you have this protection measured by zoning... by the height of something at the lot line. My height is eight feet, not ten feet which is the default in the zone I'm in. That was properly filed. The Nelsons knew about it because they, in fact, mocked up what would have been an acceptable height. They drew a picture showing four o'clock. There was this discussion at H-Board about it being four o'clock. Again, it's proper for the H-Board to do that, because in the Don Gaspar neighborhood, solar is encouraged and protected.

They violated the permits again. The words and the drawings don't match. Sometimes the... you have contradictory drawings which, again, it's a demolition permit that you look at. This demolition permit has never been amended at all. I talked about the yard wall. You had administrative approval to move the addition and to change its dimensions and again, there was a lot of discussion by H-Board that this was an exception being granted because it didn't set back the full ten feet from that, and yet the staff, administratively approved that, and it also violates H-Board... or H-District ordinances in that the dimensions of that addition for the main house are more than fifty percent of the dimensions of the primary facade. Meaning... and they have three primary facades, so thirty-three, thirty-nine and ninety feet violates two. The thirty foot one violates... it's more than fifty percent of two.

They've lost their nonconforming status because they have moved the footprint of the main house and the casita. They have increased the encroachment by creating a foundation down the outside of the south side and also on my side, on the north side, on the casita. They have extended the, what were two bys into vigas without getting permission, by the way, another primary facade violation.

There is no inspection on the shoring up and repair permit. Why did they need one when Mike Purdy just finalized out the one for Davos five months before. And, by the way, in terms of the skylights and other things from H-Board, the Nelsons could have appealed, but they did not.

There has been no inspection of the insulation. There is no insulation on the interior walls. The City has not provided you with proof that there was. They provided you with proof that insulation occurred on the main house Unit A and on the exterior of certain walls. This plan here, which you should have in your packet, has never... and it shows the insulation being on the inside. There's no insulation there. I was able to look in the front windows in the middle of March when they left the lights on. There is no interior insulation. They were wired up for plastering. It says that this insulation's gonna be exterior. They have never amended it. They didn't put it on the interior... virtually...this doesn't even show interior insulation all the way down the south wall. It shows no insulation on the east wall. It shows no insulation on this east wall. It violates.

They have foundations that have never been inspected. You have the photos there. Those photos were taken three weeks before the first foundation inspection occurred. You have that in your file. The roof of the casita was on a month before the first... lap and insulation inspection occurred at the casita. And that is true also of the...the insulation was put on after... on the casita after the lap and insulation inspection first occurred. Mr. Purdy said it only had to do with the lapping being poor, but in fact, he should have red tagged it because he wasn't able to inspect the casita's roof insulation because the sub-roof, and I believe the finished roof was on at least... well the sub-roof was on a month before, and that again is in the photos that I have provided you.

I am sorry I am out of time. I appreciate your attention. I really do hope that you have had a chance to look at the packet. If you have not, and I'm sorry, I had all of these photos that I would have liked to have run through, and that is why, again, that I am saying that this is not enough time. You may be able to peg hole certain things into a half hour, but to require people to shorten up and not be able to actually fully show you, at least, summarize this evidence is extremely frustrating when you pay \$500 to come to Council and then you're told you have a half hour. I will be glad to answer any questions that you might have, and I will, again, make a proposal that I hope will allow you to examine the packet now that you have a better idea of what you should be looking for in there.

MAYOR: Councilor Ortiz has a question.

ORTIZ: I have a couple of clarifying questions, Mayor...

BENINATO: Thank you.

ORTIZ: then, I have a question of the Appellant. Ms. Beninato, in your presentation, you made an allegation that City staff did not properly keep inspection reports. Is that correct?

BENINATO: That's correct.

ORTIZ: Okay, so I guess I want to ask you, in light of the written appeal that you, the allegations that you put in writing on page B12 of our packet, page 8 of 17 of your Statement of Facts and Laws for Appeal to the City Council. That was prepared by you, right?

BENINATO: I believe so. I don't have it right in front of me so, I can't really tell you.

ORTIZ: Okay, well I will read from its.. Item E, City Fraud, Negligence, Failure to Enforce Laws as Written or Permit as Approved, Paragraph 1, you stated, "City staff has falsified permit files and HPD files, including but limited to, adding the perforated City of Santa Fe to all the permit drawings sometime after December 07, different dates on different drawings, falsified inspection reports, and addition of drawings and letters that were not there in August 07 that are there now and dated prior to February eighth." So, my question to you is, in light of your oral testimony and the written packet, is it your contention now that City staff failed to keep inspection reports or that City staff falsified inspection reports.

BENINATO: I think both, because again, what happened is on the south side of the main house, and even now, I realize also, on the north side of the main house, there were walls that were taken down, foundations were put in, and there were no inspections. So, when you say... when the City says they inspected the foundations, in fact, there are part of the foundations that they never inspected.

ORTIZ: So, it's your contention that there were no inspections done and that staff falsified inspection reports that inspections were done.

BENINATO: On certain parts of the foundation of the main house, if I could switch over, I could be more clear about where I'm talking about. Is it possible to switch back over. Yes. Thank you.

ORTIZ: I'm looking for your evidence of falsification of inspection reports.

BENINATO: Right. So, what happened is you have an inspection report on a foundation on the main house that said it was there on... but they did the inspection on August twenty-eighth. I have provided you with two photos that show that there was a foundation where this wall fell down or was pushed down or was negligently allowed to be destroyed. What you see is concrete block and some of that concrete block just sits on the ground.

There is no footing under it. So when the City said they actually had this footing inspection on the main house, they did not inspect that. That wall existed three weeks before the footing inspection occurred. The insulation in the casita roof, the subroof was on. You couldn't see that insulation a month before the lap and insulation inspection first occurred on the casita.

ORTIZ: And is there any other evidence that you have that the City falsified inspection reports, besides what you've just testified to.

BENINATO: I was unable to do... I was unable to get...yes, well I can also tell you that the City, Ms. Brennan, gave me information about this insulation inspection on both structures, and her notes, and they're in your file, say that the City H-Board does not like spray foam insulation, they have a blanket disapproval of it. I provided you with the minutes of the H-Board meeting that show that there was really no discussion of it, except that they didn't want spray foam on the south side of the main house, because of the historic nature of the windows in their setting. And she said that as a result they were not allowed to do spray foam insulation on the historic roofs or walls, and that they were interior. But, in fact, you also have photos showing that there was spray foam insulation put on the roof of the historic part of the main house. And, that parts of the structures actually did have, again, spray foam on the outside. What you don't have, and you have these three pieces of paper from Mike Lopez, and what those show is, again, insulation on the main structure, what's called main house Unit A, spray foam insulation on that roof. It shows exterior insulation spray foam, but what you don't see is the required spray foam insulation on the interior. And that is what we are saying was falsified. My neighbor, Pete Armijo, unfortunately is diabetic and started taking new medication and couldn't make it tonight. He also saw that those interior walls had no spray foam insulation. Mike Lopez did not provide any data showing interior walls being spray foamed. And in fact, again the casita roof was not spray foamed, it had both... I'm sorry, I'm losing it... rigid and batting insulation in it that was again never inspected.

The other thing I do want to point out....

ORTIZ: So, Ms. Beninato, I guess I need to question.

BENINATO: Yes.

ORTIZ: If it's your contention that it was never inspected, then how can you then make the allegation in writing that inspection reports were falsified.

BENINATO: Because it said they were and they passed the inspection. That's why. And, the other thing is...

ORTIZ: Well, I've got another question.

BENINATO: Can I just answer the second part of your question.

ORTIZ: I didn't ask a second part...

BENINATO: Well you asked me about missing reports, and I'd like to address that.

ORTIZ: I think you answered that question.

BENINATO: I haven't really, and I just want to again clarify. Their engineer's report.. their engineer's specs call for a geohydrologist or somebody who knows soils, independent survey... independent companies to say what the concrete mix needs to be. It required them to send back the concrete mix specifications to the architect or engineer fifteen days before they poured. They never did that. There's nothing in the City to show they did that. Let me just put it that way. They were supposed to get engineer's report... structural engineer's report concerning when they got to subgrade, concerning the type of soil, concerning forms for the bond beam. Those reports are not in the City file. Their own engineer's specs require those reports.

ORTIZ: So, Ms. Beninato, if we take your contention to be true, that there are no reports in the file, how does that correspond with the allegation that staff has falsified inspection reports?

BENINATO: Well, again the falsification comes in when they do the inspection and give an okay when they couldn't have seen whether the footing was there or not, or when it appears to be no footing, or when they can't see the insulation or there is no insulation, but they say there is. The ones that aren't in the files, again, their own engineer's specs call for it. The City's supposed to have all reports, all inspections relating to the project. It is a law. It is an ordinance. And, again, I have provided you with those ordinances in your packet, because I knew that in a half hour I couldn't possibly go through all of that.

ORTIZ: I understand that. And, I...the other clarification I want to have is, in summary, can you tell me, point by point what submittals you allege were lacking by the Appellee when they applied for their building permit.

BENINATO: Yes, my understanding is that they lacked a lot, that they did not have a lot of record, and that they did not have a water budget. They did not have condo docs. Just a minute, I need to get my notes. That they did not have an archaeological clearance permit, and in fact they did find artifacts and they failed to shut the project down. They failed to report it. They failed to report the walls falling over and....

ORTIZ: Ms Beninato. I didn't ask that. I asked what submittals were missing.

BENINATO: So, those are some of the submittals. They didn't have a parking plan. Yes, and they didn't have a parking plan. Oh, and also, by the way, when I looked at the permit, the approval from the H-Board wasn't there, the whole energy calculations weren't attached. Again, no plat, no deed even attached actually. These were just loose plans that I was told was the permit file. And I have my copies of their floor plans, do not have that perforation on it. I got those copies made September-October, then again, by January, suddenly they're all perforated, because I mentioned that they weren't stamped or signed or perforated.

ORTIZ: Thank you. I guess the last question I've got is, in your written presentation that you have of the appeal, you made certain allegations, mostly legal, regarding violations of the City staff and City government. What damages do you allege as a result, what damages have you suffered as a result of the Appellees' alleged violations. What damages have these alleged violations caused you.

BENINATO: I believe that as a person who is living in a historic zone and in a cluster of historic homes, that my homes are devalued when 20% of the cluster is destroyed. I think it's very common knowledge that a historic home has somewhat more value, particularly in Santa Fe, but when you live in a cluster, it's even more valuable. I also have been damaged, because parking... I will be damaged because parking is incredibly difficult and people are parking and blocking my driveway all the time, and I see that as an ongoing problem, as do many of my neighbors who signed that petition. I have been damaged because I think there has been gross negligence in the construction of the building, and should I be walking down toward my neighbor's house, that wall can fall over on that driveway and could, again, could injure me or somebody else walking down it. I have been damaged because the addition to the casita is too close to my property. Again, this was an exception. It should have been put ten feet back from the lot line. I agreed to a full five feet. That's my back house and the entrance for my back house. It's the only entrance and my only back yard. Now, not only is it too close and they're claiming part of my property for their outdoor space, but they have these casement windows that open out toward my property, rather than the double homes. They're going to send more noise, more light, more everything out. The skylights being over the parapet level affect the dark skies which is a state law and affects my enjoyment. Being too close also is a safety thing because there are trees and coyote fencing, it's a fire hazard. I alerted them well ahead of time and they could have moved it back the six inches it needed to be back. They did not. I am also damaged because my solar rights have been infringed. And, again, I went to the trouble of filing that easement. They actually had the property for 56 out of the 60 days in which they could have filed and said they protested that easement. They

did not. And again, 15% of my solar rights are being infringed because of the height of that building.

If you give me just one second to make sure that I've covered everything.

Oh, and drainage also. The drainage is an immense problem because the lowest point on their plan that's in the city file is by my house. Traditionally, it went down, and flowed down into that big depression that you saw. But now, after the rain on Saturday, I can see it coming off the roof, flowing down in a stream sitting back by my house. If there's heavy enough rain, and because they built up, when their own plans said they weren't supposed to add any dirt on at all, that will flow into my property, it will damage my wall. Although their drainage system looks very sophisticated, it doesn't work. The drains are too close to the house. The water goes out the roof beyond them. And so those are, I think the most immediate damages.

Oh, and my fence was cut and destroyed and pushed back, and a survey marker that was in the ground was removed by Mr. Nelson on or about April fourteenth, I believe. So those are some of the damages. Thank you.

ORTIZ: Thank you for your answers. That's all I've got Mayor.

MAYOR: Thank you Councilor. Okay, then we'll move to the Appellees' presentation of their case.

BENINATO: And I really appreciate all your time, thank you.

MAYOR: Thank you Ms. Beninato.

KARL
SOMMER: Members of the Council, my name is Karl Sommer. My mailing address is post office box 2476. I'm here on behalf of the Appellee, the Nelsons and their LLC.

[UNKNOWN
QUESTION
INAUDIBLE
PERSON]

SOMMER: No, it doesn't bother me at all. No problem. As Mr. Karnes started out, this case is very simple. What we intend to do in our presentation... we have submitted an affidavit of Mr. Nelson that is in the record and attached exhibits to which he has sworn to the veracity of those exhibits. He's here to answer questions you might have about those. We want to hit some of the highlights, be very brief, and then respond to some of the

things that were said here tonight, and we'll be very brief. I would note that all of our witnesses are subject to cross examination by Ms. Beninato. We have no objection to that. I would also note for the record that Ms. Brennan, long ago, submitted to us the affidavits so that we would be prepared for what City staff was going to say and the opportunity to ask questions of City staff in writing. But, I have no objection Mayor and members of the Council, to allowing you to have Ms. Beninato ask questions of the various staff people that are here, if that is a claim that she is going to make in District Court, that she didn't have the right to ask these ladies and gentlemen questions, who have all submitted affidavits under oath to you all about the allegations.

Plainly and simply, this case is about credibility. Every allegation that Ms. Beninato made tonight, she has made on dozens of occasions, in writing, orally, complained about, wrote about. And, every allegation has been investigated, controverted, contradicted and disagreed with by people who are in the field looking exactly at what she's saying. So, what you have is essentially is Ms. Beninato says that it's this way. Staff went out and investigated and our people supplied the information. Ms. Beninato just disagreed. We have an absolute variance in what the claims about the facts are, and the Board of Adjustment and staff, I think rightfully, have determined that every allegation she's made, even those here tonight, are false.

I would like to say, just for the record, you have in front of you the, I think it's seventeen pages of over one hundred paragraphs of claims that deal with claims of fraud, dishonesty, deceit, unethical behavior and the like. Not just on the part of my clients, myself, but on the part of almost every City staff member that is engaged and involved in this case. From the City Manager, on down to the inspectors and almost everybody in between. I would note for you, that every one of those people who have been charged with fraud, deceit, dishonesty, deception, are people who have disagreed with the allegations she has made. And, I note for you that the same allegation was made or similar allegations were made with respect to the Board of Adjustment members, because they disagree. So, I think you can take from that the flavor of this case. If a claim is made and disagreed with, the standard is that you must be fraudulently stating something. And I think that we could run through every single one of them. But, I will say categorically on my behalf, Joseph Karnes behalf, Marty and Owen Nelson's behalf and Ryan's behalf who's here to testify, none of us have engaged in fraud, deceit, destruction of records or the like, or anything close. And, it is no small thing for the Nelsons, their name drug through the mud like that with no substantial any evidence at all.

Now, the other thing that I would like to say is that the City staff members who have been drug through the mud, didn't sign up for that as City

employees, and fundamentally, I think this points up that case is about an abuse of the process. Not only was the process abused, but almost every individual on City staff has been abused. I think that says a lot about the credibility of the claims that are being made.

What I would like to do is to have Mr. Owen Nelson tell you the highlights of the factual allegations, and then I'll have Ryan come up, who was on the site every day and dealt with almost every one of these individuals from City staff who are here, countless hours, spent thousands of dollars responding to what are meritless claims that have been made again here tonight. So, with that, I'm going to turn it over to Mr. Nelson to have him highlight just some of the things. He'll answer any questions you might have or that Ms. Beninato might have.

And I know for the record that she has not asked you here tonight to ask any of these people questions – Mr. Rasch, Mr. Moquino, Bobby, any of them. And, they're here tonight, and they could be asked questions if she wanted to. As far as I'm concerned, I have no objection to having that happen. So, I'm going to turn it over to Owen to go over some specifics and then we'll follow up with some minor responses to the allegations made. Thank you Mayor.

OWEN
NELSON:

My name is Owen Nelson. I hope that you're able to follow a lot of what preceded here. I'm just going to talk about a couple of things that I think we're shedding some light on. In terms of the quote unquote "destruction" of this property, I think it's clearly been engaged in rehabilitating this property. This property had holes in the wall that you could literally drive a car into before I purchased the property due to previous neglect. I believe most of what Ms. Beninato is referring to, in removal of walls, are interior walls. I would like to remind the Council members here that this is a contributing building, not a significant building. We are allowed, under the codes, to remove, replace, rearrange interior walls and that constitutes the majority of what we did in terms of wall removal.

On the lot consolidation, I think the only thing I have to say there is that we have a license and registered surveyor in the State of New Mexico who has prepared a Lot Consolidation Plan for us, the City has accepted it. I don't think anything more needs to be said.

Much has been made of the intentional destruction of the south wall of the main building. We did do extensive shoring on this property. You'll probably note, if you looked at the site plan, that we have a zero lot line condition on that wall, meaning our neighbors' property is directly adjacent to that wall. We were unable to put external shoring on that wall. Everything had to be done on the inside of that wall. That was an

old, old style roof with a lot of dirt on top as insulation. Extremely heavy. Very poorly maintained roof, so over decades, I'm sure, water has penetrated into those areas. Those roofs and ceilings were failing, they were not bending, they were not merely bending, they were failing and cracking. Anyway, what happened with that wall was, even though we had it shored from the inside, the vigas that were there on the opposite side of the room had literally rotted through and you could not tell, and you couldn't see it, it wasn't visible to the eye. Every viga had rotted through, and what happened was, one night after a series of rains, it got so heavy that the wall that we're talking about, buckled, this portion of it pulled away from the adjacent wall, and the whole thing buckled and came down. We have a neighbor who lives next door that has given us a letter attesting that she was awakened at two in the morning by a loud boom as that wall came down. We did not take the wall down. The wall fell down. It was unfortunate. That wall was in terrible shape as was most of the rest of this property.

The casita shed roof is indeed a shed roof. It has a pitch to it, it has a slope. The original building had a small parapet extending above that shed roof on the Galisteo Street side of it. That parapet had an angle on it. We asked the H-Board to approve leveling out of that parapet. They approved that. That's exactly what we did. It still is a shed roof.

In terms of the solar, it is my understanding that that's a State of New Mexico issue, not a City issue. I would only say on that matter, we did do mock-ups. We went to great efforts to keep that parapet and the roof heights so that it would not impinge on Ms. Beninato's solar collector, which is a window. By the way, just so you know, I have photographic evidence on the winter solstice day that shows clearly the shadow from our roof does not even touch the window. There is no loss of solar rights in that case.

The drainage is being done per plan. It's at the low point of our lot. No water is going onto her property, if anything, it's probably the other way around. Insulation and all those items I'm not going to address in detail, because your City staff and your inspectors have done their job. They've inspected everything. They've approved it.

If you have any questions for me, I'd be happy to answer them.

MAYOR: Thank you. Any questions? Okay. Do you have more on this part Karl.

SOMMER: I do. Just some specific questions of Ryan, what's your last name?

RYAN

ALLEN: Allen.

SOMMER: Allen. I'm sorry. I just know him as Ryan. Ryan, you're under oath, correct?

ALLEN: Yes.

SOMMER: What's your address?

ALLEN: 2395 Camino Pintores.

SOMMER: You were here and you heard Ms. Beninato testify?

ALLEN: Yes.

SOMMER: Okay, I'd like to ask you just a couple of questions. If you could explain to the Council. You heard about the inspections that were on this property.

ALLEN: Oh yes.

SOMMER: Okay. How many inspections did you have on this property that you did not call for?

ALLEN: I would say a dozen or more.

SOMMER: And at each time the inspections were done, were you there?

ALLEN: Most of the part yes, I sure was.

SOMMER: And did you go through every item of the inspections with the City officials?

ALLEN: If they had a question for me, I tried to address it to the best of my ability. So, yes.

SOMMER: And did you hear the allegation that these City officials falsified what was extant on the site when you came out?

ALLEN: Right.

SOMMER: Is that true?

ALLEN: No.

SOMMER: What is the truth about every inspection that was made.

ALLEN: I called for the inspection. The City does their job and everything looks great. We get a thumbs up, you know.

SOMMER: And is that what happened on this property?

ALLEN: Pretty much, besides the unannounced inspections that we called, of course, probably by Beninato.

SOMMER: And with respect to those unannounced, what was the resolution of each one of those inspections.

ALLEN: No red tag. The work continued.

SOMMER: With respect to the foundations that were inspected, were you there when those were done. And, what was revealed when you saw the... when you were there with the inspector. What did you show them?

ALLEN: I showed them what we needed. Steel in the footings, you know, we're going to pour concrete. Thumbs up. You guys, good job, get the permit.

SOMMER: With respect to the demolition and the claims that the wall... on the north side of the face of the casita, the main casita, you heard Ms. Beninato testify that you took down, and she showed it in red here, all of that facade well beyond what was shown on the plans. Was that true?

ALLEN: Absolutely not.

SOMMER: What did you guys take down on the north side?

ALLEN: We did not take any walls down on the north side.

SOMMER: I have no further questions.

MAYOR: We have a question from Councilor Chavez.

CHAVEZ: Karl, up until now, we've dealt with more of a structural components, footings, foundations, walls, those type of structural components. One thing that was brought up during the presentation, was the placement and the type, or the style of windows. So, in the process of construction or remodeling these units, were placement and style and type of windows also approved through that same inspection process.

SOMMER: I'll let Ryan and Owen answer that question specifically, and if you understand the question about placement and style.

ALLEN: I do. Very clearly.

CHAVEZ: Those are more, maybe esthetic treatments, but I think they're significant in the H-District, and so I wanted to touch on that for a minute.

ALLEN: Sure, and I'll probably be discussing some people here that are with us. Essentially, we're building from the approved set of plans. I have kept the openings, the fenestration on the walls that are historical walls, and it's been checked probably three or four times. Actually, I've seen Gary Moquino come out. I've actually seen David Rasch come out. We've actually had a "come to god" meeting about that a few times, and especially about what's going on along that wall on the south side. Those are the only windows we were to replace... not replace, I'm sorry, but to restore was along the south wall of the main property and we've done that and we've gone through great measure to make sure that those windows and those openings are in the exact same location and we've proven that. And we've had it... Gary's been out there maybe two, three times, Gary. Yeah, a lot.

SOMMER: Let me ask you specifically. Did you replace, repair, restore the windows in accordance with the approved plan.

ALLEN: Absolutely.

SOMMER: Was that replacement restoration and restoration approved by the City and inspected by the City.

ALLEN: Absolutely.

SOMMER: Were you ever told by anybody, except Ms. Beninato that it violated both the plans, the code, the H-Board, and her opinion of what should have gone on.

ALLEN: Absolutely not.

SOMMER: Okay. Does that answer your question Councilor?

CHAVEZ: Yes, it does, but I see staff nodding their heads, and so should I accept that as concurring with everything that you've heard?

MAYOR: I just think we have to stick to their affidavits unless somebody asks some specific questions.

CHAVEZ: That does it. Thank you.

SOMMER: I just have one more concluding remark, with respect to our presentation and then we'll stand for any questions you might have, aside from that. Thanks Ryan.

As I said, this comes down to a question of credibility, with respect to the allegations being made. And you, as the finders of fact here, get to determine who's telling the truth. Ms. Beninato or the thirteen or fourteen

people who disagree with her. I submit to you that just by more than a mere preponderance of the evidence in front of you, you could determine very simply that there is a disagreement about the facts, and that thirteen or fourteen people couldn't get it wrong all the time, which is essentially the allegation.

And I think that's what this case comes down to. What Mr. and Mrs. Nelson started with is shown in those pictures. It is a house that is literally falling down. And what they ended up with, was shown in the video, which is a house that I think all of us could say, that was an improvement on what was there. And all of the City inspectors have said it's in accordance with the plans. And, this has been a benefit to our community. For whatever reason, it hasn't been a benefit to Ms. Beninato, but that is not the basis for disrupting this project, as she would have you do.

I would submit that part of the issue of credibility that Ms. Beninato got up here and told you about, that she moved into the South Capitol, she moved into this place because there was a cluster of historic buildings, ten, and now two of them have been destroyed and their historicity absolutely obliterated. That's the allegation. Well, before my clients bought the property, Ms. Beninato went in front of the H-Board with respect to her property and asked that the historic status of her property be changed, not increased, but diminished. That the City map not show her property as contributing, that it be listed as non-contributing. I submit to you that that is an issue of credibility. Because, what she got up here tonight under oath and told you was these are things that were just so important. But, on her own property, when it meant that the contributing status had a limiting effect on what she could or could not do, she was in front of the Board giving dozens of reasons, practically, as to why, why these buildings weren't historic. I submit to you that is an issue of credibility. That's what this case is about.

Unfortunately, a lot of people have been drug through the mud. You all, as elected officials, sign up for that and arguably, I, as a lawyer, and maybe Mr. Katz sign up for that on occasion, but I don't think City staff does. And, I think that's been a travesty in this case, and whatever you can do to change that sort of abuse of your staff by members of the public, particularly Ms. Beninato, I urge you to take the opportunity to do it.

We're asking you tonight to uphold the BOA decision, adopt their findings of fact verbatim, and make that your written order, because I think the evidence is overwhelming, overwhelming that they're correct.

MAYOR:

Okay, that brings us to the Appellant's rebuttal. But, before we proceed, I do want to say, hearing no objection from the Appellee, and having our

staff present, if you would like to ask questions, either side, of the staff, then we could have the staff testimony to elaborate on their affidavits. So, I'll allow that as well with your rebuttal.

BENINATO: I would like to ask questions of Mr. Nelson, Mr. Allen, I am reserving again. for objections that I cannot ask Mr. Armijo questions, because again, the lot consolidation is critical to the approval of this building project, and he is not here to answer a large number of questions I have, not only about that, but about his so called as built survey that he did for Inside Out Design and Build, who aren't even an agent on this property. And again, I think it's really telling that when you have Mr. Sommer get up, he attacks me personally, rather than showing you how it is that they actually... where the holes were in 06. Because those photos that you have are from 07, a year after he took those. But, I'd like to cross examine him, because I think whose credibility is at issue will come out and I'd also like to have Mr. Karnes cross examined as well as Ms. Brennan. So, if I could begin. Do you want me to stand over there and take the microphone and they stand here. Would you like that? How would you like to do it.

MAYOR: Is that microphone working now?

TINA DOMINGUEZ: Yes. It's working.

BENINATO: And I need to put my sweater on. I feel a little chilled and I need my glasses.

SOMMER: Mr. Mayor, just briefly. I don't think that there's any precedent in State law or your procedures that allows a party to cross examine an attorney in front of you all, so we would object to that.

MAYOR: You are correct. I think the same is true with Ms. Kelly.... Ms. Brennan. Ms. Kelly...

BENINATO: Is this on. Yeah, it is.

MAYOR: Does anybody want to wear a hockey sweater.

BENINATO: Mr. Nelson are you a licensed in the state as an engineer?

NELSON: No, I'm not.

BENINATO: An architect?

NELSON: Nope.

BENINATO: A contractor?

NELSON: No.

BENINATO: Is your wife licensed in these professions?

NELSON: No.

BENINATO: How about Ryan Allen?

ALLEN: Nope.

BENINATO: How many projects have you done in the City of Santa Fe?

NELSON: Fifteen or more.

BENINATO: How many of those projects were in historic districts? I'm asking Nelson, I'm not asking you. Thank you so much. I have separate questions for you Mr. Allen.

NELSON: I've done approximately nine projects.

BENINATO: Okay.

NELSON: Almost all of them have been in the historic district.

BENINATO: And how many of those projects were owned by you and your wife or by an LLC formed by you and or your spouse.

NELSON: I believe that, prior to this one, they have all been owned by us personally.

BENINATO: How many of those LLCs still exist.

NELSON: There are no other LLCs. There is one LLC which still exists.

BENINATO: Okay, were all the projects done by LLCs owned by you and done as owner builder?

NELSON: No, they were not done by LLCs.

BENINATO: Did you tell me that you would get the permit and do what you want?

NELSON: No, I did not.

BENINATO: Did you employ Hands Engineering throughout this project at 610 Galisteo Street?

NELSON: I did employ them to do work on this project. Yes.

BENINATO: Are they still employed by you?

NELSON: Not at the moment.

BENINATO: When was the last time you met with them?

NELSON: I don't recall.

BENINATO: Who was the architect you hired for the job. Could you give us the name and address please.

NELSON: There is no architect. I'm the designer of the project.

BENINATO: But you're not an architect.

NELSON: No, I'm not.

BENINATO: Okay. What areas of the adobe wall did you restore, on the outside.

NELSON: What areas?

BENINATO: Yes, what areas.

NELSON: Many areas.

BENINATO: Okay, could you show us on one of the plans what areas you restored.

NELSON: There is a document there that the City requested us to provide them that shows all of the significantly damaged areas.

BENINATO: Yeah, could you show us that please?

NELSON: What do we need to do? Switch over to documents? The areas that are clouded or circled with the lines are the areas of the significant, existing damage. They also indicate, per the City's request, the parapets and roofs that were removed and replaced.

BENINATO: And didn't you actually destroy, from that little small window to the east of the lines, didn't you actually take a little adobe on the inside of that way, you removed adobe bricks.

NELSON: I don't understand the question. On the inside of the wall?

BENINATO: Yes, in other words, you left the stucco up, you left the little window in place, the second window from the east on the south facade. You left

that window in place. You left the buck in place, but you actually removed adobe from behind the stucco. Is that correct?

NELSON: Any adobes that were unsound were removed.

BENINATO: And who made that determination, that it was unsound?

NELSON: I made that determination with the assistance of our engineer. Also, we did discuss that on several occasions with building inspectors.

BENINATO: And where is, in your engineer's report, where does he say the walls are structurally unsound.

NELSON: I can't point that out to you. I'd have to look at it. He makes mention in that report of several areas not specifically located, that were unsound and in very poor condition.

BENINATO: And didn't he tell you to restore them by adding adobe on, not knocking it down.

NELSON: No, he did not say that. The detail that you referred to on their plans, shows an adobe wall that has partial damage. We're talking about areas where entire sections of wall have collapsed or are no longer there. We're not talking about damaged or degraded adobes. We're talking about walls that don't exist, literally.

BENINATO: And isn't it true, could you leave that back up there, because I'd like to still talk about that drawing please. Isn't it true that you have a photo that you submitted to the City of Santa Fe that is in the packet, it is dated eight 07, and it shows a partial... a portion of the south wall on the Unit A. Could you show the Council where Unit A begins on that wall? Isn't it in between those two windows that are really closed together, right there, in the center.

NELSON: Are you speaking of right here?

BENINATO: No, I can't see that on the screen, I'm sorry, you need to move it up a little bit. Could you show us again. Yes.

NELSON: Are you referring to those windows? Your question is what?

BENINATO: Yes. And, didn't you submit a photograph to the City of Santa Fe, showing a run on that wall from Unit A that shows a rebar in place in August of 07. Did you not submit that? Or did the City take that photograph? Are you aware of that photograph?

NELSON: Rebar? I don't understand your question.

BENINATO: You were documenting the rebar that you were using in the footing on the Unit A on the south wall. Are you aware of that photograph?

NELSON: I am aware of that photograph. Yes.

BENINATO: And what you see in that photograph is the rebar and then you see stucco. You see no wall there. The wall's gone isn't it. And you all have that photo by the way in your packet and it's very clearly not there. There is just stucco there and the rebar. The wall is gone.

MAYOR: We need to stick to questions and I'm going to have to limit the time.

BENINATO: Well, I'm trying to. So, when you have up there that there was a hole in the wall and that you were going to repair it, in fact there was no wall there, was there.

NELSON: That hole, Ms. Beninato, refers to a major hole in the stucco itself, and refers to the buckling as indicated on my drawing there, where the existing stucco was buckled outward from the wall approximately six to eight inches. In other words, it had separated due to water penetration and damage. It does not refer to a hole through the wall.

BENINATO: Why did your shoring up and repair permit not show any shoring up on the south wall?

NELSON: We showed repairing and shoring of areas that we felt were in need of them the most.

BENINATO: And you say that this was extremely damaged and that it was the water coming through the wall, yet on your shoring up and repair permit, you also don't have any indication that there was roof damage there. Is that correct?

NELSON: The drawing shows what the conditions were.

BENINATO: And again, I would point out to the City Council that it is not there.

MAYOR: Ms. Beninato

BENINATO: What day did Hands come out to observe...

NELSON: May I interject something...

BENINATO: ...the completed adobe restoration areas. What day and what date did Hands Engineering come out to observe the completed adobe restoration areas as called for in your engineer's specs.

NELSON: I don't have a date for you on that.

BENINATO: And is that because he didn't ever come out?

NELSON: Hands Engineering made several trips to that site to observe progress.

BENINATO: And where is the report that you're required to have of that inspection?

NELSON: I do not have that report.

BENINATO: And isn't it true that Hands Engineering actually came out in August of 06 and hasn't actually been back since they did the drawings for you.

NELSON: No, that is not true.

BENINATO: You are under oath and you understand that.

NELSON: That's correct.

MAYOR: Okay, Ms. Beninato, you need to move it on.

BENINATO: Did you provide the City with this proof of the inspection, no you did not. How about in terms of the review of the concrete bond beam forming and reinforcing. Did you have the structural engineer come out and look at that.

NELSON: Yes. They have observed it.

BENINATO: And who was that?

NELSON: Hands Engineering.

BENINATO: And do you have a report of that?

NELSON: I do not.

BENINATO: Did you do it and that was called for in your engineer specs. Is that correct.

NELSON: Uh huh.

BENINATO: Do you have a density test of each soil substrata.

NELSON: No, and it was not required.

BENINATO: It says on your engineering specs it was required.

NELSON: Required for what?

BENINATO: Wouldn't you want to see what the kinds of soil was and the compaction of it ...

NELSON: For?

BENINATO: ... it's your engineering specs, not mine.

NELSON: Yes, if you're going to question the engineering report, I would prefer you be more specific please.

BENINATO: Well that's what your engineer specs call for. Did you provide the City with a copy of that report or test?

NELSON: No.

BENINATO: Did you buy materials for the job?

NELSON: Yes I did.

BENINATO: Did you order the skylights?

NELSON: I did order the skylights.

BENINATO: Do you know what low profile means, low profile skylights mean.

NELSON: My understanding is that low profile refers to the curvature of the dome.

BENINATO: What day did you notify the architect or engineer that you reached subgrade?

NELSON: Subgrade?

BENINATO: Yes. When you got below the grade of the floor. I would imagine that is subgrade is it not?

NELSON: It did not get to below the level of the floor. There were no floors there. The subgrade was existing.

BENINATO: Didn't you in your shoring up and repair permit also called a demolition permit, didn't you actually ask permission to remove all the floors?

NELSON: Wood floors. That's correct. There were some wood floors. They were

primarily dirt floors.

MAYOR: Ms. Beninato, I'm going to really have to ask you to..

BENINATO: Well, I'm just trying to go through this again.

MAYOR: Well, we're going through the whole thing again. This is just cross examination and...

BENINATO: Right. And that's what I'm trying to get because they are lying to you, your honor and I think I do have a right to ask them where these reports are and have they been submitted to the City.

MAYOR: And you could have asked that...

BENINATO: No, I haven't. There are many reports and you wanted me to be specific and I'm trying to be specific.

MAYOR: I need you to wrap this up very quickly if you are going to ask more questions of other staff.

BENINATO: I will. Did you put rebar in the footing on the outside of the south wall that was poured in January of 08.

NELSON: On the outside of the wall?

BENINATO: Yes.

NELSON: No.

BENINATO: Did you have a continuous pour under pressure on that footing?

NELSON: We have a continuous pour, yes.

BENINATO: So if the packet shows that you had quikcrete sitting out there in wheelbarrows, and that you actually poured it by hand in sections, you would say that those photos are inaccurate.

NELSON: The footing that you're referring to was a continuous pour, done per normal specifications.

BENINATO: Did you give the engineer or architect a written report on the proposed concrete mix for the footing that was under the stem wall on the south side of the main house that was in place on eight August.

NELSON: I believe that our concrete strength exceeds that specified.

BENINATO: Did you give the written report of the proposed concrete mix to the engineer or architect as called for in your specs.

NELSON: No.

BENINATO: Okay. When did you have the footing that was on the outside of the south wall of the main house inspected.

NELSON: It was not inspected.

BENINATO: Okay. What rebar did you use in that footing?

NELSON: Two number four bars continuous.

BENINATO: Did you get a density test for the soil at this footing since it was subgrade.

NELSON: No, we did not. We did not disturb that footing other than to clean it out.

BENINATO: Your plans show that you're going to remove the curb on the south wall of the main house of Unit A... the main house in Unit A. Did you do that?

NELSON: A portion of that curb was removed when that portion of the wall fell. It was not put back.

BENINATO: And have you removed the rest of the curb as you said you would in your plans.

NELSON: The rest of the curb?

BENINATO: Yes, you say on your plans that you're going to remove the rest of the curb.

NELSON: No we did not.

BENINATO: Did you remove them?

NELSON: No.

BENINATO: Okay. Have you amended your plans to show you're not removing the curb.

NELSON: No.

BENINATO: Okay. When did you amend the insulation plan...

MAYOR: Ms. Beninato. Ms. Beninato, excuse me. I've asked you three times to proceed with this and we're going through everything that's in the packets

and more again. This isn't helping the Council understand the case or reach a conclusion on your appeal. I need to ask you to stop and start with anybody else you want to cross examine, or any questions you want to ask of staff.

BENINATO: I would like to ask a few more questions having to do with credibility, your honor, since my credibility was attacked, and you're not really giving me a chance to actually ask all the questions that I would like. I would at least like to ask the credibility questions.

MAYOR: I just want to point out, you've asked another half an hour of questions now.

BENINATO: You said we could have questions, there wasn't a limitation on that.

MAYOR: And I've now expressed those limitations for you, Ms. Beninato.

BENINATO: Okay, I will ask just a few more. Isn't it true then, in your plans, that you say that you're not going to bring additional dirt onto the property, but you did anyway.

NELSON: No we did not. We did not import any dirt onto that site.

BENINATO: Okay. Well, you all have that in your packet. You can see the big pile.

NELSON: That pile is no longer there as you well know living next door. Is it still there or is it not still there.

MAYOR: Okay, this is where we need to stop it. This witness can be excused from the cross examination.

NELSON: Thank you.

MAYOR: Do you have any City staff that you want to ask questions of.

BENINATO: I would like to ask Mr. Allen [inaudible]...

MAYOR: How many questions to you have for him?

BENINATO: I'm not sure, I don't have the number.

MAYOR: Well, then no. Do you have questions for staff.

BENINATO: Well, I really would like to ask Mr. Allen some questions because he has made some statements to you, again, that deal with credibility, your honor. And I'd like to have an opportunity.

MAYOR: You will have an opportunity for rebuttal, even though you've exceed your thirty minutes on that.

SOMMER: Mayor, as painful it might be for all of us, I have no objection to Mr. Allen answering some specific questions, if there's a reasonable limit on the time, five minutes, something like that. I don't want this matter to go up to District Court and have Ms. Beninato say she did not have an opportunity to ask Mr. Allen questions. So, we have no objection to a limited amount of questions, so long as they're, one, not repetitive, not argumentative and are designed to elicit something that is actually relevant to the case. So I would say...

MAYOR: I understand the point, Mr. Sommer. If you're they're counsel. Councilor Wurzburger.

COUNCILOR WURZBURGER: May I add a criteria that it would also be something new that we have not heard, or something that is not in the packet. Thank you Mayor.

BENINATO: Okay.

MAYOR: That's a hard thing to judge when she doesn't know how many questions she has and where we're going to go with them. So, what I will do, at the advice of the Appellees' counsel is to allow you five minutes of questions with this witness.

BENINATO: I'm not starting my questions yet, so if you could just wait till I begin and then start the five minutes, I'd appreciate it, since I'm trying to sort through the questions.

Isn't it true, Mr. Allen, that you have testified that you said that you only removed eight feet of the wall on the north side.

ALLEN: You're not being very clear. North side of what wall.

BENINATO: The north side of the main house, northwest, north long run of the main house, starting on the northwest corner.

ALLEN: I think Stefanie's trying to..

MAYOR: Just answer the question.

ALLEN: The wall she's talking about is an interior wall, and that wall at the BOA, I had to describe it at the BOA. There's about eight feet of wall that she keeps talking about we demolished. Well, in our approved plans, because of parking issues, that wall that we removed was actually going to be removed, it became an interior wall. So that eight feet she keeps

riding you guys about, it's an interior wall.

BENINATO: Isn't it true that actually was an exterior wall. It's the long wall.

ALLEN: It was an exterior wall, but again, because of the building permit, that wall became an interior wall, per approved plan, we were allowed to remove that wall.

BENINATO: Isn't it true that you told the Board of Adjustment that the red tag only lasted for three days, Mr. Allen?

ALLEN: Yeah, and it wasn't a valid red tag either, I believe.

BENINATO: And isn't it true that the red tag actually lasted for ten days.

ALLEN: No, that's not true. I don't believe so. No. And, again the red tag was repealed. It wasn't a valid red tag.

BENINATO: It was rescinded wasn't it, after you did work on it. Weren't you required to shore up the walls at that point when you were red tagged. There was no shoring up on the walls before the red tag occurred. Isn't that correct?

ALLEN: There was shoring. Yeah, we shored walls.

BENINATO: And you show us in that photo that I had up on the wall there, the one that was taken by the blues, could you have shown us where that shoring up was, because I certainly didn't see any shoring up on June twenty-fourth.

ALLEN: Well, if you were in the job site you could have seen it. Sorry.

BENINATO: Isn't it really true that you removed over twenty-four feet of wall and enclosed it on the north wall there, on that long north wall.

ALLEN: And, you're not making a lot of real... I can't...

BENINATO: You can't understand that question?

ALLEN: I can't understand what you're saying, you need to be specific about it. Yes. Absolutely.

BENINATO: Isn't it true that on the main house you removed all the floors, all the roofs and all the ceilings?

ALLEN: No. I mean, we removed the roofs per plan because we were going...

BENINATO: Did you remove all the floors...

ALLEN: There were no floors.

BENINATO: ...all the roofs and all...

ALLEN: There were no floors when I was on the job site. There were no floors in that house, unless you consider dirt floors. Yes, there were dirt floors. There was no wood floors, there was no tile, there was no footings there's no foundations in terms of a floor. It was dirt.

BENINATO: So you're saying the plans that you drew of shoring up and inspection, that those were incorrect..

ALLEN: That's not clear.

BENINATO: Were you on the site on July 3rd when it was red tagged, Mr. Allen?

ALLEN: Yes, I was.

BENINATO: And, did you allow your crew to continue working after the red tag on the main house.

ALLEN: The agreement we had, until we had contacted the attorneys, was we weren't allow to enter inside the main house where they had put the supposed red tag. So, yes, the gentlemen still continued to work and we did not breach the agreement with the City, which was, don't pass the plane of the building. So, absolutely, yes. We continued to work.

BENINATO: So, you continued to work under the red tag on that house.

ALLEN: Not on that house, no. You're trying...

BENINATO: So, if there is a photo in there showing three men up on the wall, with instruments, with equipment, when on July 3rd you were to say that was inaccurate.

ALLEN: And again, it wasn't a valid red tag. I'm not sure where you're going with this.

BENINATO: And why wasn't it a valid red tag. Could you explain that?

ALLEN: The City came to that conclusion, not me, I'm sorry.

BENINATO: Okay, who came to that conclusion?

ALLEN: The City.

BENINATO: Which City... which official.

ALLEN: I think it was the City of Santa Fe.

BENINATO: Well, what City official Mr. Allen, the City doesn't make decisions.

SOMMER: Mr. Mayor it's been five minutes and we're now into areas which weren't even raised on appeal.

MAYOR: Did you time it Tina?

TINA DOMINGUEZ: Yes [inaudible]

BENINATO: That's okay Tina. He's a non-responsive witness anyway. I would like to ask some questions of Mr. Rasch, please.

MAYOR: Okay. Five minutes.

BENINATO: And could you wait again Tina, I just need to get organized as to who's where.

MAYOR: Okay, now start.

BENINATO: Mr. Rasch, are you the head of the HPD, the Historic Preservation Division. Are you the head?

RASCH: No, I am not.

BENINATO: What is your title?

RASCH: Supervising planner.

TINA DOMINGUEZ: Please state your name for the record.

RASCH: David Rasch.

TINA DOMINGUEZ: Under penalty of perjury do you swear that the testimony you're about to give is the truth, the whole truth and nothing but the truth.

RASCH: I do.

BENINATO: Is it true that you administratively approved the new location for the addition exception that was granted by the H-Board. The H-Board granted that addition in November of 06, and you administratively

approved changing the location. Is that correct?

RASCH: Yes.

BENINATO: Okay. When did you approve that?

RASCH: I do not know.

BENINATO: Okay. So, if I showed you some notes that are in your handwriting that says July 11th, would you say you approved it on July 11th?

RASCH: Yes.

BENINATO: And, if I showed you something in your handwriting that said you approved it on June 19th, would you say you approved it on June 19th.

RASCH: Yes.

BENINATO: So you approved it on two different dates, is what you're..

RASCH: I approved it on whatever date you would show it to me that I approved it.

BENINATO: Well you have both dates in your handwriting in the file, so that's why I'm asking you to clarify, did you do it on June 19th or did you know it on July 11th.

RASCH: I do not know.

BENINATO: If Mr. Katz, I mean, excuse me, if Mr. Sommer, sorry Frank.. If Mr Sommer said that he didn't make the request in his proposed findings of facts and conclusions of law for that addition to be moved until June 28th, what would you say? I mean, which date then would be correct would you think.

RASCH: I couldn't approve a change until I saw one.

BENINATO: Isn't it true that on July 11th that you met with Frank Katz, Karl Sommer and Owen Nelson to discuss, supposedly, the protection of my solar easement.

RASCH: I don't believe so.

BENINATO: Didn't I ask you as part of the deal of dropping the appeal to the H-Board that you would meet with them to protect my solar easement.

RASCH: I don't believe so.

BENINATO: And didn't I ask you and remind you that you had yet to have the meeting and you finally set it up, you said you had been out of town or on vacation.

RASCH: I do not know what you're talking about.

BENINATO: Who else was at the meeting on July 11th when you met with Frank Katz, Karl Sommer and Owen Nelson?

RASCH: This is not about the solar easement, right?

BENINATO: Whatever you met about on July 11th. What did you meet about?

RASCH: That must be the red tag.

BENINATO: So, it was red tagged and what happened to that red tag?

RASCH: It was removed.

BENINATO: And why was it removed?

RASCH: We had come to the conclusion that maintenance and repair of a defective structure, as shown by an inspector, was a typical procedure of city without further process. So, we removed the red tag. It would have been disparate treatment of that applicant.

BENINATO: In other words, you're saying that when the wall fell down it wasn't demolition of the wall. Is that what you're saying?

RASCH: I would not call it demolition.

BENINATO: And even though, when you take a wall apart, and we showed you the walls being taken apart, and you saw photos of that, where the bricks were being removed and the stucco was still in place, you wouldn't call that demolition either.

RASCH: Mr. Rasch said no. HPD calls demolition removing an entire structure. We would call that remodeling.

BENINATO: Is there a definition... where does it talk about H-Board and remodeling. Isn't that an alteration of the wall, Mr. Rasch.

RASCH: Yes.

BENINATO: And isn't any change an alteration of the wall, according to code definition.

RASCH: I don't understand the question.

BENINATO: In other words, alteration is any change. So, if there's a repair, it's an alteration and it's the H-Board who approves alterations. Is that correct?

RASCH: Not necessarily.

BENINATO: And where does it say that in the code that you get to approve alterations?

RASCH: I do not have the code in front of me right now.

BENINATO: Okay. And isn't it true that in that H-Board at that time, Mr. Nelson submitted to you and affidavit in which he said that he had already removed thirty percent of the walls on the primary facades?

RASCH: I am not certain of specifics.

BENINATO: Didn't you tell me in July or August that your hands were tied and that you no longer had power to make decisions affecting the preservation of those historic structures at 610 Galisteo Street.

RASCH: That's a bad statement.

BENINATO: So you never said that to me?

RASCH: I have some authority, not much.

BENINATO: Why did you fail to require an archaeological clearance when there is more than twenty five hundred square feet of lot coverage as per ordinance?

RASCH: It's not lot coverage. In that district it's twenty five hundred square feet of ground disturbance, and staff determine that that has not been met.

BENINATO: Okay. Well, actually the ordinance actually says lot coverage. What date did the H-Board.

MAYOR: This witness is excused, that was the five minutes.

BENINATO: Well, I have just one more questions, if I could, your honor, about the windows and the size and placement, since it's primary facade. I'd like to ask Mr. Rasch that question, and then I would stop.

MAYOR: One more question, Ms. Beninato.

BENINATO: What date did the H-Board approve the changes in the door heights, the

window size, the type of windows and the placement on the primary facades. In other words, when did they approve the west window on the south primary facade becoming an awning window, excuse me a casement window, even though in the application the owner said they had no casement windows.

RASCH: I do not believe there is any variation from the H-Board approval on that elevation.

BENINATO: When did they approve, when they told the H-Board in writing that they were going to put all of the windows on the primary facade of the casita. They were all double hung and they were going to replace them with double hung. When the H-Board approve replacement with casement windows.

RASCH: It was in the application when they approved it in November, and it's in the plans that way.

BENINATO: So, you're saying that the drawings override the words, is that what you're saying.

MAYOR: That was three more questions.

BENINATO: This is about windows. This is all about the windows though, you honor, I'm trying to get some clarity. Again, I have to say that I don't really think I'm actually getting to fully cross examine people here. Can I ask some questions of Mr. Moquino please?

TINA
DOMINGUEZ: Would you please state the name for the record.

GARY
MOQUINO: Gary Moquino.

TINA
DOMINGUEZ: Under the penalty of perjury, do you swear that the testimony you're about to give is the truth, the whole truth and nothing but the truth.

MOQUINO: Yes.

TINA
DOMINGUEZ: Thank you.

BENINATO: Hi Gary. Thank you for being here tonight. I know it's been a long night. Isn't it true that you responded to a complaint by me on twenty one June of 07, that the crew at 610 was violating the permit because they had taken down more than the eight feet of wall shown on the demolition plan

on the north wall, starting at the northwest corner of the main house.

MOQUINO: Don't know exactly the date.

BENINATO: Did you respond to a complaint about that?

MOQUINO: Yes, I responded to a complaint.

BENINATO: And wasn't it true at the time that about twenty [or] feet or more of wall on the south wall was removed, was gone.

MOQUINO: Don't know.

BENINATO: You didn't look there. You don't remember. What.

MOQUINO: I looked.

BENINATO: You looked.

MOQUINO: Yes. The part that was gone was the addition part.

BENINATO: The addition part?

MOQUINO: Yes.

BENINATO: What addition?

MOQUINO: The addition on the main casita.

BENINATO: What main casita are we talking about? Are we talking about main house?

MOQUINO: The main house. Is that what you're talking about?

BENINATO: Yes, on the south wall.

MOQUINO: On the south well.

BENINATO: Was the wall down on the south wall when you came in June.

MOQUINO: Yes. That's the one that was... that fell.

BENINATO: And you didn't red tag it at the time.

MOQUINO: No.

BENINATO: Isn't it true that on that date that you came, there was already sixteen feet

of wall removed. It was removed from the northwest corner to the first wall interior wall.

MOQUINO: Are you talking about the same wall?

BENINATO: Yes, the north wall. I'm talking about now again that same corner there that shows on the demolition plan.

MOQUINO: I did not measure the wall.

BENINATO: Okay. Could you show us on the demolition plan where it shows that they get to removed sixteen feet of wall? And I have the demolition plan here, excuse me. I hope you don't mind me being too close. But, when you came on that June date, I'm asking whether the wall was gone all the way to here, as opposed to just part of the wall.

MOQUINO: I don't recall that one.

BENINATO: Isn't it true that on July 3rd when I reported damage on the south wall that you initially refused to red tag the building.

MOQUINO: I don't recall.

BENINATO: Isn't it true that you were directed by Jack Hiatt or David Rasch to red tag.

MOQUINO: My supervisor, David.

BENINATO: And that Mr. Rasch accompany you to 610 Galisteo for the purpose of red tagging?

MOQUINO: Yes.

BENINATO: Isn't it true that you did not put down what ordinance had been violated by that red tag on the red tag.

MOQUINO: Yes.

BENINATO: Did you remove the owner's red tag yourself?

MOQUINO: I don't recall.

BENINATO: You took some photos that day of that building. Is that correct?

MOQUINO: Don't recall.

BENINATO: And, can you recall where those photos are now.

MOQUINO: No I don't.

BENINATO: And, do you still have those photos?

MOQUINO: I don't see them anywhere.

BENINATO: Okay. So the single photos that you had taken, and were in the file at one point, then they're not there anymore. Is that correct?

MOQUINO: Correct.

BENINATO: And, isn't it true then in July, the casita walls were also demolished and that the demolition plan shows absolutely no approval of demolition on that wall. Excuse me. I'll get you a plan. Do you recall, again, if the casitas plans show any demolition on the casita exterior walls.

MOQUINO: I don't recall.

BENINATO: And so, when they demolished the casita walls down to the header level, and I complained about that, didn't you tell me that since they were replacing in kind, that you were not going to red tag them.

MOQUINO: I don't recall that either.

BENINATO: Isn't it the H-Board that has to approve demolition, alterations and additions on historic structures, Mr. Moquino.

MOQUINO: I don't know that.

BENINATO: Do you know who has to approved additions... replacement in kind... are you aware who approves that.

MOQUINO: No, I'm not aware of who approves that.

BENINATO: Were you aware that, or did you know that... did you know whether there was an approval for those replacement in kind walls on the casita, where the walls were going to be replaced in kind. Do you know if there was an approval made by anybody?

MOQUINO: I don't recall.

BENINATO: Okay. Do you have any administrative...

MAYOR: Okay, Ms. Beninato.

BENINATO: Do you have any of the administrative approvals in the file?

MOQUINO: Do I have any...

BENINATO: Yes, do you have any administrative approvals in the file of the changes to size of windows, placement or anything like that. Do you have paperwork concerning these changes made by staff.

MOQUINO: I personally don't.

BENINATO: Okay. Thank you. I have some questions of Mr. Purdy.

TINA DOMINGUEZ: Please state your name for the record.

MICHAEL PURDY: Michael Purdy.

TINA DOMINGUEZ: Under the penalty of perjury do you swear that the testimony you're about to give is the truth, the whole truth and nothing but the truth.

PURDY: I do.

TINA DOMINGUEZ: Thank you.

BENINATO: Are you the acting Building Inspector?

MAYOR: I'm sorry. Hold on just a second Ms. Beninato. Councilor Romero.

COUNCILOR ROMERO: I'd like to make sure that there are parameters of the kinds of questions, because there may be some things that are already in our packet that we know are repetitious. I think Councilor Wurzbarger had asked for parameters of the kinds of questions. So, it should limit to what's not in our packet to clarify the issues.

MAYOR: I think that's a reasonable request of Ms. Beninato. However, since that would require me to rule question by question, I've been putting five minute limits on these.

BENINATO: I have...because I actually have very few questions of Mr. Purdy and hopefully, we'll go pretty quickly. You say you are the acting Building Inspector. Is that your title.

PURDY: I am the Division Director for Inspections and Enforcement.

BENINATO: Okay. Are you a licensed engineer?

PURDY: No I am not.

BENINATO: Are you a licensed architect?

PURDY: I am not.

BENINATO: Last summer you... did you have a special certification in adobe architecture or preservation?

PURDY: I have no certification.

BENINATO: Okay. Last year, Mr. Hiatt set a letter out saying that you had determined the walls at 610 Galisteo Street were tenuous.

PURDY: I don't recall.

BENINATO: And what does tenuous mean to you?

MAYOR: He just said he didn't recall.

BENINATO: Well I'm asking him if he used that word, what it would mean to him.

MAYOR: But he doesn't recall using it.

PURDY: I don't recall using that word.

BENINATO: So you don't remember how many walls you found to be tenuous?

PURDY: No, I don't.

BENINATO: And you're aware, too, that only the H-Board can improve demolition of structures. Is that correct?

PURDY: I don't believe that to be correct.

BENINATO: Okay. And, isn't it correct that the Building Inspector has to enforce all laws and ordinances, and so therefore, if the H-Board is supposed to do demolition you would have to refer it back to H-Board.

PURDY: I'm not aware of that.

BENINATO: Are you required... in your view, are you required to enforce the H-Board conditions as part of the permitting process?

PURDY: I am required to enforce the codes as I interpret them.

BENINATO: How about the repairs. Did you administratively approve major repairs of the walls at 610 Galisteo?

PURDY: Can you be more specific?

BENINATO: Well, how about, like on the south side. Did you approve the repair of that wall?

PURDY: I did look at some damaged wall that had been damaged by the rain over the years, and I did instruct them to replace all damaged adobes in that section of wall.

BENINATO: And, isn't it true that you put a statement in, in February 08 that said you talked to the previous owner, Davos Capital, about stabilizing their walls and roof?

PURDY: I talked to them about shoring up the roof and the walls. Yes.

BENINATO: And isn't it true, they actually had a shoring up repair and permit at that time.

PURDY: That is correct.

BENINATO: And isn't it true that you actually inspected that permit... under that permit and finalized them out.

PURDY: I did look at it, and it was adequately shored up.

BENINATO: And did you ever inspect under the shoring up and repair permit that MoDo Group, LLC acquired in November of 06.

PURDY: I did.

BENINATO: When did you do that?

PURDY: I don't recall.

BENINATO: So, if... and is it in the inspection schedule?

PURDY: I don't know.

BENINATO: And if I told you there was no inspection and reinspection schedule under that permit, what would you say?

PURDY: I'm not aware that there is, or not.

BENINATO: Are you aware that the engineer specs required that were part of the approved permit, included requirements for inspections and reports by licensed engineers and architects at several points, including when the footings are poured and also for the bond beam?

PURDY: Can you repeat that? I didn't quite understand.

BENINATO: Sure. Are you aware that under the engineer specs that are part of this permit application and approved permit, and I can't say the exact number of the page, I think it's eleven. Are you aware that they required certain inspections and reports by licensed engineers and or licensed architects at several points during the construction project... or process, including when the footings were poured and when the bond beam was also formed and poured? Are you aware of that?

PURDY: I was not aware of that.

BENINATO: So you aren't aware of what's exactly in this file, is that correct? Is that what you're telling us today. That you're unaware of that page of inspections. May I point it out to you please? It's page S001, and again it calls for, and you can read.. you can look at some of the numbered... the ones I've circled, because those are those inspections that I've been referring to all along. So you're unaware of that page and those reports that are required, is that correct?

PURDY: I may have seen them at the time, and it's up to my discretion to require them.

BENINATO: Even though you're not a licensed engineer and a licensed engineer called for those, is that correct?

PURDY: I am the building official for the City of Santa Fe, and it's within my authority to request those, or not request those special reports or inspections.

BENINATO: Isn't it true that State law requires a zoning official, when two zoning laws conflict to enforce the more restrictive zoning ordinance?

PURDY: That could be correct.

MAYOR: Thank you Michael.

BENINATO: Just one more. Why wasn't the law consolidation papers in the file with the permit?

PURDY: I'm not aware of why they weren't with the permit.

BENINATO: But you are aware that you're supposed to have all the papers on the project in one file, is that correct?

PURDY: All construction documents should be [inaudible]

BENINATO: I'll also have to say that I did have questions for Mr. Esquibel, and I'm sorry that he's not here today, because again, you have his testimony, but I'm unable to cross examine him.

SOMMER: Mr. Mayor.

MAYOR: Mr. Sommer.

SOMMER: I would just say, so there's no confusion, Mr. Esquibel is a building official who submitted an affidavit, whose affidavit was available to be questioned before this hearing. No questions were submitted. Had they been submitted, Mr. Esquibel could have answered those questions in writing. Mr. Esquibel, as you all know, recently had back surgery and he is off on sick leave, and so could not be here tonight, and so his absence is unavoidable. But, Ms. Beninato had ample opportunity to ask questions about that affidavit, and she elected not to do so.

MAYOR: Thank you Mr. Sommer.

BENINATO: Had I known Mr. Esquibel was going to be out on sick leave tonight, I would have submitted the questions yesterday afternoon when they were due, I believe.

MAYOR: Okay, this now moves us to rebuttal, which is going to be whatever time is remaining from the thirty minutes. So, it's minus thirty now. How about we just then go to closing statement from the Appellant for five minutes.

BENINATO: Again, I am here, because as historian, I value living in the historic zone. I resent the character assassination that has been occurring here, rather than looking at this as Mr. Sommer has said that they have not told you lies, but in fact the City, Mr. Hiatt has a letter from Mr. Karnes in which he says that it was owned by Owen and Marty Nelson first and then that they put it into MoDo Group. You have the deeds that show it went directly there. That is a misrepresentation of ownership. You have misrepresentations as to values of the property. They have a mortgage line of credit for \$1.1 million, that's usually about 80% of the value. You talk about affordable housing, but in fact, they've only paid \$465,000 worth of improvements, and that comes out to fifty dollars per square foot on a thirty-three hundred square foot structure.

You have Mr. Rasch misquoting the ordinance concerning archaeological clearance. You can read it for yourself. You have Mr. Sommer

misrepresenting when he says that the owners weren't present. MoDo Group, LLC is a company, they don't go on vacation. We could have had the hearing in front of the Board of Adjustment. Then, Mr. Sommer filed a complaint against my property, again totally misrepresented the square footage there. You have Mr. Nelson saying that, you know, that they had approval for these windows changes, for example. But again, I read to you from their project description and it says, "We will be replacing the doors and windows, windows and significant facades will be replaced with new windows of like design and size." He also says that they did not have.... they had windows that ranged from double hung to fixed, sliding and awning. They did not say they had casement windows. The primary facade on the south side has a casement window. You have a photo of that. You have a photo of the window being moved up. Ms. Brennan told me they administratively approved that. Again, it's a violation of the H-District Ordinance. The same with the windows on the primary facade. You have photos showing that they've been downsized and that they have been changed from double hung as he says here, I am going to replace. There's one window on the north facade of the casita which currently does not exist. It will be replaced with a new window of double hung type, similar to other existing windows on this building. And again, that's the words. He didn't say.... and by the way, when he did those drawings and they were presented to the H-Board, there was no key code. You couldn't tell whether there was a casement window or double hung. So, it seems that the words should control here, and they're supposed to be double hung.

I think you have... and I'll just close up, because I know that you're probably really bored listening to me, even though, again, this was the only time I've ever come here. I spent a lot of money coming and I don't really feel that I have adequately been able to present my case.

However, you have several options here. You could.. I would use that the law requires you to have them lose their nonconformity. They did, in fact, add on footings to both the north casita and the main house. They did destroy more than 66 2/3 of that structure of the floor area. The structure... excuse me, it's hard to say. They destroyed this structure more than 2/3 of the floor area. And, again you have that in your packet.

Their dimensions on their addition are too large and they need to either downsize that addition or remove it. I believe that you, as a Council, can make that decision. I believe also that, since it is complicated, and you got this packet on Thursday before a holiday weekend, perhaps some of you have not actually look at these packets and looked at the photos and that perhaps you, it would be well advised to take it under advisement for two weeks and then make a decision.

I think another alternative is to send it back to the H-Board who actually

could say whether their conditions were violated or not, and whether in fact they agreed to put casement windows where it says they were going to put double hung. And again, those casement windows intrude into that zero lot line and cause loss of nonconformity. And so, maybe you should also send it back to the Planning Commission. I've also, instead of doing character assassination, in my opening statement, I gave you a... other solutions that I think are less radical than what the law actually calls for, such as putting the window that used to be offset, making it offset again, etc. It is there in your packet. And, again, I appreciate your time and attention, especially now that it is so late. Thank you.

MAYOR: Thank you Ms. Beninato.

SOMMER: Members of the Council, thank you very much for listening and I think that you have given Ms. Beninato undue process. You've given her a great deal of time, and I think she was right. She could keep us here for four hours, if you allowed her to, and thankfully, you have not.

I think that this case comes down to one simple thing. Credibility. Ms. Beninato's word versus dozens of people. I think the weight of the evidence is overwhelming. I don't think that there's even a question about it. The unfortunate thing in this case is, is really what's on the ground out there has been an extreme makeover. You know, we've all seen this TV show, or snippets of it, where a house is renovated and it's this whole new deal. Unfortunately, the extreme nature of this work over, has been that my clients and City staff and now you all have been subjected to what I think are outrageous claims. And, it's unfortunate. It is really unfortunate.

We are asking for one simple thing, and that is for the City Council tonight to adopt the findings of the Board of Adjustment and send Ms. Beninato on her way to Court to challenge your-alls decision. Because, I don't think there's any question about what's gone on in this case.

We have not addressed every single allegation of the appeal. And our failure to address every single allegation is not, by any means, an admission that we agree with them obviously. But, there's just so much thrown at you, I think that the hope here is that something will stick. And I think that the record is absolutely clear that nothing has stuck for a year now and it has cost us all a lot of time and money.

And, I'd just like to close by saying to City staff that they have done a yeoman's job of having to deal with minute detail and put up with a heck of a lot of, what I can only think of as, abuse. And, you all are served well by them in, one, protecting the record in this case, protecting the City from claims, baseless claims, of liability, and I think that they are to be applauded in their effort. The packet that is front of you is complete.

Every one of the individuals that is here tonight is thoroughly versed in what they're doing, and they've done a good job, in my opinion, too good a job on the Nelson's property. Anyway, I thank them, I thank you, and we would ask that you adopt the findings of the Board.

MAYOR: Thank you Mr. Sommer. Okay, the hearing is closed. I have Councilor Bushee, Councilor Chavez.

COUNCILOR
BUSHEE: I have a quick question for David Rasch. David, who requested the red tagging of the property in question.

RASCH: Mayor, Councilors, when Stefanie Beninato called me and said there were historic adobe walls being taken down, I requested Gary Moquino to red tag the project, as I typically would, to stop any potential damage to the historic resource for research, and that's what caused the red tag.

BUSHEE: So, it took you how long to do the discovery that it was not something you would have red tagged.

RASCH: We placed the red tag on July sixth, and we determined it was not relevant on July twelfth.

BUSHEE: There was also a statement made, and I don't know that that's... I guess it's pertinent, given that Ms. Beninato has claimed the importance of the historicness of this area, but is it true that her property has.... that she applied... appealed or applied to the H-Board to have it be a non-conforming..... not be a non-conforming property.

RASCH: Mayor and Councilor, yes that's true. She did request a downgrade of historic status of her structures. The Board did not grant that.

BUSHEE: You know, I don't want to open up a can of worms, of why that occurred, so I think I'll just leave it at that, and I am going to make a motion.

I am going to move to deny the appeal and adopt the findings of fact and conclusions of law of the Board of Adjustment.

COUNCILOR
ROMERO:

Second.

BUSHEE: And then, I'm just going to comment. You know, maybe this had to occur, you know due process is important, but I have to say in my fourteen years here, I've never experienced such an interrogation in the name of cross examination. I have never seen as many resources, City and probably private, expended and as much paper thrown at us. And,

also, I think almost everybody in this room has been, on some level, labeled as unable to do their job or that they didn't do their job, including the Council, we just didn't have all the time to read all of this paper, apparently, because it was so close to a holiday. I find this an abuse of the process is all I have to say.

MAYOR: Councilor Chavez.

CHAVEZ: Mayor, and I guess I want to clarify confusion regarding my *ex parte* communication with Ms. Beninato. And, I did disclose earlier that I did have communication with her. I explained the nature and extent of that conversation that I had with her, and I'm going to ask the Council then, if they're comfortable with that disclosure.

MAYOR: Seeing no objection.

CHAVEZ: Thank you Mayor.

MAYOR: Okay, we have a motion. Councilor Ortiz.

ORTIZ: Well, I would like to add as a **friendly amendment** to the motion, the findings that I had in looking at the hearing. **I want to add the following findings:**

1. **First, I think that both parties, the Appellant and the Appellee had sufficient and ample time, both pre-hearing as well as during the hearing to conduct themselves and to present their case;**
2. **Second, I do want to say that in my experience, eight years on the Council, this case with this Appellant and this Appellee has been afforded the longest time, both in presentation of their case in chief, as well as in cross examination of City and witnesses as well as the documentation that was provided;**
3. **Third, I want to add a finding that I found it significant that of the testimony that we heard, the testimony in large part was redundant to claims that were in the packet and that were presented to the Board of Adjustment;**
4. **Fourth, to the extent that there were new allegations presented by the Appellant, those allegations that were new, that were not presented to the Board of Adjustment, were not substantiated by evidence, and in particular;**
5. **Fifth, as it relates to the allegation that City officials falsified inspection reports, I relied upon the documentation and there was no evidence put forward to the contrary that the documents provided in Tab D, subparagraphs O and P,**

October 1, 2007 Memo from Mr. Padilla through Michael Purdy, regarding the property and the inspections, as well as the inspection reports that were laid out under Tab P, besides the allegation that those were false, there was no evidence presented that they were false, there was just an allegation to counter that, and so, based on the evidence that was provided, I find that City staff, in fact did go out to the property, I find that City staff actually inspected the property and that the documentation that was provided was not contradicted by the Appellant.

And I would request that those findings be included in addition to the Board of adjustment findings.

BUSHEE: Friendly.

MAYOR: It's accepted as friendly? Okay. Roll call on the motion then Tina.

TINA DOMINGUEZ: Councilor Chavez.

CHAVEZ: Yes.

TINA DOMINGUEZ: Councilor Dominguez.

DOMINGUEZ: Yes.

TINA DOMINGUEZ: Councilor Ortiz.

ORTIZ: Yes.

TINA DOMINGUEZ: Councilor Romero.

ROMERO: Yes.

TINA DOMINGUEZ: Councilor Trujillo

TRUJILLO: Yes.

TINA DOMINGUEZ: Councilor Wurzbarger.

WURZBURGER: Yes.

TINA DOMINGUEZ: Councilor Bushee.

BUSHEE: Yes.

TINA DOMINGUEZ: Councilor Calvert.

CALVERT: Yes.

TINA DOMINGUEZ: Mayor, the motion passes.

MAYOR: Thank you Tina. Thank you to the Council and to everyone who participated tonight.

I certify that this is a true and accurate transcript of Agenda Item G(6) Case #A 2008-03, 610 Galisteo Street Building Permits Appeal, from the Regular City Council Meeting of July 9, 2008.


Melessia Helberg, Stenographer

END OF VERBATIM TRANSCRIPT FOR AGENDA ITEM G(6)

- 7) **CONSIDERATION OF BILL NO. 2008-2008-44; ADOPTION OF ORDINANCE NO. 2008- 40. CASE #M 2008-12. CHAMISA HILLS PROFESSIONAL PLAZA DEVELOPMENT PLAN AMENDMENT. GREGG WAY, AGENT FOR BRANCH DESIGN AND DEVELOPMENT, REQUESTS DEVELOPMENT PLAN AMENDMENT TO ALLOW FOR CONSTRUCTION OF AN OFFICE BUILDING ADDITION CONSISTING OF 13,029 SQUARE FEET ON 2.76 ± ACRES. THE APPLICANT ALSO REQUESTS A VARIANCE FROM THE HEIGHT RESTRICTION OF 25 FEET IN THE SOUTH CENTRAL HIGHWAY CORRIDOR PROTECTION DISTRICT TO ALLOW CONSTRUCTION UP TO 31 FEET, AND REQUESTS THAT THE REQUIREMENT FOR APPROVAL BY THE PLANNING COMMISSION OF A SEPARATE FINAL DEVELOPMENT PLAN BE WAIVED. THE PROPERTY IS ZONED C-1-PUD (OFFICE AND RELATED COMMERCIAL, PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT) AND IS LOCATED AT 440 ST. MICHAELS DRIVE. (DONNA WYNANT)**

A memorandum prepared June 24, for the July 9, 2008 Planning Commission meeting [City Council?], with attachments, to the City Council, from Donna Wynant, Senior Plnner, Current Planning Division, regarding Case #M 2008-12, is incorporated herewith to these minutes as Exhibit "5."

Lou Baker presented the staff report which is contained in Exhibit "5." Ms. Baker noted that there is no longer the need for a variance in this case.

RECOMMENDATION: The Planning Commission on 5/15/08 recommended approval of the application by accepting the existing conditions on the site as constituting the elements of the Development Plan for the office building at 440 St. Michaels Drive. The Planning Commission also recommended approval of the Amendment to the Preliminary Development Plan to allow the construction of additional 13,029 square feet of office space. The Planning Commission further recommended waiving the requirement to approve a final development plan subject to there being no changes to the square footage proposed.

The Planning Commission's recommendation for approval was made subject to the requirements of the following departments:

- Technical Review Division-Engineering Review Memo – “RB” Zaxus, 4/21/08.
- Fire Department Review Memo – Barbara Salas, 4/3/08.
- Solid Waste Division Review Memo – Randall Marco, 4/3/08.
- Trails and Open Space Review Memo – Robert Siqueiros, 4/17/08.
- Public Works Department – Traffic Review Memo – John Romero, 5/06/08.
“The proposed additional square footage, is used as general office space, is not expected to generate a significant amount of traffic. A condition of approval shall be placed stating that no more than 20,100 gross square feet of the site can be used for medical/dental type use which includes diagnoses and outpatient care. The remaining gross square footage shall be restricted to general office use only, not allowing any medical/dental type use which would include diagnoses and outpatient care.”

Review of revised plan with two story infill addition:

“I have no comments regarding the Chamisa Hills Plan Amendment since it will be maintaining the same square footage.”

Councilor Bushee noted that in the Memorandum and in the advertised agenda, there is a request for a variance from the height restriction, and asked if there is no request, or if it was published incorrectly.

Ms. Baker said it was advertised correctly. She said this particular parcel of land is in the south central highway corridor and the height restriction is 25 feet. She said the applicant was willing to work with staff to bring the height down. So, instead of three floors, there will be only two stories and they will not exceed 25 feet, so they don't need a variance.

Councilor Wurzbarger doesn't understand why the Planning Commission agreed to waive the requirement to approve the final development plan.

Tamara Baer said there was confusion in the first place as to how this zoning came about. The building was built strictly with a building permit, and there was never a development plan to begin with. Because it is PUD, it requires the preliminary and final development plan, but because the zoning was a fluke in the first place, the Planning Commission didn't feel it was necessary for it to come back.

Public Hearing

Presentation by the Applicant

Nancy Long, Attorney for the Applicant, was sworn. Ms. Long said Ms. Baker has outlined the issue before the Council, and noted this is a strange zoning situation that they are trying to fix by having the Council approve the existing conditions as the development plan, approve the intensification of that use with the expansion that is planned, and then also approve the recommendation of the Planning Commission that it not go back there for final.

Ms. Long said this is the old Lovelace Building on St. Michaels, and the only connection between the two buildings is the second floor passageway which will be filled in with the two story structure. There will be brand new Arroyo Chamiso facilities which are moving there, the Foundation for the hospital will move there and it will open more bed space at the hospital. The idea is to open it for more clinical/patient use, and try to get some of the administrative functions. The building will be remodeled with new landscaping and they believe it will be a vast improvement. She noted Mr. Branch couldn't be here this evening. She said all the conditions recommended by staff are acceptable.

The Public Hearing was closed

Councilor Bushee said what is astounding is that an adjacent lot was rezoned in 1978 from R-1 to C-1 PUD. She is grateful that the height issue was reduced, and she sees no reason to deny the request.

Councilor Bushee moved, seconded by Councilor Romero, to adopt Ordinance No. 2008-40, approving Case #M 2008-12, with conditions as recommended by staff.

Discussion: Councilor Calvert noted on page 3 of the packet it discusses providing 98 parking spaces, which includes 20 spaces for bicycle parking, and asked if that includes bicycle racks. *[Although inaudible, apparently the response was that it does.]* Councilor Calvert said he wanted to make the clarification that the bicycle parking will be with racks.

Councilor Wurzbarger asked where the water is coming from.

The response was inaudible on the tape, but apparently staff advised that won't come until the final development plan.

Councilor Ortiz said it isn't going to final development plan, this is it.

Councilor Wurzbarger reiterated her question with regard to water for this 15,000 sq. ft. of commercial.

Ms. Baer said we don't look at this until building permit application and then it goes through WBAO. She said the water probably will come through retrofits.

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.

- 8) CONSIDERATION OF BILL NO. 2008-43; ADOPTION OF ORDINANCE NO. 2008- 41. CASE #m 2008-08. COLORES DEL SOL PRELIMINARY DEVELOPMENT PLAN AMENDMENT. JENNIFER JENKINS, AGENT FOR CENTEX HOMES, REQUESTS APPROVAL TO AMEND ORDINANCE NO. 2005-27, WHICH AMEND THE PUD PRELIMINARY DEVELOPMENT PLAN TO INCREASE THE DENSITY FROM 286UNITS TO 287 UNITS. THE PROPERTY IS LOCATED NORTH OF AIRPORT ROAD AND SOUTH OF AGUA FRIA ROAD, WEST OF JEMEZ ROAD AND EAST OF MORNING DRIVE AND SOUTH MEADOWS ROAD AND IS ZONED R-6 PUD (RESIDENTIAL DISTRICT – SIX DWELLING UNITS PER ACRE, PLANNED UNIT DEVELOPMENT OVERLAY DISTRICT). (LOU BAKER)**

A memorandum prepared June 25, for the July 9, 2008 City Council meeting, with attachments, to the City Council, from Daniel A. Esquibel, Land Use Planner Senior, Current Planning Division, regarding Case #M 2008-08, is incorporated herewith to these minutes as Exhibit "6"

Fifteen color photographs of the subject site and the property adjacent to the subject site, entered for the record by Felicia Trujillo, are incorporated herewith to these minutes as Exhibit "7."

Lou Baker presented the staff report which is contained in Exhibit "6 "

RECOMMENDATION: This proposal has satisfied 14-5.7(C) Standards and Guidelines for Planned Unit Developments Reference (Exhibits B and C – Planning Commission meeting minutes and Staff Memo). Staff recommends approval to amend the PUD subject to the above referenced conditions.

Public Hearing

Presentation by Applicant

Jennifer Jenkins, agent for the Applicant, was sworn. Ms. Jenkins said the Applicant agrees with all staff conditions. When Colores del Sol was originally annexed and rezoned, there was an anomaly of one very large lot, over ½ acre, that was part of the annexation and rezone, but it wasn't part of the original subdivision in terms of modifying that lot

because it was under the previous ownership that was part of the consolidation of the various property owners there. Centex Homes, the developer of the property, has since acquired that lot, and because it is so out of character with the rest of the neighborhood, it is just a request to split it into two, so there will be two 1/4 acre lots which are the largest lots in the neighborhood, by far. It does require Council action because of the PUD zoning.

Speaking to the ordinance:

Felicia Noel Trujillo was sworn. Ms. Trujillo presented color photographs via an overhead of the subject site. These photographs were entered in the record as Exhibit "7." Ms. Trujillo owns one acre of land which is right next to the Centex construction. She said the photographs indicate the trash which was left after construction. She said permission for the subdivision was given originally based on 4 units per acre and the request is now for 6 acres.

[The response by Ms. Jenkins is inaudible.]

Ms. Trujillo said Centex is the company responsible for her being ill for 10 months. She showed a photograph of what was done to her wire fence in building the wall. She said she is partly here to ask the Council advice. She said not only did they leave their construction vehicles running from 7:00 a.m. to 3:30 p.m. every day, but they left trash between her fence and the wall they built. She said she would watch the construction workers sitting on the wall and leaving trash. She was very ill at the time, and the only thing that brought her through were IV treatments, so she didn't have the strength to walk back and talk to anyone. She has a small clinic in the first building, noting she is a rehab specialist working with people who are paralyzed by stroke, have had open heart surgery and other delicate kinds of things.

Ms. Trujillo said "we" all attended the meetings about this. She said initially the notices were mailed to out of date addresses, noting the County had changed the addresses. She did try to explain at the meetings that she has a clinic and would appreciate them not doing anything to pollute "back there." She was told the owner was going to keep this piece of land which is being addressed tonight for himself.

Ms. Trujillo said she has two questions, one is to ask the Council's advice. One, they sent her a notice that if she wanted, they would give her a deed to five feet more. She said the subject property backs onto her property which is one acre. She wondered why they wanted to give her the five feet and then that's when she noticed the garbage. She is considering refusing that offer, and considering formally asking them to remove the garbage. She said originally the wall was to be six feet. She some of her neighbors wanted to attend noting Ysidro Herrera a neighbor recently fell off his roof, has an open wound and couldn't attend.

Ms. Trujillo said many of the neighbors think they're trying to make this more dense than the rest of their properties. There is one house on her property, which recently was split, so now she is on 1/2 acre of land, and she isn't allowed to add more because she is in the County. She said this whole development is backed onto a whole street of people who are not allowed to become that dense.

The Public Hearing was closed

Councilor Wurzbarger moved, seconded by Councilor Chavez, to adopt Ordinance No. 2008-41 approving Case #M 2008-08, with recommendations by staff with the condition that Centex remove the garbage and continue to remove the garbage and repair the fence on Ms. Trujillo's property.

Discussion: Councilor Wurzbarger said this condition has been allowed to deteriorate over time.

Councilor Bushee asked if the people in the area are aware that Centex is planning 287 units.

Ms. Jenkins said yes, noting the plat originally was for 286 units, and tonight they are asking for an increase of one unit. Responding to Councilor Bushee, Ms. Jenkins said it is 30% affordable, noting there will be a fractional fee cash contribution for the additional unit.

Councilor Bushee asked if there are other amenities in the area which will be required.

Ms. Jenkins said parks throughout the neighborhood.

Councilor Bushee wants to ensure that this development doesn't stick out like a "sore thumb," relative to the neighborhood.

Ms. Jenkins said it definitely is more dense than other things around it, but some of the lots, even though in the County, are grandfathered and there is a mix of small and large lots. She said the zoning of R-6 would allow 339 units, and they have only 287, so by no means has the subdivision been maxed out.

Councilor Bushee asked about a buffer.

Ms. Jenkins said she wasn't involved with the annexation and the rezone application, and neither was Centex and they purchased the property after the fact. She said based on their research, she understands the original applicant for the annexation and the rezone had made an offer, as an additional buffer, to the Jemez Road neighbors to create a strip of land which they could add to their back yard, basically increasing the depth of the back yard. She said that strip was not purchased by Centex, and was not part of the approved subdivision. She said the question was raised to the Applicant, and they had some ENN meetings. Centex research it and discovered it doesn't own that strip, and went back to Jeff Branch and said a "no man's" land is being created and needs to be addressed. She said the notices must have gone out to the neighbors asking them if they would like that property deeded to them. She understands that Jeff Branch's group still owns that strip of land.

Councilor Bushee asked how many neighbors are involved with that.

Ms. Jenkins said she doesn't know and apologized.

Councilor Bushee said she has had complaints in Jeff's developments in the area that people felt things weren't well done while they were living there. She wants to be sure if they don't accept these five foot strips that it doesn't turn into some trashy no man's land.

Ms. Jenkins agrees and said it is a concern. She said Centex was required to build a C & E wall on the back of the property lines on the east side to provide a buffer for the existing neighbors on Jemez Road.

Councilor Bushee asked how they access this additional five feet if there is a wall.

Ms. Jenkins said the wall is on the other side. If people want that strip and accept the dedication, the assumption is people would move their fence back, or take their fence out and just use the Colores del Sol wall as their boundary.

Councilor Bushee said there needs to be a more systematic approach to this and not just leave it up to "gee, maybe they will and maybe they won't," because that will just create a corridor of trash. She said this is a rezoning and the Council can impose more conditions. She believes it is incumbent on Centex or its agents to sit with people, explain what this is, and perhaps help take down and remove their fences.

Ms. Jenkins said the problem is that Centex doesn't own the land, and it's not under its control.

Councilor Bushee asked about Jeff Branch.

Ms. Jenkins said Centex had communications with Branch when the status of the strip was being researched, and Centex doesn't control the property.

Councilor Bushee asked how many neighbors and fences this impacts.

Ms. Trujillo said there could be 30 families on the stretch. She asked how tall is the wall.

Ms. Jenkins said, because of concerns expressed by the neighbors about the height of the wall, a couple of courses recently were added to the wall, and she believes it is now at about 5 ½ feet.

Ms. Trujillo noted the photograph of the fences in the packet, and said her link fence is exactly 73 inches, and by comparison the wall is about 14 inches shorter. Her understanding initially was that the wall would be 6 ft. tall.

Ms. Trujillo asked, if they don't take the property, if Centex will take care of cleaning the litter.

Councilor Calvert said it won't in perpetuity.

Councilor Bushee said we are going to create a problem here.

Mayor Coss suggested a nuisance condition where you would ask the City Attorney to go after the property owner which isn't Centex nor Ms. Trujillo.

Councilor Bushee asked the point of a five foot strip, commenting it is costly to move fences.

Ms. Trujillo likes the idea of Centex meeting with the neighbors if they mail the notices to the correct addresses. She believes a meeting would be fruitful.

Councilor Dominguez asked if the Branches own the strip.

Ms. Jenkins said this is her understanding.

Councilor Dominguez said if there is a strip the City has authority to make them clean that up. He asked what were the improvements on South Meadows and Rufina.

Ms. Jenkins said the roads are done to City standard, and believes they have 46 ft. rights-of-way and sidewalks on the full gamut, noting Rufina has already been constructed, so the extension of South Meadows was a part.

Councilor Calvert asked if Centex would be willing to build the masonry wall to 6 feet, saying people might be more likely to take the five feet, remove their own fences and we wouldn't have the trashy area between. He would like to impose this as a condition of approval.

Friendly amendment: Councilor Calvert would like to impose a condition for Centex to build the masonry wall to a height of six feet. **Friendly to maker and second, with the additional condition by the maker, that during the construction period Centex is going to be responsible for cleaning up all the stuff that accidentally falls over the wall in to the area.**

Ms. Jenkins will confirm the height of the wall after the two courses of CMU were added to the wall.

Friendly amendment: Councilor Bushee would like a condition to direct Centex to facilitate a meeting between Branch and the neighbors to resolve the issue of the 5 feet, and to talk about the benefit of this transfer to the neighbors. **The amendment was friendly to the maker and second.**

Ms. Trujillo asked if there could be any kind of mention to them about when they do sell the units and they are building, please not to run diesel trucks all day during construction. She has been forced to rent an office in town to see people, and she has been unable to live in her home for two months.

Councilor Wurzbarger said the City has certain rules about what can be done on a construction site, but she believes the diesel truck could be covered.

Councilor Wurzbarger gave direction to the City Manager to clarify what the City could do with respect to the length of time diesel trucks are kept running during construction, and to look at compliance with the requirement for dust control.

Mr. Katz said the City could condemn the five acre strip and require Centex to pay for it.

Councilor Bushee said this has already been offered to the neighbors.

Mr. Katz said Centex can't offer it, and asked if Branch offered the property.

Responding to Councilor Bushee, Councilor Wurzbarger said her friendly amendment directs Centex to facilitate a meeting so this issue could be discussed.

The motion, as amended, was approved on the following Roll Call vote.

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

Against: None.

9) CONSIDERATION OF ADOPTION OF 2008-2013 FIVE (5) YEAR CONSOLIDATED PLAN. (MELISA COLLETT). (Postpone to July 30, 2008 City Council Meeting)

This item was postponed to the meeting of July 30, 2008.

14. COMMUNICATIONS FROM THE GOVERNING BODY.

Councilor Dominguez

Councilor Dominguez said he has had a request to have the streets swept in Precincts 32 and 33.

Councilor Dominguez said now that we have done the things with the RTD, he wants to ensure that Mr. Buller provides the staff to make those things happen until revenues begin to come in.

Councilor Dominguez said, although this is the summer, the Santa Fe Public Schools are getting ready for the next school year. He said Melanie Romero, Principal at Capital High School, has asked that any people who would like to volunteer to assist them with registration on August 15 and 18, 8:00 a.m. to 3:30 p.m., to call her at 467-1003, and leave their name and number either for Melanie Romero or Jennie Garcia. He also would like this information to be put on the Government Channel as well.

Councilor Calvert

Councilor Calvert introduced an ordinance amendment to remove rainwater barrels from the rebate program. He asked that it go to Public Utilities and Finance Committees. A copy of this ordinance is incorporated herewith to these minutes as Exhibit "8."

Councilor Calvert introduced an ordinance amendment repealing the current alarm ordinance and creating a new one on how the City will deal with alarms and false alarms. He asked that it go first to Public Safety, and then to BQL, Public Works and Finance Committees. A copy of the proposed ordinance is incorporated herewith to these minutes as Exhibit "9."

Councilor Trujillo

Councilor Trujillo said last year we cleaned the arroyo between Camino Consuelo and Avenida de las Campanas, and it is now overgrown and would like it cleaned again.

Councilor Trujillo said he was called by the members of AABC thanking the City for the way Ft. Marcy looks.

Councilor Trujillo asked, next year, to ensure there isn't a Council meeting when Lumbre del Sol plays for Music on the Plaza.

Councilor Bushee

Councilor Bushee said there is a whole group of prairie dogs along the river on the roadside of West Alameda and they are running into the traffic. She has requested that it be put on the contractor's list.

Councilor Bushee wants the Highway Corridor Plan to go from a Resolution to an Ordinance for the next Public Works Committee.

Councilor Bushee wished Carmen Oyaca a happy 90th birthday on July 28th.

Councilor Ortiz

Councilor Ortiz said Gloria Mendoza does have an issue, and he believes the staff at the GCCC can learn a little bit about treating people with dignity, especially the elderly. He said Liz and Ron have apologized and tried to make amends, but that message isn't getting to staff. He said Ms. Mendoza is correct, there is no seating at the kiddy pool for anyone, and people who can't stand have a problem to watch anyone at the kiddy pool. He wants staff to follow up.

Councilor Ortiz said the Mayor's staff was supposed to issue a press release about the special meeting on July 21, 2008, on the additional allocation. He said to be considered at that meeting, the requests must be in writing with a proposed budget, along with a demonstration that other funds are coming into the project. He said these will be heard, considered and

prioritized and ranked in a sort of CIP fashion at that meeting. He said if it isn't in writing, please don't contact him to champion it.

Councilor Bushee asked if there will be a list of requests prior to the meeting.

Councilor Ortiz said it is hoped that the list and all the information will be in the packet, which should be available by Friday.

Councilor Bushee would like to condition that items for consideration have already been in the pipeline, and not just new projects.

Councilor Ortiz said that ability was lost when the article came out.

Councilor Bushee wants some sort of starting point before that meeting.

Councilor Ortiz said an hour has been scheduled for this particular item, but the agenda is short in the event it runs over. He pointed out that a decision doesn't have to be made by the end of the month.

Councilor Ortiz moved, seconded by Councilor Bushee, to suspend the rules to continue past 12:00 midnight.

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.

Councilor Romero

Councilor Romero would like to direct the Finance Director to provide information if there is a precedent about not spending money, commenting the idea might be not to spend the windfall. She would like this to be one option.

Councilor Romero really uses the online Constituent Services, and would encourage the Councilors to do so as well, noting it tracks the suggestions/comments/complaints, and reports to the Councilor and the constituent.

Councilor Chavez

Councilor Chavez introduced a Resolution on the practices of New Mexico Museum to manufacture furniture out of state. He asked that it go to the BQL and Public Works Committees. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "10."

Councilor Chavez said there was a lot of confusion about dogs on the Plaza at the 4th of

July Pancake Breakfast. He was approached by two people questioning the reason there is an ordinance prohibiting dogs on the Plaza, and he explained that is for the major events. He doesn't believe we are consistent which events are major, and we need to educate the public and send that message.

Councilor Chavez said the Hickox Sierra Vista Neighborhood association will be meeting on July 29, 2008, focusing on neighborhood conservation districts. He asked Mr. Buller to work with the schools to schedule the old BF Young Complex meeting room for this meeting.

Councilor Chavez said he will leave to attend a conference tomorrow as a member of the NLC Board of Directors, and will return on Sunday. He said a priority for the NLC is transportation. He said congress has just debated Legislation to provide \$1.7 billion in grants to mass transit authorities in both urban and rural areas to partially offset the rapid increase in fuel cost.

Mayor Coss

Mayor Coss had no communications.

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 12:15 p.m.

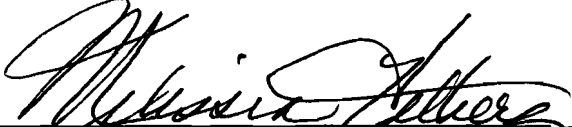
Approved by:

Mayor David Coss

ATTESTED TO:

Yolanda Y. Vigil, City Clerk

Respectfully submitted:


Melessia Helberg, Stenographer