



Agenda

REGULAR MEETING OF
THE GOVERNING BODY
OCTOBER 27, 2010
CITY COUNCIL CHAMBERS

AMENDED – EXECUTIVE SESSION – ITEM # 12-b

AFTERNOON SESSION – 5:00 P.M.

CITY CLERK'S OFFICE

DATE 10/25/10 TIME 12:00pm

SERVED BY _____

RECEIVED BY Tydominguez

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. SALUTE TO THE NEW MEXICO FLAG
4. INVOCATION
5. ROLL CALL
6. APPROVAL OF AGENDA
7. APPROVAL OF CONSENT CALENDAR
8. APPROVAL OF MINUTES: Reg. City Council Meeting – October 13, 2010.
9. PRESENTATIONS
 - a) Santa Fe Police Department Domestic Violence Officer/Advocate of the Year – Patrol Officer Ricardo Yzquierdo. (Carol Horwitz) (5 minutes)
 - b) Muchas Gracias – Fine Arts for Children and Teens (FACT), Recipient of National Arts and Humanities Youth Program Award. (5 minutes)
10. CONSENT CALENDAR
 - a) Bid No. 11/12/B – Two (2) Hot/Cold Delivery Vehicles for Senior Division; Don Chalmers Ford. (Ron Vialpando)
 - b) Request for Approval of Procurement Under State Price Agreement and Professional Services Agreement – Mary Esther Gonzales Senior Center (Meg) – Backup Generator and Electrical Panel Upgrades; DTS, Inc. (Chip Lilienthal)
 - c) Request for Approval of Services Agreement – 2011 Paratransit Services for City and County Residents; Christus St. Vincent Regional Medical Center. (Jon Bulhuis)



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- d) Request for Approval of Change Order No. 5 – St. Francis Crossing From Acequia Trail to Railyard; A.S. Horner, Inc. (Leroy Pacheco)
- e) Request for Approval of Budget Increase for Red Light Project Fund for Hearing Officers and Funds Owed to State. (Police Chief Aric Wheeler)
- f) Santa Fe Municipal Airport: (Jim Montman)
 - 1) Request for Approval of Budget Increase for Federal Grant 34 Application and Award of Matching Funds.
 - 2) Request for Approval of Budget Decrease for Federal Grant 35 Application and Award of Matching Funds.
- g) Request for Consideration of Amendment to 2010/2011 Annual Action Plan for Reallocation of CDBG Program Income. (Kym Dicome)
- h) Request for Approval to Publish Notice of Public Hearing on December 8, 2010:
 - 1) Bill No. 2010-35: An Ordinance Amending Rule 18, Exhibit A of Chapter 25 SFCC 1987 Regarding Water Meters for Multi-Family Dwelling Units (Apartments and Condominiums). (Councilor Romero) (Brian Snyder)
 - a) A Resolution Adopting Requirements for Master Water Meters for Multi-Family Dwelling Units (Apartments and Condominiums). (Councilor Romero) (Brian Snyder)
 - 2) Bill No. 2010-36: An Ordinance Amending Section 23-4.2 SFCC 1987 Regarding Solicitation on Public Property; Creating a New Article 20-2 SFCC 1987 Regulating Panhandling on Public Property; Creating a New Article 20-3 SFCC 1987 Regulating Panhandling on Private Property. (Councilor Trujillo) (Deputy Chief Abram Anaya)



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- i) CONSIDERATION OF RESOLUTION NO. 2010-_____. (Councilor Romero and Councilor Wurzbarger)
A Resolution Naming the New Public Access Trail From Old Santa Fe Trail to the Top of Sun Mountain "The Sun Mountain Community Trail". (Fabian Chavez)
- j) CONSIDERATION OF RESOLUTION NO. 2010-_____. (Councilor Wurzbarger)
A Resolution Opposing the Proposal of the United States Air Force to Establish a Low Altitude Tactical Navigation Training Area in Northern New Mexico. (Jeanne Price)
- k) Request for Approval of Real Estate Purchase Agreement – Sale of Tract O-1 (Formerly Tract O) (Approximately 8 Acres) at Santa Fe University of Art and Design (Formerly the College of Santa Fe); State of New Mexico Property Control Division. (Lee DePietro)
- l) Request for Approval of Cooperative Agreement – Partnership Between the School District and the City for Shared Resources and Services; Santa Fe Public Schools. (Isaac Pino) **(Postponed at October 13, 2010 City Council Meeting)**
- m) CONSIDERATION OF RESOLUTION NO. 2010-_____. (Councilor Dominguez and Councilor Ortiz)
A Resolution Directing Staff to Proceed with a Community Planning Process for the Airport Road Area that will Result in a Master Plan that Focuses on Establishing a Healthy Community, Streetscape Enhancements and Adjoining Land Development. (Katherine Mortimer)
(Postponed at August 25, 2010 City Council Meeting) **(Removed from Agenda by Sponsor)**

11. MATTERS FROM THE CITY MANAGER

12. MATTERS FROM THE CITY ATTORNEY

EXECUTIVE SESSION:

- a) Discussion of Thos. S. Byrne, Ltd. v. Railyard Company, LLC and the City of Santa Fe, Pending Litigation in Which the City of Santa Fe is a Participant, in Accordance with §10-15-1(H)(7), NMSA 1978.



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- b) Discussion of Pending Litigation Regarding QWEST Corporation v. City of Santa Fe, Case No. 1:10-cv-00617-RB-RLP; Pursuant to §10-15-1(H)(7) NMSA 1978.
- 13. Action Regarding Thos. S. Byrne, Ltd. v. Railyard Company, LLC and the City of Santa Fe, Pending Litigation in Which the City of Santa Fe is a Participant.
- 14. MATTERS FROM THE CITY CLERK
- 15. COMMUNICATIONS FROM THE GOVERNING BODY

EVENING SESSION – 7:00 P.M.

- A. CALL TO ORDER
- B. PLEDGE OF ALLEGIANCE
- C. SALUTE TO THE NEW MEXICO FLAG
- D. INVOCATION
- E. ROLL CALL
- F. PETITIONS FROM THE FLOOR
- G. APPOINTMENTS
- H. PUBLIC HEARINGS:
 - 1) CONSIDERATION OF RESOLUTION NO. 2010-_____.
CASE #2010-157. Santa Fe Railyard Community Corporation Requests Approval to Amend Table III-2: North Railyard Design Standards Matrix of The Railyard Master Plan Adopted by Resolution No. 2002-10, in Order to Exceed a Height of 26 Feet and to Allow a Height of 34 Feet for a Flat Roof Within the In-Between-North Railyard Area for Lease Property A2, Located Approximately 432 Feet West of the Cerrillos Road/Paseo De Peralta Intersection and 490 Feet South Along the Santa Fe Railroad Tracks.
(Dan Esquibel)
- I. ADJOURN



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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.

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CITY COUNCIL CHAMBERS

AFTERNOON SESSION – 5:00 P.M.

CITY CLERK'S OFFICE

DATE 10/22/10 TIME 3:20 pm

SERVED BY _____

RECEIVED BY tydominguez

1. CALL TO ORDER
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- e) Request for Approval of Budget Increase for Red Light Project Fund for Hearing Officers and Funds Owed to State. (Police Chief Aric Wheeler)
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**MINUTES OF THE
REGULAR MEETING OF THE
GOVERNING BODY
Santa Fe, New Mexico
October 27, 2010**

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 October 27, 2010, at approximately 5:00 p.m., in the City Hall Council Chambers. Following the Pledge of Allegiance, Salute to the New Mexico flag, and the 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
Councilor Ronald S. Trujillo

Others Attending

Robert Romero, City Manager
Geno Zamora, City Attorney
Yolanda Y. Vigil, City Clerk
Melessia Helberg, Council Stenographer

6. APPROVAL OF AGENDA

Robert Romero, City Manager noted the Agenda was amended to add the Quest Litigation under the Executive Session – Item 12(b) on the Afternoon Session.

Councilor Calvert said he has an issue with regard to the process on H(1) on the Evening Resolution. He said there was a Resolution with no sponsor, and did not go to any Committees, and reiterating has a problem with the process. He doesn't see that this is an urgent matter requiring it to go directly for Council. He said it is going to be going to the BCD-DRC and he would like that Committee to consider all of the facts, including the height. He said the Governing Body ultimately will make that decision, and he would like the BCD-DRC to be a part of that process. He said it also gives the public another opportunity to weigh in on this issue.

MOTION: Councilor Calvert moved, seconded by Councilor Bushee, to approve the Amended Agenda, removing Item H(1) on the Evening Agenda, and sending it to the BCD DRC for consideration before being heard by the Council.

DISCUSSION: Councilor Bushee said the process seems to change. She noted there was meeting after meeting about REI going up two feet, and asked why this one, at 8 feet is being rushed through. She said the neighborhood is concerned about height particularly. She said it seems to her there should be more public discussion of this issue. She said it seems we expedite at times for the sake of commerce. She said, at the very least, more discussion is merited. This is a process issue for her and a concern.

Mayor Coss said he did asked for this item to be expedited because it is a project that will help us to finish the Railyard as well as bring jobs. He said the height difference between this one and Wivior's project, which didn't work out, isn't extreme. He said it is now a matter of timing and finance to move this project forward, noting there was an ENN meeting previously on this subject before it came forward.

Councilor Calvert said the height issue came up after the ENN. He said he asked staff if this would disturb the process in terms of finance and there being an urgency, and they said no.

Mayor Coss said he received an email today from the principal, thanking us for all of our work, noting he is in California, so we can't ask him that question, but perhaps Mr. O'Reilly can shed light on that subject.

Mr. O'Reilly said if the Council was to consider this issue tonight and the BCD DRC were to consider the design at its next meeting, that would be the end of process. If the Council does not consider this Resolution tonight, it would go forward to the BCD DRC for design consideration and the BCD DRC could recommend to the Council to amend the master plan to allow the height. Then, at the December meeting, the Council could vote on the Master Plan amendment. He said this pushes out the decision point for this particular project, probably 2-4 weeks. He said he is unaware of whether this would impact the financing. He said he doesn't believe Councilor Calvert spoke to him or a member of his staff about this. He said he honestly doesn't know what this would do to the financing.

Councilor Calvert said he did speak to Mr. O'Reilly about this, and the bottom line was that Mr. O'Reilly told him he didn't believe it would have a major impact on this project moving forward.

Mr. O'Reilly said he and Councilor Calvert didn't speak about financing specifically, just to be clear. He said, "Our communication to us from the applicant and the Railyard Community Corporation, was that this was on a very fast track. The intent here was to get to a decision point as quickly as possible – to bring them closer in."

Councilor Bushee said if the BCD DRC is a recommending body and the Council says the height is good tonight, then it's it's after the fact. It's backwards. She understands, noting she is a cosponsor and believes it is a good use. She said the process is important. She said It is our Railyard, and the community is ready to "throw in the towel." She said this seems to be just a matter of form at this point. She said for process, it would be advisable to have one more public hearing, noting this wasn't heard at Public Works. She asked the indulgence of the Councilors to have another hearing on this Railyard project which has

been a very publicly reviewed process. She said the request isn't to throw a big "kink in the works," but to have another hearing, noting she could have called a meeting of the BCD DRC before Council if she had known this was in the works.

Councilor Wurzbarger asked, for clarification, if the Council makes a decision this evening, why would this need to go to the BCD-DRC.

Mr. O'Reilly said the BCD DRC has design and planning review authority over projects within the Railyard.

Councilor Wurzbarger said then it would be after the fact and it wouldn't be on the height, it would be on the design.

Councilor Bushee said the height is part of the design, and the BCD DRC won't have had a hearing on it.

Mr. O'Reilly said it is a bit of a "chicken and egg." If an amendment to the master plan is approved tonight, then, when the BCD DRC meets in two weeks, it would know that the Council is okay with the height. If not, the BCD DRC would be making a recommendation on the height, although it could approve everything else. It would then come back to the City Council for an amendment on the height. He said ultimately, either way, the decision has to come back to the City Council.

Councilor Wurzbarger said then it could be heard at the December Council meeting.

Mr. O'Reilly said that is his guess based on notice requirements and submittal deadlines

Councilor Wurzbarger asked if it is definite that Councilor Bushee will be holding a meeting of the BCD DRC and that you will have a quorum, and Councilor Bushee said yes.

Councilor Romero asked Mr. O'Reilly to talk about the ENN which was held, noting for the record that she got one call for and one email against.

Mr. O'Reilly said he didn't attend the ENN, but it is described in the Council packet. He said 22 people attended, noting it was held right next door at Warehouse 21. Staff noted there were three concerns. One was the height, the second was that the buildings to go on Tract A(2) are supposed to be residential, and there was another concern he doesn't recall, noting information on these are in the Council packet.

Councilor Calvert said the height may have been discussed at the ENN, but the request to go to 34 feet came after the ENN. He said there is a letter in the Council packet saying things went well, and "Oh, by the way, we now want to go to 34 feet" – so that was post-ENN. He said the Council does have the ultimate say in a lot of things which go before the Planning Commission which they recommend to the Council. In this case, the BCD DRC "is the Planning Commission for this project." He said he isn't arguing the merits of the height, but he believes the process is not right. He doesn't believe postponing 2 weeks will affect the progress of the outcome on this project, and we will get better process in the meantime.

Mayor Coss said it is more like a 5-6 weeks postponement.

Mr. O'Reilly said the BCD DRC meeting will be held on the second Thursday in November, and whatever is decided there still would have to come back to the Council for an amendment in early December, possibly as early as the end of November.

Mayor Coss said then we could hit the December meeting, and asked if Councilor Calvert would like to amend his motion to postpone this agenda item to the December meeting.

AMENDED MAIN MOTION: Councilor Calvert moved, seconded by Councilor Bushee, to approve the Amended Agenda, and to postpone Item H(1) on the Evening Agenda to the Council meeting of December 8, 2010, and to send it to the BCD DRC before being heard by the Council at the December meeting.

DISCUSSION ON THE MAIN MOTION AS AMENDED: Mayor Coss said we need the jobs, the construction and he did ask Mr. O'Reilly and staff to expedite this item because of that. He didn't view the building footprint as much different from what we approved for the previous project which failed. He said if we're saying we aren't going to approve the height, then we may let go the jobs and construction for this project.

Councilor Calvert said, again, he is talking about the process, and not the merits of the case. He said, for the record, the height impact may not be as great, but it is also 80 feet longer than what was there previously. He said it isn't a simple matter of height, reiterating he isn't here to discuss the merits..

Councilor Bushee said when Wiviot's building was coming in, he had a lot of things he was always changing. When the height issue came up, people met and reoriented it so it didn't block the view the neighborhood has enjoyed all these years, so good things came out of it. She said people need to be involved in this process, noting this neighborhood has had a lot of impacts of the Railyard bail out. She said the Mayor really can't upend the process, and he really should let this go through the process, commenting there are ample votes for the project.

Council Chavez said this Council speaks for all neighborhoods, noting the calls and emails he received were generally in favor of the project, but expressed concern about what will happen after bail out. He said it is time to vote on whether or not to postpone.

VOTE: The main motion as amended failed to pass on the following roll call vote:

For: Councilor Calvert and Councilor Bushee.

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

Explaining her vote: Councilor Wurzbarger voted no, saying she won't be here in December and she wants to weigh-in on this issue.

MOTION: Councilor Dominguez moved, seconded by Councilor Romero, to approve the Amended Agenda as presented.

VOTE: The motion was approved on the following roll call vote:

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

Against: Councilor Calvert and Councilor Bushee.

7. APPROVAL OF CONSENT CALENDAR

MOTION: Councilor Ortiz moved, seconded by Councilor Wurzbarger, to approve the following Consent Calendar, as amended.

VOTE: The motion was approved on the following Roll Call vote:

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

Against: None.

- a) **BID NO. 11/12/B – TWO (2) HOT/COLD DELIVERY VEHICLES FOR SENIOR DIVISION; DON CHALMERS FORD. (RON VIALPANDO)**
- b) **REQUEST FOR APPROVAL OF PROCUREMENT UNDER STATE PRICE AGREEMENT – MARY ESTHER GONZALES SENIOR CENTER (MEG) – BACKUP GENERATOR AND ELECTRICAL PANEL UPGRADES; DTS, INC. (CHIP LILIENTHAL)**
- c) **REQUEST FOR APPROVAL OF SERVICES AGREEMENT – 2011 PARATRANSIT SERVICES FOR CITY AND COUNTY RESIDENTS; CHRISTUS ST. VINCENT REGIONAL MEDICAL CENTER. (JON BULTHUIS)**
- d) **REQUEST FOR APPROVAL OF CHANGE ORDER NO. 5 – ST. FRANCIS CROSSING FROM ACEQUIA TRAIL TO RAILYARD; A.S. HORNER, INC. (LEROY PACHECO)**
- e) ***[Removed for discussion by Councilor Ortiz]***
- f) **SANTA FE MUNICIPAL AIRPORT: (JIM MONTMAN)**
 - 1) **REQUEST FOR APPROVAL OF BUDGET INCREASE FOR FEDERAL GRANT 34 APPLICATION AND AWARD OF MATCHING FUNDS.**

- 2) REQUEST FOR APPROVAL OF BUDGET DECREASE FOR FEDERAL GRANT 35 APPLICATION AND AWARD OF MATCHING FUNDS.
- g) REQUEST FOR CONSIDERATION OF AMENDMENT TO 2010/2011 ANNUAL ACTION PLAN FOR REALLOCATION OF CDBG PROGRAM INCOME. (KYM DICOME)
 - h) REQUEST FOR APPROVAL TO PUBLISH NOTICE OF PUBLIC HEARING ON DECEMBER 8, 2010:
 - 1) BILL NO. 2010-35: AN ORDINANCE AMENDING RULE 18, EXHIBIT A OF CHAPTER 25 SFCC 1987, REGARDING WATER METERS FOR MULTI-FAMILY DWELLING UNITS (APARTMENTS AND CONDOMINIUMS) (COUNCILOR ROMERO). (BRIAN SNYDER)
 - 2) BILL NO. 2010-36: AN ORDINANCE AMENDING SECTION 23-4.2 SFCC 1987, REGARDING SOLICITATION ON PUBLIC PROPERTY; CREATING A NEW ARTICLE 20-2 SFCC 1987, REGULATING PANHANDLING ON PUBLIC PROPERTY; CREATING A NEW ARTICLE 20-3 SFCC 1987, REGULATING PANHANDLING ON PRIVATE PROPERTY (COUNCILOR TRUJILLO). (DEPUTY CHIEF ABRAM ANAYA)
 - i) CONSIDERATION OF RESOLUTION NO. 2010-89 (COUNCILOR ROMERO AND COUNCILOR WURZBURGER). A RESOLUTION NAMING THE NEW PUBLIC ACCESS TRAIL FROM OLD SANTA FE TRAIL TO THE TOP OF SUN MOUNTAIN, "THE SUN MOUNTAIN COMMUNITY TRAIL." (FABIAN CHAVEZ)
 - j) CONSIDERATION OF RESOLUTION NO 2010- ____ (COUNCILOR WURZBURGER). A RESOLUTION OPPOSING THE PROPOSAL OF THE UNITED STATES AIR FORCE TO ESTABLISH A LOW ALTITUDE TACTICAL NAVIGATION TRAINING AREA IN NORTHERN NEW MEXICO. (JEANNE PRICE)
Councilor Wurzbarger said this item is removed from the Agenda forever and there will be a substitute resolution which will be passed out this evening.
 - k) *[Removed for discussion by Councilor Bushee]*
 - l) *[Removed for discussion by Councilor Bushee]*
 - m) CONSIDERATION OF RESOLUTION NO. 2010- ____ (COUNCILOR DOMINGUEZ AND COUNCILOR ORTIZ). A RESOLUTION DIRECTING STAFF TO PROCEED WITH A COMMUNITY PLANNING PROCESS FOR THE AIRPORT ROAD AREA THAT WILL RESULT IN A MASTER PLAN THAT FOCUSES ON ESTABLISHING A HEALTHY COMMUNITY. STREETSCAPE ENHANCEMENTS AND ADJOINING LAND DEVELOPMENT. (KATHERINE MORTIMER). (Postponed at August 25, 2010 City Council Meeting). (Removed from Agenda by Sponsor)

8. APPROVAL OF MINUTES: REGULAR CITY COUNCIL MEETING – OCTOBER 13, 2010

MOTION: Councilor Romero moved, seconded by Councilor Trujillo, to approve the minutes of the Regular City Council meeting of October 13, 2010, as presented.

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

9. PRESENTATIONS

a) SANTA FE POLICE DEPARTMENT DOMESTIC VIOLENCE OFFICER/ADVOCATE OF THE YEAR – PATROL OFFICER RICARDO YZQUIERDO. (CAROL HORWITZ)

Chief Wheeler said this is the second year Officer Yzquierdo has received this award.

Sherry Taylor thanked the City and the Mayor, and without their support this couldn't be done. She appreciates the work law enforcement and Officer Yzquierdo are doing.

Chief Wheeler thanked Fidel Gutierrez, Senior VP, LANB, for \$1,000 to go with the award.

Mayor Coss presented Officer Yzquierdo with a muchas Gracias Certificate and Mr. Gutierrez presented Officer Yzquierdo with a check for \$1,000.

Mayor Coss presented a Muchas Gracias Certificate to LANB for its ongoing support.

Officer Yzquierdo thanked the Mayor and Council, saying this is really a team effort. He thanked the City and the Department for this honor.

Mayor Coss said this is the first year we can say there has been a decrease in domestic violence call-ins.

b) MUCHAS GRACIAS – FINE ARTS FOR CHILDREN AND TEENS (FACT), RECIPIENT OF NATIONAL ARTS AND HUMANITIES YOUTH PROGRAM AWARD.

Mayor Coss, assisted by Councilor Bushee, presented a Muchas Gracias Certificate to Julia Bergen. He said this is a big part of the economy and is a creative force in Santa Fe.

Julia Bergen accepted the award on behalf of the Board and staff. She said they are particularly grateful to the Mayor, Council and Arts Commission for their assistance in improving the quality of the lives of our children. She said it was an honor to travel to Washington to receive the award from First Lady Michelle Obama.

Ms. Bergen said there is a private reception tomorrow, to which the Mayor and Council have been invited, and invited the public to attend one of the many events in the coming year.

CONSENT CALENDAR DISCUSSION

10 (e) REQUEST FOR APPROVAL OF BUDGET INCREASE FOR RED LIGHT PROJECT FUND FOR HEARING OFFICERS AND FUNDS OWED TO STATE. (POLICE CHIEF ARIC WHEELER)

Councilor Ortiz noted the agenda talks about a budget increase, and it really is a budget allocation of the moneys that have been collected so far to be sure people get due process.

Deputy Chief Anaya said this is correct, and he caught this right before he came up here. He said these fund exist, so it isn't an increase in the budget.

MOTION: Councilor Ortiz moved, seconded by Councilor Trujillo, to approve this request.

DISCUSSION: Councilor Ortiz said it came up in the media that this contractor was either suspended or failed to be renewed by the City of Albuquerque, noting Albuquerque is going out for bids. He said he understands we have to do this, but perhaps we need an update at Finance and Public Safety from the contractor. He said the contractor's representation to the City was based largely on the work they did for Albuquerque. He said since Albuquerque hasn't renewed the contract, it raises issues with those of us who weren't in favor of this to begin with. He asked if it would be possible to get someone from the contractor to come and talk to us about what is happening.

Chief Wheeler said we can get them to come in. He said some of the information provided by the media was based on a study done by UNM with regard to the red light cameras. He said the reason they are pulling cameras from some of the sites is based on the crash data at those intersections. He stressed that he is going strictly off the information in the media and he hasn't read the UNM report. He said he understands that study indicated there were more rear end type accidents happening at certain intersections, and the Mayor of Albuquerque didn't want to renew the contract for those intersections. He said he has requested a copy of the study so they can look at it. He said the City hasn't proceeded with the red light cameras because the Public Safety Committee hasn't seen the data necessary for us to move forward with locations that aren't State Highways. He said we are due for a one-year review in December 2010, and perhaps the Council would like to wait until he can get a copy of the study and provide it to the Councilors.

DIRECTION TO STAFF: Councilor Ortiz said then direction to staff would be that sometime in January 2011, that we review the additional information coming out of Albuquerque, in addition to the annual review required under the ordinance.

Chief Wheeler said that can be done.

Councilor Bushee said the City of Albuquerque was putting this out to bid because they wanted to see something from other contractors, and not just this one contractor.

Chief Wheeler said he would need to talk to the City Attorney to review the contract. He said, "I know that we did create it so there would be a number of different ways for us to eliminate it, if necessary. So, I think that we need to review that to be sure we are within the bounds of the legal contract."

Councilor Bushee said she wants to see what Albuquerque does, in terms of who they "put it out to and see what kind of competitive bids that they get."

Mr. Zamora said, "Just for clarification, and I need to do more research out of my office about what is going on in Albuquerque, I think there is a question as to whether they're terminating the contract, or allowing it to expire."

Councilor Bushee said they are allowing it to expire, but they are planning to go out for more competitive bids.

Mr. Zamora said this is correct, and he is unsure when our contract expires, but we are in the middle of the contract right now.

Councilor Calvert said there also has been news in the paper about the success of the program in Las Cruces, which is a city closer to our size, so we should also look at Las Cruces which doesn't seem to be having the same problems as Albuquerque.

Chief Wheeler agreed. He said the Red Light Program is in effect at certain intersections in Albuquerque, and Albuquerque wants to keep certain intersections, but they are citing those intersections where there is increased rear-end crash activity.

Councilor Trujillo agreed with Councilor Calvert that we need to look at the experience of the program in Las Cruces, noting Albuquerque is a much larger city. He said he will get the information on the study and the Albuquerque program to bring to the Public Safety Committee in January 2011, as well as to the Finance and Public Works Committees.

Councilor Trujillo said we need to look at the UNM study. He said he still sees people running red lights every day. He said the reason the red light cameras aren't allowed on State Roads is because the Governor and DOT decided they didn't want them. He said after the election, we need to see what the next Governor thinks about the Red Light cameras.

Councilor Dominguez wants to see where the speed vans have been placed and the number of times they have been in a particular place, as well as the effectiveness of the speed vans.

Chief Wheeler said this information is readily available and he can provide that information.

Councilor Dominguez wants that information presented at the time we talk with the contractor.

Councilor Bushee said she has only seen the speed vans in the middle of the street, which seems distracting and dangerous. She asked if this is allowed by City Code.

Chief Wheeler said it is allowed, and everything they've done in terms of placement of the speed vans is permissible under State law and City Code.

Councilor Bushee said she has seen them in two locations, and Councilor Ortiz said he has seen them in three locations. Councilor Bushee said she doesn't mind the speed vans, but doesn't want them placed in the middle of the road.

Councilor Trujillo said he has come across the speed vans when driving, and the warning signs are not out, which we said we would do – before the van and after the van. He would like Chief Wheeler to talk to whomever is driving the van for Redflex to ensure those signs are put out as we agreed when the van is deployed.

Chief Wheeler said yes. He said please call him immediately if anyone sees this happening and he will deal with it. He said a private contractor places the van, and when he sees something he contacts Redflex immediately.

VOTE: The motion was approved on the following Roll Call vote:

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

Against: None.

Explaining her vote: Councilor Bushee voted yes, commenting that it isn't that she likes the vans, but we need the hearing officers.

10 (k) REQUEST FOR APPROVAL OF REAL ESTATE PURCHASE AGREEMENT – SALE OF TRACT O-1 (FORMERLY TRACT O) (APPROXIMATELY 8 ACRES) AT SANTA FE UNIVERSITY OF ART AND DESIGN (FORMERLY THE COLLEGE OF SANTA FE); STATE OF NEW MEXICO PROPERTY CONTROL DIVISION. (LEE DePIETRO)

Mayor Coss welcomed Secretary Jaramillo and Peter Wenigrad who worked with us on this project.

Councilor Bushee said it was her and not Councilor Dominguez who voted against the project at the Finance Committee, at least as she reads the minutes. She noted the Action Sheet from the Finance Committee indicates she voted against.

Councilor Bushee asked Ms. DePietro if she has further information for her.

Ms. DePietro said no, commenting she tried today, via email and telephone call to the EDA office in Austin, to get a determination as to whether it had been approved and, if so, what conditions were placed today. She said she was unsuccessful in this effort.

Councilor Bushee said we are considering up to \$2 million in repairs in the cleanup of asbestos in the old barracks. She said we know there will be a new Governor and a change in administration. She asked what happens if they decide they don't want to go through with this sale, and asked if anyone has discussed this.

Ms. DePietro said we will be going to DFA for approval, if the Council approves this transaction, in mid-November, and to set the closing in the first or second week of December, so we wouldn't be into a new administration.

Councilor Bushee asked, "And that sticks."

Mr. Zamora said you are approving a contractual document, and so there are contractual obligations on behalf of both the City and the State, so the State is contractually bound to comply with this contract, and in addition to that it complies with the State's timing to get it approved, implemented and executed before the end of the year.

Councilor Bushee said, although this is going to be approved, she will vote against it until she is certain the ARRA grant will be coming through. She doesn't want the City to be on the hook for the \$1-2 million, and she thinks we could have split the difference with the State.

Councilor Ortiz said, to be clear with the representatives of the State who are in attendance, the concern at a larger level is that this administration has gone about purchasing property in Las Soleras as well as at the College of Santa Fe, where for the foreseeable future, there is a rush to get the sale consummated. However, the process of building on those sites becomes the responsibility of the next administration, which to him, seems to be handing the next administration "your bag of tricks," which strikes him as wrong conceptually. He said with regard to the details of this particular agreement, he understands the purchase of this building requires remediation and outright removal of the barracks because they contain hazardous materials.

Ms. DePietro said this is correct.

Councilor Ortiz said then we will be applying to the State for a grant of funds for the asbestos removal and remediation, noting he is looking at page 4 where she says, "Link with EDA grant."

Ms. DePietro said the \$4 million is coming to the City in the form of an ARRA grant and is a straight real estate transaction. Additionally, the City and the State have jointly applied to the Federal EDA for \$2 million.

Councilor Ortiz asked if we have cooperation from the State to help us get that grant.

Ms. DePietro said this is correct, as outlined in the original MOU.

Councilor Ortiz said if we don't get the grant, we will be stuck with that obligation, potentially, because we made that commitment to the College of Santa Fe as the property owners.

Ms. DePietro said the City would be required to do both the asbestos remediation and the demolition whether or not we receive the EDA grant.

Councilor Ortiz said then there could be a scenario where the City gets \$4 million to close the sale so the State owns the land, we don't get the grant, then we would be forced to use some of the proceeds from the sale to the State for the remediation and demolition. Therefore, the effective purchase price would become \$2 million.

Ms. DePietro said in that scenario, the effective purchase price would be \$3 million, because the asbestos removal and demolition has been priced by outside contractors at \$1 million. She said we have applied for a grant to EDA for \$2 million – \$1 million for asbestos remediation and demolition and \$1 million to work jointly with the State on a master plan on Tract O-1.

Councilor Ortiz said then our contribution is in soft or indirect costs. He asked if we are agreeing to use staff on the master plan, or if we will go out and hire someone to do that.

Ms. DePietro said it is a collaboration between the City and the State, so she imagines it would be a combination of both.

Councilor Ortiz asked the cost to hire the outside person to master plan the State's property.

Ms. DePietro said it will be to master plan an innovative park for the future which would have economic development benefits to both the City and the State – this is the vision for the \$1 million we have requested from EDA for a master plan.

Councilor Ortiz said then we also have requested \$1 million for the demolition/remediation and \$1 million for master planning.

Ms. DePietro said this is correct.

Councilor Ortiz asked, if we don't get the grant for master planning, is the City obligated in any way to do the master planning.

Ms. DePietro said no.

Councilor Ortiz said then it is not our obligation to do master planning for the entire tract.

Ms. DePietro said it is not as part of the purchase agreement, and there is no clause in the agreement which requires the City to do this.

Councilor Ortiz asked if there is a clause in the contract with the College of Santa Fe to do that either.

Ms. DePietro said no, because Tract O was never part of the leasehold interest.

Councilor Ortiz noted information was requested by the Finance Committee with regard to certain details, and it isn't reflected in the minutes, and Councilor Bushee had asked this be brought to the City Council.

Ms. DePietro understood it was to have a final decision from EDA, but unfortunately she doesn't have that today.

Councilor Ortiz asked Councilor Bushee if this was the only information she requested.

Councilor Bushee said she can't remember, and thought it would be in the minutes, but it isn't in the minutes. *[STENOGRAPHER'S NOTE: The Finance Committee minutes were not in the Council packet.]*

Councilor Bushee said it indicates on page 4 that we are to upgrade the Greer Garson theater.

Ms. DePietro said no, noting in the original application to EDA, \$1 million was programmed for the Greer Garson Theater and \$1 million for asbestos and demolition on the barracks. However, they were told by the EDA that one of its regulations was that they wanted to put a covenant or lien on the property, and that was problematic with the Greer Garson Theater because that is part of the College's leasehold interest.

Councilor Bushee said we are "on the hook," for the \$1 million if we don't get the EDA grant, but we are not "on the hook" for the master planning.

Ms. DePietro said this is correct.

Councilor Bushee said in the negotiation for the land and the contract, was there ever a request of the State as the owner of the land, to split the costs of the remediation.

Ms. DePietro said no.

Councilor Bushee asked why not.

Ms. DePietro said the sale price of \$4 million is \$11 per square foot, and staff believes the average land price out there is \$7 per square foot, and staff felt it was a really excellent price for Tract O-1, and still feel it is with the \$1 million for remediation and demolition.

Councilor Bushee said she recalls certain amounts of money were promised to the City in the original MOU, and asked what those were.

Ms. DePietro said there were three promises in that MOU. The first is that the State would purchase Tracts A,B,C and D for \$4.6 million, which it did on September 24, 2010, which calculated to \$7.99 per square foot. The second was a \$4 million commitment for ARRA funds, noting there was no collateral attached at that time.

Councilor Bushee said that's the \$4 million we're talking about now, and Ms. DePietro said this is correct. Councilor Bushee asked if this is the reason the price was adjusted upward. She is talking about what we were promised from the start which was another \$4 million, which she would hate to see that shrink. She wants it to stay at \$4 million, or \$3.5 million if the State were sharing the remediation and demolition if we don't get the EDA grant. She asked if this was a consideration.

Ms. DePietro said the \$4 million was committed in the MOU and the \$4 million is on the table for the purchase of the land.

Councilor Bushee said yes, but it may be reduced by \$1 million, and Ms. DePietro said this is correct.

Councilor Chavez said Laureate has an option to purchase, although he doesn't recall the conditions.

Mr. DePietro said Laureate can purchase the College at any time, and there is no time frame for that. The lease is for 26 years, and there is a formula which will be applied to calculate the price of the campus.

Councilor Chavez asked, in the formula, if the City could "back out" any costs for which we think we should be compensated.

Ms. DePietro can't recall the formula, noting it would begin with a market appraisal at the time, and there are credit/debits in the formula.

Councilor Chavez said Ms. DePietro mentioned a sq. ft. price earlier but that was based on existing conditions, as is, and yet we're having to make improvements which is the reason funds were set aside for deferred maintenance. He said we are crossing the line between deferred maintenance and perhaps things for which the tenant should have been responsible.

Mayor Coss pointed out that the tract being discussed is not part of the University's lease and is a separate parcel of land, so the deferred maintenance which we are withholding wouldn't apply to this parcel.

Councilor Chavez said it is for improvements on the cafeteria in that parcel.

Mayor Coss said no, this is just for remediation of the old barracks and not tied to the cafeteria.

Ms. DePietro said it was part of the City's overall purchase of the 100 acres on the campus, but it was never a part of the College's leasehold interest.

MOTION: Councilor Wurzbarger moved, seconded by Councilor Romero, to approve this request.

DISCUSSION: Councilor Ortiz asked how long we have to keep the \$1 million in escrow, contingent on receipt of the grant.

Ms. DePietro said, "Six months."

Councilor Ortiz said then if we don't get the grant in six months, then the funds are released.

Ms. DePietro said, "That is my understanding."

Mr. Zamora said, "In addition to that, the contract does contain the language that if we receive the grant money after that time frame, to the extent allowed by federal law, we will reimburse the funds to the City out of the grant, if it is received after that time frame."

Councilor Ortiz said as drafted, it is like the State is getting the grant – the purchaser is the grantee under the grant and they get to decide if the terms and conditions of the grant are acceptable to them, the purchaser. It doesn't say "the purchaser and the seller," it just says the "purchaser." So, if the grant comes in with conditions which are unacceptable to the State, then the State can say its unacceptable, and under the terms of this agreement, it will take the \$1 million out of escrow.

Ms. DePietro said it is written this way because we still are unclear with the EDA in terms of what kinds of covenants and conditions which may apply on the money.

Councilor Ortiz said, as asked by Councilor Bushee, what is the timeframe for a response from EDA – what have you been told is an expectation of a timeframe.

Ms. DePietro said, "And my response was that we were looking for a response at the end of October. I realize we are in the last week, but I did call them today and send them an email, and I'm not getting a response from them. I'll actively keep trying until I do."

Councilor Calvert asked if the \$1 million comes out of escrow for remediation, if it is structured like a construction project where there would be pulls based on progress.

Ms. DePietro said yes.

Councilor Bushee asked who will oversee the remediation.

Ms. DePietro said the State will oversee the remediation and demolition, noting they have been working together in terms of the pricing. The City has the facts and figures on the remediation and the State has the figures on the demolition because they have statewide contractors in place to perform these services.

Councilor Bushee asked if the price is capped at \$1 million, and Ms. DePietro said yes, it is.

VOTE: The motion was approved on the following Roll Call vote:

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

Against: Councilor Ortiz, Councilor Bushee and Councilor Trujillo.

Mayor Coss thanked Secretary Jaramillo and staff for their work on this purchase.

Councilor Wurzburger said the economic development component has caused us to move in this direction, and they have been instrumental in helping us in that regard.

10 (I) REQUEST FOR APPROVAL OF COOPERATIVE AGREEMENT – PARTNERSHIP BETWEEN THE SCHOOL DISTRICT AND THE CITY FOR SHARED RESOURCES AND SERVICES; SANTA FE PUBLIC SCHOOLS. (ISAAC PINO). (Postponed at the October 13, 2010 City Council Meeting)

Councilor Bushee said she had requested to include additional language in the agreement, and had several questions. She said she thought those would be written up in some form as we moved through the process. However, she didn't keep track of those.

Mr. Pino said the things which led to changes in the Agreement are outlined in the cover Memo, noting side questions were asked about the agreement which didn't affect the language.

Councilor Chavez noted the agreement provides that they aren't waiving janitorial fees, and asked how that works.

Mr. Pino said that is a *quid pro quo*. The agreement originally said the School wouldn't waive janitorial fees, so we included language saying that neither would the City.

Councilor Chavez said if we use a gymnasium are they waiving the fees.

Mr. Pino said if things aren't cleaned up after an event, the School will bill the city if it has to be cleaned.

Councilor Dominguez said one of the questions at Committee was in regard to Charter Schools and how those would be recognized, and asked how that is articulated in the MOU.

Mr. Pino said Superintendent Gutierrez advised that Charter Schools are covered as required, but they can be given less priority, which Santa Fe has chosen to do. They suggested that Charter Schools are included in the MOU, but in any instance where there are requests by the Public Schools ahead of them, that those be considered first.

Councilor Dominguez asked if the Board of Education has considered our proposed changes and approved the agreement.

Mr. Pino said this is correct.

MOTION: Councilor Dominguez moved, seconded by Councilor Ortiz to approve this request.

DISCUSSION: Councilor Chavez said on page 2 there is language about the Charter Schools and how they apply. There is also language which speaks to the Santa Fe Public School's approvals, as follows: "All changes were administratively approved by Santa Fe Public Schools as their legal counsel advised that the full Board did not have to approve the revision. The Agreement had been previously approved by the Board of Education in July 2010." Councilor Chavez said he presumes this would be in its current form, and we are approving what was approved by the Board of Education.

Mr. Pino said the changes which are noted in the Memorandum are noted and administratively approved by the Santa Fe Public Schools, and Superintendent Gutierrez did review the changes with the individual School Board members.

VOTE: The motion was approved on the following Roll Call vote:

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

Against: None.

END OF CONSENT CALENDAR DISCUSSION

11. MATTERS FROM THE CITY MANAGER

There were no matters from the City Manager.

12. MATTERS FROM THE CITY ATTORNEY

EXECUTIVE SESSION:

- a) **DISCUSSION OF THOS. S. BYRNE, LTD. V. RAILYARD COMPANY, LLC AND THE CITY OF SANTA FE, PENDING LITIGATION IN WHICH THE CITY OF SANTA FE IS A PARTICIPANT, IN ACCORDANCE WITH §10-15-1(H)(7), NMSA 1978.**
- b) **DISCUSSION OF PENDING LITIGATION REGARDING QWEST CORPORATION V. CITY OF SANTA FE, CASE NO. 1-10-CV-00617-RB-RLP; PURSUANT TO §10-15-1(H)(7), NMSA 1978.**

MOTION: Councilor Romero moved, seconded by Councilor Trujillo, that the Council go into Executive Session for the purpose of discussion of Thos S. Byrne, Ltd., v. Railyard Company, LLC, and the City of Santa Fe, pending litigation in which the City of Santa Fe is a participant, in accordance with §10-15-1(H)(7); and discussion of pending litigation regarding Qwest Corporation v. City of Santa Fe, pursuant to §10-15-1(H)(7).

VOTE: The motion was approved on the following roll call vote:

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

Against: None.

The Council went into Executive Session at 6:25 p.m.

MOTION TO COME OUT OF EXECUTIVE SESSION

MOTION: At 7:10 p.m. Councilor Ortiz moved, seconded by Councilor Romero, 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.

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

13. ACTION REGARDING THOS. S. BYRNE, LTD., V. RAILYARD COMPANY, LLC, AND THE CITY OF SANTA FE, PENDING LITIGATION IN WHICH THE CITY OF SANTA FE IS A PARTICIPANT.

MOTION: Councilor Ortiz moved, seconded by Councilor Calvert, to direct staff to take the steps necessary with the mediator to get additional time from him and from all the parties to continue the discussions along the lines of the discussions in Executive Session.

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

Mayor Coss moved Items 14 and 15 to the end of the Evening Session

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

EVENING SESSION

A. CALL TO ORDER AND ROLL CALL

The Evening Session was called to order by Mayor David Coss, at approximately 7:10 p.m. Following the Pledge of Allegiance, salute to the New Mexico Flag, and Invocation, Roll Call indicated the presence of a quorum as follows:

Members Present

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

Members Excused

Councilor Patti J. Bushee

Others Attending

Robert P. Romero, City Manager
Geno Zamora, City Attorney
Yolanda Y. Vigil, City Clerk
Melessia Helberg, Council Stenographer

F. PETITIONS FROM THE FLOOR

A copy of a 19 page document entitled IAFF Fire Fighters, entered for the record by Mary Lane, is incorporated herewith to these minutes as Exhibit "1."

Mayor Coss gave each person three minutes to petition the Governing Body.

Mary Lane said she is submitting 19 pages from International Association of Firefighters website [Exhibit "1"]. She said in August 2004, the International Association of Fire Fighters adopted a position that it opposes the use of fire stations for as base stations for towers for antennas, until a study with a high scientific merit on health effects of the effects of radio frequency radiation is conducted. She said they want to prove that such sitings are not hazardous to their members. Ms. Lane said she isn't associated with the International Association of Fire Fighters, and is a realtor in Santa Fe. She said, "I just wanted to submit this because there are 19 pages of studies that the International Association of Firefighters has drawn up. They are investigating findings for a U.S. and Canadian study that would characterize exposures in fire houses, with and without antennae, and there is concern for the effects of Radio-

Frequency Radiation on the central nervous system and the immune system as well as other metabolic effects. I just wanted to submit this because I think it's important, and I know there are plans in future years for building cell towers of all kinds throughout the City, but particularly within Ft. Marcy."

G. APPOINTMENTS

Long Range Planning Subcommittee

Mayor Coss made the following appointments to the Long Range Planning Subcommittee:

Ken Hughes (Planning Commissioner) – Reappointment – term ending 10/2012;
Angela Schackel Bordegary (Planning Commissioner) – term ending 10/2012;
Reuben Montes (Planning Commissioner) – term ending 10/2012;
Jim Hays (At-Large) – Reappointment – term ending 10/2012; and
Kim Shanahan (At-Large) – term ending 10/2012.

MOTION: Councilor Calvert moved, seconded by Councilor Romero, to approve these appointments.

DISCUSSION: Councilor Ortiz asked if this is a subcommittee of the Planning Commission.

Mayor Coss said it is a subcommittee of the Planning Commission with two at-large citizens.

VOTE: The motion was approved unanimously on a voice vote with Councilors Calvert, Dominguez, Ortiz, Romero, Trujillo and Wurzbarger voting for the motion, none against and Councilor Chavez absent for the vote.

Sustainable Santa Fe Commission

Mayor Coss made the following appointment to the Sustainable Santa Fe Commission:

Tim Rogers – to fill unexpired term ending 5/2012.

MOTION: Councilor Ortiz moved, seconded by Councilor Romero, to approve this appointment.

VOTE: The motion was approved unanimously on a voice vote with Councilors Calvert, Dominguez, Ortiz, Romero, Trujillo and Wurzbarger voting for the motion, none against and Councilor Chavez absent for the vote

Santa Fe River Commission

Mayor Coss made the following appointments to the Santa Fe River Commission:

Philip J. Bove – Reappointment – term ending 2/2013;
Dale Doremus – Reappointment – term ending 2/2013;
John E. Buschser – Reappointment – term ending 2/2013;
Richard D. Ellenberg (Alternate) – Reappointment 2/2013;
Gerald Z. Jacobi – Reappointment – term ending 2/2013;
Melinda Romero-Pike – Reappointment – term ending 2/2013;
Justice Patricio M. Serna – term ending 2/2013;
Samuel E. Gerberding – term ending 2/2013; and
James Cutropia (Alternate) – term ending 2/2013.

MOTION: Councilor Wurzburger moved, seconded by Councilor Ortiz, to approve these appointments.

VOTE: The motion was approved unanimously on a voice vote with Councilors Calvert, Dominguez, Ortiz, Romero, Trujillo and Wurzburger voting for the motion, none against and Councilor Chavez absent for the vote

H. PUBLIC HEARINGS

Councilor Chavez arrived at the meeting

- 1) **CONSIDERATION OF RESOLUTION NO. 2010-90. CASE #2010-157. SANTA FE RAILYARD COMMUNITY CORPORATION REQUESTS APPROVAL TO AMEND TABLE III-2; NORTH RAILYARD DESIGN STANDARDS MATRIX OF THE RAILYARD MASTER PLAN ADOPTED BY RESOLUTION NO. 2002-10, IN ORDER TO EXCEED A HEIGHT OF 26 FEET AND TO ALLOW A HEIGHT OF 34 FEET FOR A FLAT ROOF WITHIN THE IN-BETWEEN-NORTH RAILYARD AREA FOR LEASE PROPERTY A2, LOCATED APPROXIMATELY 432 FEET WEST OF THE CERRILLOS ROAD/PASEO DE PERALTA INTERSECTION AND 490 FEET SOUTH ALONG THE SANTA FE RAILYARD TRACKS. (DAN ESQUIBEL)**

A Memorandum, with attachments, dated October 19, 2010 for October 27, 2010 Governing Body, from Daniel A. Esquibel, Land Use Planner Senior, Current Planning Division, to the Governing Body, is incorporated herewith to these minutes as Exhibit "2."

A copy of an aerial photograph and drawings of the site, entered for the record by Dan Esquibel, are incorporated collectively herewith to these minutes as Exhibit "3."

A power point presentation dated October 27, 2010, titled "Masque Entertainment Group," entered for the record by Richard Czoski, is incorporated herewith to these minutes as Exhibit "4."

The staff report was presented by Dan Esquibel. Please see Exhibit "2" for specifics of this presentation.

Staff Recommendation: The Land Use Department recommends approval of Case #2010-157, with accompanying resolution. Massing of the proposed building represents a minimal easing of the guidelines adopted by the Railyard Master Plan.

Councilor Calvert said he has a process question. He asked the process in terms of the ENN when something substantive changes from the time the ENN was held. He said he is referring specifically to the amendment to the height, which was not presented at the ENN, and requested post-ENN in a letter from the developer. He asked what is the process, or if there is a normal procedure, or do we conduct another ENN if something substantive changes from the time the first ENN was held,.

Mr. Esquibel said there were two ENNs. The first was held to satisfy the major project plan where the height was brought forward. The second ENN was held to address the amendment which is before the Council this evening.

Councilor Calvert asked when the second ENN was held.

Mr. Esquibel said it was held on October 5, 2010. So, there were two ENNs, one specific to the major project plan and another specific to this meeting tonight.

Public Hearing

Mayor Coss gave everyone 4 minutes to speak to this issue.

Presentation by the Applicant

Richard Czoski presented information via power point. Please see Exhibit "4" for specifics of this presentation. He noted that mechanical equipment is not included in the calculation of height according to the master plan, so the equipment can be higher than the maximum set forth in the plan. He said the Art Yard building is 132 feet long, so there would have been 132 feet of 34 ft. roof. He said from the perspective of the neighbors "the height is the height," whether it is a flat roof or a pitched roof, it will impede the views to the same extent in either case.

Mr. Czoski said the proposed building and the proposed amendment this evening, includes about 71 ft. at 34 ft. height. He said the other 80 ft. actually steps down and there will be less interference with the view than with the previous building proposed to be constructed.

Mr. Czoski said the reason he is seeking this amendment is largely due to technical concerns. He said because the post-production building has to be as isolated as possible from acoustical input, they need a certain amount of internal height which is dictated by the Dolby certification and the Motion Picture Association, noting they will be doing post production and mixing and editing movies and television programs. He said they have no ability to change the dimensions on the inside of the building.

Mr. Czoski said the building was not sunken because when you go into the earth, you increase the likelihood that vibrations, especially, will go through the structure. This is the reason all of these kinds of structures are built on slabs and not built into the earth. He said it is very much a technical issue and not a cost issue.

Mr. Czoski said additionally, this post-production facility has to compete with the best post-production facilities in Los Angeles. He said once a company finishes shooting a movie, they pack up and go back to Los Angeles which is the end of the income to our City – the GRTs, the hotels, restaurants, etc. He said this facility will cause the crews to stay around longer to do the post production work which should help our economy, in addition to the jobs which will be created by this new endeavor.

Those Speaking to the Request

Devin Ross, Santa Fe Railyard Community Corporation [SFRCC] Board, said he serves on the Board of Trustees and they dearly hope that this particular tenant will wind up on the Railyard. It is going to be a wonderful thing for the Railyard and for the community. He said, as Mr. Czoski said, for this building to perform as it has to perform for the given use, and there is no option to having a flat roof of 34 feet over one section of the building. Overall, the building will intrude considerably less on the skyline than the building that was already approved for this site, so he really encourages the Governing Body to go with this modification.

Dan Warner said he and his wife live in and own the property at 611 Alarid Street which is immediately west of this building. He said they attended the two ENNs meetings previously held regarding mass and height variance, and they want to speak in favor of granting the height variance because they feel there will be no negative impact based on what they've seen proposed for this location. They feel it would be a good thing for the neighborhood.

Steven Easley, member of the SFRCC Board, said he is here to urge the Council to support this amendment. He said the SFRCC Board has spent a lot of time working on this project to ensure it complies with all requirements under the master plan. He said the developer has been extremely responsive to all of their requests and requirements to make this a reality. He said, as stated by his colleagues previously, the building will be no taller than the building which is approved already, and in many parts will be shorter than that building.

Mr. Ross said he attended both ENN meetings where they had extensive conversations about the requirements. He said there were extensive questions from the audience about that, and believes the responders answered those questions quite well, and believes the audience was satisfied with those responses. He said he quizzed the developers closely about the requirement to have the tall end of the building being discussed this evening. He said it is, as Mr. Czoski said, a requirement of the building, and a technology requirement of the sound stages that they be that tall. He said they really could have used a slightly taller building, but the SFRCC wouldn't agree to this. He said there are sound technical reasons the building needs to be configured in the manner proposed. He said it clearly isn't taller than the building already approved for this location, and there is support from the neighbors who don't find it intrusive or difficult. He said we need to keep in mind this will be a very very good project, which is projected to generate 80 permanent jobs on the Railyard which is good as well as bringing a lot of high profile people to the facility to do the post-production work. He said these people will be staying in our hotels, eating in our restaurants as well as going back and telling people what a great place Santa Fe is. He believes we need to consider all of these factors, and strongly encourages the Governing Body to approve this amendment.

Rick Martinez supports Councilors Calvert and Bushee with regard to their problems with the process. He said to find out about ENNs you can't go to the weekly meeting agenda, and you have to know how to find about the ENNs. He said the Railyard belongs to the whole City and not just to one neighborhood. He found out about this issue after the second ENN. He said the process needs to be more open to the people of the City. He said the decisions made regarding the Railyard need to be made by the public and not by the politicians. He said this is a master plan change and should be noticed to everyone in the City and people shouldn't have to go through a "cat and mouse" game to find out about the ENNs. He believes the entire ENN process needs to be changed so we really do know when and where ENNs are being held. He thinks this should go to the BCD DRC and then back to the Council so the public in Santa Fe really does know about this.

Suby Bowden, 333 Montezuma Avenue. Ms. Bowden said she is here this evening to encourage the City to do all it can to encourage Masque to stay on this property, and to take care of all of the problems we have currently with the Wiviot lease. She said she facilitated and participated in the year-long process with the stakeholders in this property with Wiviot, noting this was after the Council received more than 500 signatures from neighbors fighting the Wiviot project. She said we were told through that facilitation process that Wiviot required the height to meet the financial needs to provide as much housing as he did. She said all of the neighbors, whether lessors on the Railyard, or commercial or residential neighbors adjacent to the Railyard, didn't want to give Wiviot the height that he was given. It was a compromise which was finally negotiated and approved in order to meet financial needs, noting the financial needs were never successful.

Ms. Bowden said, "My request is as follows. I recognize that the Wiviot profile, when compared to the new profile, was taller in some areas. However, when you look at the new profile, the new profile

actually provides a better situation for the neighbors because it's lower in some areas which is what the neighbors are asking for. So, my request is, rather than your unilateral approval for this lease parcel with a high height with a straight line all the way across, which is what you're being asked for tonight, I would request that you actually approve the new profile and those metes and bounds, those heights and lengths, and widths and heights, actually be approved as an amendment. That way, the neighbors are assured that someone doesn't come along later and make it even taller to the straight line of 34 feet. I know it's a more complicate amendment, and it requires Masque and the SFRCC to define those metes and bounds, and heights, widths and lengths. I do ask that you do that, because at least it is a recognition of all of the neighbors who wanted a lower building to begin with, and therefore by approving the Masque building, only committing to only that profile and not to a future higher height of 34 feet overall, that you're meeting the neighbor's needs as well as the Masque's needs."

The Public Hearing was closed

MOTION: Councilor Ortiz moved, seconded by Councilor Chavez, to adopt Resolution No. 2010-90, approving Case No. 2010-157.

DISCUSSION: Councilor Chavez said one speaker pointed out an interesting observation with regard to the massing and profile of the building as it is proposed to be built. He asked Mr. Czoski which page of the information provided by Mr. Esquibel [Exhibit "3"], would better represent the size and massing of the proposed building, and asked Ms. Bowden if she has the same handout..

Mr. Czoski said that would be the east, west and south elevation on page 5(b), noting 5(a) and 5(b) primarily are colored in versions of the line drawings on 5(c), so they would be identical. He said, "If I understood what Suby was saying, I think she was looking for specificity in terms of exact measurements that are depicted on these elevations."

Councilor Chavez said, "North one, let's see, one north elevation, three east elevation and four west elevation would probably give you the metes and bounds and the massing that we're looking for," and Mr. Czoski said yes.

FRIENDLY AMENDMENT: Councilor Chavez said, "So, then I would ask the maker of the motion, if we can just include the renderings as part of the motion," and Councilor Ortiz said, "All of the renderings that are listed on page 5(c) as a second page to the exhibit that goes attached to the Resolution, is that right," and Councilor Chavez said, "Yes." **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND AND THERE WERE NO OBJECTIONS BY THE OTHER MEMBERS OF THE GOVERNING BODY.**

FRIENDLY AMENDMENT: Councilor Wurzbarger would like to add the language of the intention statement that was expressed that the building would never be in a straight line, that you would not be building a box. Councilor Chavez said it would have to meet the metes and bounds. Councilor

Wurzburger said she feels this is important to include in the motion. **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND AND THERE WERE NO OBJECTIONS BY THE OTHER MEMBERS OF THE GOVERNING BODY**

Councilor Ortiz asked Mr. Czoski if that amendment is clear and understandable to him as a part of the amendment on the table.

Mr. Czoski said, "Yes, Councilor Ortiz it is, and it is acceptable."

Mayor Coss said, "It's really making this building the master plan amendment, this building profile."

Mr. Czoski said, "And that's entirely appropriate, given that's what we're asking for. We're not asking this to be a blanket change for any other building, so it is specific to this building."

Councilor Calvert said on page 33 of the Council packet it says that one of the things that is a benefit is "this project will provide new jobs for citizens of Santa Fe, encourage more movie productions in New Mexico.." He asked if we are assured that these will be new jobs for citizens of Santa Fe, or will people from existing studios come here and take these jobs.

Mr. Czoski said, "I can't address that with any specificity because it's obviously our tenant, it's not us, but I'm led to believe that the majority of the new positions would be hired locally, but that they would be bringing some people in as well. Steve Perry who is the principal is relocating his company here, so he is physically moving to Santa Fe. And the next building that he will be seeking approval for, will actually be his corporate headquarters building which will be next to Warehouse 21. The other use of that building is that right now, production companies when they come to Santa Fe, they lease space at St. Vincent's to do their administrative functions, to do their personnel and such. He's going to build this building so that there is a "plug and play" feature that these production companies can then come to that building that's purposely built for these folks, because Drury Hotel will be going into the Old St. Vincent's. So, again his goal is to produce movies here and make Santa Fe more friendly for other companies to produce movies here."

Councilor Calvert asked about what the County has planned, and if there are similarities, duplications, etc., and if there is a risk that there will be duplication, and therefore there will be risk to both for being idle or not as productive as we thought.

Mr. Czoski said this is a post-production facility and is not designed to actually shoot scenes, which is what the studio in Albuquerque and the proposed studio in the County will do – those are actually sound stages for the production of movies. This is a unique facility that does its work after all of that is done.

Councilor Calvert said then this facility might actually complement that function, and Mr. Czoski said, "Yes. Exactly."

Councilor Calvert said on page 34 of the packet it says, "No impacts to rail service or regional transportation are anticipated as a result of the requested Master Plan Amendment." He asked if this is true during construction, noting there isn't much space on the east side – 10 feet between the track and the building – and they won't need access from that side for the construction process.

Mr. Czoski said the Federal Railroad Administration governs construction that occurs around rails, so he is certain they will need some access, but he is also certain they will have to work around the schedules of the "operating railroads as dispatched by the Rail Runner."

Councilor Calvert said he heard from one of the neighbors who said they heard at one of the ENN meetings that the developer, Mr. Perry, had indicated he would be committing to 24-hour security at this facility, and asked if that "rings a bell."

Mr. Czoski said it does ring a bell, and he recalls that Mr. Perry said that.

Councilor Calvert said then this is something he is committed to do, although he doesn't know we can make that a condition of approval, and he wanted to confirm this, because security is certainly a concern in the neighborhood, especially in light of recent events, and he thinks this is an excellent idea. He said he doesn't know how this can be insisted on by the City, but it would be an excellent idea if Mr. Perry would commit to and carry through on that promise he made at the ENN meeting.

Mr. Czoski said, "Councilor Calvert, we'll do our best to ensure that he does that, and he's making a \$16 million initial investment in our community, that's just for the construction. So, the nature of the work that occurs there and the hours of the work that will occur there, makes it almost imperative that he have that type of security."

Councilor Calvert said he is speaking of ongoing security, and not just during the construction phase.

Mr. Czoski said so is he, noting the construction will be over in 8 months, and "he meant and I meant on an ongoing basis."

Mayor Coss asked the location of Brycon Construction.

Mr. Czoski said it is from Albuquerque.

Mayor Coss said he would ask that Brycon Construction use as many local subs and workers as possible on this project.

Zack Snyder, Brycon, Project Manager said Brycon currently has several large projects in Santa Fe, and because of cost purpose, they will be utilizing as many of those sub-contractors as possible. He said they

are looking for a work force over the 8 months to be at a peak of 150 construction workers, and at least 40-50 construction workers on the project throughout the entire 8 month duration.

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

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

Against: None.

Explaining her vote: Councilor Wurzburger voted yes, encouraging him to advertise the jobs locally, because in their recent session on procurement with local contractors who are out of work, they assured us that the work force is here.

14. MATTERS FROM THE CITY CLERK

Yolanda Vigil reminded the Council of the Special Study session on November 9, 2010.

15. COMMUNICATIONS FROM THE GOVERNING BODY

A copy of "Bills and Resolutions scheduled for introduction by members of the Governing Body," for the Council meeting of , is incorporated herewith to these minutes as Exhibit "5."

Councilor Calvert

Councilor Calvert introduced a Resolution, cosponsored by Councilor Trujillo, directing staff to prepare an MOU with the U.S. Department of Veteran's Affairs, that would commit the U.S. Department of Veteran's Affairs to install all future headstones at the Santa Fe National Cemetery in the upright position. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "6."

Councilor Calvert again extended his personal condolences to the Bonal family, with the loss of Art Bonal, who was a very enthusiastic and dedicated union member, and said Art Bonal will be missed in the community.

Councilor Dominguez

Councilor Dominguez said he withdrew Item 10(m) from the Consent Agenda, noting he will be presenting a new version of the Resolution, with the same intent, and he would ask that the new

Resolution would go through the committee process again, including the Finance and Public Works Committees.

Councilor Dominguez thanked Fire Station 3, where he was able to do a ride along for 36 hours, commenting that he missed the Mayor's Ball. He said it was an interesting experience, and he didn't have to cook because he was with the paramedics, commenting they did have very good food.

Councilor Dominguez encouraged community safety this weekend during Halloween, and to consider participating in community activities rather than trick-or-treating on the streets..

Councilor Wurzbarger

Councilor Wurzbarger introduced the following:

- a) An ordinance, cosponsored by Mayor Coss, approving a lease between the City of Santa Fe and the Monte Sol Group, Ltd., for approximately 1.57 acres of City owned land at the Municipal Airport for the Lessee to use and occupy the premises to hangar aircraft for the Lessee's private use and other related purposes. A copy of the proposed Ordinance is incorporated herewith to these minutes as Exhibit "7."
- b) A Resolution, cosponsored by Mayor Coss, directing staff to take the necessary steps to assess an additional one dollar parking fee at the Sandoval Parking Garage on all users after 6:00 p.m.; and designating the \$1 for support of programming at the Lensic Performing Arts Center. A copy of the proposed Resolution is incorporated herewith to these minutes as Exhibit "8."

Councilor Trujillo

Councilor Trujillo had no communications and wished everyone a Happy Halloween.

Councilor Ortiz

Councilor Ortiz, on behalf of Councilor Bushee, introduced a Joint Resolution with Councilor Ortiz and Commissioner Kathy Holian, in support of a new Environmental Impact Statement for LANL's Chemistry and Metallurgy Research Replacement Nuclear Facility (CMRR Project). A copy of the Joint Resolution is incorporated herewith to these minutes as Exhibit "9."

Councilor Ortiz said he also would echo Councilor Dominguez's concerns about a safe Halloween and Trick-or-Treaters. He said the Lutheran Church is offering kids \$1 pound for trick-or-treat candy, which they will be sending to our forces overseas.

Councilor Chavez

Councilor Chavez said he has no communications.

Councilor Romero

Councilor Romero thanked the Farmer's Market Institute for putting on a great Fiesta, noting the proceeds go for small business loans for farmers in Northern New Mexico, noting she also missed the Mayor's Ball but really enjoyed the Fiesta..

Councilor Romero thanked the Neighborhood Network for putting together a forum on crime and safety which went well.

Councilor Romero said there is a lot of work being done in Santa Fe around food policy and encouraged people to look at "Food Rebels," which is a great book on food policy.

Councilor Romero wished everyone a safe Halloween weekend, saying she and her family will be carving pumpkins at her house, noting this is her youngest granddaughter's first Halloween.

Mayor Coss

Mayor Coss urged everyone to go and vote – early or on Election Day November 2nd.

Mayor Coss wished Monsignor Jerome a very Happy Birthday.

Mayor Coss said he met with people from Sociedad Folklorico who would like to reserve the Convention Center for the 76th Annual Baille de Cascarones, noting he will be bringing that Resolution forward at the next meeting. Councilors Wurzbarger, Chavez and Trujillo would like to cosponsor the Resolution.

Mayor Coss thanked everyone who participated in La Union Latina Conference, noting our local Historian and linguists "made us very proud." He said it was a great conference with academics from Madrid and Mexico City, which was fairly well attended. He thanked Councilor Wurzbarger for her work on

the conference as well as Chris Swedin and Kate Noble, noting we had 5 ambassadors in Santa Fe at one point and that took a lot of time. He thanked the 400th Committee which really "pitched in" and helped with protocol and hosting.

Councilor Wurzburger said the entire event was taped, and those tapes will be made available to High School and College classes, and will be shown on our Government Channel periodically.

Mayor Coss extended personal condolences to the family of Art Bonal who was a great union person and a great Santa Fean. He extended personal condolences to the family of Bob Kitchens and to Gary Moquino of the City whose mother passed away today.

Mayor Coss introduced an Ordinance amending various sections of Article 27-2 of the City Code regarding telecommunications facilities authorized in the public rights-of-way. A copy of the Ordinance is incorporated herewith to these minutes as Exhibit "10."

Mayor Coss said Councilor Wurzburger withdrew the original Resolution on LATN, and there is a draft substitute Resolution which will go back to the committees for review.

I. ADJOURN

There was no further business to come before the Governing Body, and upon completion of the Agenda, the meeting was adjourned at approximately 8:00 p.m.

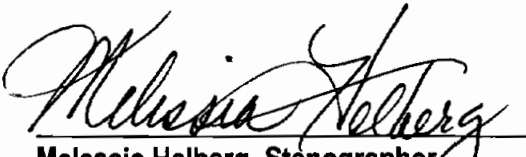
Approved by:

Mayor David Coss

ATTESTED TO:

Yolanda Y. Vigil, City Clerk

Respectfully submitted:


Mellessia Helberg, Stenographer