



Agenda

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BY Beth Messner

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**PUBLIC WORKS/CIP & LAND USE COMMITTEE
MEETING
CITY COUNCIL CHAMBERS
MONDAY, DECEMBER 7, 2009
5:15 P.M.**

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF AGENDA
4. APPROVAL OF CONSENT AGENDA
5. APPROVAL OF MINUTES FROM NOVEMBER 16, 2009 PUBLIC WORKS COMMITTEE MEETING

PUBLIC HEARING

6. REQUEST FOR APPROVAL OF AN ORDINANCE REPEALING CHAPTER 27 SFCC 1987 AND CREATING A NEW CHAPTER 27 SFCC 1987 REGARDING TELECOMMUNICATION AND CABLE SERVICES **(FRANK KATZ)**
 - REQUEST FOR APPROVAL OF AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO NEWPATH NETWORKS, LLC TO RENT, USE AND OCCUPY THE CITY'S PUBLIC RIGHTS-OF-WAY IN THE CITY OF SANTA FE, NEW MEXICO, AND FIXING THE TERMS AND CONDITIONS THEREOF **(FRANK KATZ)**
 - REQUEST FOR APPROVAL OF AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO CITYLINK FIBER HOLDINGS OF SANTA FE NM, LLC TO RENT, USE AND OCCUPY THE CITY'S PUBLIC RIGHTS-OF-WAY IN THE CITY OF SANTA FE, NEW MEXICO, AND FIXING THE TERMS AND CONDITIONS THEREOF **(FRANK KATZ)**

CONSENT AGENDA

7. REQUEST FOR APPROVAL OF BUDGET INCREASE FOR SANTA FE RAILYARD COMMUNITY CORPORATION **(ROBERT SIQUEIROS)**
8. REQUEST FOR APPROVAL OF VEHICLE PROCUREMENT WITH ARIZONA BUS SALES/EL DORADO NATIONAL FOR SIX EZ RIDER HEAVY DUTY LOW FLOOR 30' TRANSIT BUSES AT A COST OF \$399,947 EACH **(JON BULTHUIS)**
9. REQUEST FOR APPROVAL OF PROCUREMENT FOR THE REPLACEMENT AND INSTALLATION OF HEAD SIGNS FOR BLUEBIRD TRANSIT BUSES WITH TWIN VISION IN THE AMOUNT OF \$97,800 PART OF WHICH IS FUNDED WITH FEDERAL GRANT FUNDS **(JON BULTHUIS)**

10. REQUEST FOR APPROVAL OF AWARD OF BID AND CONSTRUCTION AGREEMENT FOR ON CALL ROADWAY CONSTRUCTION SERVICES IN AN AMOUNT NOT TO EXCEED \$1,000,000 PER CONTRACT, EXCLUSIVE OF NEW MEXICO GROSS RECEIPTS TAX WITH:
 - STAR PAVING COMPANY
 - TLC PLUMBING AND UTILITY (**SANDRA WINKELMAIER**)
11. REQUEST FOR APPROVAL OF AMENDMENT NO. 1 TO THE RECREATIONAL ACCESS AGREEMENT (DOWNS INFIELD) BETWEEN THE CITY OF SANTA FE AND PUEBLO OF POJOAQUE DEVELOPMENT CORPORATION TO CLARIFY THE AMOUNT THE CITY CHARGES TO PPDC FOR CITY TREATED EFFLUENT WATER (**FRANK KATZ**)

DISCUSSION

12. REQUEST FOR APPROVAL OF AN ORDINANCE AMENDING SECTION 24-2.6 SFCC 1987 TO RESTRICT TRUCK, TRUCK TRAILER AND OTHER LARGE VEHICLE TRAFFIC ON CORDOVA ROAD (**COUNCILOR CHAVEZ**) (**RICK DEVINE**)
13. REQUEST FOR APPROVAL OF THE PROFESSIONAL SERVICES CONTRACT FOR THE COLLEGE OF SANTA FE BETWEEN THE CITY OF SANTA FE AND CSF MANAGEMENT, LLC (**LEE DEPIETRO**)
14. REQUEST FOR APPROVAL OF EXTENSION OF LEASE AGREEMENT BY AND BETWEEN FIRST INTERSTATE PLAZA ASSOCIATES LIMITED PARTNERSHIP AND THE CITY OF SANTA FE REGARDING THE SPACE COMMONLY KNOWN AS SUITE NO. 100, 125 LINCOLN AVENUE, SANTA FE, NEW MEXICO (**EDWARD VIGIL**)
15. WATER REQUIREMENTS ORDINANCE NO. 2009-38 ADMINISTRATIVE PROCEDURES
 - REQUEST FOR COMMENTS ON THE DRAFT ADMINISTRATIVE PROCEDURES (**DALE LYONS**)
16. MATTERS FROM STAFF
17. MATTERS FROM THE COMMITTEE
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19. ADJOURN

Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6520, five (5) working days prior to meeting date

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PUBLIC WORK, CIP & LAND USE COMMITTEE

December 7, 2009

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6. Telecommunications & Cable Services Ordinance	Approved	2-12
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13. PSA - CSF Management and City	Approved as presented	15-20
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Exhibits: A and B

MINUTES OF THE
CITY OF SANTA FE
PUBLIC WORKS/CIP & LAND USE COMMITTEE

MONDAY, DECEMBER 7, 2009

1. CALL TO ORDER

A regular meeting of the Public Works/CIP & Land Use Committee was called to order on the above date by Chair Patti Bushee at approximately 5:15 p.m. in City Council Chambers, City Hall, 200 Lincoln, Santa Fe, New Mexico

2. ROLL CALL

Roll Call indicated the presence of a quorum as follows:

MEMBER PRESENT:

Councilor Patti Bushee, Chair
Councilor Christopher Calvert
Councilor Miguel Chávez
Councilor Rosemary Romero
Councilor Ronald S. Trujillo, Vice Chair

MEMBERS ABSENT:

OTHER COUNCILORS PRESENT:

None

OTHERS PRESENT:

Mr. Robert Romero, Public Works Director
Ms. Bobbi Mossman, Public Works Staff

NOTE: All items in the Committee packet for all agenda items are incorporated herewith by reference. The original Committee packet is on file in the Public Works Department.

3. APPROVAL OF AGENDA

Councilor Calvert moved to approve the Agenda as presented. Councilor Trujillo seconded the motion and it passed by unanimous voice vote.

4. APPROVAL OF CONSENT AGENDA

Councilor Calvert moved to approve the Consent Agenda as published. Councilor Romero seconded the motion and it passed by unanimous voice vote.

5. APPROVAL OF MINUTES FROM NOVEMBER 16, 2009, PUBLIC WORKS COMMITTEE MEETING

Councilor Trujillo moved to approve the minutes of November 16, 2009 as presented. Councilor Chávez seconded the motion and it passed by unanimous voice vote.

PUBLIC HEARING

6. REQUEST FOR APPROVAL OF SALE OF AN ORDINANCE REPEALING CHAPTER 27 SFCC 1987 AND CREATING A NEW CHAPTER 27 SFCC 1987 REGARDING TELECOMMUNICATIONS AND CABLE SERVICES (FRANK KATZ)

- REQUEST FOR APPROVAL OF AN ORDINANCE GRATING A NON-EXCLUSIVE FRANCHISE TO NEWPATH NETWORKS, LLC TO RENT, USE AND OCCUPY THE CITY'S PUBLIC RIGHTS-OF-WAY IN THE CITY OF SANTA FE, NEW MEXICO AND FIXING THE TERMS AND CONDITIONS THEREOF (FRANK KATZ)**
- REQUEST FOR APPROVAL OF AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO CITYLINK FIBER HOLDINGS OF SANTA FE New Mexico, LLC TO RENT, USE AND OCCUPY THE CITY'S PUBLIC RIGHTS-OF-WAY IN THE CITY OF SANTA FE, NEW MEXICO AND FIXING THE TERMS AND CONDITIONS THEREOF (FRANK KATZ)**

Chair Bushee announced to all in the audience that the City Hall WiFi was turned off.

Chair Bushee asked speakers to line up and give them two minutes.

Mr. Katz clarified there were three things before the Committee now: 1 - general franchise ordinance for telecommunications. The Tenth Circuit Court of Appeals held most of the ordinance from 1998 unconstitutional in 2004. It was just the structure to grant a franchise to a provider to use their equipment in the public right of way.

This doesn't have to do with current land use concerns in Chapter 14 like co-location and shielding. That was all in place so it didn't touch on that now. What was in place probably needed some work.

Most Committee members and most of the public were aware that federal law in this area preempted municipalities from considering health and environmental effects of radio frequency emissions. The only thing the City could consider was what was within those standards.

He clarified that he didn't mean to say there were no health concerns but that they didn't apply to any particular provider. Perhaps the City could do a resolution to petition the FCC concerning those health concerns.

Chair Bushee added that it was not relevant for this Committee.

Mr. Katz agreed. The FCC just did a rule making that required municipalities to deal with these applications in a reasonable time: within 90 days for co-locations and 150 days for new towers. So the City had to act expeditiously. The City was allowed to apply its zoning and land use rules to these and had 90 days to go through the whole process.

Councilor Chávez asked what section in Chapter 27 (Land Use Code) this applied to.

Mr. Katz said Section 14-6.3E dealt with telecommunications. There were things about antennae and towers. Here tonight were two companies that wanted to provide services with their equipment in public ROW. Only one of the companies was present. The one wanted to put fiber optic in the ROW and the other wanted to do a distributed antenna system which was wireless at quite low power.

Councilor Romero asked if there was another chapter involved that would be impacted.

Mr. Katz said the staff were proposing an amendment on Chapter 27.

Chair Bushee asked those who would speak for a minute but no more than 2 minutes. There were staff who had to drive back to Albuquerque in this weather. This would go forward to Council and the public would have another opportunity.

Mr. Katz said it would go to Council's first meeting for publication and then for hearing at the first meeting in February.

PUBLIC HEARING

Ms. Katy Singer, 2556 Camino San Patricio said she was very touched by the conversation just now on what Council was able to do. You were not able to say no. That was a strong thing and it was a complicated issue and this was about democracy.

She needed her City to preserve the right to review and possibly deny every antenna and to consider a temporary moratorium on installing new antennae. That would give Council time to pass a wireless telecommunications ordinance that would preserve aesthetics and property values. A public hearing was needed for each one with a chance for the public to appeal. Companies must prove there was a gap in coverage and install in the least intrusive way. She preferred lease agreements to franchises because they retained local authority much stronger than franchises. She hoped the City could find a company that could provide fiber optics to every home for secure fast internet connections rather than through wireless technology.

Mr. Bill Bruno, 2357 Botolph Road agreed with Ms. Singer. As a theoretical bio-physicist he was convinced that there were health effects. The government of France declared there was no doubt that there were health effects. According to the movie, Full Signal, there were lawyers challenging the constitutionality of the 1996 Telecommunications Act on the basis that the federal government left public health to be a local responsibility. There was the New Mexico State Health Department and the City's health department. And they were being told by the FCC or by Congress through this act that "we can't touch the issue of cell phone towers." That was why it was unconstitutional. He also thought there was a lot of fine legal points that needed to be considered.

Mr. Arthur Furstenberg, 246½ Casados, asked where he was. He said he must be in some foreign country where there was no freedom of speech. In the United States he couldn't be prevented from speaking about health nor could all of his elected officials either. That would violate the first amendment. In the United States, no law could authorize antennae to be built that would deprive people of their life, liberty or property because it would violate the fifth amendment. In the United States the federal government could not prohibit states and local governments from exercising their police power which meant the power to protect the health, safety and welfare of the community. That would violate the tenth amendment. "If this were the United States, any law that prohibited elected officials from protecting the public's health would obviously be unconstitutional and no one would obey such a law. The City of Santa Fe must not obey such a law.

Ms. Patricia Waldygo, #1 Santo Drive in Cerrillos said they needed to repeal Section 704 of the Telecommunications Act of 1996 so they could have open public discussion of the health effects of locating cell antennae too close to where people lived. The act squelched the peoples' freedom of speech. She said no one in the United States was conducting studies like they were in England. She showed three maps that showed cancer clusters near cell phone towers in English towns that were done under Dr. John Walker, who did research about cancer clusters around antennas. She described one being done in London that was directly in line with the antenna. She also had an article from the London Evening Standard about a large cell phone tower on top of an apartment building called the Tower of Doom where the cancer rate on the top floor was 20%, ten times the national average. She also included in her handout several court cases against telecommunications companies for the City Attorney to review.

She said television networks were only reporting studies favorable to telecomm industries because they were huge advertisers. Everyone was ignoring reality as if ignoring the dangers of electromagnetic fields would make them harmless. NBC Nightly News reported there was no danger from cell phones. But Full Signal showed that it took longer than ten years to realize cigarettes caused cancer.

She said that, to date, 3,000 physicians had signed an appeal for great restrictions because they were seeing an increase in certain diseases in their patients that they attributed to ambient microwave radiation. They included ADHD, heart attacks and strokes, Alzheimer's, epilepsy, migraines, leukemia and brain tumors.

She said Santa Fe was known as a beautiful peaceful unique place all over the world. She asked how

Santa Fe's tourism might drop off if this peaceful atmosphere disappeared and it became more like a little town in Italy named Balorimo known as the town that never sleeps because 53% percent could not sleep well because of all the cell towers there. Her statement and articles are attached as Exhibit A.

Ms. Joann Collin, Galisteo Road, thanked the Committee for their service in representing the residents. She depended on their voice to help with the City. It was hard to make a bridge between Santa Feans and the federal government. She asked them to please do everything possible regarding a moratorium so they could do something more democratic and constitutional about the FCC law.

Ms. Jan Boyer, 815 Rio Vista Street, said she had a psychotherapist business and a good portion of her business was for people from other places who came here to do healing and they asked her if they could tolerate EMF here in Santa Fe. She wished the City didn't have to give away anything. It was not a trade secret what they were doing or where they were putting the antennae. The City didn't have to give that power to them. She suggested that if it could be done in a way that was healthy they should do fiber optics. Then the issue would be moot.

Ms. Giselle Pyburn, mother of young children in Santa Fe, said many were concerned about their kids because their brains were developing and the cell towers affected them. She would like Santa Fe to stand up and find legal ways to challenge this act. She hoped the City could research that and help find the path. At minimum the City should have regulations to protect schools and playgrounds with "no tower" zones. Santa Fe High School already had a tower on their property.

Ms. Denise Sherwin, 66 Avenida Avea, was the owner of a wellness center in Santa Fe County who worked with doctors and diagnostics. One of the diagnostics produced information about the biology shifting into a state of imbalance. It became shocking to her how many people showed electromagnetic radiation as an underlying cause.

There were lots of studies and information about it. She read one about the German government warning against the use of WiFi because of health risks.

She commented that it was unlike second hand smoke. A blanket of microwave radiation across this city affected children's brains. It was a rape of their children's future.

Ms. Virginia Miller, West Alameda, asked the Committee if they had seen Full Signal. Councilor Calvert had. She urged the rest to please try to see it. The Santa Fe Film Festival had a DVD of it. It was very important.

She wanted wired technology for secure fast internet connections and no more antennae. She said she was personally willing to limit her use of cell phones for emergency use only. She wanted the City of Santa Fe to join with Tucson, Portland Oregon and other cities to insist that Congress revise the Telecommunications Act so that new knowledge about wireless devices and health could be recognized. She was willing to help with that and contact their delegation to work on it.

Mr. Julia Anna Coles, 1625 Wilderness Gate Road, said she and her husband moved here four years ago with their 6 and 9 year old sons. They chose Santa Fe because of its progressive values and safe and clean environment. Her husband was a pediatrician at the Indian Hospital. They didn't allow their kids to have cell phones or talk on them or mobile phones. They were here with her to see how citizens stand up for their rights. There was no question of what was going on. She wanted every child to be safe from it.

Mr. Michael Collins said he was from the County but worked in the City. This was a constitutional issue and he would be proud of his City to challenge it. At least the companies should do the researched and prove that it was safe before they proceeded. He was going to the County, as well.

Ms. Betsy Millard, 2012 Valle Rio, said she was not affected by this technology. She didn't have a cell phone but had been tracking the problems regarding cell technology so she didn't have one or a WiFi. She saw Full Signal but was not sure they still had a DVD of it. She believed there was a huge price to pay with all these cell technologies. In the film they installed cell towers in a village in Israel and the cancers near the towers were so obvious. The leaders of all religions decided the towers were sac religious and burned all of them down.

Mr. John Mead, 2323 Calle Papa, hoped that Santa Fe would take the lead instead of just jumping on the band wagon. He didn't know that they needed all the apparent conveniences that technology provided. He called their attention to the precautionary principle that a few cities had begun to adopt to check out and make sure things were entirely safe before approving them.

He asked where did state sovereignty had gone and why the federal government established laws that superseded local ones. Some people were very sensitive to these things and they should be considered the canaries in the coal mine.

Ms. Lisa Bustos, 93 Feather Road, said this was about democracy and she needed her City to maintain their authority over zoning, land use and public utilities. She was willing to give up her cell phone and WiFi. She went to the library for computer use. It was truly about health.

Mr. Bob Sherwin, 43 Estates Drive and co-owner of the Wellness Center. It was astounding to him that anyone could say no one could challenge the health benefits when there had been no testing to do it. It seemed insurmountable to be able to challenge the cell phone companies that were making hundreds of billions of dollars. It would take all of us from many cities across the country to rise up and educate the public that the number one cause of death for children was from brain tumors. All of us were frequency beams and holding the frequency up to our brains and wouldn't know the effect for several years. He thought if it was government for and by the people they needed to rally to make it different.

Ms. Patty Rango said she worked with Extenet Systems and interested in a acquiring a right of way agreement as the other applicants were. Her company had concerns with the proposed ordinance amendment. The traditional franchise agreement with a percentage fee was appropriate for other business models but the wireless industry was a little different. So that arrangement didn't always work. The ordinance doesn't take into account Section 253 of the Federal Telecomm Act which limited the amount of

compensation they could recover against the actual costs of management of the public right of way. Because of that, Extenet felt it might be illegal and would put both parties at risk. They would like to work with Santa Fe on an ordinance that would comply with Section 253 and protect all signatories. They had submitted samples to the City Attorney already and thanked the City for the work they had already put into this ordinance. She hoped they could move forward with an agreement that would benefit all.

Mr. John McFee with the Department of Health and a consumer product safety representative for the State said he could not represent either agency since no health and safety concerns were taken into account. He spent after noon speaking with Kathy Siecal, his counterpart at EPA dealing with child health. He explained to her the parallels between the present introduction of wireless technology on a full scale with the introduction of 80,000 synthetic chemicals in the 1950s.

She was shocked and not up to speed with it and was going to the American Academy of Pediatrics, who were about to put out their environmental health guide and lobby them to include a chapter on it in their health guide. Asthma and autism rates in our children had increased greatly. They didn't even know what the switch from analog to digital TV would do. They all had to work together on it. This was just the beginning. The next was radiotelemetry of electric and gas meters that would have a cell tower on every house. Wisconsin was seeing epidemic health problems from that. He felt they were all drinking the kool aid here for the sake of convenience. They already had 30 years of data on those working around electricity getting cancer.

Mr. Richard Walker, 1303 Luana Street, didn't know much from research but read that the City could not refuse to approve installation of an antenna because of health or environmental reasons. So they didn't have a right to stand up for their health or a right to talk to make changes.

He said his ears started ringing and he began to get headaches and not be able to sleep a year ago. He couldn't prove it was these waves but it was overwhelming people and they were dying as a planet. There was enough proof out there that they needed to research it and not take it off the table to insure health and safety of everyone.

Ms. Carolyn Walker, 19 A Piñon Jay Trail, said that in Baxter State Park in Maine they didn't allow cell phones because they disrupted the behavior of the animals. She worked for Dr. Harman who dealt with autism and he found that lowering EMF helped them a great deal.

Ms. Kira Cope, 108 Galisteo Street and owner of Maya, asked the Council to consider a temporary moratorium on this to have time to create a wireless siting ordinance to protect aesthetics, property values and historic preservation. She would like it to require telecomm companies to go through permit process including public notification and a chance for the public to appeal the placement and to install in least intrusive way possible.

Ms. Victoria Jewett, 1405 Seville Road, also asked for a temporary moratorium to allow for writing a reasonable new ordinance that would work for the people here. She would also ask if the Council wouldn't mind if a crew from NewPath showed up on your sidewalk with no notice and started erecting an antenna.

She asked for the right to review and approve each antenna that goes up rather than have a carte blanche franchise. She wanted the Council to be creative as some other cities have done even within the constraints of the FCC's rules

Ms. Teress Zuco, 531 Varela Lane, said it was troublesome that this would be a blanket of coverage over the whole City and felt there could be a better alternative. She knew a lot of people used flash drives so there were alternatives. The City could also find companies who provided fiber optics for computer access.

She also favored leases so the City could maintain oversight over them instead of not being able to change anything for 20 or 30 years, making it difficult to get out of them. She noted that other cities were working hard to change this law. Nobody could complain or say anything and it was unfair.

There were no more speakers from the public in this hearing.

Councilor Chávez asked Mr. Katz about the notion that they had to have 100% coverage 100% of the time. He thought that might not be the best practical model. The city has questioned this to some extent and had an ordinance that had been challenged and the tenth circuit struck it down. So it was not that the City had not been sensitive about health concerns.

He asked if Mr. Katz could touch on what the City tried in the past and where the obstacles might be in the future if they considered changing the federal legislation.

Mr. Katz said the Committee heard from lots of people who were concerned with the health effects. Asbestos and cigarettes were similar. The Council had to take them into consideration but not whether they would grant a franchise to a provider to provide a telecommunications system. He thought everyone should want to have this reviewed and researched. Most people liked having cell phones. It was a nice convenience. They wanted the FCC to look at it but the Council could not consider that at this time.

The ordinance was struck down because it didn't provide enough right for the companies and the lease was too high. The fee was the same as provided for cable companies by the FCC. The fee was a 5% on gross revenues and was exactly what was proposed here.

Chair Bushee asked him to also respond to the Extenet person.

Mr. Katz said what Extenet and NewPath wanted to do was a distributive system for areas not covered very well right now. AT&T would pay them to use that system. But it was no different than those that built towers.

Councilor Chávez thought if they could impose a moratorium he was not sure how it would be imposed and what effects there would be.

Chair Bushee said it would require a specific time frame and specific purpose.

Councilor Chávez didn't know that would impact the federal law.

Mr. Katz said if the City decided they would not act, it would put the City at risk. A moratorium would not be needed for aesthetics and siting.

The proposals would be for small antennas on telephone poles that would be disguised and that addressed the aesthetics. Everyone needed to know where they were.

Councilor Chávez asked if an ENN wouldn't cover that now and it would be vetted through a public process.

Mr. Katz understood the franchise agreements would allow them to use the public ROW but they still needed land use permits from the City. A large portion of them were in the historic district so their plans would be reviewed by the HDRB.

Councilor Chávez thought it was a big challenge for the City to square off with the federal government. They should not be silent but it was a challenge. He guessed they could join with other cities. He had some concerns. One provider had concerns how the ordinance was drafted and the fees were structured. But they might not have much jurisdiction there.

Councilor Romero thanked Councilor Chávez for asking what was on their list. She asked Mr. Katz if they could draft a petition to the FCC.

Mr. Katz clarified that Ms. Price had been drafting one that would ask the FCC to do the research.

Councilor Romero asked to be a cosponsor that resolution. She mentioned that the precautionary act was on her list of things to work on. But it wouldn't happen at this meeting. It was on the top of her list.

Councilor Calvert asked if on page 63, the Director there was the Public Works Director.

Mr. Katz agreed. It was in the definitions, page 5, line 16.

Councilor Calvert asked who the City Communications Manager was on page 63.

Mr. Katz was not sure.

Councilor Calvert said they needed to clarify that. He referred to page 26 of the ordinance regarding underground and asked who would define what was reasonable.

Mr. Katz said it was the reasonable man standard.

Councilor Calvert asked if the applicant needed to provide a map. He thought it should just say "They

would provide a map. That should be in 27.7(K) (page 72)

His third point was that the Public Works Director needed to determine what should be in the application. He had all the faith in Mr. Romero but it should apply to any Public Works Director so he would like to see that at a minimum to guide that.

Then on #7, regarding parks and open space, he noted that Mr. Katz said the intention was not to allow them on those places. He wanted it to be more specific.

Chair Bushee said she wanted to bring that up too. On page 60, it said it included everything and then on page 65 it said where they could not place them. They wanted to see this in as few places as possible and didn't want to see it on a trail.

Mr. Katz said the definitions spelled that out.

Chair Bushee asked if they needed to keep the paragraph on page 60.

Mr. Katz said they would look at that.

Chair Bushee asked that staff go through all of it for public right of way. It should be clear what the City would permit. It was still not as strong as if they had it in the ordinance.

Mr. Katz said that paragraph dealt with co-location. Co-location was where a Qwest line, a Comcast line or electric line was already on the pole. The intention was not to allow that.

Councilor Calvert just wanted that intent to be clearly spelled out in the ordinance.

Councilor Calvert asked if the company had any liability. If the FCC changed its rules, he wondered if there could be cross liability.

Mr. Katz said the franchisee indemnified the City for any claims.

Councilor Calvert asked if in the memo on page 5 of their packet it was about a ten year term.

Mr. Katz said that was the term of the franchise and it could be extended.

Councilor Calvert thought if the City asked the FCC to change it, they should give themselves an escape clause. That it could be a reason for termination.

Mr. Katz agreed that made a lot of sense but it would be good to have it here.

Councilor Calvert asked if different providers wanted to use the same location and it probably wouldn't happen but if they all located on the same pole, they might exceed a safe EMF level according to the FCC

standards. It could be the cumulative impact if several devices were on the same pole.

Mr. Katz said that was in the ordinance already.

Chair Bushee clarified that the City did not have jurisdiction on school yards and the feds prevented the City from dealing with health. But given the fact that the City had many dollars invested in school yards and wondered if they could consider including that in areas where the City prevented them.

Mr. Katz said they didn't have jurisdiction over them. They did have height limits that applied but it would be up to the schools to say they didn't want them on their property.

Chair Bushee said she would just like staff to look into the agreements the City had with the schools and consider them as antenna-free zones. The schools could come up with what they wanted. She also asked staff to see if Tucson and Portland were rearranging their standards. She asked if staff could also see if they could go through a lease agreement instead of a lease.

Chair Bushee mentioned to the public that the City had never had a health department.

Mr. Katz noted that it was the lease agreement that the tenth circuit struck down.

Chair Bushee asked if they were required to have a franchise agreement.

Mr. Katz didn't know but didn't recommend not having a franchise agreement.

Chair Bushee asked if he could look into whether it was required. Mr. Katz agreed.

Chair Bushee commented that she didn't get to vote today but it was a concern of all the members. She was out of town when Full Signal was showing. She thought they all took this seriously. They were between a rock and a hard place when trying to regulate health concerns. She understood those concerns. It was a little like liquor licenses where they had denied a few and then the State overturned them.

She thanked everyone for their input. She was well aware of Baxter State Park, being from Maine. Many of the Councilors would support the protests to the FCC.

Councilor Trujillo asked Mr. Katz if they could set boundaries for antennas that went beyond the park boundaries. They had the right of way but asked if they could put one across the street.

Mr. Katz reminded the Committee that there were other limits - if a tower or antenna was not necessary or there was not a gap in service, the City could deny it. If there was a gap in service they could beat the City on it. He explained it further.

Councilor Trujillo asked if Los Angeles, Portland and Tucson had resolutions into the FCC. Mr. Katz agreed.

Councilor Romero suggested they needed reciprocity with the schools so when what they undertook was affecting the health of the city residents.

Chair Bushee thought perhaps it was time for a meeting with the school board and add this to the agenda.

Councilor Romero moved for approval with the amendments from staff and this Committee

Chair Bushee added **with clarification on right of ways and other clean up.**

Chair Bushee asked Mr. Katz to provide the new draft to the Committee.

Councilor Trujillo seconded and it passed by majority voice vote with Councilor Chávez voting against.

Councilor Chávez made a statement about his vote. The City had to accept some gap in service in the interest of health and safety. He said he would limit his computer time and cell phone time to send a message.

Councilor Calvert said he voted yes because the City needed to have something on the books and they were trying to put some teeth in it. Otherwise they would be more at the mercy of the federal government.

Councilor Romero moved to approve the NewPath application.

The motion died for lack of a second.

Councilor Chávez moved to forward the application without any recommendation. Councilor Calvert seconded the motion and it passed by unanimous voice vote.

City Link Fiber -

Councilor Calvert moved to approve the CityLink application for fiber optics in the public right of way. Councilor Romero seconded the motion.

Councilor Chávez thought the fiber optics were more desirable. There were fewer questions and he would vote yes on this.

The motion passed by unanimous voice vote.

CONSENT AGENDA

7. **REQUEST FOR APPROVAL OF BUDGET INCREASE FOR SANTA FE RAILYARD COMMUNITY CORPORATION (ROBERT SIQUEIROS)**
8. **REQUEST FOR APPROVAL OF VEHICLE PROCUREMENT WITH ARIZONA BUS SALES/EL DORADO NATIONAL FOR SIX 32 RIDER HEAVY DUTY LOW FLOOR 30' TRANSIT BUSES AT A COST OF \$399,947 EACH (JON BULTHUIS)**
9. **REQUEST FOR APPROVAL OF PROCUREMENT FOR THE REPLACEMENT AND INSTALLATION OF HEAD SIGNS FOR BLUEBIRD TRANSIT BUSES WITH TWIN VISION IN THE AMOUNT OF \$97,800, PART OF WHICH was FUNDED WITH FEDERAL GRANT FUNDS (JON BULTHUIS)**
10. **REQUEST FOR APPROVAL OF AWARD OF BID AND CONSTRUCTION AGREEMENT FOR ON CALL ROADWAY CONSTRUCTION SERVICES IN AN AMOUNT NOT TO EXCEED \$1,000,000 PER CONTRACT, EXCLUSIVE OF NEW MEXICO GROSS RECEIPTS TAX WITH:**
 - **STAR PAVING COMPANY**
 - **TLC PLUMBING AND UTILITY (SANDRA WINKELMAIER)**
11. **REQUEST FOR APPROVAL OF AMENDMENT NO. 1 TO THE RECREATIONAL ACCESS AGREEMENT (DOWNS INFIELD) BETWEEN THE CITY OF SANTA FE AND PUEBLO OF POJOAQUE DEVELOPMENT CORPORATION TO CLARIFY THE AMOUNT THE CITY CHARGES TO PPDC FOR CITY TREATED EFFLUENT WATER (FRANK KATZ)**

DISCUSSION

12. **REQUEST FOR APPROVAL OF AN ORDINANCE AMENDING SECTION 24-2.6 SFCC 1987 TO RESTRICT TRUCK, TRUCK TRAILER AND OTHER LARGE VEHICLE TRAFFIC ON CORDOVA ROAD (COUNCILOR CHÁVEZ) (RICK DEVINE)**

Mr. Devine had nothing to add to the report.

Councilor Calvert noted that this appeared to be all of Cordova Road but the part between St Francis and Cerrillos didn't seem to fit well into it.

Mr. Devine said he would recommend that it be just St. Francis to Old Pecos Trail.

Councilor Calvert asked if it could be prohibited from Don Diego to Old Pecos Trail.

Mr. Devine agreed.

Councilor Chávez concluded that it would be the residential sections of Cordova and they could even deliver to residential area if they had a bill of lading. He had no problem with that.

Councilor Chávez moved to approve the request as amended. Councilor Calvert seconded the motion.

Councilor Romero said this was all new to her. She had never heard there were problems in that area and it was in her district. She asked how many actually complained. She asked if they were proposing something that only one or two people complained about.

Mr. Devine deferred to Councilor Chávez.

Councilor Chávez said it was initially a handful and he apologized for not communicating earlier. If a request came in, he would respond to it. He worked with staff to come up with the ordinance. There were five initially and he thought they worked with others on that street. He asked Ms. Price if she had others who had asked for prohibition of truck traffic.

Ms. Price said she only communicated with one gentleman, Mr. Atwell. She informed him of the meeting dates. That was it.

Councilor Romero asked if Public Works looked at any traffic counts or analysis.

Mr. Devine said they did not do a formal traffic count.

Councilor Romero said her concern was that there were so many businesses that would call her who were not contacted and would ask her how many complained and what analysis was done. She was supportive of neighborhoods that were impacted but businesses were too. It was how it gets moved along. Their questions could be answered if it followed the procedures. That stretch of road only had about ten houses there.

Councilor Chávez said there was an email that went to the Committee and he responded with a phone call. He added that he didn't know that other streets had traffic counts.

Chair Bushee thought they had traffic counts.

Mr. Romero said he didn't remember any criteria for that.

Mr. Devine said they could do the count. It would amount to finding trucks that were violating or delivering to an address on the street.

Chair Bushee asked what they wanted to do.

Councilor Romero wanted to postpone the matter to get a little more information.

Councilor Chávez said there were no steps to take. He said he could let Mr. Atwell know. If he wanted it bad enough, he could work for it. He had already suggested petitions to him. There were no criteria in the past.

Mr. Devine was asked what road category Cordova was. He said it was a minor arterial.

Chair Bushee asked if most truck restrictions were on residential streets.

Mr. Devine agreed but they had restricted Governor Miles and Agua Fria that were arterials.

Councilor Romero moved to postpone with the caveat to come up with criteria like a study or a petition.

Chair Bushee asked if the postponement was for a set period of time.

Councilor Romero asked that it be **for three months and bring back criteria for adding streets being proposed for a truck ban.**

Councilor Trujillo seconded as a courtesy to her. He thought from Don Diego was fine.

Councilor Romero explained that she was cautious about it because they thought they were fixing a problem but might be making it someone else's problem. She wanted to see some kind of process.

Councilor Chávez said speed humps were the same thing.

Chair Bushee asked if staff could you use a camera out there.

Mr. Devine said they could but the issue was different because they were counting trucks but didn't know where they were going.

The vote on the motion resulted in a 2-2 tie and Chair Bushee voted yes. The motion passed.

13. REQUEST FOR APPROVAL OF THE PROFESSIONAL SERVICES CONTRACT FOR THE COLLEGE OF SANTA FE BETWEEN THE CITY OF SANTA FE AND CSF MANAGEMENT LLC (LEE DEPIETRO)

Ms. DePietro presented the request.

Chair Bushee -asked about the background.

Ms. DePietro said staff built it into the purchase agreement.

Chair Bushee understood Laureate was going to manage theirs and the City staff would look at the remaining buildings. She asked if this was coming from the City Manager's office and added that she didn't vote for this.

Ms. DePietro said it was in the agreement.

Chair Bushee said she didn't recall it.

Mr. Buller said his recollection was that it came from Mr. Millican's sheet on all the expenditures.

Chair Bushee said there was always a step between.

Mr. Buller said Mr. Millican should give her a copy of it.

Chair Bushee said all they got were lists of what they might need to spend money on and how they got to a property manager. She was going to rail on this at Council. There had to be some steps in between. It went as far as an RFP for \$200,000 without any Council directive and that was very frustrating. It was done without the policy makers' involvement. She didn't think this should even be here - especially right now.

Councilor Romero moved for approval of the request.

He didn't think staff had the capacity to manage that property and thought it was written into the purchase of CSF.

Councilor Calvert seconded the motion.

Councilor Chávez asked if they had a PSA that followed all the protocol.

Ms. DePietro agreed.

Councilor Chávez asked if this LLC was a new organization.

Ms. DePietro said the SFRRRC was the only one with members on this new LLC.

Councilor Chávez felt if the City didn't have the staff capable of doing this, they obviously did need to sub this out. Now they had the Railyard Corporation sort of merging or going into this new venture. He asked if the City knew that everything was taken care of on the Railyard and lessees were all paying.

Mr. Romero suggested that Mr. Czoski was here.

Mr. Richard Czoski said they were current in their payments to the City.

Councilor Chávez asked if there were any tenants they were having to foreclose on.

Mr. Czoski said all tenants were current on their payments.

Councilor Calvert said the memo explained the funds were set aside for this. He asked where they were set aside and who they were set aside for and if it was for the city or for Laureate to use.

Ms. DePietro said the capital plan and deferred maintenance were all included in the bonds. They did list all the costs in the issuance. These were both included and built into the entire bond package.

Councilor Calvert noted on the first page staff showed these nine items and asked if they were part of the lease management.

Ms. DePietro said they were the major components of Exhibit A but there were others.

Councilor Calvert asked about the \$50 and \$75/hr rates for these management services.

Ms. DePietro said only one of them bid a flat fee. Each of the other six had line items for a specific task in the scope of work. There were three components in the PSA before the Committee: a \$6,000 flat management fee for accounting, administrative services, insurance and other costs for the management entity.

The second section was billable hours for property manager, construction manager and executive director. A third component was for committee members' meetings attendance for the LLC.

Councilor Calvert didn't have a problem with the hourly rates but with the flat fee. He wanted to know what they were getting for the \$6,000 and it would help if they were broken out separately.

Ms. DePietro agreed to change the exhibit to target each one of those items.

Councilor Calvert agreed that would be helpful and where it showed the actual bids.

Regarding the winning bid, he noted that there was one that was a whole lot less so he asked what the evaluation of it was that the low bid was not the winning bid.

Ms. DePietro explained that the responses were copied and distributed to each team member who scored them individually and they went with the two highest ratings and had interviews. After the interviews they made the selection.

Councilor Chávez asked if it included local preference. He asked why some proposals did not include the local preference.

Ms. DePietro said they just didn't complete the form in the package.

Councilor Calvert said that should be a message to applicants to make sure they fill that in.

Chair Bushee pointed out that the Evaluation Team didn't include anyone from Public Works. Also the agreement was not specific to this property.

Mr. Buller asked if it included Laureate's property as well.

Ms. DePietro said there were associated things that were shared and the deferred capital plan. These were the components.

Chair Bushee clarified that she wanted to talk about the underlying zoning.

Ms. DePietro said that operations monies were built into the bond issue and Laureate was with a triple net lease.

Chair Bushee asked what the timeline was and how much money was there to do that built into the bond.

Ms. DePietro said it was ongoing for as long as the City owned the college. The deferred capital was three years. After the three years they would just deal with operations of the college.

Chair Bushee felt this was premature. She was waiting to see what SFCC was going to do.

Ms. DePietro said the City was responsible for providing the utilities in the first five years. There was one point of entry and the college maintained the distributions. So there were a variety of duties on both sides in the lease agreement and this was to enforce those.

Chair Bushee asked if that was spelled out in Exhibit A.

Ms. DePietro agreed. It got very specific with what was spelled out in the lease agreement.

Chair Bushee said if the amount of money was considered a cap and not knowing what they were going to do she questioned it.

Ms. DePietro thought they had enough spelled out in the agreement. The biggest part was overseeing the capital plan. There were some unknowns like the barracks where they were doing an asbestos survey right now.

Chair Bushee said with the Railyard Corp the City had a MP with a very specific public plan. This was a very different step and they didn't know what they were doing there. They needed to wait for the SFCC and the State to clarify what they were going to do. She understood there were some things the City could jump right into but she was surprised with this. They were clear with the contractors but there were many unknowns here and nothing staff gave her answered those questions.

Councilor Trujillo thought when the City purchased it the City would be managing it. He asked if the City couldn't do it.

Mr. Romero said at the time they were developing budgets and the numbers, he worked with Mr. Millican to decide either to do it ourselves or contract for it. He didn't have any excess staff to oversee the construction and make sure the improvements were done correctly. So it would either be hire new people or contract. He added they were not to go to the General Fund or CIP to pay for this.

Councilor Romero asked if Mr. Romero agreed that this was built into the bond and it would take care of the property the City purchased.

Mr. Romero agreed and affirmed there would be no use of General Fund budget or City personnel.

Councilor Romero asked if there was someone to monitor it as part of the management fee.

Mr. Romero agreed.

Councilor Romero concluded that the SFCC had nothing to do with this. They still had a vision about this higher education center but might build it on their own campus. This was really taking care of what the City owned and maintaining it through a management company since City staff could not take it on.

Mr. Romero confirmed they didn't have the capacity so this was the route chosen.

Ms. DePietro explained that at the Council meeting on Wednesday evening they would have a purchase agreement for four tracts of land - it was a component of the \$11 million.

Chair Bushee asked when they would start spending money on capital.

Ms. DePietro said it was defined in the lease. They had already undertaken an electrical distribution analysis and an asbestos survey. She was working on the schedule right now. The City owned the buildings. The purpose of construction management was to assure the three year plan would be done in a quality manner.

Chair Bushee pointed out that the Selection Committee had no member who knows anything about this.

Mr. Romero said he was part of the selection but had to step out during the interview to handle an emergency but he was involved. They were only going to charge for what they did. He thought that was a very important thing.

Chair Bushee said it was still a surprise to her.

Ms. DePietro said she would be the contact from the City and oversee their work.

Chair Bushee commented that the underlying zoning needed to happen.

Mr. Romero said this was different from the Railyard where they had a plan. The City was not just turning it over to them.

Chair Bushee thought it should have included some of the old materials for them to use and the timeline of how it would get expended.

Ms. DePietro said she could put that in the Councilor's boxes.

Chair Bushee asked that it also spell out how it was expected to be spent in the next three years. Councilor Romero clarified that his motion included the CSF LLC.

Councilor Calvert added that it included which of those functions applied to which fees.

The motion passed by unanimous voice vote.

14. REQUEST FOR APPROVAL OF EXTENSION OF LEASE AGREEMENT BY AND BETWEEN FIRST INTERSTATE PLAZA ASSOCIATES LIMITED PARTNERSHIP AND THE CITY OF SANTA FE REGARDING THE SPACE COMMONLY KNOWN AS SUITE NO. 100, 125 LINCOLN AVENUE, SANTA FE, NEW MEXICO (EDWARD VIGIL)

Mr. Vigil presented the request. He explained they had to make decisions about keeping staff there or moving them. Amendment No. 1 is attached to these minutes as Exhibit B.

Chair Bushee thought the plan was to move those staff to Siler Road.

Mr. Vigil said that was down the road.

Councilor Trujillo asked for the term of the lease.

Mr. Vigil said it was a five year extension and only a 50 cent increase in the rates. He added that other rates far exceeded this rate.

Mr. Romero thought the City might have some space they could use. There was a provision to go month to month.

Mr. Vigil said the \$24/sq ft would allow the City to keep the space while the extension was being processed.

Mr. Romero commented that the school might have some available property and he was hoping to get something at a significantly lower rate. There was some on Alameda. Ridge Road and at the Montessori

school. There were ten staff on this site. He was not sure how long the hold over option was to last.

Mr. Vigil was not sure either. They did have vacant space in the building now. He was sure they wanted a decision in the next few months.

Mr. Buller thought they were hoping the City would decide to stay. Many of the school properties were a long distance from City Hall. Sabrina Pratt had to supply people to the Community Gallery and needed to be close to doing that. Aside from that, he wasn't sure.

Chair Bushee asked if there was no room in the Convention Center.

Mr. Vigil said he spoke to Keith Toler who said they wouldn't have adequate facilities for their own staff.

Chair Bushee asked if they needed to do temporary space.

Mr. Vigil said if the City wanted to keep staff downtown, he would recommend the five year lease.

Mr. Buller assured them Mr. Vigil had looked at a lot of downtown properties.

Chair Bushee asked if they could wait until the next meeting, Mr. Vigil agreed.

Chair Bushee asked if there was any chance of renegotiating with them.

Mr. Vigil clarified that they proposed \$2 more and that was when he started looking at alternatives and found a majority were full service leases with full service. First Interstate said the \$2 was because their costs had gone up, mostly for utilities. They lowered their proposal to 50 cents more (\$24). They City was paying \$25 at the Post Office.

Councilor Calvert moved to postpone this request until the January meeting.

Chair Bushee asked that they bring more information on school space.

Mr. Romero said if the schools could accommodate the City, most of the people across the street could be somewhere else. He thought it might be well to take time to figure out what was best. This was a time where the City could find leased space for much less. They would know in a month whether schools were possible and how much money there was.

Councilor Romero excused herself from the meeting.

Councilor Trujillo seconded the motion and it passed by unanimous voice vote. Councilor Romero was not present for the vote.

15. WATER REQUIREMENTS ORDINANCE NO. 2009-38 ADMINISTRATIVE PROCEDURES

- **REQUEST FOR COMMENTS ON THE DRAFT ADMINISTRATIVE PROCEDURES (DALE LYONS)**

Dale Lyons presented the request. He said they were planning to be on the next Council agenda and didn't know why they were not included on it.

Councilor Calvert thought there was time sensitivity. It was supposed to go into effect January 1st and thought it had to be on the Council agenda. He said that was brought up at the Public Utilities Committee.

Chair Bushee thought they should hear it at the first Public Works meeting in January.

Councilor Calvert moved to postpone the Water Requirements Ordinance to the first meeting in January. Councilor Trujillo seconded the motion.

Mr. Lyons said they would have updated the draft by then.

Councilor Chávez asked what would change.

Mr. Lyons said they would add the fee schedule and list of forms for the programs.

The motion passed by unanimous voice vote. Councilor Romero was not present for the vote.

16. MATTERS FROM STAFF

There were none.

17. MATTERS FROM THE COMMITTEE

Chair Bushee said the Genoveva Chávez Community Center would be on the next agenda.

Mr. Romero agreed and they would share the things that were not working. It would be a full presentation.

Chair Bushee asked why they kept closing the indoor track. The public should expect a fully functioning facility.

Councilor Trujillo said on a safety note that he had seen people just walk in. He didn't know if staff was checking cards.

Mr. Romero said he had spent a lot of time there lately. He walked in twenty times and no one said a word. They were working on lots of ideas over there.

Chair Bushee said they needed long term and short term plans. She wondered if they looked at old contractors to recoup on the guarantees. The new ones really needed to be up to snuff.

Mr. Romero said they had a long meeting there the other day and hoped they could now find a solution. We need to solve it once and for all. A warranty would help with the roof for sure.

18. NEXT MEETING: MONDAY, JANUARY 11, 2010

19. ADJOURN

Having completed the agenda and with nothing further to come before the Committee, the meeting was adjourned at 8:03 p.m.

Approved by:

Patti J. Bushee, Chair

Submitted by:


Carl Boaz, Stenographer