



Agenda

REGULAR MEETING OF
THE GOVERNING BODY
AUGUST 27, 2008
CITY COUNCIL CHAMBERS

AFTERNOON SESSION – 5:00 P.M.

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 – August 11, 2008
8. PRESENTATIONS

CITY CLERK'S OFFICE

DATE 8/22/08 TIME 2:05 pm

SERVED BY _____

RECEIVED BY Hydomaguz

- a) Muchas Gracias – Shayna Lewis, Planning Commissioner.
(5 minutes)
 - b) National League of Cities Update (Councilor Chavez). (5 minutes)
9. CONSENT CALENDAR
- a) CONSIDERATION OF RESOLUTION NO. 2008-_____. (Councilor Calvert)
A Resolution Urging the New Mexico Legislature to Pass a Budget for The Interstate Stream Commission that Includes a Recurring Budget Item of an Additional \$345,000 for Ongoing Regional Water Planning. (Claudia Borchert)
 - b) Request for Approval to Publish of Notice of Public Hearing on September 24, 2008:

Bill No. 2008-52 – An Ordinance Repealing Section 25-2.10 SFCC 1987 for the Purpose of Discounting the Rainwater Harvesting Barrel Rebate Program. (Councilor Calvert) (Dan Ransom)
 - c) Request for Approval of Budget Increase for 08/09 Fiscal Year Ice Arena for Adult Hockey Program at GCCC. (Liz Roybal)



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- d) Request for Approval of Grant Agreement – Combined Heat and Power System for GCCC; State of New Mexico Energy and Minerals and Natural Resources Department. (Nick Schiavo)
 - 1) Request for Approval of Budget Increase – Utilities Administration Fund.
- e) Santa Fe Municipal Airport (Jim Montman)
 - 1) Request for Approval of Grant Application – Federal Airport Improvement Program for Construction of Airport Rescue and Firefighting Station.
 - 2) Request for Approval of Grant Award – Airport Manager to Accept Federal Grant in Order to Meet Federal Fiscal Year Deadlines.
 - 3) Request for Approval of Grant Application – State Airport Aid for Construction of Airport Rescue and Firefighting Station.
 - 4) Request for Approval of Grant Award – Airport Manager to Accept State Grant and Expedite the Process.
- f) Request for Approval of Amendment No. 1 to Professional Services Agreement – Frenchy's Park and Larragoite Park Improvements; Sites Southwest, Inc. (Ben Gurule)
- g) Request for Approval of Amended Destination Business System Service Agreement; New Media Gateway, Inc. (Keith Toler)
- h) Request for Approval of Amendment No. 1 to Professional Services Agreement – Calibrate and Rebuild Large Water Meters for Water Division; Great Southwest Meters. (Shannon Jones)
- i) Request for Approval of Amendment No. 3 to Professional Services Agreement – City Wide Source of Supply Improvements for Water Division; Alpha Southwest, Inc. (Michael Gonzales)
- j) Request for Approval of Amendment No. 2 to Professional Services Agreement – Water Rights Issues for Water Division; Lee Wilson & Associates, Inc. (Dale Lyons)



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- k) Request for Approval of 99 Year Land Lease – City Owned Land at Paseo de Peralta and Gomez Street; Santa Fe Habitat for Humanity. (Richard Macpherson)
 - l) Request for Approval of Conceptual Design of Downtown Transit Center – Sheridan Street Improvements. (Mary MacDonald and Jon Bulthuis)
 - m) CONSIDERATION OF RESOLUTION NO. 2008-_____. (Councilor Bushee)
A Resolution Naming the City's Sangre De Cristo Water Company Building in Honor of "Arthur G. Sanchez". (Maya Martinez)
 - n) CONSIDERATION OF RESOLUTION NO. 2008-_____. (Councilor Ortiz, Mayor Coss, Councilor Dominguez, Councilor Bushee and Councilor Trujillo)
A Resolution Adopting the Healthy Lifestyles for Children and Adolescents Task Force Report Dated May 15, 2008; Designating 1% of the City's Gross Receipts Tax for Healthy Lifestyles Grants; and Directing the City Manager to Implement the Recommendations of the Healthy Lifestyles Task Force. (Lynn Hathaway)
 - o) Request for Approval of Agreement – Compressed Natural Gas Vehicle Fueling Station and CNG Sales and Retailing for Transit Division; Clean Energy Construction Corporation. (Jon Bulthuis)
10. CONSIDERATION OF RESOLUTION NO. 2008-_____. (Councilor Wurzburger, Mayor Coss, Councilor Romero and Councilor Calvert)
A Resolution Calling for a Special Municipal Election to be Held ~~August 19, 2008~~ _____, 2008 for the Purpose of Submitting a Question to the Qualified Electors of the City of Santa Fe as to Whether an Excise Tax Should be Imposed on the Transfer of Residential Property in the Amount of One Percent (1%) of the Portion of the Purchase Price in Excess of \$750,000. the Tax Would be Imposed on the Buyer and the Revenues Collected from the Tax Would be Used Solely for Affordable Workforce Housing. (Postponed at July 30, 2008 City Council Meeting) **(Request to Postpone to October 6, 2008 City Council Meeting)**
- a) Request for Approval of Consolidated Precincts.
11. MATTERS FROM THE CITY MANAGER



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12. MATTERS FROM THE CITY ATTORNEY

EXECUTIVE SESSION:

- a) Update on Pending Litigation: *Waddell v. City of Santa Fe* (Real Estate Transfer Tax Ordinance); Pursuant to §10-15-1 (H) (7) NMSA 1978.
- b) Discussion of Northwest Quadrant and Santa Fe Public Schools, Pursuant to §10-15-1 (H)(8) NMSA 1978.
- c) Discussion Regarding the Acquisition of Water Rights; Pursuant to §10-15-1 (H)(8) NMSA 1978.
- d) Discussion of Potential Modification to the Las Campanas "Settlement Agreement"; Pursuant to §10-15-1 (H) (7) NMSA 1978.

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) Request from Menole, Incorporated for a Restaurant (Beer & Wine) License to be Located at Bert's La Taqueria, 416 Agua Fria. (Yolanda Y. Vigil)



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- 2) Request from John Chavez for the Following: (Yolanda Y. Vigil)
 - a) Pursuant to §60-6B-10 NMSA 1978, a Request for a Waiver of the 300 Foot Location Restriction to Allow the Sale of Alcoholic Beverages at Real Burger, 2239 Old Pecos Trail, Which is Within 300 Feet of Congregation Beit Tikva, 2230 Old Pecos Trail.
 - b) If the Waiver of the 300 Foot Restriction is Granted, a Request for a Restaurant (Beer & Wine) License to be Located at Real Burger, 2239 Old Pecos Trail.
- 3) Request from the Santa Fe Railyard Community Corporation to Allow the Dispensing/Consumption of Alcoholic Beverages (Beer & Wine Only) at the Santa Fe Farmer's Market Facility (City Property) on September 12, 2008 from 6:00 P.M. – 10:00 P.M, for the Railyard Grand Opening Donor and Supporter Party. (Richard Czoski and Yolanda Y. Vigil)
 - a) Second Street Brewery.
 - b) Susan's Fine Wine and Spirits.
- 4) CONSIDERATION OF BILL NO. 2008-49: ADOPTION OF ORDINANCE NO. 2008-_____.
An Ordinance Authorizing the Issuance and Sale of The City of Santa Fe, New Mexico Gross Receipts Tax Refunding Revenue Bonds, Series 2008B in an Aggregate Principal Amount Not to Exceed \$24,000,000 for the Purpose of Defraying the Cost of Refunding, Paying and Discharging the Outstanding City of Santa Fe, New Mexico Gross Receipts Tax Refunding And Improvement Revenue Bonds, Series 1997A; and City of Santa Fe Gross Receipts Tax Revenue Bonds, Series 1999; Providing that the Refunding Bonds will be Payable and Collectible From the Gross Receipts Tax Revenues Distributed to the City; Providing for the Disposition of the Receipts Derived from the Gross Receipts Tax Revenues; Establishing the Form, Terms, Manner of Execution and Other Details of the Refunding Bonds; Authorizing the Execution and Delivery of a Bond Purchase Agreement, in Connection with the Refunding Bonds; Providing for Redemption Of The Series 1997A And 1999 Bonds; Approving Certain Other Agreements and Documents in Connection With The Refunding Bonds; Ratifying Action Previously Taken in Connection With the Refunding Bonds; Repealing All Ordinances in Conflict Herewith; and Related Matters. (David Millican)



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- 5) **CONSIDERATION OF BILL NO. 2008-47: ADOPTION OF ORDINANCE NO. 2008-_____.**
An Ordinance Amending Sections 14-6.2(C)(10), 14-8.11(D), 26-1.8 and 26-1.33 SFCC 1987 and 26-1.8 SFCC 1987 Regarding the Applicability of the Santa Fe Homes Program to Vacation Time Share Projects and Making Such Other Changes as are Necessary. (Councilor Calvert and Councilor Bushee) (Ted Swisher)
 - a) **CONSIDERATION OF RESOLUTION NO. 2008-_____.** (Councilor Calvert and Councilor Bushee)
A Resolution Amending the Administrative Procedures for The Santa Fe Homes Program (SFHP) Regarding the Applicability of the SFHP to Vacation Time Share Projects and Make Such Other Changes as are Necessary. (Ted Swisher)
- 6) **Case # H-08-061.** Appeal of the Historic Design Review Board's Decision on June 10, 2008, Concerning Non-Contributing Property Located at 120 Quintana Street in the Westside-Guadalupe Historic District. Max Aragon Requests that the Governing Body Rescind the Approval to Construct an Approximately Six Foot High Coyote Fence and a Nine and One-Half Foot High Pedestrian Gate. (David Rasch)
- 7) **Case # H-08-008.** Appeal of the Historic Design Review Board's Decision on May 13, 2008, Concerning Non-Contributing Property Located at 610 Miller Street in the Downtown & Eastside Historic District. Richard Martinez, Agent for Balser, Requests that the Governing Body Rescind the Conditional Approval to Construct a Single Approximately Six Foot High Vehicle Gate. (David Rasch)
- 8) Pursuant to §60-6B-10 NMSA 1978, a Request for a Waiver of the 300 Foot Location Restriction and Approval to Allow the Sale/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 Event: (Yolanda Y. Vigil)
 - a) Santa Fe Fiesta Council Fiestecita to be held on Tuesday September 2, 2008 from 6:00 – 9:00 p.m.

H. ADJOURN



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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
August 27, 2008**

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PURSUANT TO §60-6B-10 NMSA 1978, A REQUEST FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES AT REAL BURGER, 2239 OLD PECOS TRAIL, WHICH IS WITHIN 300 FEET OF CONGREGATION BEIT TIKVA, 2230 OLD PECOS TRAIL.	Approved	11-12
IF THE WAIVER OF THE 300 FOOT RESTRICTION IS GRANTED, A REQUEST FOR A RESTAURANT (BEER & WINE) LICENSE TO BE LOCATED AT REAL BURGER, 2239 OLD PECOS TRAIL.	Approved	11-12
REQUEST FROM THE SANTA FE RAILYARD COMMUNITY CORPORATION TO ALLOW THE DISPENSING/ CONSUMPTION OF ALCOHOLIC BEVERAGES (BEER & WINE ONLY) AT THE SANTA FE FARMER'S MARKET FACILITY (CITY PROPERTY) ON SEPTEMBER 12, 2008, FROM 6:00 P.M. TO 10:00 P.M., FOR THE RAILYARD GRAND OPENING DONOR AND SUPPORTER PARTY SECOND STREET BREWERY. SUSAN'S FINE WINES AND SPIRITS.	Approved	13-14

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
<p>PURSUANT TO §60-6B-10 NMSA 1978, A REQUEST FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION AND APPROVAL TO ALLOW THE SALE/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 EVENT: SANTA FE FIESTA COUNCIL FIESTECITA TO BE HELD ON TUESDAY, SEPTEMBER 2, 2008, FROM 6:00 - 9:00 P.M.</p>	<p>Approved</p> <p>Approved</p>	<p>14</p> <p>14-15</p>
<p>CONSIDERATION OF BILL NO. 2008-49; ADOPTION OF ORDINANCE NO. 2008- ____ . AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF SANTA FE, NEW MEXICO GROSS RECEIPTS TAX REFUNDING REVENUE BONDS, SERIES 2008B IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$24,000,000 FOR THE PURPOSE OF DEFRAYING THE COST OF REFUNDING, PAYING AND DISCHARGING THE OUTSTANDING CITY OF SANTA FE, NEW MEXICO, GROSS RECEIPTS TAX REFUNDING AND IMPROVEMENT REVENUE BONDS, SERIES 1997A; AND CITY OF SANTA FE GROSS RECEIPTS TAX REVENUE BONDS, SERIES 1999; ETC.</p>	<p>Postponed to 09/24/08</p>	<p>15-16</p>
<p>CONSIDERATION OF BILL NO. 2008-47; ADOPTION OF ORDINANCE NO. 2008- 45 . AN ORDINANCE AMENDING SECTIONS 14-6.2(C)(10), 14-8.11(D), 26-1.8 AND 26-1.33 SFCC 1987 AND 26-1.8 SFCC 1987, REGARDING THE APPLICABILITY OF THE SANTA FE HOMES PROGRAM TO VACATION TIME SHARE PROJECTS AND MAKING SUCH OTHER CHANGES AS ARE NECESSARY</p>	<p>Adopted</p>	<p>16-25</p>
<p>CONSIDERATION OF RESOLUTION NO. 2008- 73 A RESOLUTION AMENDING THE ADMINISTRATIVE PROCEDURES FOR THE SANTA FE HOMES PROGRAM (SFHP) REGARDING THE APPLICABILITY OF THE SFHP TO VACATION TIME SHARE PROJECTS AND MAKE SUCH OTHER CHANGES AS ARE NECESSARY</p>	<p>Adopted</p>	<p>16-25</p>

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
CASE #H-08-061. APPEAL OF THE HISTORIC DESIGN REVIEW BOARD'S DECISION ON JUNE 10, 2008, CONCERNING NON-CONTRIBUTING PROPERTY LOCATED AT 120 QUINTANA STREET IN THE WESTSIDE-GUADALUPE HISTORIC DISTRICT. MAX ARAGON REQUESTS THAT THE GOVERNING BODY RESCIND THE APPROVAL TO CONSTRUCT AN APPROXIMATELY SIX FOOT HIGH COYOTE FENCE AND A NINE AND ON-HALF FOOT HIGH PEDESTRIAN GATE	Appeal denied	25-30
CASE #H-08-008. APPEAL OF THE HISTORIC DESIGN REVIEW BOARD'S DECISION ON MAY 13, 2008, CONCERNING NON-CONTRIBUTING PROPERTY LOCATED AT 610 MILLER STREET IN THE DOWNTOWN & EASTSIDE HISTORIC DISTRICT. RICHARD MARTINEZ, AGENT FOR BALSER, REQUESTS THAT THE GOVERNING BODY RESCIND THE CONDITIONAL APPROVAL TO CONSTRUCT A SINGLE, APPROXIMATELY SIX FOOT HIGH, VEHICLE GATE	Appeal granted	31-34
MATTERS FROM THE CITY CLERK	None	34
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**MINUTES OF THE
REGULAR MEETING OF THE
GOVERNING BODY
Santa Fe, New Mexico
August 27, 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 August 27, 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 Wurzbarger, Mayor Pro-Tem
Councilor Patti J. Bushee
Councilor Christopher Calvert
Councilor Miguel Chavez,
Councilor Carmichael A. Dominguez
Councilor Matthew E. Ortiz
Councilor Rosemary Romero

Members Excused

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

Mr. Buller said there has been a request to move Item # G(8) on the Evening Agenda to be heard between G(3) and G(4).

Councilor Calvert moved, seconded by Councilor Chavez, to approve the agenda as amended.

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

6. APPROVAL OF CONSENT CALENDAR

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

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

Against: None.

- a) CONSIDERATION OF RESOLUTION NO. 2008- 70 (COUNCILOR CALVERT). A RESOLUTION URGING THE NEW MEXICO LEGISLATURE TO PASS A BUDGET FOR THE INTERSTATE STREAM COMMISSION THAT INCLUDES A RECURRING BUDGET ITEM OF AN ADDITIONAL \$345,000 FOR ONGOING REGIONAL WATER PLANNING. (CLAUDIA BORCHERT)**
- b) REQUEST FOR APPROVAL TO PUBLISH NOTICE OF PUBLIC HEARING ON SEPTEMBER 24, 2008: BILL NO. 2008-50 – AN ORDINANCE REPEALING SECTION 25-2.10 SFCC 1987, FOR THE PURPOSE OF DISCOUNTING THE RAINWATER HARVESTING BARREL REBATE PROGRAM (COUNCILOR CALVERT). (DAN RANSOM)**
- c) REQUEST FOR APPROVAL OF BUDGET INCREASE FOR 08/09 FISCAL YEAR ICE ARENA FOR ADULT HOCKEY PROGRAM AT GCCC. (LIZ ROYBAL)**
- d) REQUEST FOR APPROVAL OF GRANT AGREEMENT – COMBINED HEAT AND POWER SYSTEM FOR GCCC; STATE OF NEW MEXICO ENERGY AND MINERALS AND NATURAL RESOURCES DEPARTMENT. (NICK SCIAVO)**
 - 1) REQUEST FOR APPROVAL OF BUDGET INCREASE – UTILITIES ADMINISTRATION FUND.**
- e) SANTA FE MUNICIPAL AIRPORT (JIM MONTMAN)**
 - 1) REQUEST FOR APPROVAL OF GRANT APPLICATION – FEDERAL AIRPORT IMPROVEMENT PROGRAM FOR CONSTRUCTION OF AIRPORT RESCUE AND FIREFIGHTING STATION.**
 - 2) REQUEST FOR APPROVAL OF GRANT AWARD – AIRPORT MANAGER TO ACCEPT FEDERAL GRANT IN ORDER TO MEED FEDERAL FISCAL YEAR DEADLINES.**
 - 3) REQUEST FOR APPROVAL OF GRANT APPLICATION – STATE AIRPORT AID FOR CONSTRUCTION OF AIRPORT RESCUE AND FIREFIGHTING STATION.**
 - 4) REQUEST FOR APPROVAL OF GRANT AWARD – AIRPORT MANAGER TO ACCEPT STATE GRANT AND EXPEDITE THE PROCESS.**

- f) REQUEST FOR APPROVAL OF AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT – FRENCHY'S PARK AND LARRAGOITE PARK IMPROVEMENTS; SITES SOUTHWEST, INC. (BEN GURULE)**
- g) REQUEST FOR APPROVAL OF AMENDED DESTINATION BUSINESS SYSTEM SERVICE AGREEMENT; NEW MEDIA GATEWAY, INC. (KEITH TOLER)**
- h) REQUEST FOR APPROVAL OF AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT – CALIBRATE AND REBUILD LARGE WATER METERS FOR WATER DIVISION; GREAT SOUTHWEST METERS. (SHANNON JONES)**
- i) REQUEST FOR APPROVAL OF AMENDMENT NO. 3 TO PROFESSIONAL SERVICES AGREEMENT – CITY WIDE SOURCE OF SUPPLY IMPROVEMENTS FOR WATER DIVISION; ALPHA SOUTHWEST, INC. (MICHAEL GONZALES)**
- j) REQUEST FOR APPROVAL OF AMENDMENT NO. 2 TO PROFESSIONAL SERVICES AGREEMENT – WATER RIGHTS ISSUES FOR WATER DIVISION; LEE WILSON & ASSOCIATES, INC. (DALE LYONS)**
- k) REQUEST FOR APPROVAL OF 99 YEAR LAND LEASE – CITY OWNED LAND AT PASEO DE PERALTA AND GOMEZ STREET; SANTA FE HABITAT FOR HUMANITY. (RICHARD MacPHERSON)**
- l) REQUEST FOR APPROVAL OF CONCEPTUAL DESIGN OF DOWNTOWN TRANSIT CENTER – SHERIDAN STREET IMPROVEMENTS. (MARY MacDONALD AND JON BULTHUIS)**
- m) CONSIDERATION OF RESOLUTION NO. 2008-71 (COUNCILOR BUSHEE). A RESOLUTION NAMING THE CITY'S SANGRE DE CRISTO WATER COMPANY BUILDING IN HONOR OF "ARTHUR G. SANCHEZ." (MAYA MARTINEZ)**
- n) CONSIDERATION OF RESOLUTION NO. 2008-72 (COUNCILOR ORTIZ, MAYOR COSS, COUNCILOR DOMINGUEZ, COUNCILOR BUSHEE AND COUNCILOR TRUJILLO). A RESOLUTION ADOPTING THE HEALTHY LIFESTYLES FOR CHILDREN AND ADOLESCENTS TASK FORCE REPORT DATED MAY 15, 2008; DESIGNATING 1% OF THE CITY'S GROSS RECEIPTS TAX FOR HEALTHY LIFESTYLES GRANTS; AND DIRECTING THE CITY MANAGER TO IMPLEMENT THE RECOMMENDATIONS OF THE HEALTHY LIFESTYLES TASK FORCE. (LYNN HATHAWAY)**

- o) REQUEST FOR APPROVAL OF AGREEMENT – COMPRESSED NATURAL GAS VEHICLE FUELING STATION AND CNG SALES AND RETAILING FOR TRANSIT DIVISION; CLEAN ENERGY CONSTRUCTION CORPORATION. (JON BULTHUIS)**

7. APPROVAL OF MINUTES: Reg. City Council Meeting – August 11, 2008.

The following correction was made to the minutes of August 11, 2008:

Page 15, correct as follows: Councilor Bushee moved, seconded by Councilor Calvert, to ~~adopt Ordinance No. 2008-44~~ adopt the Development Plan in Case #M 2007-39,"

Councilor Wurzbarger moved, seconded by Councilor Calvert, to approve the minutes of the Regular City Council Meeting of August 11, 2008, as amended. The motion was approved on a voice vote, with Councilors Bushee, Calvert, Chavez, Dominguez, Ortiz, Romero and Wurzbarger voting for the motion and none against.

8. PRESENTATIONS

- a) MUCHAS GRACIAS – SHAYNA LEWIS, PLANNING COMMISSIONER**

Ms. Lewis wasn't in attendance, so this item was postponed to the next meeting.

- b) NATIONAL LEAGUE OF CITIES UPDATE. (COUNCILOR CHAVEZ)**

A copy of "National League of Cities Summer Board Meeting – Update to Santa Fe City Council by City Councilor and NLC Board Member Miguel Chavez," is incorporated herewith to these minutes as Exhibit "1."

A copy of "Annual Listing of Federally Obligated Projects – Santa Fe Metropolitan Planning Organization, as of August 6, 2008," is incorporated herewith to these minutes as Exhibit "2."

A copy of "NLC Resolution #2008-54 – Urging the Federal Government to Create an Adequately Funded comprehensive National Surface Transportation Plan," is incorporated herewith to these minutes as Exhibit "3."

Councilor Miguel Chavez, member of the NLC Board, presented information via power point. The text of the power point is contained in Exhibit "1." He noted the conference was held in Huntsville, Alabama, because that is the home of the NLC president. Please see Exhibit "1" for specifics of this presentation.

Councilor Chavez said the Board members were asked to inform their respective governing bodies about the discussions at the NLC Board meeting and present Resolution 2008-54 regarding National Transportation Policy, and advise them about what we need to do

for this funding.

Councilor Chavez said this year's Congress of Cities will be held in Orlando, Florida, November 11-15, 2008. He said the NMML has blocked a group of rooms for New Mexico officials who would like to attend the meeting, and he would like as many Santa Fe Governing Body members to attend as possible. He said registration can be done on the internet at <http://www.nlc.org>.

Councilor Wurzbarger thanked Councilor Chavez for this presentation. She would be very happy to work with him on the Resolution in bringing it back to the Council. She said, with regard to the priorities on affordable housing, it seems to be solely financially based. She said one of the criticisms we've had from the Santa Fe realtors is that we really didn't need to do the Real Estate Transfer Tax because the federal government was going to take care of that problem. She is curious as to whether there was more to this than the housing and foreclosure crisis, because, fortunately, that isn't a great problem in New Mexico.

Councilor Chavez said they recognize that there are different needs in different parts of the nation, and they have programs which are geared for first time homebuyers. He said Santa Fe has benefitted from the CDBG funds to assist us with our affordable housing programs. He said some of the issue and policies focus more on the national level, commenting that NLC understands that we have special needs.

Councilor Wurzbarger agreed, but said putting money into that solely for foreclosures wouldn't be of particular help to Santa Fe.

Councilor Chavez agreed, saying the NLC is recognizing that cities such as Santa Fe, with an aging population and inventory, especially in public housing, can recapture that housing with the Energy Block Grant assistance, and retrofit those units to bring them current to meet current energy standards.

Councilor Romero asked if there was any discussion about regionalization on the new energy efficiency and conservation block grant. She said many times a contingency for a grant is that we need to do more regional planning and/or planning around those issues.

Councilor Chavez said yes. He said it puts that under the microscope and sheds a different light on it. He said they are talking mega-regions, because their populations are 3-4 times those of Santa Fe, and they're dealing with public transportation on different scale of economy than we are, as well as dealing with foreclosure crisis on a different scale of economy.

Councilor Romero said that does affect us, although we are smaller, but with the limited City and County resources, we need to start thinking about energy from a regional perspective.

Councilor Chavez said, with regard to public transportation, surface transportation under a rural program will cost more per rider than one in a dense, urban area. They are looking at all of these factors.

Councilor Romero said she is glad to see the recommendation to restore the COPS program funding, and she would support the effort to move the Resolution forward.

Councilor Chavez said these programs need to be funded, and when the people are on patrol we need to have trained professionals watching their efforts.

Councilor Dominguez thanked Councilor Chavez for his presentation. He said the NLC cares about education and our children, and asked if there are funds available with regard to infrastructure, specifically transportation in our school system. He said schools are feeling the same crunches as the cities.

Councilor Chavez said he doesn't know specifically, but all of those components of infrastructure are under the general category of infrastructure. He said NLC is also interested in healthy lifestyles, and Santa Fe has taken that initiative at the local level. He said he would think he could find information on education by searching the NLC web page.

Councilor Dominguez said he has done that, but he doesn't see anything which has the action plan, or a list of priorities.

Councilor Chavez suggested that he speak to Lynn Hathaway in the Children & Youth Division of Community Services to assist in navigating the web page to find that information. He said this needs to be emphasized as we move forward with discussions at the NLC.

CONSENT CALENDAR DISCUSSION

No items for discussion were removed from the Consent Calendar.

- 10. CONSIDERATION OF RESOLUTION NO. 2008- ____ (COUNCILOR WURZBURGER, MAYOR COSS, COUNCILOR ROMERO AND COUNCILOR CALVERT). A RESOLUTION CALLING FOR A SPECIAL MUNICIPAL ELECTION TO BE HELD ~~AUGUST 19, 2008~~, FOR THE PURPOSE OF SUBMITTING A QUESTION TO THE QUALIFIED ELECTORS OF THE CITY OF SANTA FE AS TO WHETHER AN EXCISE TAX SHOULD BE IMPOSED ON THE TRANSFER OF RESIDENTIAL PROPERTY IN THE AMOUNT OF ONE PERCENT (1%) OF THE PORTION OF THE PURCHASE PRICE IN EXCESS OF \$750,000. THE TAX WOULD BE IMPOSED ON THE BUYER AND THE REVENUES COLLECTED FROM THE TAX WOULD BE USED SOLELY FOR AFFORDABLE WORKFORCE HOUSING. (Request to postpone to October 6, 2008, City Council Meeting)**

- 1) REQUEST FOR APPROVAL OF CONSOLIDATED PRECINCTS.**

This item was postponed to the Council meeting of October 6, 2008.

- 11. MATTERS FROM THE CITY MANAGER**

None.

12. MATTERS FROM THE CITY ATTORNEY

Mr. Katz said there are four matters to be discussed in executive session, as follows:

EXECUTIVE SESSION

- a) **UPDATE ON PENDING LITIGATION: WADDELL V. CITY OF SANTA FE (REAL ESTATE TRANSFER TAX ORDINANCE); PURSUANT TO §10-15-1(H)(7), NMSA 1978.**
- b) **DISCUSSION ON NORTHWEST QUADRANT AND SANTA FE PUBLIC SCHOOLS, PURSUANT TO §10-15-1(H)(8) NMSA 1978.**
- c) **DISCUSSION REGARDING THE ACQUISITION OF WATER RIGHTS; PURSUANT TO §10-15-1(H)(8) NMSA 1978.**
- d) **DISCUSSION OF POTENTIAL MODIFICATION TO THE LAS CAMPANAS "SETTLEMENT AGREEMENT" PURSUANT TO §10-15-1(H)(7) NMSA 1978.**

Councilor Wurzbarger moved, seconded by Councilor Calvert, that the Council go into Executive Session for the purpose of the update on pending litigation in Waddell v. City of Santa Fe and discussion of potential modification to the Las Campanas Settlement agreement, pursuant to §10-15-1(H)(7), and discussion of the Northwest Quadrant and Santa Fe Public Schools and discussion regarding the acquisition of water rights, pursuant to §10-15-1(H)(8).

Discussion: Councilor Chavez asked what is the threat of litigation or pending litigation regarding Item 12(b).

Mr. Katz said that is concerning the purchase of land.

Councilor Chavez said that land is a public asset, and he questions why that is being done in an executive session and not publicly. He believes items 12(b) as well as 12(d) should be discussed publicly, because he believes 12(d) involves water rights, which are a public asset, and asked what is the threatened litigation or pending litigation.

Mr. Katz said the Settlement Agreement was the resolution of litigation, and what is being discussed is a fairly minor modification of that Settlement Agreement.

Councilor Chavez said he would argue that this is a public asset and it should be discussed publicly, and the public should be notified that the City is considering this modification.

The motion was approved* on a Roll Call vote as follows:

For: Councilor Calvert, Councilor Dominguez, Councilor Romero and Councilor Wurzbarger.

Against: Councilor Chavez.

Abstain: Councilor Bushee.

Absent: Councilor Ortiz.

Explaining her vote: Councilor Bushee abstained, saying she missed the conversation with the City Attorney, noting she has a concern with regard to Item 12(b) and didn't get to ask that question.

Explaining his vote: Councilor Chavez initially passed on the vote. He asked if he votes yes, if he has to stay in executive session for all of it, or if he can recuse himself from discussion on Items 12(b) and 12(d). Mr. Katz said Councilor Chavez doesn't have to stay in the executive session if he doesn't wish to do so. Councilor Chavez asked if he would have access to that information outside of the executive session today. Councilor Wurzbarger said that would depend on what happens.

* Yolanda Vigil, City Clerk, said, regarding whether the Mayor needs to cast a vote, the City Attorney has advised her that the motion has been approved by a majority vote of the City Council.

The Council went into Executive Session at 5:45 p.m.

MOTION TO COME OUT OF EXECUTIVE SESSION

At 7:39 p.m., Councilor Calvert moved, seconded by Councilor Dominguez, that the City Council come out of Executive Session, and stated that the only items which were discussed in executive session were those items which were on the agenda, and no action was taken. The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Romero, and Wurzbarger voting for the motion and none against.

Mayor Coss moved Items #13, Matters from the City Clerk, and #14 Communications from the Governing Body to the end of the evening session.

END OF AFTERNOON SESSION AT 7:40 P.M.

The Council moved directly into the Evening Session without a break

EVENING SESSION

A. CALL TO ORDER AND ROLL CALL

The Evening Session was called to order by Mayor David Coss, at approximately 7:40 p.m. Roll Call indicated the presence of a quorum as follows:

Members Present

Mayor David Coss
Councilor Patti J. Bushee
Councilor Christopher Calvert
Councilor Miguel Chavez,
Councilor Carmichael A. Dominguez
Councilor Matthew E. Ortiz
Councilor Rosemary Romero

Members Excused

Councilor Rebecca Wurzbarger, Mayor Pro-Tem
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 Memorandum dated August 26, 2008, to Pattie [Patti] Bushee, Public Works/CIP & Land Use Committee, from David McQuarie, MCD Plan Review Subcommittee, regarding Project Compliance, is incorporated herewith to these minutes as Exhibit "4."

Dave McQuarie, MCD Plan Review Subcommittee reviewed the information in Exhibit "4," noting that he is requesting that Item #11, on the Public Works Committee Agenda, Pueblos del Sol Trails resurfacing, presented on August 2nd be reevaluated. He asked that the Council adopt the practice of no public funds for a project without written verification.

Paul Pease, SF Concert Band President, said the band performs four concerts each summer and there is limited parking for the band members and the audiences. He is requesting the assignment of some parking space along Federal Place, next to the green on the east side of the Federal Courthouse. He said if the band had assigned parking spaces it would be much easier to unload instruments and avoid having to walk long distances. He said there are 10 spaces on the north and 7 on the south side of Federal Place, and he is requesting two spaces to unload their heavy equipment.

Stefanie Beninato said, "I was here two weeks ago and asked you to reconsider your

decision on the appeal that I made for 610 Galisteo, and I asked that you make an announcement about that, and I'm wondering what you have decided.

Mayor Coss said we have decided not to reconsider it.

Ms. Beninato said, "Okay, I appreciate that. But I also want to let you know that as far as I'm concerned that you are failing to uphold your oath to abide by the constitution and the laws. I think it was very clear that the law was not followed, and again I have your City Attorney Kelley Brennan telling me that they're working to their permit, when in fact the permit shows, and this is an issue that has come up since the appeal. The permit shows that they're supposed to be building a fence on the west side and removing the garage, part of the garage wall has been kept up, and they're not building a fence. And it's part of a demolition plan that the H-Board should reconsider. And, again I would like you to direct it to go back to H-Board on that matter. Again, we are entitled to a public hearing. It is H-Board provenance, not City's staff's provenance. And the other thing is that the landscaping plan seems to, it's going to interfere with my solar. I see a evergreen tree is going to be placed directly in front of my collector that is... that has an easement on it, as well as some other collectors. And, again the ordinances are clear that you're encouraging and promoting solar in the Don Gaspar neighborhood and I'm asking that your City staff look into the landscaping plan so that trees that are quite big could be placed further away, not interfering with the collector, at least have the deciduous trees be there. And again, the State law is clear that if you have two conflicting ordinances, or that might be conflict, that the more restrictive one applies. You'd call yourself... we call our self interested in sustainable development and a creative city, etc., etc., and so again, I'm going to ask the Mayor that you would direct your staff to look into the landscaping plan. These trees have not been put in the ground yet, so they can still be moved around, but it would need immediate attention, and I would appreciate that, because I'm also having a drainage problem as well, and from what Miss Brennan told me, the City staff didn't understand what they were supposed to be looking at, they were looking at the wrong wall. And, I get a lot of B.S. about it, and again, it's really clear from pictures I've sent to the City Manager that water is draining onto backfill that's up against my adobe wall and that is, in fact, damaging my wall. So, I'd ask again that the City staff look into the drainage issue as well. The drains don't work. They just don't work. They're too close to the house.. the water goes out, not in the drain and it runs down onto my property. So I'd appreciate that. I did call Mr. Buller the other day when there was a problem with the Railyard having backup equipment at 4:30 in the morning going off [inaudible]... they're working at 4:30 in the morning, I don't know, but I haven't heard it since, so I would like to thank him if in fact that helped by calling him and my Councilors and getting some attention to that unnecessary noise so early in the morning."

F. APPOINTMENTS

Arts Commission

Mayor Coss appointed the following individual to the Arts Commission:

Joey A. Chavez – to fill unexpired term ending 10/2008.

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

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

G. PUBLIC HEARINGS

1) REQUEST FROM MENOLE, INCORPORATED, FOR A RESTAURANT (BEER & WINE) LICENSE TO BE LOCATED AT BERT'S LA TAQUERIA, 416 AGUA FRIA. (YOLANDA Y. VIGIL)

The staff report was given by Yolanda Vigil, noting that currently there is an inter-local dispenser license at this location, but it will be transferred if this Restaurant License is approved. She said, although the premises are within 300 feet of Our Lady of Guadalupe Church, an approval of a waiver is not required, since the premises currently are licensed, and the premises were licensed prior to July 1981. She said there are traffic, litter and noise reports in the packet and staff requests that the business be required to comply with all City ordinances as a condition of doing business with the City.

Public Hearing

There was no one speaking for or against this request.

The Public Hearing was closed

Councilor Calvert moved, seconded by Councilor Romero, to grant the request for a Restaurant License to be located at Bert's La Taqueria, 416 Agua Fria.

The motion was approved on the following Roll Call Vote:

For: Councilor Calvert, Councilor Chavez, Councilor Dominguez, and Councilor Romero.

Against: None.

Absent: Councilor Bushee and Councilor Ortiz

2) REQUEST FROM JOHN CHAVEZ, FOR THE FOLLOWING:

- a) PURSUANT TO §60-6B-10 NMSA 1978, A REQUEST FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION TO ALLOW THE SALE**

OF ALCOHOLIC BEVERAGES AT REAL BURGER, 2239 OLD PECOS TRAIL, WHICH IS WITHIN 300 FEET OF CONGREGATION BEIT TIKVA, 2230 OLD PECOS TRAIL.

- b) IF THE WAIVER OF THE 300 FOOT RESTRICTION IS GRANTED, A REQUEST FOR A RESTAURANT (BEER & WINE) LICENSE TO BE LOCATED AT REAL BURGER, 2239 OLD PECOS TRAIL.
(YOLANDA Y. VIGIL)**

The staff report was given by Yolanda Vigil, noting staff requests that the business be required to comply with all City ordinances as a condition of approval. She said two motions are needed for this item.

Public Hearing

There was no one speaking for or against this request.

The Public Hearing was closed

Councilor Romero moved, seconded by Councilor Dominguez, to grant the request for the waiver of the 300 foot location restriction to allow the sale of alcoholic beverages at Real Burger, 2239 Old Pecos Trail.

The motion was approved on the following Roll Call Vote:

For: Councilor Calvert, Councilor Chavez, Councilor Dominguez, and Councilor Romero.

Against: None.

Absent: Councilor Bushee and Councilor Ortiz.

Councilor Dominguez moved, seconded by Councilor Calvert, to grant the request for a Restaurant License to be located at Real Burger, 2239 Old Pecos Trail.

The motion was approved on the following Roll Call Vote:

For: Councilor Calvert, Councilor Chavez, Councilor Dominguez and Councilor Romero.

Against: None.

Absent: Councilor Bushee and Councilor Ortiz.

- 3) **REQUEST FROM THE SANTA FE RAILYARD COMMUNITY CORPORATION TO ALLOW THE DISPENSING/CONSUMPTION OF ALCOHOLIC BEVERAGES (BEER & WINE ONLY) AT THE SANTA FE FARMER'S MARKET FACILITY (CITY PROPERTY) ON SEPTEMBER 12, 2008, FROM 6:00 P.M. TO 10:00 P.M., FOR THE RAILYARD GRAND OPENING DONOR AND SUPPORTER PARTY. (RICHARD CZOSKI AND YOLANDA Y. VIGIL)**
- a) **SECOND STREET BREWERY.**
 - b) **SUSAN'S FINE WINES AND SPIRITS.**

The staff report was given by Yolanda Vigil. She said this request is before the Governing Body because it is on City property.

Public Hearing

Stefanie Beninato was sworn. Ms. Beninato said she is opposed to having any kind of alcohol served at City events, saying it wasn't allowed for hockey games at the Chavez Center. She said this is a poor example for the youth who seem to think that alcohol has to be at an event to have a good time. She would like to have one of the events where high end donors aren't served alcohol and see who shows up.

Richard Czoski was sworn. Mr. Czoski asked if there are questions about the event or the matter at hand.

Councilor Chavez said these kinds of requests usually are accompanied with a waiver because of Alvord School, and asked if this doesn't apply in this case.

Ms. Vigil said the Farmer's Market building is beyond the 300 feet, and the waiver doesn't apply here. She said there are two dispensers, but there is only one event.

The Public Hearing was closed

Councilor Calvert moved, seconded by Councilor Romero, to approve the request from the Santa Fe Railyard Community Corporation to allow the dispensing/consumption of alcoholic beverages (beer and wine only) at the Santa Fe Farmer's Market Facility on city property, on September 12, 2008 from 6:00 p.m. to 10:00 p.m., for the Railyard Grand Opening Donor and Supporter Party.

The motion was approved on the following Roll Call Vote:

For: Councilor Calvert, Councilor Chavez, Councilor Dominguez and Councilor Romero.

Against: None.

Absent: Councilor Bushee and Councilor Ortiz.

- 8) PURSUANT TO §60-6B-10 NMSA 1978, A REQUEST FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION AND APPROVAL TO ALLOW THE SALE/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 EVENT:**
- a) SANTA FE FIESTA COUNCIL FIESTECITA TO BE HELD ON TUESDAY, SEPTEMBER 2, 2008, FROM 6:00 - 9:00 P.M. (YOLANDA Y. VIGIL)**

The staff report was given by Yolanda Vigil.

Public Hearing

Stefanie Beninato [previously sworn] said she has the same objections. She believes this is a poor example. Alcohol is a drug and she asked why we have alcohol at City events and why not have an alcohol free, drug free event. She would like to see a tobacco free event on the Plaza. This would set an example about the health hazards of alcohol and tobacco.

The Public Hearing was closed

Councilor Romero moved, seconded by Councilor Calvert, to grant the request for a waiver of the 300 foot location restriction.

The motion was approved on the following Roll Call Vote:

For: Councilor Calvert, Councilor Chavez, Councilor Dominguez and Councilor Romero.

Against: None.

Absent: Councilor Bushee and Councilor Ortiz.

Councilor Chavez moved, seconded by Councilor Romero, to allow the sale/consumption of alcoholic beverages at El Museo Cultural de Santa Fe for the Santa Fe Fiesta Council Fiestecita on September 2, 2008 from 6:00 to 9:00 p.m.

The motion was approved on the following Roll Call Vote:

For: Councilor Calvert, Councilor Chavez, Councilor Dominguez and Councilor Romero.

Against: None.

Absent: Councilor Bushee and Councilor Ortiz.

- 4) CONSIDERATION OF BILL NO. 2008-49; ADOPTION OF ORDINANCE NO. 2008- _____. AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF SANTA FE, NEW MEXICO GROSS RECEIPTS TAX REFUNDING REVENUE BONDS, SERIES 2008B IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$24,000,000 FOR THE PURPOSE OF DEFRAYING THE COST OF REFUNDING, PAYING AND DISCHARGING THE OUTSTANDING CITY OF SANTA FE, NEW MEXICO, GROSS RECEIPTS TAX REFUNDING AND IMPROVEMENT REVENUE BONDS, SERIES 1997A; AND CITY OF SANTA FE GROSS RECEIPTS TAX REVENUE BONDS, SERIES 1999; PROVIDING THAT THE REFUNDING BONDS WILL BE PAYABLE AND COLLECTIBLE FROM THE GROSS RECEIPTS TAX REVENUES DISTRIBUTED TO THE CITY; PROVIDING FOR THE DISPOSITION OF THE RECEIPTS DERIVED FROM THE GROSS RECEIPTS TAX REVENUES; ESTABLISHING THE FORM, TERMS, MANNER OF EXECUTION AND OTHER DETAILS OF THE REFUNDING BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT, IN CONNECTION WITH THE REFUNDING BONDS; PROVIDING FOR REDEMPTION OF THE SERIES 1997A AND 1999 BONDS; APPROVING CERTAIN OTHER AGREEMENTS AND DOCUMENTS IN CONNECTION WITH THE REFUNDING BONDS; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION WITH THE REFUNDING BONDS; REPEALING ALL ORDINANCES IN CONFLICT HERewith; AND RELATED MATTERS. (DAVID MILLIGAN)**

David Milligan said since this was considered by the Council on August 11, 2008, he has discovered that the banks which previously were active in this market up to two weeks ago, have withdrawn from the market. He said we will be unable to proceed with a managed competition, private placement for these bonds. He is requesting that it be rescheduled to September 24, 2008. They will be looking at another alternative, which would be a negotiated placement or a competitive sale, and return with information about that on September 24, 2008.

Councilor Chavez moved, seconded by Councilor Romero, to postpone this item to the Council meeting of September 24, 2008.

Discussion: Councilor Calvert asked if this substantially changes, can we modify this, or do we have to start the process over.

Dwayne Brown, Bond Counsel, said we will not have to start the whole process over again, because this ordinance as originally introduced and heard at the Finance Committee,

had a black line with respect to the purchaser of the bonds, because we were soliciting bids from various banks. Those banks withdrew from the market. He said we will need to do two things: add standard provisions which relate to selling the bonds through a bond underwriter and filling in the blank with respect to the purchaser, so we are in substantial compliance with the normal procedure for doing a refunding bond issue.

Responding to Councilor Calvert, George Wiliford, Financial Advisor, said the different method of sale would be subject to the same parameters which were established on August 11, 2008, which said that the minimum savings should be 3% present value, which should equate to a minimum savings of around \$180,000 per year. He said they had recommended the private placement route which had been working very well on issues such as this one which were short and relatively simple. He said as indicated, in the past two weeks, the known bank buyers have closed their shop to major banks and said they aren't interested in bidding or buying unless it is an entity which has substantial deposit and other relationships. He said this throws us back to the need to do a conventional public offering, either competitively or on a negotiated basis, which means there has to be an official statement, ratings and then an underwriter. There are costs associated, but he ran numbers and that should still exceed the minimum savings level.

Councilor Calvert said then it will meet the criteria, but the savings probably will be less because of the extra cost.

Mr. Wiliford said if the market holds, they will be selling at true bond market rates with no premium, which would have been the case in a private placement, so hopefully, the net impact will be neutral, reiterating that it has to meet the minimum criteria and parameters, regardless.

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

Councilor Bushee arrived at the meeting

- 5) CONSIDERATION OF BILL NO. 2008-47; ADOPTION OF ORDINANCE NO. 2008- 45. AN ORDINANCE AMENDING SECTIONS 14-6.2(C)(10), 14-8.11(D), 26-1.8 AND 26-1.33 SFCC 1987 AND 26-1.8 SFCC 1987, REGARDING THE APPLICABILITY OF THE SANTA FE HOMES PROGRAM TO VACATION TIME SHARE PROJECTS AND MAKING SUCH OTHER CHANGES AS ARE NECESSARY (COUNCILOR CALVERT AND COUNCILOR BUSHEE). (TED SWISHER)**
 - a) CONSIDERATION OF RESOLUTION NO. 2008- 73 COUNCILOR CALVERT AND COUNCILOR BUSHEE). A RESOLUTION AMENDING THE ADMINISTRATIVE PROCEDURES FOR THE SANTA FE HOMES PROGRAM (SFHP) REGARDING THE APPLICABILITY OF THE SFHP TO VACATION TIME SHARE PROJECTS AND MAKE SUCH OTHER CHANGES AS ARE NECESSARY. (TED SWISHER)**

Items #5 and #5(a) were combined for purposes of discussion and public hearing, but were voted upon separately.

A copy of a proposed amendment to the Resolution, submitted by staff, is incorporated herewith to these minutes as Exhibit "5."

Ted Swisher presented information regarding the proposed Ordinance and Resolution

Councilor Calvert noted there is an amendment sheet which applies to the Resolution stating a figure of \$200,000 for the fee in lieu, which differs from the previous amendment which originally went with this.

Public Hearing

There was no one speaking for or against the Ordinance or Resolution.

The Public Hearing was closed

Councilor Calvert moved, seconded by Councilor Romero, to Adopt Ordinance No. 2008-45.

Discussion: Councilor Chavez said then the fee-in-lieu will be \$200,000 per unit, and the number of units will be determined by the size of the development. He said this would be a substantial amount of money and we might be able to build 1-2 units elsewhere, or purchase an existing home, rehab it and put it in the affordable housing pool. He said part of the rub is that the housing unit would be somewhere else.

Councilor Calvert said the ordinance still leaves the decision to the Governing Body as to whether or not we accept the fee-in-lieu, so it is not automatic.

Councilor Chavez said he understands, but if it's there, there will be pressure to accept the fee-in-lieu, instead of pushing for the unit. He said staff recommends the fee-in-lieu, and generally he likes to take staff recommendation. He said even if we were to receive \$600,000 fee-in-lieu for three units, this is a one time check, and once spent the money is gone. However, the other timeshares will continue to generate revenue on an ongoing basis. He said we need either to build the units or put the money into the Affordable Housing Trust Fund. He said the "spin" is that we could take the \$600,000 and do the best we can with the funds. He said in his scenario, we ask each of these projects to deed one of those units to the City and we put the money from leasing that unit into the Affordable Housing Trust Fund. This would be an ongoing, recurring, revenue source.

Ms. McCormick said she has cautions about doing this. She said a fee-in-lieu is always designed to have some comparable relationship to when you actually have to build a unit. So, you would have to be able to demonstrate that paying into a fund over time is equivalent to the

cost to build the unit or pay the fee-in-lieu amount. Ms. McCormick said staff believes it can defend the fee-in-lieu at \$200,000.

Councilor Chavez asked where we can build a single-family unit in the City for \$200,000.

Ms. McCormick said we can't, but we are capable of using \$200,000 to buy a home on the market for \$350,000, buy it down to \$150,000 and put it in the program. She said in this scenario, it would not include the costs of rehab, but in some cases it would. She said this is "scary," but clever idea.

Councilor Ortiz arrived at the meeting.

Councilor Chavez said this isn't scary, this would generate a lot of money on an annual basis. This money could be dedicated to the Trust Fund. He said this way we're not getting \$200,000 on a one-time shot, but a recurring, consistent, ongoing revenue stream for affordable housing. He said this is about being creative and "thinking outside the box."

Ms. McCormick said it is an intriguing option, and in her short tenure, a fee-in-lieu hasn't been approved, although it has been discussed. However, the fee-in-lieu for the Lensic project is the first one which has been approved.

Councilor Chavez said the County's Affordable Housing Program deviates from our program in two ways: the County can accept a fee-in-lieu and the County can do a transfer of development right, and build it elsewhere because it's more desirable or less expensive and such. He said the County has \$1.6 from fees-in-lieu to build housing elsewhere. He asked where the "somewhere else" will be if not in the developments already approved.

Ms. McCormick said the County would have to answer that question.

Councilor Chavez said he isn't asking for an answer, but is presenting this as a scenario which happens with the fee-in-lieu. It solves one problem, but creates another set of problems. He has problems with the fee-in-lieu because it "creates that shell game," and we don't always get the units where we have identified them in a vision plan specifically for the downtown area.

Councilor Bushee thanked staff for working on this, saying this should have been done some time ago. She doesn't want to encourage fractionals, but we already have them and we need to capture them in the program. She doesn't see another way around this right now, doesn't believe we can require anything else, and thinks this is the best we can get. She hopes this passes unanimously.

The motion to adopt Ordinance No. 2008-45, was approved on the following Roll Call vote.

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

Against: Councilor Chavez.

Explaining his vote: Councilor Chavez said he appreciates the work of staff, and the debate we've had in the past, but he wants to push the envelope. He believes we need to look at other options and require we have these units in as many developments as possible, so he votes no.

Explaining his vote: Councilor Dominguez said all things being equal, we probably could move in different directions. However, things aren't on an even keel, so he votes yes.

Explaining his vote: Councilor Ortiz clarified the vote is on the Ordinance, and the dollar amount is set in the Resolution.

Councilor Calvert moved, seconded by Councilor Dominguez to adopt Resolution No. 73-2008, as amended [Exhibit "5].

Discussion: Councilor Ortiz asked, given the Memorandum defending the program, when we're talking about the difference between the \$200,000 and the \$213,000, why we can't get the \$213,000, as opposed to the \$200,000.

Ms. McCormick said the \$213,000 is the maximum amount she feels would be legally defensible. Responding to Councilor Ortiz, she said she always urges caution, noting this is the highest fee-in-lieu she's ever seen, which is what made her somewhat nervous. This takes into consideration market changes.

Councilor Ortiz asked Mr. Katz if he agrees with this legally defensible solution proposed by staff.

Mr. Katz said he agrees. It is somewhat like how the county appraiser appraises property, which is somewhat below the fair market value is, so he doesn't have to defend every protest. He said by notching this slightly below the value calculation, we help prevent having it attacked.

Councilor Ortiz asked how this amount compares to the amount attached to the Lensic project.

Ms. McCormick said it is exactly the same amount, they're paying \$720,000 for 3.6 units.

Councilor Ortiz said, although he wasn't in favor of the ordinance, one of the reasons he voted for it is so it wouldn't get stalled on a 4-2 vote. He said one of the problems we have had is the distribution of affordable housing in all parts of the City. He said the argument was if we applied it across the board, we could get affordable housing in all developments throughout the City. He said this Council set a precedent in allowing this fee-in-lieu. He said three projects in the BCD have come forward, and they have been able to buy out of providing affordable units

by paying cash with the affordable housing going to other parts of town – his side of town, and Councilor Dominguez's and Chavez's side of town. He said there is something inherently distressing in that phenomenon – allowing fees-in-lieu to get these properties out of the downtown where people could live and walk to work or go shopping. He said he does want to get the maximum amount of fee-in-lieu from these people, especially in the Business Capitol District. He said he will go along with the City Attorney's position, if \$200,000 is the amount the City Attorney believes is the best amount for our best legal position.

Councilor Calvert reiterated that this doesn't change the Council's ability to decide whether or not to go with a fee-in-lieu.

Councilor Ortiz said, if past practice is any indication, we will see developments in the Business Capitol District buy themselves out of providing affordable housing units, which he believes is a distressing trend.

Councilor Romero said she hopes we will look at areas which are appropriate for affordable housing. She said the Lencic development really wasn't an appropriate area to have families living there where there were no permanent neighbors. She said she hopes we will look at each project carefully with the intent to get more affordable housing in the downtown area, so it's evenly spread throughout the City.

Councilor Chavez said we do have that discretion, but agrees with Councilor Ortiz that there is more of a trend, and by allowing those options we encourage that. He said we need to be more firm to get the units built. He said the industry is also saying that it's not desirable to have full time residents in a timeshare situation, and they aren't compatible for some reason, and not what people buying timeshares want. He said at the end of the day, the market dictates who can afford a timeshare in downtown Santa Fe. He reiterated his concerns about the fee-in-lieu, and the alternative he is suggesting. He said we are hamstrung by the legal system, the court system, by the market to some degree, and believes in this case we could do better.

Councilor Bushee said she is uncertain why the Council is having this internal debate, noting no one came forward from the development or affordable housing community to discuss this, so we are having this seemingly circular debate. She said we had a debate "once and for all" some time ago, deciding that we would accept fee-in-lieu, noting this is limited to the Business Capitol District, primarily where they are allowed to have fractionals. She would like a discussion at some point about what fractionals mean to the downtown.

Councilor Bushee said the debate tonight is whether we want to capture some kind of benefit, because fractionals fall under commercial development. She said Councilor Chavez is asking to upend the entire homes process. She reiterated the Council has the authority on a case-by-case basis as to whether to accept a fee-in-lieu. If we don't approve it, we can look at requiring an actual home. She said the previous debate centered on the fact that most people aren't going to bring us the opportunity for downtown housing, and will avoid it by going into some other type of commercial development. She said fractionals are popular now and seem to make economic sense to developers.

Councilor Bushee said prime downtown Santa Fe does not lend itself to affordability. She wants to get the best we can and put it to the best use in the program. She is somewhat surprised that we are reopening the debate of whether we want housing downtown, which isn't the discussion around the proposal this evening. She believes the \$200,000 is the best we can get, and we should be sure it applies to fractionals.

Councilor Ortiz said the debate is ongoing with regard to placing affordable housing in all parts of the City. It is one of those "touchstone" issues about which we need to think seriously. For this Resolution, what is the amount we are going to allow on developments coming through, noting this is the second one, and another is in the development stages. He said if we are to allow people in the downtown area where land is at a premium, to buy themselves out of affordable housing requirements, he doesn't know that \$200,000 is the minimum. He doesn't know if we can push the envelope. He said on pages 3-4, there is a different amount put forward as a possibility which is substantially higher. For example, we would charge a fee-in-lieu of 1.2 for houses in the northeast, and 1.2 in the southeast where the property is more expensive, therefore the cost of housing is higher. He said the number of affordable units in those areas is becoming significantly less. He said Santa Fe is becoming a place where it is harder and harder to maintain affordability on the north and east sides, and these adjustment factors take that into consideration, setting forth different dollar amounts we can charge.

Councilor Ortiz understands the developers are looking at the economics of the project and are saying they would rather contribute an amount of money, rather than marketing its development as a mixed income development. He said we need to have that discussion if we are going to allow that buyout, and determine the dollar amount we will accept. He believes the \$200,000 is at the very low end. He said if we accept his, we are giving developers on the north and east side the same break as those on the west and south side. He said we're giving an economic incentive for people to buy out of building affordable units. We need to make a policy decision this evening: Can we go with the higher amount and still be covered, and what that dollar amount is. The Attorney and staff have said they want to stay under the bar, and asked if we have the ability to go higher than that. He believes the numbers on pages 3-4 are instructive. He asked Ms. McCormick why she provided this information, if she believes we should stay at \$200,000.

Ms. McCormick said she wanted the Council to have full benefit of the analysis done by staff with how to approach the fee-in-lieu in different parts of town. She said that analysis considered what was on the market, using only MLS information and where you could buy homes under \$350,000 with a buy-down of \$200,000 which would be within the Santa Fe Homes program requirement. She said they looked at the median sales price over time in the northeast. She then looked at whether higher prices could be justified in the northeast. She said, "So, I would tell you that, yes, I think you could do that, that it would be defensible. It makes me a little nervous, but I do stand behind my work on that. I think it's defensible, and I think you could do a .8 fee-in-lieu for anything on the south side, because there again, you see that the median income is significantly... our median house price, excuse me, is significantly lower. So, you could say, because of that and to even it out, the analysis I did was .8 for 80% of \$200,000 which was the mid-point. Did I make myself clear. So, to recap, I believe you could go higher and that we could defend it. I wouldn't go to the full amount, but..."

Councilor Ortiz said we do have the choice, ultimately, to approve the project. However, by the time these projects come to us, we get the "same familiar sob story from the developer, and we aren't in the position to make these kinds of changes, and fortunately, for us, if we put it out front and we provide a market incentive for people, then maybe it's our hope that we can get development without buying out." He believes the adjustment factor is defensible and that is the kind of tack that we should use – if you want to buy out of the Business Capitol District you should pay a larger amount, because it's more expensive, and it is harder to find affordable units within that area. He likes the adjustment factors put forward by staff.

Councilor Ortiz asked if 1.2 equals \$240,000, which means that .8 is \$180,000..

Ms. McCormick said this is correct.

Friendly Amendment: Councilor Ortiz proposed that in those areas that are designed as Northeast and Southeast, that the factor used is 1.2, and for those designated in Southwest that the factor is .8, and that we continue at the same \$200,000 level as the base price.

Discussion on the Friendly Amendment: Councilor Calvert asked if the boundaries are clear as to what those areas are – Northeast, Southeast and Southwest.

Ms. McCormick said they are on the maps used by the realtors, and it is the only source of data she has where it is clearly mapped – that they report the median sales prices over time for each of those sectors. She said a consistent data source is needed to do this.

Amended Friendly Amendment: Councilor Ortiz proposed that in those areas that are designed as Northeast and Southeast, that the factor used is 1.2, and for those designated in Southwest that the factor is .8. as defined by the Santa Fe Board of Realtors MLS map, and that we continue at the same \$200,000 level as the base price As defined by BOR MLS map.

Question on the Friendly Amendment by the second: Councilor Bushee said the only fractionals permitted are in the BCD, which clearly is in the downtown. She said if we want to open this discussion, there is a proposal for the old St. Vincent's property to have a hotel and casitas behind the hotel. Are the casitas commercial? They aren't fractional. She said these are changes which would be done in the overall Homes Program.

Ms. McCormick said the way the language changes have been written, is that this becomes a fee-in-lieu option for any project throughout the program.

Responding to Councilor Bushee, Ms. McCormick said this allows a fee-in-lieu for everything.

Councilor Bushee noted there have been two cases. One hasn't been built, one is downtown, and the third one in the pipeline is downtown as well. She said there are other possibilities we haven't captured.

Councilor Ortiz believes this is better done on the front end.

Councilor Bushee asked, for clarity, if the Northeast is going to mean downtown.

Councilor Ortiz said he presumes so, and that fee-in-lieu would be \$240,000.

Councilor Bushee said we started this evening with the City Attorney telling us that wasn't a wise move.

Councilor Ortiz said he didn't hear Mr. Katz said it wasn't a wise move. He heard him give an analogy to the Assessor's Office, and agreeing with Ms. McCormick on her leanings.

Councilor Bushee said we are going to accept very few fees-in-lieu, noting we have done only one without the benefit of this policy before us.

Councilor Ortiz said then we should do it on a policy basis – up front.

Councilor Bushee said she heard Councilor Ortiz say let's bump the fee up downtown to \$240,000.

Councilor Ortiz said then "Let's bump the fee up on the southeast part of town as well."

Councilor Bushee said we have fees-in-lieu mostly downtown, because it's not affordable to build there. She said we accepted a fee in lieu as an incentive to get some type of housing in the downtown. She said if we don't do this, people will come in with new pro formas to build shops, more galleries. She doesn't believe this is a smart way to begin to build-out the downtown. She said in this market, the bottom line is the dollar cost and the margin of profit. She is concerned we're doing this by the "seat of our pants."

Councilor Ortiz said he isn't doing it from the "seat of the pants," noting staff did the analysis and he's just reading the packet. The fact is that there is data to support this.

Councilor Bushee said she is speaking against the amendment. She said almost everybody voted for a fee-in-lieu.

Councilor Ortiz said both he and Councilor Heldmeyer voted against it.

Councilor Bushee said the fee-in-lieu for the first project was \$109,000 per unit which hasn't yet come forward for build-out. The second one, without the benefit of these policies, was \$200,000 per unit. She wants to be sure we don't start to negatively impact the downtown build-out. She said there are unintended consequences and she wants to be sure that we're "clear about what we're doing."

Councilor Ortiz said, "Just so that I'm clear on the consequences that we're trying to not intend, your point is that we don't want to make it too expensive to build downtown. That's really what the point is.."

Councilor Bushee said no, she wants to be sure there is some kind of mix in the downtown buildout.

Councilor Ortiz said we won't get a mix because we are allowing a fee-in-lieu downtown. He asked if we are going to rely on the analysis of staff that a premium should be paid for projects, not just downtown, but on the east side where affordable housing units won't be built. They will buy themselves out.

Councilor Bushee said we probably won't allow a fee-in-lieu since they have to come to the Council, and downtown what will happen is that you will have a "gallery row" instead of some kind of housing mix. She isn't in "love" with the idea of fractionals all over downtown, but they are proliferating because they make the most sense economically. She said we have a vibrant downtown and we are fortunate that people still want to build on the very expensive real estate. She wants to strike the right balance. She said we only seem to allow fee-in-lieu when it doesn't make sense to force affordable housing.

The proposed friendly amendment wasn't friendly to the maker and second.

Councilor Ortiz moved, seconded by Councilor Chavez for purposes of discussion, to amend the motion to provide that in those areas that are designed as Northeast and Southeast, that the factor used is 1.2, and for those designated in the Southwest that the factor is .8. as defined by the Santa Fe Board of Realtors MLS map, and that we continue at the same \$200,000 level as the base price.

Discussion: Councilor Chavez said this pushes the envelope. He said to be conservative in some cases is okay, but we aren't being as effective as we could be if we will always be subject to the whims of the market and market trends, or be hamstrung by legal parameters. He said \$200,000 isn't adequate to buy or build a unit anywhere in Santa Fe, especially downtown. He said we need to increase that amount. He said he thought originally the fee-in-lieu was the right direction, but that hasn't worked out. He agrees with Councilor Ortiz's position to maximize the fee-in-lieu as much as possible.

The motion to amend was approved on the following roll call vote:

For: Councilor Calvert, Councilor Chavez, Councilor Dominguez and Councilor Ortiz.

Against: Councilor Bushee and Councilor Romero.

Explaining his vote: Councilor Calvert said, as the author and main sponsor of this bill, he is beginning to wonder if a figure is appropriate in the Resolution. If it is going to vary over time, do we want to include something which defines how we got to it. He said originally it was based on the affordable home prices for a three-bedroom unit.

Responding to the Mayor's request that Councilor Calvert just cast his vote, Councilor Ortiz, Parliamentarian, said it is parliamentary procedure that once a vote is called, a person has one minute to explain their vote.

Continuing to explain his vote: Councilor Calvert said it might be inappropriate to

include a figure because things will fluctuate, and that wasn't the original language. He said prices might continue to increase, and in your case it will continue to be under value.

Mayor Coss said this is the reason it is in the Resolution and asked Councilor Calvert to cast his vote.

Councilor Calvert voted in favor of the motion.

Explaining his vote: Councilor Chavez said in the spirit of pushing the envelope, he will vote yes.

Explaining his vote: Councilor Ortiz said if you're going to push the envelope, let's push the envelope on issues that matter in Santa Fe and that is affordable housing, so he votes yes.

Responding to a question from Councilor Calvert, Mayor Coss said this is a Resolution, so a majority of those present and voting is needed.

Ms. Vigil said that applies to a vote on the amendment, but five votes will be needed to adopt the Resolution.

The motion, as amended, was approved on the following roll call vote:

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

Against: None.

Explaining his vote: Councilor Chavez said he can't "throw the baby out with the bathwater," and has to vote yes.

Explaining his vote: Councilor Ortiz thanked Councilor Wurzburger, and voted yes.

- 6. CASE #H-08-061. APPEAL OF THE HISTORIC DESIGN REVIEW BOARD'S DECISION ON JUNE 10, 2008, CONCERNING NON-CONTRIBUTING PROPERTY LOCATED AT 120 QUINTANA STREET IN THE WESTSIDE-GUADALUPE HISTORIC DISTRICT. MAX ARAGON REQUESTS THAT THE GOVERNING BODY RESCIND THE APPROVAL TO CONSTRUCT AN APPROXIMATELY SIX FOOT HIGH COYOTE FENCE AND A NINE AND ON-HALF FOOT HIGH PEDESTRIAN GATE. (DAVID RASCH)**

A memorandum dated August 27, 2008, with attachments, to Mayor Coss and City Council Members, from David Rasch, Supervising Planner, Historic Preservation Division, is incorporated herewith to these minutes as Exhibit "6."

A copy of a letter dated August 16, 2008, from Tracy Wright, supporting the decision of the Historic Review Board on June 10, 2008, entered for the record by David Rasch, is incorporated herewith to these minutes as Exhibit "7."

A copy of an Affidavit by Andree Falls, Appellee, entered for the record by David Rash, on behalf of the owner who can't attend this evening, is incorporated herewith to these minutes as Exhibit "8."

The staff report was presented by David Rasch which is contained in Exhibit "6." Mr. Rasch said he made a site visit today to verify the heights of the structures, and measured the coyote fence at 5' 11" inches. He said there was a grade change. He confirmed with the owner's representative that the grade change was there before the fence was replaced, so they moved the grade away, replaced the fence and put the grade back. So, although the grade has been changed, he is confirming that the fence is 5'11". There is a typographical error on the pedestrian gate. It is 7½ feet, not 9½ , and all of these heights are allowable under Code.

Staff Recommendation: Staff recommends denial of this appeal based upon the findings of fact and conclusions of law that the proposed project complies with the Historic Districts Zoning Overlay Ordinance to construct a coyote fence at 5'11" high and a stuccoed pedestrian gate (Section 14-5.2(D) General Design Standards for All H-Districts and Section 14-5.2(I) Westside-Guadalupe Historic District Design Standards).

Public Hearing

Presentation by the Appellant

Mayor Coss gave Mr. Aragon 5 minutes to speak, and 3 minutes for additional testimony.

Max Aragon, Appellant, was sworn. Mr. Aragon said he was born and raised across the street from 120 Quintana Street. He said 25 years ago he built a fence for Linda Wiley who lived there at that time, and the fence was at curb level, noting he moved some of the new landscaping that they did. The fence that was there was torn down without a permit and without H-Board approval. He said that fence was at the level of the curb just like the one he put up 25 years ago. He said the fence is now at about 6 ft. 5 in. He said they measured from the new landscape.

Mr. Aragon said he isn't here to complain about the nice coyote fence or the adobe or anything, and said "I think it's great that the neighborhood's cleaning up." He has been working on his family home for a long time and has had a lot of problems and he's going to finally finish it. He said when people start making fences 6 feet high, it starts to change the area and "all our fences are 4 ft. 11 in." He said he remodeled next door 3-4 years ago, and they allowed him only a 4 ft. 11 in. fence. He said, "I don't know if they had the 20%, which is 5 ft. 11 in. which is fine, we don't mind. It's nice. That's the way all of the fences were there during this whole time." He said he is asking that the fence be measured and be the same as "they" were. He said "they" say 5 ft. 11 in. is fine. However, to have an almost 8 ft. high adobe fence on one

end, starts to change the way it always looked. He loves the fence and the adobe. He's a contractor and does the same type of building, but it starts to get higher and higher, and at 8 ft. it starts to look like a gated community. He asked that they put it at the standard code height which is 5 ft. 11 in.

Nancy Avadisian was sworn. Ms. Avadisian said she has the house next door to 120 Quintana. She loves that we're improving the neighborhood with the new fence. However, the fence is at least 6 inches higher than it was before. She said Max was trying to explain that the old fence was measured at the street level on the curb level. She said new dirt and bark has been built up and the fence is being measured from that which was not there before, and it is significantly higher than it was. She said for her it is much higher than it was before and she hates to see the neighborhood becoming so enclosed, and asked that the fence be at the approved level of 5 ft. 11 in. which is 20% more than the ordinance suggests and not at 6½ feet high.

Nancy Avadisian was given permission by the Mayor to speak after Andree Falls' statement was read. Ms. Avadisian said the adobe wall which was built without a permit, or H-Board approval, is now pushing against the fence that she and her neighbor built together, and it's pushing into her yard and will eventually fall onto her property onto her house. She would ask that the wall which was built without a permit be corrected so the fence doesn't fall on her property.

Max Aragon was given permission by the Mayor to speak after Ms. Avadisian spoke for the second time. Mr. Aragon asked what is the ruling on something that is grandfathered in. He said he has an adobe structure at 121 Quintana and they said he couldn't fix it up.

Mayor Coss said this question is outside the bounds of this appeal, and suggested Mr. Rasch could help him with that information.

Those speaking against the Appeal

Mayor Coss gave 5 minutes to those speaking against the Appeal.

Statement of Andree Falls, owner, was read into the record by **Rod Claude Jack**, as follows:

"I would like to apologize to the City Council for not being here in person this evening. I want to assure you that it is not a frivolous reason that keeps me away, but an important personal responsibility related to the death of my mother last year, and with only 15 days notice, I could not change my travel plans. Despite being fully aware of the circumstances, the Appellant refused to postpone the date of this hearing and my statement is being read to you by Claude Jack, who stands ready to answer questions.

First, let me be clear. The proposed coyote fence is in fact no taller, and may be an inch shorter, than the rotting, sagging fence it replaced. It is made from the same

materials as the old fence that had stood since I purchased the property in 1995. It is approximately 5 foot 11 inches high, and runs along the sidewalk. The fence has been measured by a City official and found to be of this approved height.

Also, I would like to clarify that the proposed entry way, made of an adobe wall and an old wooden door, is 96 inches tall, or 7 feet 6 inches tall. Your packet has a typo which states that it is 9 feet 6 inches tall, instead of 96 inches. This entry way sits at the back of my driveway, 20 feet away from the street. This entry is officially a decorative element that is not subject to height restrictions. It is also completely in keeping with the character of the street. There are 5 other entries of similar design on Quintana Street, and photographs of these are in your packet.

Further, my home is a modest 1,100 square feet, and occupies less than 40% of the lot. The fence and entry are perfectly in keeping with the modest scale of my home. The only objector seems to be one person and his neighbor girlfriend, and that appellant has had issues with the Historic Review Board, which in the past, has denied his application for proposed renovations and has red tagged his projects for non-compliance. Whether that fact, rather than the merits of my project, lies behind the person's appeal may be worthy of your consideration."

The overwhelming majority of my neighbors on Quintana Street support my fence and entry, as shown by the numerous letters of report in your packet. Many of these speak to the fact that this is perfectly in keeping with the scale and charm of the street, while representing an improvement to the neighborhood.

Near completion since March of this year, the project is wholly in compliance with applicable ordinances as the Historic Review Board ruled, when it granted the approval on June tenth. Members of the City Council, I respectfully ask you to uphold this lawful ruling of the Historic Review Board and deny the appeal. Thank you."

The Public Hearing was Closed

Councilor Chavez moved to uphold the appeal. The motion died for lack of a second.

Councilor Bushee said she read the history, and asked Mr. Rasch to repeat what he found when he went to the site.

Mr. Rasch said he went on site this afternoon before this hearing with a tape measure, and measured the existing coyote fence about two feet away from the curb at 5 ft. 11 in. He said it is an irregular fence, so he tried to check the highest latillas, which are under 6 feet. He also noticed there is a grade added from the curb level of about 5-6 inches. He said he and the Appellant looked at that together and he showed him that the latillas do go subgrade there. He then asked the owner's representative if the grade was there before and he said yes. When the fence was removed, which was there previously, they moved the grade away, built the new

fence and put the grade back. So he is assuming the statement that they reestablished grade is true, which is an important issue, because we read height from natural or finished grade, whichever is more restrictive. He said, "So, I'm assuming that grade addition was the finished grade as previously existing, so I'm allowing that to be the natural grade."

Councilor Bushee asked if it is a replacement fence from what was there.

Mr. Rasch said that is correct.

Councilor Bushee asked if the height has changed.

Mr. Rasch said it might be one inch off, and he considers an inch to be *de minimus*.

Councilor Bushee moved, seconded by Councilor Romero, to deny the appeal in Case No. H-08-061, based upon the findings of fact and conclusions of law by the Historic Design Review Board.

Discussion: Councilor Calvert asked if there is any evidence of the grade before the fence was replaced.

Mr. Rasch said he does not have concrete evidence.

Councilor Calvert said one of the problems which originated here was doing this without a permit to begin with. He will support the motion, but he wants to make sure that the applicant is subject to the penalty for not paying permit fees, and asked if that was discussed.

Mr. Rasch said he believes the permit has been issue, but if was issued without the fee, he believes it still can be imposed.

Friendly amendment: Councilor Calvert would like a condition of approval that the Appellant is subject to the "twice the permit fee" for not having obtained a permit. **The amendment was friendly to the maker and second.**

Councilor Romero said she knows the area well, and this area is going through major changes. She said the coyote fences don't last and they fall down. She said what is happening is a little gentrification – old time homes are changing and new people are coming into the neighborhood. She encourages the neighbors to work together with each other to work out the changes in the neighborhood. She said she is seeing real improvement in the new coyote fences which are being built.

Councilor Bushee said if the appellee had raised the grade in any substance it would have to be retained in some manner. She asked Mr. Rasch if staff has been to the site to review that it was a similar grade, and did it look as if it has been disturbed, raised and retained in some way.

Mr. Rasch said since the fence was built illegally, staff didn't get to inspect it before hand, so there was no evidence of how that grade was reestablished.

Responding to Councilor Bushee, Mr. Rasch said the fence was already built, but the adobe pedestrian gate was stopped mid-point.

Councilor Bushee asked if there is any concern that it is an altered grade.

Mr. Rasch said he looked through the fence, and the grade on the inside of the fence is about equal to the grade on the outside.

Councilor Bushee said her point is that if you're raising grade, you have to retain it somehow.

Mr. Rasch said yes, and there is bark of about 2 inches which he thinks would help infiltration so it doesn't wash onto the street, so there is bark on top of the soil.

Councilor Bushee said we aren't allowed to go out and see these, and she doesn't want any confusion in the record that this has been some kind of questionable item.

Mr. Rasch said, "I think, if the grade was there to begin with, that's a very logical reason for why that fence rotted to begin with, because it was subgrade original. It's a logical conclusion, but I don't have the facts of it."

Councilor Bushee said it's not like there's an enormous change or there's a concern about alteration.

Mr. Rasch said, "No. I believe it's approximately the same size."

The motion, as amended, was approved on the following Roll Call vote.

For: Councilor Bushee, Councilor Calvert, Councilor Ortiz and Councilor Romero, and Mayor Coss [voting because a majority of five votes are needed].

Against: Councilor Chavez.

Absent: Councilor Dominguez.

Clarification of the motion: Councilor Calvert asked if there is a reference to the findings which were in the packet as part of that decision.

Mayor Coss said the motion to deny upholds the findings of fact and conclusions of law.

Councilor Calvert wants to make sure that is clear in the motion.

7. **CASE #H-08-008. APPEAL OF THE HISTORIC DESIGN REVIEW BOARD'S DECISION ON MAY 13, 2008, CONCERNING NON-CONTRIBUTING PROPERTY LOCATED AT 610 MILLER STREET IN THE DOWNTOWN & EASTSIDE HISTORIC DISTRICT. RICHARD MARTINEZ, AGENT FOR BALSER, REQUESTS THAT THE GOVERNING BODY RESCIND THE CONDITIONAL APPROVAL TO CONSTRUCT A SINGLE, APPROXIMATELY SIX FOOT HIGH, VEHICLE GATE. (DAVID RASCH)**

A memorandum dated August 27, 2008, with attachments, to Mayor Coss and City Council Members, from David Rasch, Supervising Planner, Historic Preservation Division, is incorporated herewith to these minutes as Exhibit "9."

The staff report was presented by David Rasch which is contained in Exhibit "9."

Staff Recommendation: Staff recommends denial of this appeal based upon the findings of fact and conclusions of law that the proposed project complies with the Historic Districts Zoning Overlay Ordinance to construct one vehicle gate that is traditionally designed and harmonious to the streetscape (Section 14-5.2(D) General Design Standards for all H-Districts and Section 14-5.2(E) Downtown & Eastside Historic District Design Standards).

Public Hearing

Presentation by the Appellant

Karl Sommer, P.O. Box 2476, Santa Fe 87504, Attorney for the Appellant, was sworn. Mr. Sommer said he is here on behalf of the Balsers, owners of the property, who have invested a great deal in their property. They have done a great job with the property, having hired Richard Martinez who has done work in Santa Fe for a long time with great success. He said we are here tonight because this case points up one central issue. If left unchecked, you will more and more about this kind of case.

Mr. Sommer quoted from City Code, "Full responsibility for the design and the development of structures is left to the applicant." He said what we have here is the H-Board saying we don't like the design of your gate, redesign it. They redesigned it, and the Board said no, we'll tell you how to design it. However, the Code says the design is left to the applicant. The H-Board is to apply the standards to the design. He said, in the record, Mr. Rasch's staff Memos recommended approval at every level, saying "This application meets the standards of the Code and I recommend approval" in both instances. In both instances the design was denied.

Mr. Sommer said he wants to go through the first instance when it was designed, because it points up something – what didn't come before you and the applicant tried to redesign it. Mr. Sommer pointed out the first design on an enlargement, which was the first design which was denied by the Board at the beginning this year. He pointed out the subject site. He said the structure complied with the law and the height requirements, but was denied on the basis that the Board said it doesn't comply with the height requirements because "this"

element is higher than walls are allowed. He said as in the previous case, and Mr. Rasch will tell you, the element above a gate does not have to comply with the height requirements, because it is considered a decorative element and gates don't have to comply with the height requirement. It was denied.

Mr. Sommer said the Balsers then asked Mr. Martinez to redesign it with a nice gate that we can see through. He said, using the enlargement, this gate looks down a driveway to a back yard that you cannot see. He said this is the redesign. He said Mr. Martinez then redesigned a wrought iron gate that you can see through, but beyond that to create the privacy his clients are looking for, is a gate which has the appearance of a coyote fence. So, you can't see, from the street, down the driveway and around the corner into his clients' back yard. Mr. Sommer said there is nothing in the Code that says anything about the location of this fence and the property line. There is nothing in the Code that says you can't have a gate at the property line, and a gate further down the driveway.

Mr. Sommer said the H-Board is saying, in the first instance, "We don't like your design. It's too massive, and we're going to deny it on the basis that it's too high." He said this was inappropriate and wrong, but his clients chose not to appeal and to redesign. He said they redesigned a gate that you can see through from the street, but you can't see in the back. There is nothing in the Code or in the Historic District Ordinance which says that a gate should be designed so that you can see into peoples' yards, but that's becoming the trend at the H-Board. He said he has been involved in several cases which didn't get appealed, but more and more are coming forward.

Mr. Sommer said he started this presentation with one quote from the Code, "Full responsibility for design and development structures is left to the Applicant." What we have here is the H-Board saying it doesn't like the designs, and they will approve the project, but based on design, you're going to have to remove the second gate. He said this is arbitrary and capricious, and not in conformance with the standards of the Code. He said the Balsers would like to move forward with the project. He said Mr. Martinez can answer any detailed questions about the design and the location on the lot.

The Public Hearing was Closed

Councilor Chavez said the statement staff made in this and the previous case is that gates don't have to meet the height requirement, and believes there has to be some limitation on the height of a gate. He believes staff is drawing a distinction between the maximum height of a fence which is 6 ft, and that the gate can be somewhat higher.

Mr. Rasch said that is correct, and gates, like fences, have a maximum allowable height, and on residential it is 6 feet, and on commercial 8 feet. He said if an archway is built over the gate, it is exempt from the height calculation. However, the archway must be proportional or traditional in design.

Responding to Councilor Chavez, Mr. Rasch said as long as it is proportional or is in keeping with traditional design, it fits.

Councilor Chavez said then it's not completely accurate to say that gates do not have a height requirement, but there is a variation from the height of the fence to allow for those gates.

Mr. Rasch said, "For the accent details over them, it's a proportional issue, yes."

Councilor Chavez asked the length of the gate being proposed and the most recent design, and if it is one gate or two hinging to the center, or what.

Richard Martinez, Architect, previously sworn. Mr. Martinez said it is one gate, and the original was two gates that opened together. He said the Code specifically says arches over gates are exempt from the height requirements. This is one gate from one side to the other.

Councilor Chavez asked what is proposed as the screen behind the gate, and asked if it swings the same way.

Mr. Martinez said yes.

Councilor Calvert said staff recommended approval.

STENOGRAPHER'S NOTE: The rest of Councilor Calvert's question/statement are inaudible on the tape and on the CD of the television broadcast because Councilor Calvert's microphone was off.

Mr. Rasch said the way the staff and Historic Preservation Division works, is that we look "black and white" at the Code, so, technically these applications fit Code. The H-Board purview is to look at the more subjective issues which aren't necessarily black and white and this is where they didn't agree with staff and staff's recommendation.

Councilor Ortiz moved, seconded by Councilor Romero, to uphold the appeal in Case No. H-08-008, and to deny the findings of fact, with the finding that the H-Board's action, as it relates to this gate and all gates, is an arbitrary and capricious delegation of their authority and is not allowed under Code.

Discussion: Councilor Ortiz said he wants to send a larger message to the H-Board that he doesn't want to see these kinds of cases coming before the Council, and for the H-Board to do the right thing.

Councilor Chavez said then that negates the detailed point about having a single or a double gate, because the appeal speaks specifically to a single, approximately 6 foot high, vehicle gate. So, whether it is a single or double doesn't factor in either.

The motion was approved on the following Roll Call vote.

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

Against: None.

Absent: Councilor Dominguez.

13. MATTERS FROM THE CITY CLERK

Yolanda Vigil reminded the Council of the special Fiesta meeting on September 2, 2008, at 4:00 p.m. She will send out an email reminding the Councilors.

14. COMMUNICATIONS FROM THE GOVERNING BODY.

Councilor Calvert

Councilor Calvert congratulated Jack Hiatt who became a grandfather of a little girl recently.

Councilor Bushee

Councilor Bushee introduced a Resolution directing the City Manager to implement a 311 Constituent Call Center, noting it is cosponsored by Councilors Ortiz, Wurzbarger, and Dominguez and Mayor Coss. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "10."

Councilor Bushee said she hasn't heard back about the potential for a bicycle depot/locker which was introduced a year ago, noting part of that resolution had a parking shuttle and such. She wants a response on that as soon as possible. She wants the infrastructure to begin to come together so it could take place and to be sure that Richard Czoski saved a space for the old rail car.

Councilor Bushee introduced an ordinance amendment on behalf of Councilor Trujillo, to permit City banners commemorating the 400-year anniversary of the founding of La Villa Real de La Santa Fe de San Francisco de Asis. A copy of the ordinance is incorporated herewith to these minutes as Exhibit "12."

Councilor Bushee said she is still trying to track the antenna issue, and understands there is a meeting on September 11th, and understands the one on Valley Drive has been removed.

Mr. Buller said this is correct, noting they agreed to remove it while they look at other options. He said Gary Martinez circulated information on that, and he will get that to her.

Councilor Bushee said there were about 75 people at the BTAC meeting last night, and several issues were raised:

- We need to do outreach and she's working with Laura on that.
- People that remove the weeds from sidewalks and medians are spewing debris into the bike paths.
- They really don't like the bulb-outs, particularly the ones on Guadalupe. She thinks we need a plan in this regard.
- There are a number of public safety issues which need to go to the Public Safety Committee for the Police to investigate.

Councilor Bushee will provide the list of public safety issues to Mr. Buller.

Councilor Ortiz

Councilor Ortiz said he had a request to postpone Item 9(e) regarding the Municipal Airport which wasn't done on the Consent Calendar. He said they are asking for additional time to submit public comments through the FAA process. He has a packet of materials. He directed the City Manager to direct Jim Montman to allow and facilitate that public comment, even though approval was granted. He said the point of contact for the La Cienega neighborhood is Jose Villegas, Police Chaplain.

Councilor Ortiz wished everyone a successful school year. He hopes everyone has a safe Labor Day.

Councilor Chavez

Councilor Chavez introduced a Resolution urging the federal government to create an adequately funded comprehensive national surface transportation plan. He asked that it go to Public Works, Finance and back to the Council. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "11."

Councilor Chavez said he and his wife are grandparents again. Their daughter, Elena, gave birth to Gabriel Tercero yesterday, and mother and baby are doing well.

Councilor Chavez said the Hickox neighborhood will hold another neighborhood meeting specifically to focus on the concept of a neighborhood plan on September 29, 2008. He said Patrick Nicholson is working with the group. He appreciates staff attending these neighborhood meetings.

Councilor Chavez said there has been an initial meeting to discuss traffic issues on Agua Fria, especially in front of Larragoite School, and there will be a follow-up meeting on September 9, 2008, at 8:30 a.m., with the principal and public safety and other City staff.

follow-up. He said Agua Fria straddles Districts #1 and #3 and he notified the District #1 Councilors about that meeting.

Councilor Chavez received a communication from La Cienega residents who are concerned about the petroglyph sites. He spoke with Mr. Montman and asked him to take two representatives from La Cienega on a fly over to see if, during the feast days, the flight patterns will be over them. He said he did a similar flyover with people from Santo Domingo representatives about their feast days and cultural events.

Councilor Romero

Councilor Romero made a plea "in desperation" for another Councilor to serve on SWMA Board, saying the Board meets once a month for about 1½ hours maximum.

Councilor Romero said she spoke with Alex Valdez, CEO, St. Vincent's Hospital, about our Healthy Life Styles Task Force, and they are interested in promoting preventive health, and asked Mr. Buller to send a copy of that to Mr. Valdez.

Councilor Calvert said he also spoke with Alex Valdez this morning, and one of the things he emphasized is that we all have one thing in common which is affordable housing and we can all partner on that, regardless of our respective jurisdictions.

Councilor Romero said the Casa Linda neighborhood has been working closely with the NM DOT on the realignment of the Railrunner line on Santa Rosa. The decision was made cooperatively to move the rail line further east, and the trail closer to the Santa Rosa residents with landscaping. She has encouraged Chris and the neighborhood to work on an easement to water the landscaping, commenting she encourages that the City pay nothing because the DOT owns water rights. She doesn't want this to be made a City problem.

Councilor Romero is meeting with Pego Guerrerortiz tomorrow, along with Jack Hiatt, with regard to the DOT master plan, and she wants the City to be part of that conversation, noting it is a 25-acre redevelopment.

Mayor Coss

Mayor Coss invited everyone to the Labor Day picnic at Franklin Miles Park on September 1, 2008, 11:00 a.m. to 2:00 p.m., commenting there will be good food and entertainment. He invited everyone to attend the State of the City Speech on September 3, 2008, at 6:00 p.m., at the new convention center. He said the Grand Baille also will be held at the new facility.

Mayor Coss introduced the following:

1. An Ordinance on behalf of Councilor Wurzburger regarding City wastewater and

water service outside the City limits. A copy of the Ordinance is incorporated herewith to these minutes as Exhibit "13."

2. An Ordinance on behalf of Councilor Wurzbarger, which he cosponsored, amending the City Code regarding the Workforce Housing Funding Initiative. A copy of the Ordinance is incorporated herewith to these minutes as Exhibit "14."
3. A Resolution adopting the Santa Fe County Hazard Mitigation Plan. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "15."
4. A Resolution, cosponsored by Councilors Romero, Chavez, Calvert and Trujillo, authorizing the issuance of an RFP to prepare a Master Plan for City facilities at the Siler Road property and the downtown City Hall area. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "16."

Councilor Bushee asked what is being done in terms of landscaping around the City Hall.

Mr. Buller said they are putting pecan shells down temporarily, and over the longer term they want to coordinate this landscaping with the Community Convention Center landscaping.

Councilor Bushee would like them to "tackle" the lawn as well.

Mr. Buller said they will, but right now they're trying to make things look okay until they can do the full landscaping. Responding to the Mayor, Mr. Buller said this is just a "bandaid" of pecan shells to get us through. But they will coordinate this landscaping with the one designed by Fabian Chavez and approved by the Council.

Responding to Councilor Chavez, Mr. Buller said he doesn't recall all the details of that landscaping plan.

H. ADJOURN

There being no further business to come before the Governing Body, and upon completion of the Agenda, the meeting was adjourned at approximately 9:45 p.m.

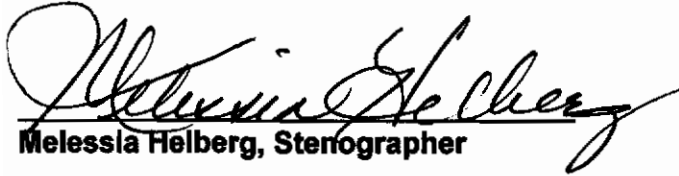
Approved by:

Mayor David Coss

ATTESTED TO:

Yolanda Y. Vigil, City Clerk

Respectfully submitted:



Melessia Helberg, Stenographer