



# Agenda

REGULAR MEETING OF  
THE GOVERNING BODY  
NOVEMBER 10, 2010  
CITY COUNCIL CHAMBERS

## AMENDED – EXECUTIVE SESSION – ITEM # 12-b AND ITEM # 13

### AFTERNOON SESSION – 5:00 P.M.

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 27, 2010
9. PRESENTATIONS
  - a) Employee of the Month for November 2010 – Kevin Romero, Wastewater Operator IV – Wastewater Management Division. (5 minutes)
  - b) Muchas Gracias – USS Santa Fe Commander Dave Adams and Crew Members. (5 minutes)
  - c) Introduction of Law Enforcement Academy Graduates and Lateral Officers. (Chief Aric Wheeler) (5 minutes)
10. CONSENT CALENDAR
  - a) Bid No. 11/20/B – Surge Tank Repainting – Buckman Booster Pump Station Nos. 2, 3 & 4 for Water Division; Norvell Construction, LLC. (Robert Jorgensen)
    - 1) Request for Approval of Budget Increase – Project Fund.
  - b) Request for Approval of Change Order No. 1 – Ragle Park Renovation for Parks Division; Heads Up Landscape Contractors. (Ben Gurule)

CITY CLERK'S OFFICE

DATE 11-9-10 TIME 9:30 am

SERVED BY \_\_\_\_\_

RECEIVED BY Hydrominguez



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REGULAR MEETING OF  
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- c) Request for Approval of Amendment No. 2 to Professional Services Agreement – Genoveva Chavez Community Center; M & E Engineering, Inc. (Martin Valdez)
- d) Request for Approval of 2011 Legislative Priorities. (Robert Romero)
- e) Request for Approval of Second Amendment to Lease Agreement – Cafeteria Expansion and Maintenance Shop Relocation; Santa Fe University Art and Design, LLC. (Lee DePietro)
- f) Request for Approval of Procurement and Agreements – Voice Utility Interactive Response System (LVR) Hardware, Software and Services for Utility Billing Division; Selectron Technologies, Inc. (Caryn Fiorina)
- g) CONSIDERATION OF RESOLUTION NO. 2010-\_\_\_\_\_. (Councilor Bushee)  
A Joint Resolution In Support of a New Environmental Impact Statement for LANL's Chemistry and Metallurgy Research Replacement Nuclear Facility (CMRR Project). (Jeanne Price)
- h) CONSIDERATION OF RESOLUTION NO. 2010-\_\_\_\_\_. (Councilor Dominguez)  
A Resolution Directing the Parks and Open Space Advisory Commission, the Bicycle Trails Advisory Committee and Other City Committees to Make Recommendations Regarding Priorities for Parks Open Space, Trails, and Recreational Facilities that Have not Previously Been Funded or Were Under Funded. (Fabian Chavez)
- i) CONSIDERATION OF RESOLUTION NO. 2010-\_\_\_\_\_. (Councilor Wurzburger and Mayor Coss)  
A Resolution Conditionally Supporting the Proposal of the United States Air Force to Establish a Low Altitude Tactical Navigation Training Area in Northern New Mexico. (Jeanne Price)
- j) Request for Approval of Changes to City of Santa Fe Purchasing Manual – Local Preference. (Robert Rodarte)



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- k) Request for Approval of Professional Services Agreements – Fiscal Year 2010 Affordable Housing Services. (RFP #10/32/P) (Melisa Dailey)
  - 1) Santa Fe Community Housing Trust
  - 2) Homewise
- l) Request for Approval of Amendment No. 1 to Professional Services Agreement – Services at Santa Fe University of Art and Design; College of Santa Fe Management, LLC. (Lee DePietro)
- m) Request for Approval to Publish Notice of Public Hearing on December 8, 2010:
  - 1) Bill No. 2010-30: An Ordinance Amending Section 6-16.1 SFCC 1987 Regarding the Ethics and Campaign Review Board Quorum. (Councilor Bushee, Councilor Romero and Councilor Wurzbarger) (Yolanda Vigil) **(Postponed at September 15, 2010 City Council Meeting)**
  - 2) Bill No. 2010-38: An Ordinance Amending Various Sections of the Telecommunications Facilities in the Public Rights-of-Way Ordinance, Article 27-2 SFCC 1987; Sections 27-2.2 (Applicability); Portions of 27-2.3 (Definitions); 27-2.4 (Applications); 27-2.5 (Compensations and Charges); 27-2.7 (Obligations of Providers Regarding the Public Rights-of-Way); 27-2.13 (Land Use Review); and Creating a New Section 27-2.16 (Severability); and Making Such Other Changes as are Necessary. (Mayor Coss) (Kelley Brennan)

11. MATTERS FROM THE CITY MANAGER

12. MATTERS FROM THE CITY ATTORNEY

## EXECUTIVE SESSION:

- a) Pursuant to City of Santa Fe Resolution No. 2010-24, Discussion of Threatened or Pending Litigation in which the City of Santa Fe Is or May Become a Participant, in Accordance with §10-15-1(H)(7), NMSA 1978.



# Agenda

REGULAR MEETING OF  
THE GOVERNING BODY  
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CITY COUNCIL CHAMBERS

- b) 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.
- 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 BILL NO. 2010-33: ADOPTION OF ORDINANCE NO. 2010-\_\_\_\_\_.  
An Ordinance Authorizing the Issuance and Sale of the City of Santa Fe, New Mexico Gross Receipts Tax Revenue Refunding Bonds, Series 2010B in an Aggregate Principal Amount Not to Exceed \$27,500,000 for the Purpose of Providing Funds for (I) Prepaying and Discharging Three New Mexico Finance Authority Loans for the Santa Fe Railyard Project and a Parking Structure and (II) Paying the Costs of Issuance of the Bonds; Providing that the Bonds Will be Payable and Collectible From



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REGULAR MEETING OF  
THE GOVERNING BODY  
NOVEMBER 10, 2010  
CITY COUNCIL CHAMBERS

Certain Gross Receipts Tax Revenues Distributed to the City; Establishing the Terms, Form and Details of the Bonds; Authorizing the Execution and Delivery of a Bond Purchase Agreement, an Official Statement and a Continuing Disclosure Undertaking in Connection with the Bonds; Ratifying Action Previously Taken in Connection with the Bonds; Repealing all Ordinances in Conflict Herewith; and Related Matters. (Kathryn Raveling)

2) CONSIDERATION OF BILL NO. 2010-34: ADOPTION OF ORDINANCE NO. 2010-\_\_\_\_\_.

An Ordinance Authorizing the Issuance and Sale of the City of Santa Fe, New Mexico Gross Receipts Tax Revenue Refunding Bonds, Series 2010A in an Aggregate Principal Amount Not to Exceed \$16,500,000 for the Purpose of Providing Funds for (I) Refunding the City of Santa Fe Gross Receipts Tax Revenue Bonds, Series 2002 that Mature on and After June 1, 2013 and (II) Paying the Costs of Issuance of the Bonds; Providing that the Bonds will be Payable and Collectible From Certain Gross Receipts Tax Revenues Distributed to the City; Establishing the Terms, Form and Details of the Bonds; Authorizing the Execution and Delivery of a Bond Purchase Agreement, an Official Statement and a Continuing Disclosure Undertaking in Connection with the Bonds; Ratifying Action Previously Taken in Connection with the Bonds; Repealing all Ordinances in Conflict Herewith; and Related Matters. (Kathryn Raveling)

3) CONSIDERATION OF BILL NO. 2010-31: ADOPTION OF ORDINANCE NO. 2010-\_\_\_\_\_. (Mayor Coss)

An Ordinance Repealing Section 1-3.5 SFCC 1987 Regarding the Destruction of Arrest Records. (Judge Ann Yalman)

4) CONSIDERATION OF BILL NO. 2010-32: ADOPTION OF ORDINANCE NO. 2010-\_\_\_\_\_. (Councilor Ortiz and Councilor Trujillo)

An Ordinance Amending Various Sections of Chapter 14 SFCC 1987 Land Development Code Related to Appeals. (Matthew O'Reilly)

a) CONSIDERATION OF RESOLUTION NO. 2010-\_\_\_\_\_.  
(Councilor Ortiz and Councilor Trujillo)

A Resolution Adopting Administrative Procedures Related to Appeals of Land Use Decisions. (Matthew O'Reilly)



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CITY COUNCIL CHAMBERS

- 5) CONSIDERATION OF RESOLUTION NO. 2010-\_\_\_\_\_.  
**Case #2010-87. Padilla Center General Plan Amendment.** Design Enginuity, Agent for Nino Padilla, Requests Approval of a General Plan Future Land Use Map Amendment to Change the Designation of 2.873 +/- Acres of Land from Office to Neighborhood Center Between Camino Tierra Real and Thomas Road, on the North Side of Airport Road Located Within the Presumptive City Limits and Within Phase 2 of the City-Initiated Annexation. (Donna Wynant)
- 6) CONSIDERATION OF BILL NO. 2010-37: ADOPTION OF ORDINANCE NO. 2010-\_\_\_\_\_.  
**Case #2010-76. Padilla Center Rezoning.** Design Enginuity, Agent for Nino Padilla, Requests Rezoning of 2.873 +/- Acres of Land from C-1 (Office and Related Commercial) to C-2 (General Commercial) Between Camino Tierra Real and Thomas Road, on the North Side of Airport Road Located Within the Presumptive City Limits and Within Phase 2 of the City-Initiated Annexation. (Donna Wynant)

## I. ADJOURN

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

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

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



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NOVEMBER 10, 2010  
CITY COUNCIL CHAMBERS

## AFTERNOON SESSION – 5:00 P.M.

CITY CLERK'S OFFICE

DATE 11-5-10 TIME 10:12 am

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 27, 2010
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14. COMMUNICATIONS FROM THE GOVERNING BODY

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November 10, 2010

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<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
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<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
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**MINUTES OF THE  
REGULAR MEETING OF THE  
GOVERNING BODY  
Santa Fe, New Mexico  
November 10, 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 November 10, 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 Rosemary Romero  
Councilor Ronald S. Trujillo

**Members Excused**

Councilor Matthew E. Ortiz

**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 said it has been requested to remove Item 10(e) from the agenda, noting the Santa Fe University of Art & Design no longer is pursuing this amendment.

Mayor Coss said the University is going to spend the money to do this.



**MOTION:** Councilor Bushee moved, seconded by Councilor Chavez, to approve the agenda as amended.

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

## **7. APPROVAL OF CONSENT CALENDAR**

**MOTION:** Councilor Calvert moved, seconded by Councilor Chavez, 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 Romero and Councilor Trujillo.

**Against:** None.

**Absent for the vote:** Councilor Wurzbarger

- a) **BID NO. 11/20/B – SURGE TANK REPAINTING – BUCKMAN BOOSTER PUMP STATION NOS. 2, 3 & 4 FOR WATER DIVISION; NORVELL CONSTRUCTION, LLC. (ROBERT JORGENSEN)**
  - 1) **REQUEST FOR APPROVAL OF BUDGET INCREASE – PROJECT FUND.**
- b) **REQUEST FOR APPROVAL OF CHANGE ORDER NO. 1 – RAGLE PARK RENOVATION FOR PARKS DIVISION; HEADS UP LANDSCAPE CONTRACTORS. (BEN GURULE)**
- c) **REQUEST FOR APPROVAL OF AMENDMENT NO. 2 TO PROFESSIONAL SERVICES AGREEMENT – GENOVEVA CHAVEZ COMMUNITY CENTER; M & E ENGINEERING, INC. (MARTIN VALDEZ)**
- d) **REQUEST FOR APPROVAL OF 2011 LEGISLATIVE PRIORITIES. (ROBERT ROMERO)**
- e) **REQUEST FOR APPROVAL OF SECOND AMENDMENT TO LEASE AGREEMENT – CAFETERIA EXPANSION AND MAINTENANCE SHOP RELOCATION; SANTA FE UNIVERSITY ART AND DESIGN, LLC. (LEE DePIETRO)**  
**This was removed from the agenda.**

- f) REQUEST FOR APPROVAL OF PROCUREMENT AND AGREEMENTS – VOICE UTILITY INTERACTIVE RESPONSE SYSTEM (LVR) HARDWARE, SOFTWARE AND SERVICES FOR UTILITY BILLING DIVISION; SELECTRON TECHNOLOGIES, INC. (CARYN FIORINA)
- g) CONSIDERATION OF RESOLUTION NO. 2010-91 (COUNCILOR BUSHEE). A JOINT RESOLUTION IN SUPPORT OF A NEW ENVIRONMENTAL IMPACT STATEMENT FOR LANL'S CHEMISTRY AND METALLURGY RESEARCH REPLACEMENT NUCLEAR FACILITY (CMRR PROJECT). (JEANNE PRICE)
- h) CONSIDERATION OF RESOLUTION NO. 2010-92 (COUNCILOR DOMINGUEZ). A RESOLUTION DIRECTING THE PARKS AND OPEN SPACE ADVISORY COMMISSION, THE BICYCLE TRAILS ADVISORY COMMITTEE AND OTHER CITY COMMITTEES TO MAKE RECOMMENDATIONS REGARDING PRIORITIES FOR PARKS OPEN SPACE, TRAILS AND RECREATIONAL FACILITIES THAT HAVE NOT PREVIOUSLY BEEN FUNDED OR WERE UNDER FUNDED. (FABIAN CHAVEZ)
- i) *[Removed for discussion by Councilors Calvert and Chavez]*
- j) REQUEST FOR APPROVAL OF CHANGES TO CITY OF SANTA FE PURCHASING MANUAL – LOCAL PREFERENCE. (ROBERT RODARTE)
- k) REQUEST FOR APPROVAL OF PROFESSIONAL SERVICES AGREEMENTS – FISCAL YEAR 2010 AFFORDABLE HOUSING SERVICES. (RFP #10/32/P). (MELISA DAILEY)
  - 1) SANTA FE COMMUNITY HOUSING TRUST
  - 2) HOMEWISE
- l) *[Removed for discussion by Councilor Bushee]*
- m) REQUEST FOR APPROVAL TO PUBLISH NOTICE OF PUBLIC HEARING ON DECEMBER 8, 2010:
  - 1) BILL NO. 2010-30: AN ORDINANCE AMENDING SECTION 6-16.1 SFCC 1987, REGARDING THE ETHICS AND CAMPAIGN REVIEW BOARD QUORUM (COUNCILOR BUSHEE, COUNCILOR ROMERO AND COUNCILOR WURZBURGER). (YOLANDA VIGIL) (Postponed at September 15, 2010 City Council Meeting)
  - 2) BILL NO. 2010-38: AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY ORDINANCE, ARTICLE 27-2 SFCC 1987; SECTIONS 27-2.2 (APPLICABILITY); PORTIONS OF 27-2.3 (DEFINITIONS); 27-2.4 (APPLICATIONS); 27-2.5 (COMPENSATIONS AND CHARGES); 27-2.7 (OBLIGATIONS OF PROVIDERS REGARDING THE PUBLIC RIGHTS-OF-WAY); 27-2.13 (LAND USE REVIEW); AND CREATING A NEW SECTION 27-2.16 (SEVERABILITY); AND MAKING

**SUCH OTHER CHANGES AS ARE NECESSARY (MAYOR COSS). (KELLEY BRENNAN)**

**8. APPROVAL OF MINUTES: REGULAR CITY COUNCIL MEETING – OCTOBER 27, 2010**

**MOTION:** Councilor Romero moved, seconded by Councilor Calvert, to approve the minutes of the Regular City Council meeting of October 27, 2010, as presented.

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

*Councilor Wurzbarger arrived at the meeting*

**9. PRESENTATIONS**

**a) EMPLOYEE OF THE MONTH FOR NOVEMBER 2010 – KEVIN ROMERO, WASTEWATER OPERATOR IV – WASTEWATER MANAGEMENT DIVISION.**

Mayor Coss presented this award, assisted by Councilor Romero who read the letter of nomination into the record. Councilor Romero disclosed that Kevin Romero is her nephew. She spoke about Kevin's efforts to put together conduct a training class on wastewater treatment and the excellence of that effort although he had never done anything like this before, which resulted in her nomination of Kevin for this award.

Mayor Coss presented Mr. Romero with a plaque and a check for \$100 from the Employees Benefit Committee.

Luis Orosco, Wastewater Plant Superintendent, said he can attest to what was in the letter of nomination, because Kevin can do that. He said, because of Kevin's performance, we were nominated for an award by the New Mexico Water & Wastewater Association. He said while everyone was gone, Kevin gave a presentation and a tour to the people who came, and we won that award. He said they will be going in January to receive the award. He said Kevin is a good operator, and he thanks him for working with the City.

Mr. Romero thanked everyone who attended the workshop. He thanked Mr. Orosco for hiring him and for the opportunity to take on this challenge. He said he had never done anything like this before, and did the best he could based on his knowledge.

Councilor Romero said Kevin is a really hard worker, a wonderful father, a great nephew and a great son. She is proud of what he's done in the 18 years he's been with the City, noting Kevin continues to put himself through school.

**b) MUCHAS GRACIAS – USS SANTA FE COMMANDER DAVE ADAMS AND CREW MEMBERS.**

Mayor Coss welcomed Commander Dave Adams and the members with him from the crew of the USS Santa Fe: Jonathan Lim, Ryan Daniel, Johnny Mercinos, Chief Matarinos. He said it is very special to have them in Santa Fe on Veterans Day to help us celebrate.

Commander Adams said there is a strong community of 130 men who represent the City for the freedoms we all enjoy. He spoke about the history of the USS Santa Fe, said they have nicknamed her the Lucky Lady and said Santa Fe is lucky for them. Commander Adams presented a plaque to the Mayor, a USS Santa Fe coin, a picture of the ship and a USS Santa Fe ball cap. He said they look forward to spending the next two days in Santa Fe.

Mayor Coss reminded everyone of the Veterans Day parade tomorrow at 10:00 a.m., and invited everyone from the public to attend.

**c) INTRODUCTION OF LAW ENFORCEMENT ACADEMY GRADUATES AND LATERAL OFFICERS. (CHIEF ARIC WHEELER)**

Chief Aric Wheeler introduced the recent Law Enforcement Academy graduates and lateral transfers and gave a brief biography on each. He spoke about 3 individuals who couldn't be here this evening because their duties took them elsewhere. He said the individuals graduating from the Law Enforcement Academy received 7 of the 10 achievement awards.

Mayor Coss welcomed the new officers to the Police Force and wished them well in the future.

**CONSENT CALENDAR DISCUSSION**

**(i) CONSIDERATION OF RESOLUTION NO. 2010-93 (COUNCILOR WURZBURGER AND MAYOR COSS). A RESOLUTION CONDITIONALLY SUPPORTING THE PROPOSAL OF THE UNITED STATES AIR FORCE TO ESTABLISH A LOW ALTITUDE TACTICAL NAVIGATION TRAINING AREA IN NORTHERN NEW MEXICO. (JEANNE PRICE )**

An Amendment Sheet with proposed amendments to this Resolution, submitted by the Public Works Committee, is incorporated herewith to these minutes as Exhibit "1."

An Amendment Sheet with proposed amendments to this Resolution, submitted by Councilor Wurzbarger, is incorporated herewith to these minutes as Exhibit "2."

An Action Sheet from the Public Works/CIP and Land Use Committee of Monday, November 8, 2010, asking that Councilor Calvert be added as a sponsor, is incorporated herewith to these minutes as Exhibit "3."

Councilor Calvert thanked everyone who has offered comments and suggestions, and apologized he has been unable to return all the messages, although he did read them all.

Councilor Calvert said he has proposed amendments to the Resolution, in addition to those from the Public Works Committee as follows:

- 1) Page 1, line 13, amend as follows: "...AREA IN NORTHERN NEW MEXICO, SUBJECT TO THE NEPA PROCESS. He said this is to make it clear that the City does want that process followed.
- 2) Page 2, line 4, after the amendments proposed by the Public Works Committee, add as follows: "WHEREAS, the United States Air Force has stated its intent to avoid high population densities such as Santa Fe on these training missions."
- 3) Page 2, line 5, amend as follows: "...Environmental Policy Act (NEPA) Environmental Assessment (EA) process; and.."
- 4) Page 2, line 7, amend as follows: "...Assessment or an Environmental Impact Statement (EIS) if the NEPA process deems that necessary, that determines...."
- 5) Page 2, between lines 18 and 19, add the following new language, "BE IT FURTHER RESOLVED that the City of Santa Fe supports adoption of Low Altitude Tactical Navigation (LATN) training areas as specified as Alternative One.

Councilor Calvert said most of the correspondence he received was about the flights over Santa. He said alternative one is on the website for Canon Air Force Base. Alternative one specifically carves out Santa Fe and Albuquerque from the training flight area. He is trying to balance between NIMBY and others wanting assurances that they wouldn't be flying over Santa Fe. He said since this is offered as an alternative by the Air Force itself, he believes we should "take them up on it," and the reason he is including that.

**MOTION:** Councilor Calvert moved, seconded by Councilor Wurzbarger, to adopt Resolution No. 2010-93, with the amendments from Public Works [Exhibit "1"], the amendments from Councilor Wurzbarger [Exhibit "2"] and the aforementioned amendments he proposed.

**DISCUSSION:** Councilor Wurzbarger said she appreciates the work done by Councilor Calvert and Mayor Coss with respect to revising her original resolution on this item, and believes they accurately have reflected the concerns of the community with regard to what can and cannot happen in Santa Fe. She said what she heard mostly over the past two weeks is the difference between an Environmental Assessment [hereinafter "EA"], and an Environmental Impact Statement [hereinafter "EIS"], and to a person, the plea was for the City to require an EIS.

Councilor Bushee said she does appreciate the amendments, but she is concerned that the people of Santa Fe, which will be excluded from these flights, will be weighing-in as being in favor of this, while the

cities in Northern New Mexico oppose these flight patterns. She still is uncertain about this, noting the first Resolution was to oppose these flight patterns, commenting that although this is a better version, she doesn't understand why Santa Fe would go against communities with real concerns when we won't be subjected to the same things they will be subjected to.

Councilor Calvert said we aren't asking for the Air Force to be exempted, we are asking for an EIS to evaluate these processes, and we support the best training for servicemen and women who will be doing these missions, but we definitely want the NEPA process to be followed and for all those impacts to be listed and addressed as best possible.

Councilor Bushee said she understands, and this is the genesis for the amendments. She reiterated she still is somewhat confused and a little concerned that we are weighing-in at all, when every other city to the North is concerned and has made a clear statement that it will have an impact to their quality of life. She said, in deference to solidarity with Northern New Mexico, she still has concerns.

Councilor Calvert said there is some misperception that the Low Altitude Tactical Navigation [hereinafter "LATN"] area designation will decide whether or not they fly these missions. If they go through this whole process and don't get the LATN training area they still will be flying these missions. He said LATN allows them to be more effective and efficient in the training which is provided to the service men and women. He said they already are doing these flights out of Kirtland. He said people registered comments about whether the Air Force should be doing this, and whether we should be in Iraq or Afghanistan, but that truly isn't our decision to make. However, we can weigh-in that we want the best training for these pilots, and this is the reason the Resolution is stated as it is stated. He reiterated, "Whether or not they get the LATN is not going to affect whether they do the missions. It's just how and how effectively they do the missions."

Councilor Romero has been concerned about the way this was framed, and she appreciates the people who contacted her. However, these flights already are happening – this is the given. The decision which needs to be made is regarding the environmental process moving forward, and she supports a complete EIS. She said it is difficult to determine the outcome, noting in the NEPA process a determination could be made for no action. This would mean there is enough information with all the alternatives to determine no action which would limit what the LATN could do. She believes it is premature to weigh-in on an alternative until we've gone through the complete NEPA process, which is what the public asked to be done. She had hoped they first would go completely through the process. She said, with regard to the process, it is a mixed message which got people riled up because it appears to be a "yes or no" proposition. She said it is difficult for her to support the process with the mixed message. She said she hopes all alternatives are considered carefully, while we are being supportive of our neighbors.

Councilor Chavez said, based on calls and comments he received, it seems people are in the dark, especially those which live near the Airport and/or in the Airport Road area. He said he had a conversation about this with Jim Montman, regarding the public concern about low altitude flights and whether or not the Osprey will be relocated to our airport for those flights. He asked Mr. Montman to work with staff and others to do public outreach using the public access channel to explain what the City is doing, and if training is taking place, where it is being done. He would like Mr. Montman to walk through the steps in the process.

Jim Montman said he is willing to do this. He said the answer to one of the questions is that there is no intent to operate at the Santa Fe Municipal Airport, which has nothing to do with that training. He said it will go through the LATN and then return, most likely, to the Melrose Range, and then back to Canon, but the Osprey could land here on occasion, noting that has happened only once in 5 years. He said there is no intention for those aircraft to deploy or operate out of the Santa Fe Municipal Airport.

Councilor Chavez would like to keep the public informed as we move through the process and how they may be affected. He said we are concerned about our quality of life the impact this may have on our tourist economy, but we have to think about the economies in the north and even the economy in Clovis and what this will mean to them. He said whether or not you agree with national foreign policy is another issue, and we can't redirect that policy, so we have to make decisions such as these – "train here but don't train there." He doesn't see any fairness in this, noting we are dealing with the economic impacts in many ways on many levels.

Mr. Montman said he can keep the Governing Body and the public informed in coordination with the leadership at Canon Air Force Base, noting he already has been in contact with them.

Councilor Romero said, "I, would personally like to see an EIS, but that's not up to me to decide. Just for the record, and what I hope folks understand, is what's being looked at right now is an Environmental Assessment, and in that assessment, which is in the Resolution, it is stated that if it's required and if there's a need, and that's going to be part of the public input and the evaluation of the alternatives, and that's when it would be deemed that an EIS would be appropriate. I wish it could have been an EIS, but they're looking at an Environmental Assessment and that's what we're working from. But I hope that when the evaluation is complete they will do an even more thorough evaluation which includes the economic, cultural, a variety of issues and an Environmental Impact Statement. And it's not in the Resolution. The Resolution is an EA, just to be clear with folks."

Councilor Calvert said, to be clear it is part of the NEPA process which starts with an EA, and can go to the full EIS if that's warranted. He said it's not up to us to dictate that process, asking who is the lead agency on this.

Mr. Montman said he doesn't know, but for the Airport it was the FAA, but it wouldn't surprise him if it is the Department of Defense for this one.

Councilor Calvert said he would be surprised if it was the DOD, it would be sort of approving their own.

Mr. Montman said it was the same way with the FAA and the American Eagle.

Councilor Chavez asked for a legal opinion about changing the title of this Resolution after it has been published, after asking Councilor Calvert to restate the proposed change to the title. He believes it can be incorporated in the WHEREAS without changing the title.

Mr. Zamora said, "I would like to consider it within the context of what the change is, because under the Inspection of Public Records Act you need to advertise with reasonable specificity for the public to

understand what is being considered, and so, if you changed it to a Resolution supporting something completely different, then I think we would have a larger question."

Councilor Chavez said then the changes aren't sufficiently substantive to raise that concern.

Mr. Zamora said, "And I would just like to review those changes once again before I rule."

Councilor Calvert said we have that language in the Resolution in the WHEREAS, and again in the amendments to the Resolution.

Councilor Chavez said he still questions whether it needs to be in the title when it's already in the body of the Resolution.

Councilor Trujillo thanked Councilor Wurzbarger for withdrawing the previous Resolution and for introducing this one as well, and thanked Councilor Calvert for his hard work on this as well. He said we're asking for an EIS. He said there was a misperception that the flights would go directly over Santa Fe. He is glad Councilor Calvert stated that these flights already are taking place. He said it's not okay for us to say, "Let our servicemen go protect our country, but they can't have the training." He said this is a little bit of "NIMBYism."

Councilor Trujillo said Santa Fe should count itself lucky to have all of the facilities we have in New Mexico, because New Mexico is a very important State in this area in the U.S. He received emails saying it would be nice if the Councilors could "enjoy these flights 200 times a day over their homes." He said every night there are helicopters flying from UNM to St. Vincent's and he hears those, but it doesn't bother him because they are flying people to save lives. He believes we should support this Resolution, noting that the LATN may not happen.

Mayor Coss thanked Councilor Wurzbarger for agreeing to pull back on the Resolution, and to give the Governing Body the opportunity to take a longer look at it. He said, in terms of solidarity with the people of Northern New Mexico, the NEPA process will look at social, economic and environmental issues, and this Resolution says "we expect you to be serious about that and strictly follow the NEPA process, or we won't support the training." However, the Resolution does say we support the training for the men and women in the armed services.

Mayor Coss said ten years ago, this Governing Body took a position against the war in Iraq and the Patriot Act, and took our "lumps" for that. He said one of the emails he received said the answer was to use simulators. He said they misunderstand the nature of the training, and he certainly wishes we were sending these men and women to a simulated war, but we're not, we're sending them into a real war. He has a hard time saying we are against their training before we even go through the NEPA process on this.

Mayor Coss noted that one of the sailors here this evening from the USS Santa Fe is being sent to Afghanistan for his next tour of duty. Mayor Coss said denying this training won't end the war. He said perhaps this will be inconvenient for the people of Northern New Mexico, but something about these wars should be inconvenient for us, because they've been ongoing for 10 years and it is hard to notice any



inconvenience to the body politic of New Mexico or elsewhere. He said he just couldn't look aviators from the National Guard or from Canon in the eye and say we opposed their training before the NEPA process even began. He thanked Councilor Wurzbarger for bringing this back.

Councilor Bushee reiterated her concern that we won't be inconvenienced while other communities will, and believes we shouldn't undermine their efforts.

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

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

**Against:** Councilor Bushee

**Explaining her vote:** Councilor Romero said, "Yes, and it is supporting the NEPA process."

**10 (I) REQUEST FOR APPROVAL OF AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT – SERVICES AT SANTA FE UNIVERSITY OF ART AND DESIGN; COLLEGE OF SANTA FE MANAGEMENT, LLC. (LEE DePIETRO)**

Councilor Bushee said concerns about this amendment were raised at the Finance Committee, and she doesn't see changes to any of the things we asked about. She said we wanted some of this to be renegotiated.

**MOTION:** Councilor Bushee moved, seconded by Councilor Dominguez, to postpone this item to the next Council meeting on December 8, 2010, and in the interim to remand this item back to the Finance Committee to get the answers with regard to renegotiation.

**DISCUSSION:** Councilor Wurzbarger would like to know the questions which were raised by the Finance Committee.

Councilor Bushee said Councilor Wurzbarger was late to the Finance Committee meeting and wasn't in attendance when this was discussed.

Councilor Wurzbarger reiterated that she would like to hear the questions which were raised at the Finance Committee.

Kelley Brennan, Assistant City Attorney, said Lee DePietro is unable to be here this evening, so she is filling in for her. She has some familiarity with the contract and will try to answer any questions..

Councilor Bushee said this is the reason she is asking this item to go back to Finance.

Councilor Dominguez said he voted for this item at Finance Committee with the understanding we would have answers to our questions by the Council meeting.

Councilor Bushee said postponing this item won't hurt it timewise, and believes it would be good to get those answers before making a decision.

Ms. Brennan said the College isn't providing services now, because there is no assurance of being reimbursed. She takes responsibility for the confusion, saying she understood Ms. DePietro provided a Memorandum in the Councilors' boxes in response to those questions before leaving, but apparently she did not.

Councilor Wurzbarger asked, for clarification, if they have stopped work.

Ms. Brennan said she understands they have been through the compensation.

Councilor Wurzbarger wants an analysis of the impact of stopping work when this is considered at the next Finance Committee meeting.

Councilor Calvert said then this will be heard at the next Council meeting.

Mayor Coss said yes, but that won't be until December.

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

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**END OF CONSENT CALENDAR DISCUSSION**  
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**11. MATTERS FROM THE CITY MANAGER.**

None.

**12. MATTERS FROM THE CITY ATTORNEY**

**EXECUTIVE SESSION**

- a) **PURSUANT TO CITY OF SANTA FE RESOLUTION NO. 2010-24, DISCUSSION OF THREATENED OR PENDING LITIGATION IN WHICH THE CITY OF SANTA FE IS OR MAY BECOME A PARTICIPANT, IN ACCORDANCE WITH §10-15-1(H)(7) NMSA 1978. (GENO ZAMORA)**

- b) **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.**

**MOTION:** Councilor Wurzbarger moved, seconded by Councilor Calvert, that the Council go into Executive Session for the purpose of discussion of threatened or pending litigation in which the City of Santa Fe is or may become a participant, in accordance with §10-15-1(H)(7), and 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).

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

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

**Against:** None.

**Absent:** Councilor Bushee.

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

#### **MOTION TO COME OUT OF EXECUTIVE SESSION**

**MOTION:** At 6:40 p.m., Councilor Wurzbarger moved, seconded by Councilor Calvert, that the City Council come out of Executive Session and stated that the only items which were discussed in executive session were those items which were on the agenda, and no action was taken.

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

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.**

No action was taken on this matter.

14. **MATTERS FROM THE CITY CLERK**

There were no matters from the City Clerk.

## **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 November 10, 2010, is incorporated herewith to these minutes as Exhibit "4"

### **Councilor Calvert**

Councilor Calvert wished all of the veterans a very Happy Veterans Day.

### **Councilor Dominguez**

Councilor Dominguez wished everyone a Happy Veterans Day. He said he will be unable to attend the parade because he is participating in a Leadership Santa Fe Alumni Workshop.

Councilor Dominguez introduced an Ordinance amending Article 10-9 SFCC 1987, the City's Nuisance Abatement Ordinance, to include loud or unruly gatherings as a public nuisance; and to authorize the City for collect for the costs of responding to a public nuisance, and to make such other changes as are necessary. A copy of the ordinance is incorporated herewith to these minutes as Exhibit "5."

### **Councilor Wurzbarger**

Councilor Wurzbarger introduced the following:

1. A Resolution recognizing the Baile de los Cascarones held by the Sociedad Folklorica as an official annual event of the Governing Body and waiving all related fees and charges at the Santa Fe Community Convention Center for the annual event including room rental and equipment use and parking. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "6."
2. A Resolution supporting the State's drug court program and requesting that funding for the Drug Court Program be a State priority. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "7."

### **Councilor Trujillo**

Councilor Trujillo wished all veterans a Happy Veterans Day.

Councilor Trujillo invited everyone to Kearney School on Saturday, 1:00 to 4:00 P.M., to play Turkey Bingo and enjoy the opportunity to win turkeys and other prizes.

Councilor Trujillo introduced a Resolution opposing the transfer of the E911 Program from the Department of Finance and Administration to any other State Department or Division. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "8."

Councilor Trujillo expressed appreciation for the cleanup at the Cross of the Martyrs.

Councilor Trujillo said he was contacted by parents of students at St. Michael's that there are no flashing lights, and there are two schools on that street. He asked staff to look into the possibility of installing flashing lights at the schools.

### **Councilor Romero**

Councilor Romero introduced a Resolution directing staff to proceed with a community planning process for the St. Michael's Drive area that will result in a master plan that focuses on developing creative and cultural industries along the corridor, and establishing a vibrant and innovative community, streetscape enhancements and complimentary adjoining land and economic development. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "9."

### **Councilor Bushee**

Councilor Bushee wished the veterans a safe holiday. She said her uncles served in World War II, and her dad is a Korean War veteran.

Councilor Bushee complimented the Police Officers for their work on Saturday when people came from out of town to protest the nightclubs downtown. She said the Police handled the situation safely and efficiently, and commended them for their demeanor and response to this issue. She said we need to amend the City Code to restrict how close protestors can be to the business being protested

Mayor Coss said he would like to help in this effort.

### **Councilor Chavez**

Councilor Chavez entered a letter for the record he received from Marcia Bolton of Agua Fria, protesting the flyovers, saying the vibrations will impact their neighborhood. He said this is an example of the confusion with regard to this issue. A copy of the letter is incorporated herewith to these minutes as Exhibit "10."

Councilor Chavez asked Yolanda Vigil to share information with the public regarding where the public can send commentary on the Code of Ethics and Campaign Practices Ordinance. He said these ordinances are on the web page and on public access ticker tape.

Ms. Vigil said there is a comment form at the website for commentary on the Codes. She said the public is welcome to send any written comments to her office by mail at P.O. Box 909, Santa Fe, New Mexico 87504, or by email to [yyvigil@santafenm.gov](mailto:yyvigil@santafenm.gov)

Responding to Councilor Chavez, Ms. Vigil said she will work with staff to ensure this information is placed on the public access ticker tape.

Councilor Chavez said people are finding it cumbersome to organize neighborhood watch programs because they are having difficulty obtaining the maps required by the Police Department to define the neighborhood watch areas. He asked Robert Romero to talk to someone in Planning and Land Use to facilitate getting these maps. He said he will be meeting with someone at 9:30 a.m. on Monday to help the Osage area with maps.

### **Mayor Coss**

Mayor Coss wished all veterans and service men and women a Happy Veterans Day and invited the public to attend the Veterans Day Parade tomorrow, beginning at 10:00 a.m.

**END OF AFTERNOON SESSION AT 6:55 P.M.**

## **EVENING SESSION**

### **A. CALL TO ORDER AND ROLL CALL**

The Evening Session was called to order by Mayor David Coss, at approximately 7:00 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 Patti J. Bushee  
Councilor Christopher Calvert  
Councilor Miguel Chavez  
Councilor Carmichael A. Dominguez  
Councilor Rosemary Romero  
Councilor Ronald S. Trujillo

#### **Members Excused**

Councilor Matthew E. Ortiz

#### **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 "ADA Grievance Procedure," entered for the record by David McQuarie, is incorporated herewith to these minutes as Exhibit "11."

A copy of a letter dated November 10, 2010, from Felicia N. Trujillo, regarding data from peer-reviewed published research on the effects of cell towers on residents nearby, entered for the record by Felicia Trujillo is incorporated herewith to these minutes as Exhibit "12."

A copy of the BioInitiative Report: A Rationale for a Biologically-based Public Exposure Standard for Electromagnetic Fields (ELF and RF), Release Date: August 31, 2007, with attached CD containing the Report; and a copy of a report from the European Environment Agency, regarding "EEA Radiation risk from every devices assessed, published September 17, 2007, entered for the record by Ron Danz, are incorporated herewith to these minutes as Exhibit "13" and Exhibit "14," respectively.

A picture drawn by Sally Blakemore, entered for the record by Sally Blakemore, is incorporated herewith to these minutes as Exhibit "15."

A copy of a Press Release dated May 29, 2009, #08/09-340, issued by the Los Angeles Unified School District, with a heading that Los Angeles Board of Education Members Vote to Prohibit Cell Phone Towers Near Schools, entered for the record by Sally Blakemore, is incorporated herewith to these minutes as Exhibit "16."

A copy of an excerpt from an article which Ms. Blakemore said is written by Abraham R. Liboff, PhD Research Professor, Center for Molecular Biology and Biotechnology, Florida Atlantic University, Boca Raton, Florida, entered for the record by Sally Blakemore, is incorporated herewith to these minutes as Exhibit "17."

A copy of an article from Electric Sense, dated September 20, 2010, regarding the dangers of passive radiation from the new Super Wi-Fi, is incorporated herewith to these minutes as Exhibit "18."

A copy of an article from Entrepreneur, dated Fall 2007, "The effect of distance to cell phone towers on house prices in Florida," submitted for the record by Mary Layne, is incorporated herewith to these minutes as Exhibit "19."

A copy of an article from the London Evening Standard, dated November 10, 2010, regarding "Orange to remove mobile mast from 'tower of doom,' where cancer rate has soared," entered for the record is incorporated herewith to these minutes as Exhibit "20."

A copy of a poem, "An Illiteracy of the Heart," submitted for the record by an unidentified individual, is incorporated herewith to these minutes as Exhibit "21."

**Dave McQuarie** said he is here to get an answer to his question: when are you going to put in a safe route for all pedestrians. He said a lot of pedestrians are using the street because there is no sidewalk. He said secondly, he never heard anything about the ADA grievance he filed. He said Mr. Lujan said he could not get assistance and didn't know how to proceed. He said this is a traffic matter and traffic people need to assist. He said Mr. Lujan is still not trained in terms of ADA. He said the City is required by state and federal law, and IBC, as owners of the road, to do something.

**Dr. Felicia Trujillo** said when there was a request to the Solana Center coop to put up a cell tower in the Center, 1,000 people signed petitions against this placement. She said when a cell tower is placed in an area there is four times the incidence of cancer. She said one of the cell towers is near the Public Housing near Baillo's, noting there are a lot of seniors and disabled living there, and they are first in line for the radiation from that tower. Ms. Trujillo presented information from peer-reviewed and published research on the effects of cell towers on residents nearby, done by Wolf & Wolf, which she said is irrefutable. Ms. Trujillo entered the research for the record [Exhibit "14"]. Please see Exhibit "14" for specifics of Ms. Trujillo's presentation.



**Ron Danz** said he is here to speak same subject as Felicia Trujillo. He said he has two reports to enter for the record, along with a disk containing one of the reports [Exhibit "16" and "17"]. He said one of the reports is from the European Environmental Agency which was issued September 17, 2007. This report is interesting to him as an engineer, because the EEA contributed to the BioInitiative Report in the same year. He said what they said case studies of public hazards are analyzed in the Late Lessons publication which is a publication of the EEA. They talk about 12 very late lessons which we have learned over the last 40-50 years, and we learned them too late – and these are big lessons. He said EMF is a late lesson and we need to learn from the past about lessons which are so expensive.

Mr. Danz read a portion of the BioInitiative Report on page 23 into the record as follows: "The Salzburg Resolution of 2000 set a target of 0.1  $\mu\text{W}/\text{cm}^2$  (or 0.614 V/m) for public exposure to pulsed radio-frequency. Since then, there are many credible anecdotal reports of unwellness and illness in the vicinity of wireless transmitters (wireless voice and data communication antennas) at lower levels. Effects include sleep disruption, impairment of memory and concentration, fatigue, headache, skin disorders, visual symptoms, nausea, loss of appetite tinnitus and cardiac problems. There are some credible articles from researchers reporting that cell tower level RF exposures (estimated to be between 0.01 and 0.5  $\mu\text{W}/\text{cm}^2$ ) which is 10 times less that what they are recommending, produce ill-effects in populations living up to several hundred meters from wireless antenna sites. This information now argues for thresholds or guidelines that are substantially below current FCC and ICNIPR standards for whole body exposure." Mr. Danz said it is a lengthy document which he will leave for the record. He urged the Governing Body to reconsider this carefully and think about what the EEA has to say in this report about late risks.

**Sally Blakemore** said she has lived in Bellamah for 21 years, and loves Santa Fe. She used the overhead projector to present her drawing about how Santa Fe will look in three-years if we don't stop the proliferation of cell towers. Ms. Blakemore entered her drawing for the record [Exhibit "15"].

Ms. Blakemore read from an article by Dr. Liboff of Boca Raton [Exhibit "18"] as follows. "The key point about electromagnetic pollution that the public ha to realize is that it is not necessary that the intensity be large for a biological interaction to occur. There is now considerable evidence that extremely weak signals can have physiological consequences. These interactive intensities are about 1000 times smaller than the threshold values formerly estimate by otherwise knowledgeable theoreticians, who, in their vainglorious approach to science, rejected all evidence to the contrary as inconsistent with their magnificent calculations. These faulty estimated thresholds are yet to be corrected by both regulators and the media. The overall problem with environmental electromagnetism is much deeper, not only of concern at power line frequencies, but also in the radio-frequency range encompassing mobile phones. Here the public's continuing exposure to electromagnetic radiation is largely connected to money. Indeed the tens of billions of dollars in sales one finds in the cell phone industry makes it mandatory to corporate leaders that they deny, in knee-jerk fashion, any indication of hazard." She said the need for these towers is because people are addicted to cell phones and are polluting our environment for a gadget that is not appropriate technology.

Ms. Blakemore said in 2009, the Los Angeles Unified School District issued a press release that no cell towers would be allowed near schools. She said they protected their children and asked if we don't like our children. Ms. Blakemore entered a copy of this press release for the record [Exhibit "16"].

**Rusty Storbeck** said he has lived in Santa Fe for 21 years, and he also lives in Bellamah. Mr. Storbeck read an article into the record regarding the effects of passive radiation from the new super Wi-Fi. Please see Exhibit "18" for the text of this article. He said this person goes on to say that glioma tumors, the same type which struck down Ted Kennedy, have been linked to electromagnetic radiation, as well as migraine headaches, early onset of senility, and such have been traced to electromagnetic radiation. Mr. Storbeck entered a copy of the article for the record [Exhibit "18"]. It is his hope that the Governing Body considers this seriously because the late consequences are the thing "we can't go back once the barn door is open."

**Mary Layne** said she is a realtor in Santa Fe. She said the website for whyfry.org is great. Ms. Layne submitted an article from Entrepreneur, dated Fall 2007, "The effect of distance to cell phone towers on house prices in Florida." She is concerned about health, but she is more concerned about money. She said the unsightliness of cell towers, the possibility of lowered property values is something in which we might be interested in the City Different, Santa Fe. She said let's not be interested in too many cell towers.

**Jane Julseth, 1120 Don Juan**, spoke about the collateral damage from the construction on the Alameda Middle school which is about ½ block from her home. She said she won't dwell on the after effects on the neighborhood, the traffic, the unsightly chain link fence. She is here to speak for the invisible. She was distressed with the conversion of a prairie dog town into a mega parking lot, although every effort was made to relocate the prairie dogs, and she is grateful for that, it broke her heart to see a lone prairie dog not relocated searching the destruction for its village and family. She began to see wildlife she hadn't seen before, a painfully thin fox crossing La Madeira, a falcon in her back yard which were victims of the construction, their source of sustenance, the prairie dogs, gone. She said one of her projects has been to catch the feral cats in the neighborhood and get them neutered, noting research has shown this is the only way to control the feral cat population. She is grateful for the spay/neuter center. She believes the feral cats now are being eaten by the starving fox.

Ms. Julseth said she mourns the loss of these animals. One of the most important things we can teach children is the respect for our wildlife and the environment – their future depends on it. She said the project at the school has done the opposite. It destroyed wildlife and contributed to global warming. She asked what message this sends to the children – that wildlife and the environment don't matter. She said if we don't understand this, future generations are doomed. She said 98% of the prairie dog habitat has been destroyed, and 85% of the Meadowlark population has disappeared since the 1950's. She asked the benefit of a parking lot to our children. She is a strong supporter of education. She has been asked to

contribute to the cost of the school which she refused. She would contribute to more teachers, more healthy food, and books for the children. She read recently that beavers and birds are getting in the way of the Airport, commenting we know who will lose, noting hundreds of prairie dogs have been poisoned at the Airport. She asked that the children take care of the prairie dogs that remain, and believes they will learn to love the environment through feeding and nurturing them. She asked the Governing Body to think of the impact of construction projects on the surrounding areas. She said we share space with the animals.

**Darwin Bond-Graham** said he lives in Albuquerque, but he came here this evening to say thanks for the Resolution in support of a new EIS for the CMRR nuclear facility at Los Alamos. He works for and is a board member of the Los Alamos Study Group, among which thousands are constituency. He a lot of people are here to thank you for this. He said this resolution is important because right now the federal government is violating the NEPA process and creating a situation where it is making bad decisions about what to do with our land, water, natural and socio-economic resources in Northern New Mexico. He said the point here is making good decisions. He said this Resolution is helping to achieve good government practices at the higher level.

**Peter Neils**, President of the Los Alamos Study Group, thanked the Council for passing the Resolution. He said the Group currently is suing the NNSA to compel them to comply with the national Act. He said this action, while some might regard as mild, was in fact very important and could be instrumental in the future.

Councilor Bushee noted this was a Joint Resolution with Santa Fe County cosponsored by Commissioner Holian and herself, and suggested the group also might want to talk to the County, although she is unsure whether it has been adopted by the County.

**Erich Kuerschner** said he sent an email to members of the Governing Body to explain their position up north. He said his position is to try to clarify the difference between an EIS and an EA. He wants to clear up the misconception that military dollars are economic development. He said the EIS which was done originally for Canon Air Force Base is that they are counting the incoming dollars as positive and benefits which is true for "anyone that receives a welfare payment. It's a benefit to the recipient, but to us, in Taos and the outlying regions, we don't get a benefit from that and in fact it's just the opposite. Every time somebody gets taken out of the workforce to engage in the military and does another military project, it puts an added burden on us." He said New Mexico used to be 34<sup>th</sup> in median income and now we are 46<sup>th</sup> which he believes is due to LANL. He wants everyone to understand what military spending does for communities like Taos, and puts an unfair burden on "us."

**William Malten** thanked the Council for adopting the Resolution on the CMRR. He said the history of this issue goes back to 1994 when the City Council adopted a Resolution supporting an EIS for LANL. In 2005, the City supported the compliance with the U.S. Non-Proliferation Nuclear Weapons Treaty, and 2006 the Council opposed expanded nuclear weapons activity, including plutonium pit production at LANL. He said the position of Santa Fe has been important. It is a good thing to ask for a full EIS study. He thanked the Governing Body for its courage and its Resolution.

**Candy Jones** thanked the City for the Resolution supporting a full EIS. She said the CMRR building project will have an impact on the outlying areas. She said it is disheartening that so few community members are aware that the CMRR building would be, essentially, a plutonium bomb factory – Rocky Flats II. She said we can look at Hanford and Golden as two places which are nuclear wastelands. There has been no positive track record on the production of plutonium. She said Golden, Colorado experienced more than 500 fires, 5 of which almost led to the explosion of Denver. She said the City and County cosponsored study of a water analysis regarding the BDD. She said that that study didn't include what this project would do to the water supply. She said we can talk about cell towers and prairie dogs, which are important, but regarding this issue, there potentially wouldn't be a Santa Fe. She suggested everyone google Hanford and Golden.

**Rosamond Evans** said she is a member of the Los Alamos Study Group Board. She came to New Mexico in 1974 to live in Santa Fe, but now lives in Albuquerque. She thanked the Governing Body for insisting on a full NEPA process and an EIS which is extremely important. She spoke about the CMRR project. In New Mexico, she has seen more and more militarization and destruction of our lives since she's lived here. The uranium mining in parts of New Mexico has had a terrible impact and believes continues to cause birth defects in the workers who participated. We are losing water and land to permanent destruction – it can't be farmed or used for growing food. If we don't pay attention and, for example do what you did tonight in insisting on a full EIS, she thinks New Mexico will be unlivable. She said this Council has passed important Resolutions previously against the Patriot Act, the War in Iraq and this training program which is preparation for the war in Iran, noting our terrain is most like Iran. She said this action helps the rest of the people in the State to have some hope.

**Astrid Webster** thanked Patti Bushee for her single vote against this issue, noting the vote was unanimous in Albuquerque. She said most people weren't conscious about what they were voting on. She said she sent two letters today. She works with young kids, many of which are traumatized. She grew up near Holloman Air Force Base, and that noise is nothing like the noise coming over her house at night. She said her nephew works on the Osprey and helped to develop them. She spoke about an accident she witnessed when a blade came off the Osprey, and she doesn't want them going over her house. She tried to see Congressman Udall, but keeps getting one of his staff persons, although she did see him in 2003 when she went to Washington. She gets headaches when she goes to Los Alamos, but

she goes anyway because this is such an important issue. She spoke about the survivors group from Hiroshima. She thanked Councilor Bushee for all the children. She displayed the t-shirt she was wearing on behalf of Gail Riba which had a peace symbol on it.

**Rhea Goodman** said this is the first time she has been to Santa Fe, and it took Los Alamos to bring her here. She is a radio producer of "Living Juicy," moving to Santa Fe in 1982, where people can live juicy because the air and water feel pure. She said Los Alamos is problematic but she kept it at bay, but she can no longer do that. She said the proposed \$6 million plutonium plant will impact our air, water and possibly the entire City. She isn't speaking from "cold hard facts," but from a "gut feeling." It is up to this Governing Body to keep Santa Fe from coming militarized, and the direction it's going is that it is going to "fall by the wayside, and the quality of life will continue to decrease substantially." She fears she will have to look for another place to live. She wants us to continue to think of ways to live with this which will stop the proliferation.

**Francine Lindberg, Taos, New Mexico**, said is here to commend the Governing Body for adopting the Resolution to require an EIS for the CMRRMF. She said despite our personal opinions for the facility itself, and all things to do with LANL nuclear weapons, she believes it is vital for our representatives to actively advocate for citizens so people are aware of the impact of the projects, especially one of this magnitude and cost. She said this will help as a precedence for other cities and counties, hoping that they will adopt similar legislation. She said thank you very much.

## **G. APPOINTMENTS**

A Memorandum dated November 9, 2010, to the City Council from Mayor David Coss, regarding appointments, is incorporated herewith to these minutes as Exhibit "22."

### **Public Safety Committee**

Mayor Coss made the following appointments to the Public Safety Committee:

Christopher M. Rivera – to fill unexpired term ending 03/2014; and  
Doug A. Nava – to fill unexpired term ending 03/2014.

**MOTION:** Councilor Trujillo moved, seconded by Councilor Chavez, to approve these appointments.

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

### **Audit Committee**

Mayor Coss made the following appointments to the Audit Committee:

Clark Crocker de Schweinitz – term ending 11/2012;  
Maurice A. Lierz – term ending 11/2013;  
Deborah A. Moll, Esq., Chair – term ending 11/2013;  
Randy Randall – term ending 11/2012; and  
Hazeldine Romero Gonzales – term ending 3/2013.

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

**DISCUSSION:** Councilor Bushee asked if there is a requirement that the members of the Committee must reside in the City.

Ms. Vigil said the members are required to live within the State of New Mexico.

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

### **Buckman Direct Diversion Board**

Mayor Coss made the following appointment to the Buckman Direct Diversion Board:

Mayor Coss, Alternate

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

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

## **H. PUBLIC HEARINGS**

- 1) **CONSIDERATION OF BILL NO. 2010-33; ADOPTION OF ORDINANCE NO. 2010-26. AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF SANTA FE, NEW MEXICO GROSS RECEIPTS TAX REVENUE REFUNDING BONDS, SERIES 2010B IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$27,500,000, FOR THE PURPOSE OF PROVIDING FUNDS FOR (I) PREPAYING AND DISCHARGING THREE NEW MEXICO FINANCE AUTHORITY LOANS FOR THE SANTA FE RAILYARD PROJECT AND A PARKING STRUCTURE, AND (II) PAYING THE COSTS OF**

**ISSUANCE OF THE BONDS; PROVIDING THAT THE BONDS WILL BE PAYABLE AND COLLECTIBLE FROM CERTAIN GROSS RECEIPTS TAX REVENUES DISTRIBUTED TO THE CITY; ESTABLISHING THE TERMS, FORM AND DETAILS OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT, AN OFFICIAL STATEMENT AND A CONTINUING DISCLOSURE UNDERTAKING IN CONNECTION WITH THE BONDS; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION WITH THE BONDS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND RELATED MATTERS. (KATHRYN RAVELING)**

*Items H(1) and H(2), were combined for purpose of presentation, discussion, but were voted upon separately.*

A copy of the bond book for the \$15,005,000 Gross Receipts Tax Refunding Revenue Bonds, Series 2010A and \$10,490,000 Subordinate Lien Gross Receipts Tax Refunding Revenue Bonds, Series 2010B, prepared by First Southwest, dated November 10, 2010, is incorporated herewith to these minutes as Exhibit "23."

The staff report was given by Kathryn Raveling, noting this is one good thing we were able to do and show some savings. Ms. Raveling reviewed the information in Exhibit "23." Please see Exhibit "23" for specifics of this presentation.

Councilor Bushee asked what the \$704,000 mean for savings annually, and does she know how it will be applied if the Council approves this request.

Ms. Raveling said the savings for this fiscal year is \$209,000. She said we are anticipating a shortfall in the ½% GRT, so this will help to cover that projected shortfall of \$1.5 million.

### **Public Hearing**

There was no one speaking for or against this request.

### **The Public Hearing was closed**

**MOTION:** Councilor Bushee moved, seconded by Councilor Calvert, to adopt Ordinance No. 2010-26

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

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

**Against:** None.

- 2) **CONSIDERATION OF BILL NO. 2010-34; ADOPTION OF ORDINANCE NO. 2010-27 AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF SANTA FE, NEW MEXICO GROSS RECEIPTS TAX REVENUE REFUNDING BONDS, SERIES 2010A, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$16,500,000 FOR THE PURPOSE OF PROVIDING FUNDING FOR (I) REFUNDING THE CITY OF SANTA FE GROSS RECEIPTS TAX REVENUE BONDS, SERIES 2002 THAT MATURE ON AND AFTER JUNE 1, 2013, AND (II) PAYING THE COSTS OF ISSUANCE OF THE BONDS; PROVIDING THAT THE BONDS WILL BE PAYABLE AND COLLECTIBLE FROM CERTAIN GROSS RECEIPTS TAX REVENUES DISTRIBUTED TO THE CITY; ESTABLISHING THE TERMS, FORM AND DETAILS OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT, AN OFFICIAL STATEMENT AND A CONTINUING DISCLOSURE UNDERTAKING IN CONNECTION WITH THE BONDS; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION WITH THE BONDS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND RELATED MATTERS. (KATHRYN RAVELING)**

**Public Hearing**

There was no one speaking for or against this request.

**The Public Hearing was closed**

**MOTION:** Councilor Wurzbarger moved, seconded by Councilor Calvert, to adopt Ordinance No. 2010-27.

**DISCUSSION:** Councilor Bushee asked how the savings will be applied, and Ms. Raveling said in the same manner as those in H(1).

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

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

**Against:** None.

- 3) **CONSIDERATION OF BILL NO. 2010-231; ADOPTION OF ORDINANCE NO. 2010-28 (MAYOR COSS). AN ORDINANCE REPEALING SECTION 1-3.5 SFCC 1987, REGARDING THE DESTRUCTION OF ARREST RECORDS. (JUDGE ANN YALMAN)**

The staff report was presented by Judge Ann Yalman.



### **Public Hearing**

There was no one speaking for or against this request.

### **The Public Hearing was closed**

**MOTION:** Councilor Bushee moved, seconded by Councilor Romero, to adopt Ordinance No. 2010-28.

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

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

**Against:** None.

- 4) **CONSIDERATION OF BILL NO. 2010-32; ADOPTION OF ORDINANCE NO. 2010-\_\_\_\_ (COUNCILOR ORTIZ AND COUNCILOR TRUJILLO). AN ORDINANCE AMENDING VARIOUS SECTIONS OF CHAPTER 14 SFCC 1987 LAND DEVELOPMENT CODE RELATED TO APPEALS. (MATTHEW O'REILLY)**
  - a) **CONSIDERATION OF RESOLUTION NO. 2010-\_\_\_\_ (COUNCILOR ORTIZ AND COUNCILOR TRUJILLO). A RESOLUTION ADOPTING ADMINISTRATIVE PROCEDURES RELATED TO APPEALS OF LAND USE DECISIONS. (MATTHEW O'REILLY)**

The staff report was presented by Matthew O'Reilly, Land Use Department Director, noting the proposed amendments are in the Council packet.

Councilor Calvert said he spoke with Mr. O'Reilly earlier. He said we are considering changing the time for appeal to 15 days. He said if there is concern with the length of the process, a more meaningful process would be to expedite the turnaround of the minutes for quasi-judicial City boards and commission for the preparation of the Findings of Fact and Conclusions of Law. He asked how much that would cost, and the source of the funds to do this.

Mr. O'Reilly said he researched this possibility this afternoon, and the City estimates an additional cost of only \$5,000 to expedite the minutes to a five-day turnaround. He said it is felt these funds would be available in savings from the deletion of a hearing examiner, so it would be budget neutral.

Councilor Calvert said the expediting of minutes is not a part of the proposition before the Commission this evening, and direction to staff to add this to the recommendations should be part of any motion.

Councilor Calvert noted that item has had only one public hearing which was at the Planning Commission.

Mr. O'Reilly said this is correct, noting that it was discussed at the Public Works and Finance Committees.

Councilor Calvert asked Mr. O'Reilly to review each bullet item and give a brief rationale on the changes proposed.

Mr. O'Reilly said he will ask Jeanne Price to help.

Mr. O'Reilly reviewed the bullet points on ages 1 and 2 of the staff Memorandum in Exhibit "24," as follows.

1. *Authorizing the Governing Body to accept a land use board's findings and conclusions and not hear an appeal or to conduct a hearing on the record or de novo (beginning on [page 1, line 24]).*

Ms. Price said on page 1, line 24 of the bill is where we start this. She said it was revised to coordinate with the repeal of the hearing examiner process. It returns the decision to the Governing Body to decide on appeals from a land use board. It first comes to the Governing Body as Findings of Fact to accept or not. The Governing Body can decide whether to have a hearing on the record or a hearing *de novo*, or it would go to District Court if the Council decided not to hear the appeal.

Councilor Calvert said there was a recent case where our only option was to accept the Findings of Fact and Conclusion of Law in total along with the decision. He supported the decision, but found fault with some of the Findings of Fact and Conclusion of Law. He would like to see some leeway on the Council's part in doing that, and he doesn't see that explicitly.

Ms. Kelley said the hearing on the record would give you the right to review the record and conform the findings if you felt so. Currently, when the hearing examiner hears the case and makes the Findings and you do not, the hearing examiner's findings cannot be changed because he heard the evidence. She said if you have the right to review the record, the Council could reconsider the Findings and make its own based on the record, or you could hear the matter afresh.

2. *Making final actions of the Summary Committee appealable to the Governing Body rather than the Planning Commission (page 2, line 16; page 3 line 8).*

Mr. O'Reilly said the Ordinance, as currently written does not make it clear how decisions of the Summary Committee are to be handled if they are appealed. He said they didn't feel it was appropriate for the Planning Commission to hear appeals from the Summary Committee, because the Summary Committee is composed of Planning Commissioners, so the appeals from the Summary Committee will be heard by the Governing Body.

3. *Making the Appellant responsible for sending notice of the appeal hearing (beginning on page 5, line 25).*

Mr. O'Reilly said this is clarifying language and puts the burden for mailing notice on the Appellant.

4. *Modifying to whom notice of the appeal is given (beginning on page 6, line 25).*

Mr. O'Reilly said there were redundancies in the current ordinance, and the proposed changes clarify what is appealable to make it clear what can and cannot be appealed.

5. *Clarifying what is appealable (beginning on page 7, line 19, page 8, line 5).*

Mr. O'Reilly said there were redundancies in the current ordinance, and the proposed changes clarify what is appealable to make it clear what can and cannot be appealed.

6. *Modifying reasons for appeal (beginning on page 8, line 15).*

There was no discussion under this item by the City Council.

7. *Modifying standing for appeal (beginning on page 9, line 3).*

Ms. Brennan said there were a lot of categories for standing that we could collapse into a single category. For example, the new No. 2 allows us to eliminate persons who own a property interest within 200 feet and neighborhood associations. So rather than reducing standing dramatically, we have encompassed 2-3 categories into a single category. She said any aggrieved person is defined at the end of the Ordinance on page 25, as follows: " A Person who has a personal or pecuniary interest or property right adversely affected by the decision being appealed. The person's interest must be an immediate, pecuniary and substantial consequence of the decision and not merely nominal or remote."

Councilor Calvert said then you're not reducing the standard for standing, you just changed it and consolidated it into fewer headings, and Mr. O'Reilly said this is correct.

8. *Changing time for appeal from 30 days to 15 days (page 10, line 12)*

Mr. O'Reilly said there are several reasons for this change, but perhaps the most important one is that we were finding, for certain simple decisions by the H-Board, it was taking 30 days to get Findings of Fact, and it was at that point the appeal window would start. It would then be another 30 days before a permit could be issued for an H-Board decision. He said this meant that people to went before the H-Board, for example for a pitched roof, were sometimes waiting 60 days before permit could be issued to do something that simple.

Mr. O'Reilly said the change in turnround for the minutes of quasi judiciary City boards and commissions, as well as the change from 15 to 30 days will speed this process quite a bit.

Councilor Calvert said the 15 days would begin when the Findings of Fact and Conclusions of Law are accepted and approved.

Mr. O'Reilly said this is correct. He said staff believes the net result would result in a delay of 30 days instead of 60 days. He said when the Planning Commission first considered this in 2009, the City's consultant testified that in his research the 15 day window was what he found to be most common.

Councilor Calvert said there is 15 days from acceptance of the Findings of Fact, but they have a fairly good idea when the case is heard what the decision is. He understands people wanted time based on those Findings of Fact being accepted, but there is a good preview unless they are accepted. He said the net effect is that they have about 30 days to assess the appeal.

Mr. O'Reilly said what they've seen in the appeals which have been filed since this law has been in effect, is that everyone who has filed an appeal was present at the hearing when the decisions were made, noting sometimes there were multiple hearings, so there was great knowledge of the case beforehand.

Councilor Bushee asked how many people an appellant has to notify and what does it cost the City to send out a notice.

Mr. O'Reilly said a notice has to be sent to everyone who normally is required to be sent a notice for any Land Use Hearing, within 200 feet and all neighborhood associations within 200 feet.

Councilor Bushee asked the cost for an average appeal, noting Mr. O'Reilly made a reference to our cheap cost to appeal, so she's looking to see what actually is added as a burden with these changes.

Mr. O'Reilly said we're not adding any burden any more than is on anyone else, but right now, mailings are sent by first class mail at 44¢ each.

Councilor Bushee reiterated that Mr. O'Reilly said it is cheap to appeal, and asked him the cost to do the mailing of the notice, and asked if advertising in the newspaper is required.

Mr. O'Reilly said it requires a mailing to, for example 100 people, which would be \$44. He said a newspaper ad runs about \$50, so there is \$100 for these, plus the \$100 fee to the City.

Councilor Bushee said then the \$100 cost to appeal is now doubled, approximately.

Councilor Bushee said she was surprised Mr. O'Reilly said there was a rush on appeals, and he implied people were doing this for more nefarious reasons. She said there's "not been a fire sale on appeals, it hasn't gotten cheaper. You made a subjective comment and I'm trying to turn it into a more objective understanding here." She said Mr. O'Reilly said 7 new appeals have been filed. She asked Mr. O'Reilly to explain why it seems there has been a run on appeals.

Mr. O'Reilly said 7 appeals have been filed in the first quarter of this fiscal year, two in writing and one orally. He said Land Use staff has been told by appellants that they were intending to do this to drag this out as long as possible, noting one appellant said so in writing. He believes people have taken advantage of this because it's relatively inexpensive, and most of the appellants so far have been attorneys or have had attorneys representing them. He thinks they like the idea that they can go before a hearing examiner who is an attorney, so it's very similar to going before a judge, which is different from how things used to be before these changes were put in place when the appellants would have to, potentially, come before this Governing Body. He said because it adds an additional step and is relatively inexpensive, people have been availing themselves of that. He said they have been following our ordinance and filing appeals.

Councilor Bushee said then you are suggesting that eliminating the hearing officer would reduce the number of appeals, noting a hearing examiner is one of the recommendations.

Mr. O'Reilly said yes, he does believe it will reduce appeals which are appealed simply because they can be and because they cause a delay. He said those who have legitimate appeals and strongly follow those appeals will follow it all the way to the City Council. He reiterated that on 3 occasions, one verbally and two in writing, it was indicated that people were doing this to extend the appeal out as far as possibly, ostensibly, to hurt their neighbor.

Councilor Bushee understands, and asked if this is the same rationale for taking appeals away from the Planning Commission.

Mr. O'Reilly said the appeals won't be taken from the Planning Commission. The Ordinance makes more clear what goes to the Planning Commission on appeal, and what doesn't.

9. *Removing contents of appeal (beginning on page 11, line 18) – this is now included in separate administrative procedures.*

Mr. O'Reilly said this has been moved to the administrative procedures.

Councilor Calvert asked if this changed, or if it simply was moved to the administrative procedures.

Mr. O'Reilly would like Kelly Brennan to address what might have changed in the content, but believes it was just made more clear. It was felt it might be easier to change later, if staff felt it was necessary to do so, if it was in the administrative procedures.

Councilor Calvert said then this is now included in separate administrative procedures;

Mr. O'Reilly said this is correct.

Councilor Calvert asked if we changed anything by doing this.

Ms. Kelley said she drafted the administrative procedures for the prior ordinance, and the current version which had not been adopted. She realized part of the way through that we were going to propose revisions to the Ordinance. She said some of the procedures are from the Ordinance and others are just common sense steps that needed to be filled in. She said she doesn't believe we reduced anything.

10. *Eliminating the poverty exemption for the appeal fee (beginning on page 12, line 22).*

Mr. O'Reilly said this seemed to be superfluous, although it may seem a little mean spirited the way its in there, to file an appeal at a cost of \$100. He said it costs the City many thousands of dollars for an appeal, and there didn't seem to be a need for a poverty exemption when the appeal fee was only \$100.

11. *Referring the appeal to the City Attorney for final disposition if appeal does not conform to appeal requirements (beginning on page 14, line 22).*

Mr. O'Reilly said this was an issue of some concern, because the Ordinance as currently written, requires the Land Use Director to review the appeal submitted and must pass on, and schedule a hearing, if it is valid on its face. He said we have seen we have received some appeals where there really didn't seem to be a really good basis for appealing. He said there are a number of reasons for that. One of which is, because it is so expensive to file an appeal, and there is an additional avenue to go to a hearing examiner, we've seen an increase in the number of appeals. He said 7 appeals were filed in the first quarter of this year. He said if staff felt someone was filing an appeal for a purpose simply to delay, or

some other reason, staff would like to have the opportunity to ask the City Attorney to look at the appeal and determine if the basis of the appeal was valid.

Councilor Calvert said currently, if the appeal is correct as to form, it has to be accepted. However, this would now allow the City Attorney to review it as to form as well as to the validity of the grounds for appeal – if it is a legitimate appeal. He asked Mr. Zamora to comment as to whether or not this is correct, and to speak to any problems of that being done administratively.

Mr. Zamora said the context is just qualifying an appeal. Oftentimes, there is a limited scope of what can be appealed, and people tend to fall outside that process. He said administratively deciding whether it falls outside the ordinance is a valid thing for the City Attorney's Office to do, otherwise you risk all of these improper appeals proceeding through and closing up the process, so you do need an administrative procedure to thin that out.

Ms. Brennan said, responding to Councilor Calvert's request for a situation where this would happen, there was an threat of an appeal on a matter where there had been a court decision demonstrating that the person had no interest in the easement. This is one case where the City Attorney might determine that there is no basis for appeal. She said we have a number of ADA claims on appeal coming up before the Board of Adjustment, but the Board of Adjustment does not have jurisdiction to hear those claims and that would be another reason for rejecting an appeal.

Councilor Calvert asked if people have recourse to the administrative decision.

Ms. Brennan said she believes he means whether somebody can appeal an administrative decision, and the answer is yes, the appeal goes directly to the Court in that circumstance.

12. *Eliminating mediation (beginning on page 16, line 23)*

Mr. O'Reilly said the way the current ordinance is written it implies the City is to pay for the mediation. He said under the proposed Ordinance, it is possible for parties to enter into mediation on their own if they want to do so, noting a recent case at the Planning Commission where a case was postponed to allow the parties time to mediate. He said as written, the Ordinance provides that the Land Use Director needs to refer it to mediation and implies the City would have to pay for that.

Councilor Calvert said then you're saying we are eliminating the City's role in the mediation process.

13. *Establishing administrative procedures upon adoption of the Governing Body (page 20, line 4).*

Councilor Calvert said he believes this was requested under the previous revision and the reason it is being brought forward at this time.

Mr. O'Reilly said he would point out, on page 39 of the packet, Item V(A) lists the things the Land Use Director and then the City Attorney are to look at in determining whether an appeal is valid.

14. *Moving details of the public hearing process to administrative procedures (beginning on page 20, line 15; and beginning on page 22, line 2).*

Councilor Bushee asked what is meant by moving details of the public hearing process to administrative procedures.

Mr. O'Reilly said the idea is to put things in administrative procedures which might need to be slightly modified as we move forward. This is very similar to the Water Ordinance where we have separate administrative procedures. The administrative procedures in the packet outline the steps to be followed to file an appeal, as well as the procedures boards and committees use in hearing an appeal.

15. *Allowing the discussion of an appeal in executive session subject to the Open Meetings Act (page 21, line 17)*

Councilor Bushee asked if this currently is not allowed.

Mr. Zamora said, under certain circumstances, discussions relating to the determination of administrative procedures are allowed under the Open Meetings Act in executive session. He said types of administrative hearings are allowed to be deliberated in executive session.

Councilor Bushee asked the reason this change was necessary.

Ms. Brennan said it wasn't in the prior ordinance, but it is in the ordinance now to reflect that it is available for boards and commissions.

16. *Eliminating the hearing officer (beginning on page 24, line 1)*

Mr. O'Reilly said we've talked about some of the reasons this was recommended, but we haven't discussed the financial impacts, noting there is an FIR in the packet which projects some of the estimated savings from the City not having to hire and pay for a hearing officer. He said there are updated figures from invoices from the hearing examiner. He said the estimate for \$2,500 for the hearing examiner and



\$300 respectively for an appeal is somewhat less, noting the appeal is coming in at about \$2,000 for the hearing examiner, but a little more for the stenographers. He said with those calculations, he is projecting a savings of \$85,000 to \$86,000 over the next two years with the elimination of the hearing examiner.

## **Public Hearing**

### **Speaking to the request**

Mayor Coss gave each person 5 minutes to speak to the request.

**Fred Rowe, President, Neighborhood Law Center.** He said Councilor Calvert said there has been only one public hearing on this Ordinance which was before the Planning Commission in September. He said the only members of the public that spoke at that meeting was Marilyn Bayne and himself. He said Ms. Bayne couldn't be here this evening because of conflict of the meeting being cosponsored by the Neighborhood Network.

Mr. Rowe said the points made at the September hearing were that this is a very complex, new ordinance which deserves careful review and study. He said they did not have the opportunity prior to that meeting to conduct that study, and he takes full responsibility for not reading the packet fully before the Planning Commission public hearing.

Mr. Rowe said last year when this Ordinance came before the City Council, "we" had worked at length with City staff, and had collaborated for a better Ordinance before the Council. He said there was no such opportunity this year, despite repeated requests for meetings with staff, and we had no meetings. He has utmost respect for staff as well as their acumen, but they never got together on the Ordinance.

Mr. Rowe said "we" respectfully request a postponement of this Ordinance, noting it is 26 pages single spaced, with 9 pages of administrative procedures attached. It is 35 pages of fine, legalistic print of extreme importance for the purpose of who may appeal to the Council, what kinds of appeals the Council may hear and whether or not lawyers are needed for neighbors to appeal. He has several proposed amendments which he hopes aren't put before the Council this evening.

Mr. Rowe said he has several examples where "we" must differ with staff. He said the first is the criteria of appeal which have been relaxed. There said there is a new definition on page 26 of the ordinance which significantly tightens the requirements for people to appeal, which provides, "...The person's interest must be an immediate, pecuniary and substantial consequence of the decision and not merely nominal or remote." He said this is new language which conflicts with governing New Mexico case law and would exclude a neighbor living 1,500 ft. away which complains that a Planning Commission decision would increase noise, dirt, trash and traffic in the area, which he believes is self evident from the definition. He said this is what the Court of Appeals decided was sufficient to incur standing on a neighbor to file an appeal in Ramirez v. City of Santa Fe.

Mr. Rowe said the second example is the procedural set of requirements before you, which requires that a person not only needs to allege that the decision below was erroneous, but must state that the decision below was arbitrary and capricious, which is a higher standard and a higher requirement. He would think both of these requirements, now in the text of the proposed Ordinance and procedures, would require a neighbor to hire a lawyer to explain this, are wrong and Ramirez controls. He said no neighbor realistically can, or should be required to, hire a lawyer in order to present an appeal to this body. He would think this body would like to hear genuine appeals in neighborhoods.

Mr. Rowe said, in addition, the new ordinance, unlike the previous Ordinance, gives the City Attorney the last word to dismiss an appeal, with the explanation by staff that the Council shouldn't be bothered. He said the fact is that State statute requires that appeals from administrative decisions, such as the City Attorney's final decision to veto an appeal, must go before the City Council. He said there is a conflict with the governing case law as well as the governing statutory law. He can understand that the Council, for budgetary reasons, may have had its fill of hearing examiners and has no budget for mediators. Mr. Rowe said he is not here to say the Council should determine otherwise. However, he would state, it is his professional opinion, in good faith, that there are substantial problems in the text of the Ordinance which are new and which should be carefully considered. He said hopefully they can iron these out with staff and come back with a better ordinance.

Mr. Rowe said there was much discussion in the Council Study session last night about the need for a matrix. He would like to see such a matrix to be prepared for this Ordinance which sets out the changes and how the changes improve what was there before, commenting the Council should want this for an Ordinance of this importance. He believes they can work with staff to develop such a matrix, so there is something in writing to avoid staff standing here and trying to explain these complex issues.

**Greg Heltman** said he has a chance to look at the proposed Ordinance, but he hasn't seen the Memo to which everyone is referencing. He doesn't have a legal background, but he does have concerns. He is concerned about Section 1 which provides that a decision of the Summary Committee could be taken in the form of Findings of Fact and Conclusions of Law directly to the Governing Body, and the Governing Body could accept those without the right of a public hearing for the appellant, commenting that he finds that disturbing. He believes the right to appeal decisions made by an administrative body to the elected Governing Body through a public hearing, fosters transparency in our government. He said the proposed process allows the City Council to make summary disposition of an administrative decision which truncates the due process rights of Santa Feans. He said such summary dispositions of appeals will burden further the District Court and the City Attorney in defending such actions. At the very least, please provide the right to petition the Governing Body for a reconsideration of a summary disposition, similar to the rules which prevail currently at the Appellate Court as well as the State Supreme Court.

Mr. Heltman said in Section 3 of the proposed ordinance, 15 days is insufficient for preparing an appeal, especially under the provisions of the ordinance and the muster it must now pass. If an appellant must go from a Summary Committee decision directly to the Governing Body, 15 days is insufficient to

prepare an appeal with the requisite evidence, obtain recordings of the meeting, meeting minutes, prepare references to the record, collect possible affidavits and such. He said, given the authority in the Ordinance for summary disposition by the Governing Body, this means the appellant receives only one public hearing at the Summary Committee level before they must go to Court and start incurring further expense.

Mr. Heltman believes there is insufficient time for the Planning Department to give the form of notice, before the time to file an appeal has expired. He reiterated that 15 days is insufficient.

Mr. Heltman said the language makes no allowance for holidays, first class mailings and such. He agrees with Mr. Rowe that the Ordinance needs to be tabled for further work, and to look at the context vis a vis State and federal law, and the concerns he shared this evening. He believes 30 days is the minimum time necessary to go through the process.

Mr. Heltman would like to see language that the Ordinance will be reviewed by "the standard of plain language as a way to avoid administrative gloss."

**Peter Dwyer, 632 Camino de la Luz**, said he has worked extensively with Mr. Rowe on the Board of the Law Center, although he is speaking tonight in his own capacity, noting the Board has no formal position on the Ordinance. He reviewed the previous draft Ordinance, the administrative procedures, and the Board reviewed the Ordinance, noting there was an email string between a number of the Board which are all attorneys – Nancy Long, Daniel Yolahem, Fred Rowe, Anita Miller and himself. They looked at the current Ordinance very carefully when it was adopted and it is now about to be changed. They would encourage the Governing Body to postpone approval until they have had a similar opportunity to make a second round of comments on the changes. He will not go into detail on the changes of particular concern to him or the other members, commenting that best can be done in writing through staff. He said they believe they could add value while still obtaining staffs' objectives. He understands the staff wants this to be more economical, more efficient in terms of process, and such, and believes there are laudable goals which can be achieved. They have recommendations about how those things could be done differently along with language changes. They would volunteer their time as lawyers to go through the draft and comment, noting he is doing the same thing for the City of Espanola with Cyrus Samii under contract, so it's the kind of work he does and gets paid for doing. He urged the Governing Body to postpone the existing bill so they can submit detailed written comment, reiterating he thinks, working together, we can develop something which achieves the same goals with less impact.

**Stefanie Beninato** said she could reiterate what has been said, and she agrees the Governing Body needs to postpone approval, allow more public input and changes which will bring the Ordinance into compliance with federal and state law and case law. She said Mr. Rowe mentioned Ramirez v. City of Santa Fe, which gives people standing to discuss larger issues, noting it is based on the U.S. Supreme Court case, Sierra Club v. Martin, so the City would immediately have constitutional problems. She supports the second person's comments about due process. She said the idea that you can "blow off" a

hearing and appeal because it came from an administrative committee, or the hearing officer, and just adopt the Findings of Fact from the Hearing Officer and not allow the appellants to come forward and say what happened in the process, is not correct, and the City Council should really review this Ordinance. She said Findings of Fact and Conclusions of Law often are very different that what actually happens within the hearing itself. You often have to wait for the City Attorney to "save everyone's butts." She said the amount of time is too short. She spoke about a recent experience with a hearing examiner. She said it is the Governing Body's responsibility to act in a quasi-judicial manner and to vote not to hear an appeal she believes violates your constitutional duty. She urged the Council to work with the Neighborhood Law Center and other interested parties and allow more input on this Ordinance.

**Jim Harrington, State Chair of Common Cause**, said he is speaking on behalf of Common Cause, and will be reading a statement on behalf of Marilyn Bayne who couldn't attend this evening. He said he just looked at the draft, and hasn't had a chance to examine it in depth because he was preparing for the other hearing last night. He said he has looked at the draft enough to see that there are issues about which his organization is concerned in protecting public participation in the government process. He said they are concerned about shortening the appeal period and narrowing the standing for appeal, allowing final dismissal of appeals by staff without a hearing, eliminating the poverty exemption, commenting perhaps their concerns might be allayed if they could meet with staff and have the time to look at everything. He asked for a postponement of approval of the Ordinance, noting he has heard no great urgency in getting it adopted this evening.

**Jim Harrington read a statement on behalf of Marilyn Bayne of the Neighborhood Network**, "The Board of the Neighborhood Network asks the Governing Body to please postpone voting on the revised Appeals Ordinance this evening. The Network and several neighborhood associations are concerned there is information only recently available which we've not had the chance to review. The appeals process is a very important issue potentially affecting every neighborhood association as well as our own non-profit organization. We would much appreciate your consideration of our request to postpone."

### **The Public Hearing was closed**

Councilor Bushee said she would like to ask for a postponement of a few months on this ordinance.

**MOTION:** Councilor Bushee moved, seconded by Councilor Romero, to postpone consideration of this ordinance for three months.

**DISCUSSION:** Councilor Bushee said it is important that the concepts in this Ordinance be considered as carefully as our consideration of the ethics ordinance. She is sure the goals of efficiency, cost savings and streamlining are laudable goals in these times for local government, but never at the expense of the good government ideals of due process and transparency, or eliminating access to democracy. She believes if

we take time to do a matrix review and air it more thoroughly before it is considered again by the Council, we will come up with a much better product.

Councilor Trujillo asked Mr. O'Reilly what happens if we postpone this Ordinance – what is the effect.

Mr. O'Reilly said there are several things which will happen if the Ordinance is postponed. He said the City's budget for the hearing examiner will be exceeded in short order. Secondly, we will continue to have people waiting 60 days or longer to be allowed to proceed with simple permits, such as in the case of a simple roof repair which has to go to the H-Board with winter coming on. It isn't good to tell them they have to wait two months or more to fix their roof in the winter. We will continue to see an increase in the number of appeals.

**AMENDED MOTION:** Councilor Bushee moved, seconded by Councilor Chavez, to postpone approval for one month to the next meeting, December 8, 2010, in the hope that the work can be done by that time.

**DISCUSSION:** Councilor Chavez said if we give it a month and it's not enough, then we will have to give it another month, and said he hopes that staff can find ways around some of the dilemmas that staff is experiencing, because he is unsure that patching the ordinance right now will fix all of that. He would support a postponement for one month instead of three for the purposes stated earlier.

Mr. O'Reilly said, since this is the time period, staff would like people to submit their comment and review in writing as soon as possible.

Councilor Bushee said, "Actually I would ask, if further direction is given, that you would actually work in tandem, in person, in a small group of staff and those who have committed to volunteer their time and really just 'knock this thing out'... and have a dialogue. If you take the time to do this back and forth in writing it will end up in the lawyer's department holding things up. I would just ask that a small little group of people, given the urgency that you've just stated, Matt, that you really knock this out."

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

**For:** Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Romero and Councilor Wurzburger.

**Against:** Councilor Dominguez, Councilor Trujillo.

**Explaining her vote:** Councilor Wurzburger said I vote yes, but would just state that it might be useful to write some of these ideas down for the first face-to-face meeting, because it would be helpful to come in with our respective points of concerns and possible solutions as the base for these conversations.

**Explaining her vote:** Councilor Bushee said yes, and said will be no dearth of written word or verbal comment

**Explaining his vote:** Councilor Calvert voted yes and said he echos Councilor Wurzburger's direction that everybody get as much prepared as possible in advance of the first meeting so you can get a running start and don't spend the first meeting discussing ground rules or something.

**Explaining his vote:** Councilor Chavez voted yes, but said even though there is a dearth of attorneys he wants the language to be easy for people to understand – language the lay person can understand.

**Explaining vote:** Councilor Dominguez said he echos Councilor Wurzburger's remarks, but he is going to vote no because of the fact there are so many lawyers involved, which makes him even more weary of this.

**Explaining his vote:** Councilor Trujillo voted no, and said he hopes we don't exceed the budget, and when our constituents call you can explain why they can't get their fence done.

5. **CONSIDERATION OF RESOLUTION NO. 2010-94. CASE #2010-87. PADILLA CENTER GENERAL PLAN AMENDMENT. DESIGN ENGINEITY, AGENT FOR NINO PADILLA, REQUESTS APPROVAL OF A GENERAL PLAN FUTURE LAND USE MAP AMENDMENT TO CHANGE THE DESIGNATION OF 2.873± ACRES OF LAND FROM OFFICE TO NEIGHBORHOOD CENTER BETWEEN CAMINO TIERRA REAL AND THOMAS ROAD, ON THE NORTH SIDE OF AIRPORT ROAD LOCATED WITHIN THE PRESUMPTIVE CITY LIMITS AND WITHIN PHASE 2 OF THE CITY-INITIATED ANNEXATION. (DONNA WYNANT)**

*Items H(5) and H(6) were combined for purposes of presentation, public hearing and discussion, but were voted upon separately.*

A Memorandum prepared October 29, 2010, for the City Council meeting of November 10, 2010, with attachments, to the City Council, from Donna Wynant, Senior Planner, Current Planning Division, regarding Case #2010-87 and Case #2010-76, is incorporated herewith to these minutes as Exhibit "24."

The staff report was presented by Donna Wynant. See Exhibit "24," for specifics of this presentation. Ms. Wynant said, in addition to the conditions of approval on page 26 of the packet, staff would like to recommend an additional condition that the Applicant give additional easement as necessary to accommodate what was designed with all the revisions to the Final Subdivision Plat, a meandering sidewalk as portrayed on the phasing plan, Sheet 5 of the packet.

### **Public Hearing**

### **Presentation by the Applicant**

**Guerrerortiz Oralynn, Design Enguinity, agent for the applicant, was sworn.** Ms. Guerrierortiz introduced Nino and Nancy Padilla, the property owners, and their broker. She said also in attendance are representatives of the Hutton family who will be developing the Family Dollar Store. Ms. Guerrierortiz demonstrated the subject site using an enlarged aerial view and site drawings. She said the property originally was zoned C-1 for office as one big parcel. The request is to modify 1/3 of the property into C--2 to allow retail. They are requesting a partial rezoning of the western third and a general plan amendment. She said on the 1/3 being rezoned, one acre lot will be for the Family Dollar Store and then there will be a one acre lot which will be available and marketed, hopefully for some other neighborhood services.

Ms. Guerrierortiz said the City will be closing Camino Tierra and Thomas Road to prevent left turns out because of some traffic problems on Airport Road, and those will be part of the median improvements which will occur next summer. She said the applicant will be installing deceleration lanes to get into the project in three locations: one into the C-1 lot, one into Camino Tierra Real and one into Thomas Road. The applicant will be replacing most of the existing sidewalk and installing a meandering sidewalk. Along Camino Tierra Real, the sidewalk will be behind the trees which are already there, and along Airport Road will be moving in and out of a 20 foot distance. She said "along here" we will be installing a bunch of shade trees and sheltering trees. She said the public expressed concern about walking along Airport Road, and feel insecure in doing that. She said they are trying to do a mixed use development with neighborhood services which will be used by people in the immediate neighborhood. She said it is an infill project, so no serious infrastructure will be going in.

Ms. Guerrierortiz said the Plan does meet the requirements of the Southwest Santa Fe Community Area Master Plan, and is very consistent with that. She said in general, they will be focusing on pedestrian connections. She said they are in agreement with all conditions of approval. She said there have been no objections from the community, noting they had two ENN meetings, two Planning Commission meetings and more than 800 letters were sent out, of which 300 were certified.

### **Speaking to the Request**

There was no one speaking for or against this request.

### **The Public Testimony Portion of the Public Hearing was Closed**

Councilor Dominguez disclosed that he had an informational meeting with the Applicant and the Applicant's agent some time ago, way before it was put on the agenda. He said in some of the information provided there are schematics about landscaping, and asked what landscaping will be put in, what is required and what she will be doing about that.

Ms. Guerrierortiz said the last sheet in the drawings in the packet, shows a series of trees and consistent landscaping which will provide shade trees and screening along the roadway on Airport Road.

It will be located behind the curb and for the first 10 feet throughout – from one end of the project to the other, ultimately. She said the next 10 ft. will be landscaped as individual lots are developed. She noted this is all being phased.

Commissioner Dominguez said, for the record, he wants to ensure that the landscaping is consistent with the meandering of the sidewalk and the integrating of the pedestrians.

Ms. Guerrerortiz said they will be replacing the sidewalk for the length of this project and will be meandering the sidewalk within the first 20 feet.

Councilor Dominguez asked how the landscaping fits with the meandering.

Ms. Guerrerortiz said the trees will meander, so they will be on one side of the sidewalk in some areas and on the other side in some areas. It will be free-flowing.

Councilor Dominguez said then you are trying to integrate pedestrian access into the site so you don't have to necessarily cross drainage ponds and such.

Ms. Guerrerortiz said there will be no drainage ponds in that area, and all will be landscaped open space which could be usable.

Councilor Dominguez said any improvements will be better than what exists currently, but he is concerned about the left turn only out of Camino Tierra Real. He said the Staff Memo talks about the safer approach is to require motor vehicles to make u-turns and asked where the u-turn will happen.

Ms. Guerrerortiz said it will be at the light at Country Club.

Councilor Dominguez asked John Romero, Traffic Engineer, if the intersection is sufficient for that kind of activity.

John Romero said yes it is. He said with regard to the residential community, in the morning when people are leaving, potentially they will be conflicting with the right turn movement there. He said so what will happen is that at the time the left turn comes up, the right turns will have to wait and "yield to those guys," but there should be enough capacity at that signal to handle that.

Councilor Dominguez that is better than what is there now.

Mr. Romero said the traffic report showed a very significant delay with a left turn in the morning.

**MOTION:** Councilor Dominguez moved, seconded by Councilor Chavez, to adopt Resolution No. 2010-94, approving Case #2010-87, the Padilla Center General Plan Amendment, with all conditions of approval as recommended by staff, with the additional condition requested by staff.



**DISCUSSION:** Councilor Chavez said his only comment is that there are Findings of Fact and Conclusions of Law in the packet and asked if those need to be included in the motion, along with all conditions of approval.

**RESTATED MOTION:** Councilor Dominguez moved, seconded by Councilor Chavez, to adopt Resolution No. 2010- 94, approving Case #2010-87, the Padilla Center General Plan Amendment, with all conditions of approval as recommended by staff, with the additional condition requested by staff, and to approve the Findings of Fact and Conclusions of Law as presented by staff.

**DISCUSSION:** Councilor Romero asked what the center of the road, the median, will look like, noting people have indicated they are afraid to walk along the road, noting the meandering is one way to slow the traffic.

Mr. Romero said there will be a median through a City project in that area. In terms of pedestrians crossing Airport Road, there will be no designated pedestrian crossing in that area and it will be at the signal. The reason is that is it dangerous because of the high speed and other traffic violations.

Councilor Romero said, "I will note for the record that it is still a concern, even though we make a median narrow so that people will go to a light to cross, they don't. And then we make it really unsafe for them, so I want to note that I'm hoping we can figure out what that looks like."

Councilor Romero said on page 21 in the Staff Response to the question about traffic generated, she is concerned about the cumulative impact, and the question was about the number of people during certain hours. The staff response was that traffic generated by the office developments in the Pavilion Project would likely generate peak hour traffic from its large office developments, and depending on the nature of office use eventually developed in the Padilla Center, traffic may or may not intensify at peak hours. She asked the fallback if it does intensify at peak hours.

Mr. Romero said to address that, the traffic study estimated the worst case office traffic scenario, so "I think it is worst case, and at best the actual traffic actually will be better than what was estimated in the traffic study."

Councilor Trujillo said he understood Ms. Guerrerortiz to say they were going to close Thomas Road.

Ms. Guerrerortiz said the City actually will be closing left turns out of Thomas Road, but it still will be open, and it will be a right-in, right-out.

Councilor Trujillo said he wanted to be sure there are two entrances for fire and emergency vehicles.

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

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

**Against:** None.

6. **CONSIDERATION OF BILL NO. 2010-37: ADOPTION OF ORDINANCE NO. 2010-29. CASE #2010-76. PADILLA CENTER GENERAL PLAN AMENDMENT. DESIGN ENGINEERING, AGENT FOR NINO PADILLA, REQUESTS REZONING OF 2.873± ACRES OF LAND FROM C-1 (OFFICE AND RELATED COMMERCIAL) TO C-2 (GENERAL COMMERCIAL) BETWEEN CAMINO TIERRA REAL AND THOMAS ROAD, ON THE NORTH SIDE OF AIRPORT ROAD LOCATED WITHIN THE PRESUMPTIVE CITY LIMITS AND WITHIN PHASE 2 OF THE CITY-INITIATED ANNEXATION. (DONNA WYNANT)**

**MOTION:** Councilor Dominguez moved, seconded by Councilor Chavez, to adopt Ordinance No. 2010-29, approving Case No. 2010-76, the Padilla Center General Plan Amendment, with all applicable conditions of approval recommended by staff, and to approve the Findings of Fact and Conclusions of Law as presented.

**DISCUSSION.** Councilor Calvert asked about watering the proposed landscaping, and if consideration has been given for water harvesting and such.

Ms. Guerrerortiz said there will be passive water harvesting. There will be no cistern, but water will be directed from the asphalt and rooftops to areas which need to be irrigated.

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

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

**Against:** None.

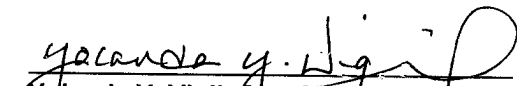
## **I. ADJOURN**

The was no further business to come before the Governing Body, and upon completion of the Agenda, the meeting was adjourned at approximately 9:20 p.m.

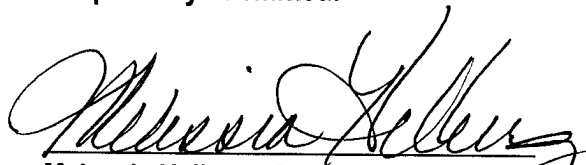
Approved by:

  
Mayor David Coss

ATTESTED TO:

  
Yolanda Y. Vigil, City Clerk

Respectfully submitted:

  
Melessia Helberg, Stenographer