



# Agenda

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**BOARD OF ADJUSTMENT**  
**Tuesday February 15, 2011 at 7:00 P.M.**  
**200 Lincoln Ave. Santa Fe NM**  
**City Council Chambers**

- A. ROLL CALL**
- B. PLEDGE OF ALLEGIANCE**
- C. APPROVAL OF AGENDA**
- D. APPROVAL OF MINUTES: January 19, 2011 minutes**
- E. FINDINGS/CONCLUSIONS: Case #2010-190**
- F. OLD BUSINESS: None**
- G. NEW BUSINESS**

1. **Case #2010-195.** 1409 Monterey Drive Special Exception and Variances. Desert Academy applicant, requests a Special Exception for a private school use with variances from the minimum acreage requirements of 5 acres, minimum parking requirements and 15 foot landscape buffer. The proposed use is to operate grades 7-12 within the now vacant Kaune Elementary building. The property located at 1409 Monterey Drive and is zoned R-5 (Residential). (Dan Esquibel, case manager)

- H. BUSINESS FROM THE FLOOR**
- I. STAFF COMMUNICATIONS**
- J. MATTERS FROM THE COMMISSION**
- K. ADJOURNMENT**

**NOTES:**

New Mexico law requires the following administrative procedures be followed by zoning boards conducting "quasi-judicial" hearings. In "quasi-judicial" hearing before zoning boards, all witnesses must be sworn in, under oath, prior to testimony and will be subject to cross-examination. Witnesses have the right to have an attorney present at the hearing. The zoning board will, in its discretion, grant or deny requests to postpone hearings. Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6520, five (5) working days prior to meeting date.

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OF THE BOARD OF ADJUSTMENT MEETING  
Tuesday, February 15, 2011**

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CASE 2010- 195. 1409 MONTEREY DRIVE, SPECIAL EXCEPTION AND VARIANCES. DESERT ACADEMY, APPLICANT, REQUESTS A SPECIAL EXCEPTION FOR A PRIVATE SCHOOL USE WITH VARIANCES FROM THE MINIMUM ACREAGE REQUIREMENTS OF 5 ACRES, MINIMUM PARKING REQUIREMENTS AND 15 FOOT LANDSCAPE BUFFER. THE PROPOSED USE IS TO OPERATE GRADES 7-12 WITHIN THE NOW VACANT KAUNE ELEMENTARY BUILDING. THE PROPERTY IS LOCATED AT 1409 MONTEREY DRIVE AND IS ZONED R-5 (RESIDENTIAL)	Special Exception approved; partial approval of variances; consideration at next meeting	10-49
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**MINUTES OF THE MEETING OF THE  
BOARD OF ADJUSTMENT  
CITY HALL COUNCIL CHAMBERS  
SANTA FE, NEW MEXICO  
Tuesday, February 15, 2011**

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

A regular meeting of the City of Santa Fe Board of Adjustment was called to order by Monica Montoya, Acting Chair, at approximately 7:15 p.m., on Tuesday, February 15, 2011, in the Council Chambers, City Hall, Santa Fe, New Mexico.

**MEMBERS PRESENT:**

James A. Brack, Chair  
Peter Komis  
Alexandra G. Ladd  
Monica Montoya  
Rachel L. Winston

**MEMBERS EXCUSED:**

Gary Friedman, Vice-Chair  
Susan E. Rooney

**OTHERS PRESENT:**

Daniel Esquibel, Current Planning Division  
Kelley Brennan, Assistant City Attorney  
Melessia Helberg, Stenographer

There was a quorum of the membership in attendance for conducting official business.

*In the absence of the Chair and Vice-Chair, Commissioner Komis suggested, and it was the consensus among the members in attendance that Commissioner Monica Montoya would serve as Chair until such time as Chair Brack arrived at the meeting.*

**B. PLEDGE OF ALLEGIANCE**

**C. APPROVAL OF AGENDA**

**MOTION:** Rachel Winston moved, seconded by Peter Komis, to approve the agenda as presented.

**VOTE:** The motion was approved unanimously on a voice vote.

**D. APPROVAL OF MINUTES – January 19, 2011**

**MOTION:** Rachel Winston moved, seconded by Alexandra Ladd, to approve the minutes of the meeting of January 19, 2011, as presented.

**DISCUSSION:** Commissioner Komis said there is a possible error in the minutes he would like corrected as follows:

Page 8, paragraph 4, correct as follows: Commissioner Komis asked if people in the capitol area will still ~~won't~~ have service if this is approved.

**AMENDED MOTION:** Rachel Winston moved, seconded by Alexandra Ladd, to approve the minutes of the meeting of January 19, 2011, as amended.

**VOTE:** The Amended Motion was approved unanimously on a voice vote.

**E. FINDINGS/CONCLUSIONS – CASE #2010-190**

A copy of the Findings of Fact and Conclusions of Law in Case #2010-190, is incorporated herewith to these minutes as Exhibit "1."

A copy of proposed changes to the Findings of Fact and Conclusions of Law in Case #2010-190, proposed by Commissioner Komis, submitted for the record by Commissioner Komis, is incorporated herewith to these minutes as Exhibit "2."

Commissioner Komis thanked Ms. Brennan for her arduous work on the Findings of Fact, noting that the Board of Adjustment approves or denies cases and the Findings of Fact aren't quite what you require as an attorney, and you are able to take this "hodge podge of what we say and make it understandable, and I just want to thank you so much for doing that. And I see that you have arduously worked on this as well."

Commissioner Komis said he read the packet, "and based on the intensity of last month's meeting, I went through it, and in fact I kept my old packet which I have here, and the Code, etc., and I wanted to make just a couple of slight corrections," beginning with Finding No. 9.

*Chair Brack arrived at the meeting during Commissioner Komis's motion and asked Commissioner Montoya to continue presiding over the meeting*

MOTION: Commissioner Komis moved to approve the Findings and Conclusions in Case #2010-190, with the following exceptions, based on his feeling that "the intent didn't come out":

FINDINGS OF FACT:

- a. 9. Code 14-6.2(E)(6)(a) requires a special exception for the project. As a result, the Applicant's application for the Project is not deemed to meet the submittal requirements of Code §14-3.6(B)(2) and §14-6.2(E)(6).
- b. 12. The Board has considered the criteria established by Code §14-3.6(C) and the requirements of Code §14-6.2(E)(6)(a) and, based upon the information contained in the Staff Report and the testimony and written material introduced at the hearing, finds that the Application does not comply with the requirements of Code ~~§14-6.2(E)(1)(n) in that the Applicant did not specifically provide remedies for the public health and safety impacts of communication towers.~~ §14-6.2(E)(6) and whereby the purpose specific to §14-6.2(E)(1)(n) specifically required by §14-6.2(E)(6)(b)(vii), was not submitted as part of the application to the Board, and whereby the incomplete application presented at the public hearing prohibited the Board's fiduciary responsibility to provide remedies pursuant to Code §14-3.6(c)(4) Board of Adjustment Actions.
- c. 14. The application to the City and packet material submitted to the Board of Adjustment was incomplete, whereby Code §14-1.9 defines what is mandatory materials to be provided to the City and the Board of Adjustment pursuant to §14-6.2(E)(6) Special Exceptions.
- d. ~~14.~~ 15. The special exception is not in harmony with the intent and purpose of Chapter 14 as set forth in Code 14-6.2(E)(1)(n), and 14-6.2(E)(6) Special Exceptions.

CONCLUSIONS OF LAW

- e. 4. The Application does not comply with the requirements of Code ~~§14-6.2(E)(1)(n) §14-6.2(E)(6) thereby not meeting the intent of 14-6.2(E)(1)(n) in that the Applicant did not specifically provide remedies for the public health and safety impacts of communication towers required information in order to determine appropriate conditions are safeguards, in conformity with this Chapter per 14-3.6(4)(a).~~
- f. 5. The special exception is not in harmony with the intent and purpose of Chapter 14 as set forth in Code ~~§14-6.2(E)(1)(n) §14-6.2(E)(1), and as set forth and regulated pursuant to Code §14-6.2(E)(6).~~

## VERBATIM TRANSCRIPT

COMMISSIONER  
KOMIS:

I think my corrections reflect my intent in making the motion. But, because of all the things, and Alexandra can remember, it was an intense meeting, with a lot of things going on at the time, and motions and denials and motions and back and forth. After rereading the Code and the notes from the last meeting and rereading the City Attorney's transcripts, I feel I wanted to bring this forward.

KELLEY  
BRENNAN:

A point of order, Chair Brack, I took the ultimate findings in the motion. The motion was voted on by the members, and I think the motion cannot be amended at this stage, that the motion expressed the reasons. Board Member Komis I asked you specifically what the reason was and you said you wanted to keep it simple, and that is what was voted on, and we can't change the motion downstream.

CMR. KOMIS:

Well I don't think I'm changing the motion. I think, and for the record, I'm trying to clarify the intent of what was denied. I mean, for example, it might have been a typo on your part, you know, number 9 says the project is deemed to meet the submittal requirements of the Code, and down below you said it was not deemed. So, I'm sure my proposal for this shouldn't be denied, at least on number 9. And, again, just based on past experience of our Board not giving the specific Findings of Fact, and this is the first time we've had verbatim Findings of Fact and I really appreciated that, by the way, thank you. But, in my years of experience here, I always thought our intent was primary and based on my fiduciary responsibilities to the public and to the people who spoke and to this community. I wanted to make sure that this went forward in such a way that the City does not become liable for something that it should not be liable for. Thank you.

ACTING  
CHAIR MONTOYA:

Go ahead. The Chair still has control of the meeting. Go ahead.

MS. BRENNAN:

I think that this effectively changes the motion. The reason given is specifically... I'm looking for the motion... the motion appearing on page 28 of the minutes was, I move for denial of Case #2010-190. I feel that the applicant didn't specifically answer Section 14-6.2(E)(1)(n). I find that he did not specifically provide remedies for the public health and safety impacts of communication towers as provided in City Code. Subsequently, on page 29, I advised that Code specifically requires that the reasons for denial be stated. Board member Komis said, Yes, I did. I said I felt they didn't comply with Section 14-6.2(E)(1)(n), and that was it. I don't want to complicate it further. I had a motion and second on that, and that would be it. And that was indeed the motion that was voted on and decided, and I think any changes to the Findings of Fact that alter the motion should not be approved.

ACTING

CHAIR MONTOYA: Is it possible then, that we should have [inaudible] reviewing the minutes proposed or make changes to the minutes to reflect the intent of motion.

MS. BRENNAN: The Land Use Director has typically told Board members, or Land Use Board members, and he's also talked to the Council on the subject, and said that either accept or reject the Findings without amending it. I have had one instance where the Planning Commission did not approve the Findings, and then modified the Findings to reflect their concerns and approved those.

ACTING

CHAIR MONTOYA: Okay. Is it possible that we, as a Board could entertain a motion to follow that same procedure.

MS. BRENNAN: Yes. However, it would have to be any changes would have to be reflected, certainly a change that reflected the reason given for the motion could not be changed. The vote was taken on a very specific motion and the Findings should reflect that Motion as a baseline.

CMR. KOMIS: Well, the reasons, I'm sorry...

ACTING

CHAIR MONTOYA: That's okay. Go ahead.

CMR. KOMIS: The reasons I feel, and I want to make it quite clear that our intent was not to deny the passage based on the health and safety of what effects the cell tower may have on people. It could be other issues regarding health and safety. For example, something was brought up in discussion about is the tower going to be labeled and if someone is going to repair the roof, are they going to be adverse to being zapped or electrocuted or something not having to do with whatever rays come out of cell phone towers. That's not what this is all about. This has to do with my feeling that the application was incomplete. I mean, I wanted to table the application. In fact, I'm kind of confused as to why it didn't go to the H-Board first, because anything in the Historic District...

ACTING

CHAIR MONTOYA: Yes, well that's the path that we've got to...

CMR. KOMIS: Well that's beside the point, because I didn't bring that up either, and I didn't bring it up at the H-Board, which I probably should have at the last meeting, because I have it in my notes here.

ACTING

CHAIR MONTOYA: Well, in any event, it sounds like....

CMR. KOMIS: Just real quickly... so basically my intent was based on the Code and land use issues. It wasn't on health issues.

ACTING

CHAIR MONTOYA: I understand. And I understand, thank you, that was a very helpful explanation and helpful in understanding that it has in the past been done by other committees when there is a disagreement about the Findings of Fact... that we can in fact... I don't know if it would be as a table, but the Board could pass a motion to table work on the Findings of Fact, and then come back... perhaps could it be next month, look at those and then make a motion on them at that point.

MS. BRENNAN: The Board should deny, not approve it, and develop Findings of Fact and Conclusions that they think reflects the hearing. Again, I would say that notwithstanding your intent, what was expressed was the motion and that is what was voted on and that really must form the basis of the decision.

ACTING

CHAIR MONTOYA: Thank you. Thank you Kelly. Okay. So understanding that, is it your intent, Peter, to entertain a motion to deny the findings of fact.

CMR. KOMIS: Well, approve them with my...

ACTING

CHAIR MONTOYA: No, we can't do that.

CMR. KOMIS: Well, okay then, I would like to deny the Findings of Fact please.

ACTING

CHAIR MONTOYA: Okay, so I have a motion to deny the Findings of Fact. Do I have a second.

COMMISSIONER

LADD: Chair.

ACTING

CHAIR MONTOYA: Yes.

CMR. LADD: Can we have a discussion.

ACTING

CHAIR MONTOYA: Yes. I'm sorry.

CMR. LADD: Okay, that's all right. I just wanted to clarify with Commissioner Komis. What grounds, specifically, do you feel like the Applicant did not meet the list of requirements under the Code.



CMR. KOMIS: Well, basically on what I read, I felt the Application was incomplete and we didn't have the information provided to us. For example, there should have been remedies brought before us regarding health and safety, in my opinion, based on what I read in the Code. Now, it doesn't have to specifically have, you know, it doesn't have to have what the FCC precludes us from finding in other words. Number one, the material brought to us, for example was deficient. I just don't think everything in there.... I think there were... for example, we had a plat that was missing. We didn't have the right plat. We had a plat from across the street, and it had a name on it, where if it were part of this application, I would have had to recuse myself and we wouldn't have had a quorum anyway. Do you see what I mean. There were a lot of issues. I wanted to see.... there was supposed to be a compliance letter or proof that they would comply with FCC and that wasn't in there. And he said, well I can state it now on the record. No, I think that needs to come in with the packet, and we need to see it and we need to be briefed on things. Kind of like today, on this next meeting, for example, we received a lot of things. I don't think I could read through 3 or 4 pages of what was presented to me and make a fair assessment of this upcoming meeting, so...

ACTING  
CHAIR MONTOYA: Does that answer your question.

CMR. LADD: Well, I guess I don't agree with the premise, so I'm having a hard time agreeing to redoing the Findings of Fact.

ACTING  
CHAIR MONTOYA: Okay. So, in that case you wouldn't second a motion or vote for it.

CMR. LADD: Okay.

ACTING  
CHAIR MONTOYA: So his motion would be to deny the Findings of Fact. Is there any more discussion.

CMR. KOMIS: Yes. Not all of the Board members are here for this Motion who were here the last time. There were other members who were present that aren't here, so I don't know what the rules are. I understand that now the Chairman can vote. In the years I've been here, the Chairman only broke a tie, so that goes to show there are surprises coming out all over. But I would just move that we table this and re-vote when we have all the members here that were here before, number one, or number two, the members that were here.... well, I just...

ACTING  
CHAIR MONTOYA: I understood. We have advice from our attorney that tabling is not an option. We have an option to vote for denial and that is our option, or approval... those are our two options.

CMR. KOMIS: Okay, I still would like to enter these into the record.

ACTING  
CHAIR MONTOYA: Okay.

MELESSIA  
HELBERG: Madam Chair, point of order. Commissioner Komis made a motion. Has there been a second to the motion.

ACTING  
CHAIR MONTOYA: We're still in discussion.

CHAIR BRACK: I'll second the motion for discussion purposes.

ACTING  
CHAIR MONTOYA: For discussion purposes. Okay. So, if there is no more discussion, can I have a.... those in favor.

CMR. KOMIS: Aye.

ACTING  
CHAIR MONTOYA: Those opposed.

CMR. WINSTON, &  
CMR. LADD: Aye.

ACTING  
CHAIR MONTOYA: So we will move on to the next item, and at this point, City Attorney and folks, I would like to turn it back over to Chair Brock, if he'll take it.

CMR. KOMIS: Thank you madam chair.

MS. HELBERG: We had Commissioner Komis voting, and Commissioners Ladd and Winston voting. Commissioner Montoya did you vote.

ACTING  
CHAIR MONTOYA: That is correct. As the Chair, I choose not to vote on that item.

MS. BRENNAN: Point of order, and this addresses also the voting of the Chair. By ordinance, 4 members shall constitute a quorum, and the Chair may vote on all questions.

ACTING  
CHAIR MONTOYA: Understood. I have to say that because I was not present at that meeting that I don't feel like I am qualified to make a vote on that.

MS. BRENNAN: Then you can abstain.

ACTING  
CHAIR MONTOYA: So I can abstain. Yes. Thank you.

MS. HELBERG: Then how does Chair Brack vote.

CHAIR BRACK: Then I will vote with the majority.

MS. HELBERG: The motion has failed by a 3-1 vote.

ACTING  
CHAIR MONTOYA: You're on.

CMR. KOMIS: Do you want me to give you a copy.

MS. HELBERG: You can give me that one or a copy.

CMR. KOMIS: Can I get a copy made, and get this returned to me because I need this packet for tonight.

MS. HELBERG: That will be fine.

#### END OF VERBATIM TRANSCRIPTION

**MOTION:** Commissioner Brack moved, seconded by Commissioner Winston, to approve the Findings of Fact and Conclusions of Law in Case #2010-190, as presented by staff.

**VOTE:** The motion was approved on a voice vote with Commissioners Ladd, Winston and Brack voting in favor of the motion, Commissioner Komis voting against, and Commissioner Montoya abstaining.

*Chair Brack officially assumed the duties of the Chair*

#### F. OLD BUSINESS

There was no Old Business.

## **G. NEW BUSINESS**

1. **CASE 2010- 195. 1409 MONTEREY DRIVE, SPECIAL EXCEPTION AND VARIANCES. DESERT ACADEMY, APPLICANT, REQUESTS A SPECIAL EXCEPTION FOR A PRIVATE SCHOOL USE WITH VARIANCES FROM THE MINIMUM ACREAGE REQUIREMENTS OF 5 ACRES, MINIMUM PARKING REQUIREMENTS AND 15 FOOT LANDSCAPE BUFFER. THE PROPOSED USE IS TO OPERATE GRADES 7-12 WITHIN THE NOW VACANT KAUNE ELEMENTARY BUILDING. THE PROPERTY IS LOCATED AT 1409 MONTEREY DRIVE AND IS ZONED R-5 (RESIDENTIAL). (DAN ESQUIBEL, CASE MANAGER)**

A Memorandum prepared for the meeting, with attachments, to the Board of Adjustment, from Daniel A. Esquibel, Land Use Planner Senior, is incorporated herewith to these minutes as Exhibit "3."

A copy of an email to Daniel A. Esquibel and Marco Randall from Jud Osborn, dated February 14, 2011, is incorporated herewith to these minutes as Exhibit "4."

A copy of an email to Daniel Esquibel, from Carolyn Cook, dated February 15, 2011, is incorporated herewith to these minutes as Exhibit "5."

A copy of an email to Daniel A. Esquibel, from Peter McCarthy, dated February 11, 2011, is incorporated herewith to these minutes as Exhibit "6."

A copy of an email to Daniel A. Esquibel, from Peter McCarthy, dated February 14, 2011, is incorporated herewith to these minutes as Exhibit "7."

A copy of Emily Powell's statement for the record, entered for the record by Emily Powell, is incorporated herewith to these minutes as Exhibit "8."

A copy of three (3) pages of Protective Covenants, entered for the record by Emily Powell, at the request of Commissioner Peter Komis, is incorporated herewith to these minutes as Exhibit "9."

**Staff was sworn**

### **Staff Report**

The staff report was presented by Daniel A. Esquibel, Land Use Planner Senior, which is contained in Exhibit "3." Please see Exhibit "3" for specifics of this presentation.

**Staff recommendation:** The Land Use Department recommends approval of the Special Exception and the 3 variance requests.

### Questions from the Board

Commissioner Komis said Mr. Esquibel said 10 acres is required for this type of institution.

Mr. Esquibel said Chapter 14 does require 10 acres for secondary schools.

Commissioner Komis said he couldn't hear what Mr. Esquibel said regarding the current size, and asked the current size, noting it says 4.6 acres.

Mr. Esquibel said the existing site is 4.9 acres for the existing Kaune Elementary School area. It was a combination of several lots which originally were part of the Casa Linda Subdivision which was put together for the Kaune Elementary School, noting the Casa Linda Subdivision was approved prior to the effective date of the Code.

Commissioner Komis, noting the language in the Staff Report on page 2 of 12, which provides it is 4.6 acres Existing, and asked if that should be changed to 4.9 acres.

Mr. Esquibel said that is correct, it should be changed to 4.9 throughout the Report.

Responding to Commissioner Winston, Mr. Esquibel said, "I believe it is 4.9 acres for the existing site of Kaune Elementary School, and the minimum size requirements for a secondary school, which is junior high and high school, under the Code is 10 acres. The Applicants are requesting a variance to occupy the existing site with its existing acreage with the variance that allows them to occupy that site with the existing acreage, rather than 10 acres, because there's not 10 acres available at that site.

Commissioner Montoya said, "We are reviewing the application in its entirety at this point and not just the variance to the site size. Correct."

Mr. Esquibel said yes this is correct. However, because the site size is critical to the balance of the variances, without a review of the site size it would prohibit approval of the balance. He said, "You have to pretty much allow that, or at least have the discussion first. If you approve the site size, in essence those will impact the other variances as the result of that approval. So, it is... that particular variance is the critical component of this application that would allow you to go into the other aspects of the development to discuss it without approval of the site size, they technically cannot locate there."

**DISCLOSURE BY COMMISSIONER KOMIS:** Commissioner Komis said, "I forgot to disclose something in the essence of transparency, and I really neglected to do this. In November, I believe it was, I made a donate to Desert Academy for their basketball [program] that amounted to \$250. I was approached by a Mr. Jonathan Salazar, who works at the Genoveva Center. And I made the donation because I like Jonathan and his wife. Also Sharon Doyle, who used to be the former principal of Wood-Gormley, asked me to be on the Board of Desert Academy. She left a message on my machine after the summer break, and I believe I had just returned from overseas and I didn't return her call, regrettably, but I feel that I can make an unbiased decision if that's okay with everyone out there listening.

**DISCLOSURE BY COMMISSIONER WINSTON:** Commissioner Winston said, "I have a disclosure to make as well. My firm, I work for a law firm, and we have a contract with Santa Fe Public Schools to provide general counsel legal advice. My firm has not been involved in any way in the negotiations regarding the sale of this land as Desert Academy. I have interviewed all of the attorneys representing the schools and I do not believe that I have a conflict, but I did want to disclose that. I do believe that I can make a decision impartially on this matter."

*STENOGRAPHER'S NOTE: There were no objections by the other members of the Board to the participation of Commissioner Komis or Commissioner Winston on this case.*

Commissioner Montoya said she has questions as to how to proceed with the review prior to making a decision on this application. She asked if it is appropriate now, or to wait until later, to ask her questions about the parking variance. She will need to have her questions answered before she can make a decision about the site variance.

Mr. Esquibel said, since the variances are part of the special exception, the overall application will include those variances. He said staff felt it important for the Board to understand, by granting the variance to the site size, there is a direct impact to the balance of those variances, since the site actually impacts the reason for those variances. He reiterated, "If you approve those variances, then they can locate there. Any other aspects or modifications that the Board feels is necessary can be included in any conditions thereafter."

Commissioner Montoya said, then Mr. Esquibel is saying that after all of the discussion, after we hear from the applicant and the neighborhood, at that point will be when the Board will make its decision on the special exception and the variances, and not one at a time.

Mr. Esquibel said this is correct.

Commissioner Ladd said she still is somewhat confused by how the minimum size for a secondary school would apply to this site if it was still operated by the Santa Fe Public Schools. She asked, if the Santa Fe Schools were to decide, for example, to open an alternative school on the site, would the School also have the burden of obtaining a special exception for site size.

Mr. Esquibel said the City does not have jurisdiction over the Public School system. Since Desert Academy is a private school, the City does have that jurisdiction. So in essence, when the School sells the property to Desert Academy, Desert Academy has to apply for a special exception, but the Public Schools do not.

Commissioner Ladd asked what is the 10 acre minimum lot size based on.

Mr. Esquibel said he looked for that, but he couldn't find that definition anywhere, and he put that in the variance standards. He said, "Part of the review we made identified the fact that without the integration of a public school system in the neighborhood, you are going to have them scattered throughout the outskirts of the community. Or, you will have huge schools. And that was a key component

to make sure that integration with the neighborhoods for the school system was important. Other than that fact, you also do not have any 10 acre sites within a very large area of that District as required by the variance standards. In which case, it made it a very unique circumstance that you did have a use specific to an institutional use within this area that met all of the standards for one, but really couldn't fit the others. But, because of its unique circumstance, being coming out of the Public School System, in some ways it's non-conforming to a certain extent, because it just didn't have what it took to be a high school or a junior high. But there's no space around it anywhere else, so they just can't go buy space anywhere else. And, the other side is that property values are such, that you're not going to get a private school that's going to have 10 acres, 20 acres or 13 acres like some of the other private schools that were able to move into these other outlying areas, like St. Mike's and others. But, the prices back then were very different than they are now, and availability of acreage was very different than what they are now. Here, they'd actually have to consolidate properties, demolish buildings, reconstruct, so when you look at the variance standards it identifies with, are there unique circumstances of building, land or structure. Well yes, there are unique circumstances for this particular area, so technically, this variance didn't meet the technical aspects for granting them... or meeting that variance standard, so we recommended for it as a result of that technical accuracy for approval."

Commissioner Ladd said then the current site of Desert Academy is a little more than one acre.

Mr. Esquibel said he doesn't know, noting he didn't evaluate the existing site off Alarid Street, but he does know that it's pretty tight. He is unsure when "they" were approved, but understands they may have gone through a special exception at one time to get "there," so the Board acknowledged their school at that location on the size of that lot. This site is significantly larger and will obviously accommodate the school.

Commissioner Ladd said if Desert Academy could function on such a small site without adverse impact on that neighborhood, clarifying she doesn't know if this is true, "it would appear to me that going to a site that is four or five times bigger, they're going to be able to function even better with significantly less impact on the new neighborhood because the site is so much bigger. And you know, it just appears that the 10 acre minimum lot size is a big arbitrary. There's no reason why... no specific land use reason why a secondary school needs ten acres, so I just wanted to work through that."

Mr. Esquibel said, "As you know, there's very few times the Land Use Department comes forward recommending approval for any variance. It's just very hard to meet those standards and they're very rare, but we would not recommend favorably for a variance if it could not meet those standards." He suggested she should speak with Justin Snyder from SF Public Schools who could provide basic State standards for projecting the school size in relation to the student population. He said City Engineer John Romero can speak to any traffic issues related to the school and the area.

Commissioner Ladd said she would like to hear from Mr. Snyder, and asked if it would be appropriate to do that at this time, commenting she has no idea if the 10 acres is typical for schools Statewide.

Mr. Esquibel said both Justin Snyder and John Romero are part of the Development Review Team which would make them part of the staff review, and the Board can choose to ask questions since they are part of this portion of the Application.

Commissioner Ladd said if we can first establish the size, the Board can move to discussion of the variances.

Mr. Esquibel said it might be appropriate to allow the Applicant to make its presentation before opening it to the public hearing, and we can then bring the technical issues.

Responding to the Chair, Mr. Esquibel reiterated that Mr. Snyder and Mr. Romero are part of the Technical Review Team and contributed to the review before the Board this evening. However, on the advice of the Land Use Administrator, he is recommending that the Board allow the Applicant to make its presentation before opening the meeting to questions.

Commissioner Ladd said that will be fine.

## **Public Hearing**

### **Presentation by the Applicant**

*Terry Passalacqua, Jud Osborn and James Wheeler representing the Applicant were sworn.*

**Terry Passalacqua, Head of School, Desert Academy [previously sworn].** Mr. Passalacqua said he has been with Desert Academy for 15 years. He said the Academy currently sits on 1.1 acres of land. He said they are asking the Board of Adjustment for a special exception to site size. He doesn't know the genesis for the 10 acre requirement, but that would be a full football field, soccer field, baseball field and grounds. He said, on the 4.9 acres, the Academy would be operating with a small soccer field and a four-lane track, and for them would be enough space. He said Desert Academy has been in negotiations with the Public Schools to purchase the property for 9-10 months.

Mr. Passalacqua said there have been a few neighborhood meetings in regard to the plan to get input from the neighbors, before they developed a site plan, which was designed 1-1½ months ago. He said the neighbors were concerned about noise and activity at the practice field behind the school. He said they made sure it is not a full regulation field. He said there would be no outside games, or lights and they worked hard to develop a traffic plan.

Mr. Passalacqua, using a drawing from the packet on the overhead, demonstrated the look of the building, the flow of traffic and the parking. He said they considered the input from the neighborhood in terms of the look of the building, traffic flow and parking issues. He said they tried to make the traffic pattern such that the younger drivers, 11<sup>th</sup> and 12<sup>th</sup> grades, would come from the lower left which would limit their access. He said they have about 65 parking spaces available at Desert Academy, which is all they need. He said one of the requests is a variance from 118 spaces to 101 spaces. He said they wouldn't use that many spaces, but those could be fit in the plan, reiterating they need only 65 parking



spaces. He said if the 35-40 11<sup>th</sup> and 12<sup>th</sup> grade drivers were to park off site, they would need only 35 spaces. He said Mr. Osborn can speak to the details of the parking plan.

Commissioner Montoya asked how many parking spaces are on the parking lot at the north entrance.

**Jud Osborn, Finance Director, Desert Academy [previously sworn].** Mr. Osborn said he has other duties, noting recently he has been working on the detail of the special exception and the variances. Using the drawing from the Board packet on the overhead, Mr. Osborn said they have shown some parking which isn't a part of the plan which they are looking to rent from Berean Baptist Church, noting these spaces aren't part of the parking variance. He said this parking is important because it will provide 35-40 spaces outside of the School, and aid in their efforts to limit the number of Juniors and Seniors driving down Monterrey Drive, and will turn right into the parking lot at the Berean Baptist Church. He said the information is included because it is relevant to the plan. He pointed out the existing lot at Kaune's Elementary School which has 50 spaces.

Commissioner Montoya asked if the Berean Baptist lot is the lot to the north.

Mr. Osborn said the lot is not in existence right now. He said there would be 18 spaces on that lot with an additional 35-40 spaces available at the front of the building.

Commissioner Montoya asked the number of parking spaces in the lot at the south end of the property.

Mr. Osborn said there would 35 spaces in the proposed new lot, and there would be an additional 16 spaces in the pick-up and drop-off area. He said there won't be parking during pick-up and drop-off, but they want to include those spaces which would be used for various large events such as open hours, or twice a year when they invite people to tour the school.

Commissioner Montoya said then the total number of on-site parking spaces is 101, and Mr. Osborn said this is correct, reiterating the request is for a variance from 118 to 101.

Mr. Osborn said Mr. Esquibel stated the issues quite well, noting they are in a R-5 zone and requesting a site variance from the 10 acres to 4.9 acres. He said the ultimate best use of this property, clearly is for a school. He said, "To the best information we've been provided, there is not currently a school that is ready to open in this zone, although there has been interest from charter schools." He said the best use of the school would be to enhance the education of students in Santa Fe.

Mr. Osborn said they have proposed a number of ways they can work with the Casa Linda Neighborhood. He said there has been unease in the neighborhood about the situation, but they are taking every step possible to facilitate this. He said one of the forms that has been included pertains to examples of how Desert Academy will work with the neighborhood for a better community. He said they will do everything possible for a smooth transition into the new facility.

Chair Brack asked the number of students at the current Desert Academy location.

Mr. Osborn said there 65 parking spaces, including the spaces from the National Dance Institute which is the adjacent property. Currently there are 173 students, and they are working toward a maximum growth to 240 students, and estimate they will be parking a maximum of 80 at the new facility, reiterating that the plan provides that only Juniors or Seniors will be allowed to drive cars on the campus. He said everyone else would be dropped-off, and they have worked extensively with John Romero on the specific mechanics of that.

Chair Brack asked when Desert Academy was located at the current site.

Mr. Osborn said it was established there in 2001, noting he didn't join the staff of Desert Academy until 2005.

Chair Brack said that didn't come before this Board.

Commissioner Montoya asked the number of parking permits Desert Academy plans to issue at the new site with the 240 students..

Mr. Osborn said currently there are 33 student parkers. He said they vigilantly monitor these parkers who are given a sticker to put on their car. He said there isn't a lot of space on Camino Alire for people to pull over and drop-off students. They really monitor the drop-off and pick-up as well as the student parking. He said they are willing to revoke parking privileges for violations of the parking.

Commissioner Montoya asked Mr. Osborn if his answer is that there will 33 parking permits at the new location for students.

Mr. Osborn said there will be a maximum of 50 parking permits, for 240 students.

Commissioner Montoya said then the north lot has 50 spaces, plus the 18 spaces at the Church, and Mr. Osborn indicated this is correct.

Commissioner Komis said throughout the day there will be extra curricular activities such as track and soccer, and asked if they have basketball.

Mr. Osborn said they have a basketball program December through March, and at this point they are leasing various gyms throughout town to set up practices which is very expensive, noting it is getting difficult to sustain this program, and the gyms are getting other requests from other outside sources. It is becoming a huge financial burden to lease the gyms for the basketball program as well as for other sports programs. He said when they first move in, they will be looking at practice basketball only, and won't be able to host games until the gym is built to full size. He said the practice field will never be used for soccer games, and will be used only for practice.

Commissioner Komis noted Mr. Osborn told Commissioner Montoya there will be a maximum of 50 student permits. However, the responses are somewhat different from Mr. Passalacqua's who stated that the 11<sup>th</sup> and 12<sup>th</sup> grade students will be encouraged to park off campus, and that you only need 101 or 65 spaces. He asked where it is proposed that the 50 students with permits will park, and asked if they are supposed to park in the residential neighborhood.

Mr. Osborn said no, and perhaps there is a misunderstanding between him and Mr. Passalacqua, or perhaps a misstatement. He said they would like to utilize and come to a long term lease with the Berean Baptist Church to park, and they are looking at 18 spaces on the back and up to 40 spaces at the front of the building, reiterating that isn't part of the variance. However, he is bringing that up because it will have an impact on traffic in the neighborhood.

Commissioner Komis asked if there currently is a lease with the Berean Baptist Church.

Mr. Osborn said no, but they are in ongoing negotiations, and have every reason to believe the negotiations are genuine.

Commissioner Komis asked if there is a representative from the Berean Baptist Church in attendance this evening.

Mr. Osborn said yes, Pastor Chapman is here.

Commissioner Ladd said, "I wrote down that you said you need 80 spaces."

Mr. Osborn said this is correct, for the maximum enrollment, noting those spaces would also be for Juniors/Seniors, staff and visitor parking.

Commissioner Ladd asked, "Within the existing site plan that you are bringing forward today, there are 80 spaces provided, not including the Church parking lot."

Mr. Osborn said, "That is correct. There are 87 and an additional 16 which would only be used for actual parking during special events."

Commissioner Ladd asked, "In your current location, which is also sort of embedded in a residential area, have you had any issues with parking, neighbors, student parkers, you know. How has that worked out for you."

Mr. Osborn said, "We have had very minimal problems with any of our neighbors. And what we also encourage, if something arises, is that our neighbors come to us. We'd really like to keep it out of the major issues. We don't want cars getting towed. You know, we would like to handle it internally. Essentially we do. The main time that we've ever encountered any issue is during a special event, such as an open house, and we are out there [watching the] parking vigilantly with up to 10 parkers, and still sometimes people park where they should not. And these aren't our parents, they're visitors, so it's harder sometimes to control that element, where as with our parents, they're very used to how regimented we

treat the parking and drop-off and how, for every pick-up and drop-off time there are two adults present that are monitoring the situation, certainly to make sure our students are safe, but also to make sure it is smooth and sometimes students are goofing off while their parents are waiting. And, they'll nudge the students in the right direction to help ease the transition and help ease the process. And, we're very efficient at doing the pickup and drop-off, and the current loop has room for only about 18 vehicles, and we never back up onto Camino Alire for more than a few seconds."

Commissioner Komis asked, if the goal is to have Juniors and Seniors park off campus, as indicated by Mr. Passalacqua, do you have security on campus, and how will they walk to and from parking off campus.

Mr. Osborn said they would post one adult to supervise the entrance and leaving of the parking for the external parking lot, because they don't want issues to arise to cause trouble with neighbors, and to closely monitor how they are entering and leaving the premises. He said if they're driving in a manner that is not law abiding or respectful of rules, then they certainly can revoke their parking privileges.

Commissioner Komis asked if there is security at the lot off campus where the students park, to take them to and from school.

Mr. Osborn said no, because it is adjacent to the school. The adult supervisor would be there to see them go into the campus, but there wouldn't be anyone to walk each student through. However, there would be an adult if anybody has an issue or there was trouble, and we can get more adults there in a hurry if needed.

Commissioner Komis asked if the adult supervisor is there daily during school hours and functions.

Mr. Osborn said there is, "at least during all times when students are driving to and from that lot, there would be adult supervision."

Commissioner Montoya said the Board is discussing the parking on the adjacent lot, but technically this Board is not granting or approving that lot, we are just noting that parking is available. She asked if having that off site parking is permitted by Code.

Mr. Esquibel said, "In residential districts, off-site parking is typically not permitted. There are certain districts where we allow shared off site parking, one being the business capitol districts. There are some other districts [where it is] allowed such as C-2, C-1, however, during those issues, we look at whether the parking in that facility is going to be compromised as a direct result of the shared parking being requested. So, they would have to come in and request that as a separate application, but it's not part of this Application that we're voting on."

Commissioner Montoya said, "Then technically, we are looking at a variance application for the parking that is on-site, not the parking that is at the church."

Mr. Esquibel said this is correct.

Commissioner Montoya said the Code is very strong in its requirement that you work closely with the neighborhood anytime you put forth an application, especially for a school in a residential neighborhood. The Code asks you to go through the ENN process. She said, "And so, earlier you talked about some of the input that you received from the neighborhood process and had incorporated into your process. If you will... and please help me remember or clarify some of these. You mentioned that there wouldn't be evening facilities at the.... could you go over some of the neighborhood issues that you worked through."

Mr. Passalacqua said, "We talked about having games in the back of the school, and I assured the neighbors that we do not have regulation fields... we will not have regulation fields there, we will not have games. There was much concern and phone calls and emails in neighborhood meetings I attended that talked about night activities. We will have no outside night activities, for example. There was mention about changing the look of the building, landscaping and so forth. We're not going to change any landscaping or look of the building. Noise level. Again, we discussed that, the neighbors and Mr. Osborn and myself discussed what noise levels there would be, they mentioned that, well would we have bells and whistles out on the field and the answer is no. What we... we would have basketball games twice a week and we would be finished with those basketball games by 9:00 p.m., for example. But, I think the most important thing is that I would be willing to work with the neighbors on any issue. They would have access to our sports calendar, our events calendar. They would know exactly which activities we would be doing. And again, we would just work with them on all of that."

Mr. Osborn said, "I had also brought up the issue of how we're working with the neighborhood, and certainly in the ENN process, one of the big concerns is they didn't want to see the entire back of the school turned into a parking lot, and that's one of the.... as we looked at what it would take to meet the Code pertaining to parking, it really involved turning a lot of the back of the school into parking area. And that is one of the major reasons we want this variance, as well as it would deplete the possibility of us having a practice field, and that would make it difficult for us to run track, practice soccer and that sort of thing. But certainly, that was one of the issues being encountered at the ENN meeting. Of course there were other issues requested, about how to beautify this new, proposed lot. And certainly, we've looked at some of those options as far as perhaps roll-out garden beds that could be placed at times when it wouldn't be in use. Something along those lines.... doing whatever we can to help make that [attractive]." He said this is something new and out of the norm for the neighborhood.

Mr. Osborn said some of the things they are looking to: neighborhood use of the field during off hours for the school; encourage members of the neighborhood to participate in evening and weekend classes hosted by the Academy; coordinate community events and gatherings such as a party or picnic on the field; encourage Casa Linda Neighborhood meetings at the school; look at the option to open an early childhood center for school employees and neighbors only; involvement in neighborhood cleanups, and such. He noted they are involved in the River cleanup project. He said they were unable, however, to maintain the playground which had to be removed after looking at liability and talking to the insurance company. However, they have proposed donating money or equipment to a neighborhood playground. They want to be the best neighbor possible. They definitely would contribute to the security of the

neighborhood, noting an abandoned building isn't a great benefit for the neighborhood and is a great financial burden for the Schools. They would participate in Crime Watch efforts, noting there will be video security around the school. They are willing to discuss any of these, and intend to push these further.

Mr. Osborn said he has heard it said that, "It seems perhaps in some ways that we're not working with the neighborhood. I'd say the main way we're not working with the neighborhood is that we're continuing to push forward with this effort because we know the future of Desert Academy hinges upon this move at this point."

Commissioner Komis said you were pointing to the south side of the building, the practice field, and said you wouldn't want to put required parking spaces there, so you wouldn't want to get rid of all the landscape and turn it into a parking lot.

Mr. Osborn said this is correct, and this is the least of their intentions.

Commissioner Komis asked if there is anything in the Code requiring landscaping.

Mr. Esquibel said one of the variance requests is for the 15 ft. landscape buffer which will be acquired along the residential property. He said there is a road running along the east side adjacent to the track. He said they have requested a variance to that section. He said the parking has its own landscaping requirements, which they would be buffering that parking from the residential district which they have done. Aside from that, there may be a four-foot wall or shrub against the other parking area where there is a drop-off where the standards would apply.

Mr. Komis asked if there are landscape or lot coverage requirements in the Code which would prevent them from turning the soccer field into a parking lot.

Mr. Esquibel said lot coverage is based on roof area and not necessarily parking or accessory aspects of the school. He said the roofed area and the existing property is a non-conforming site which was developed by the Public Schools. He said since they are adding only a small portion of the basketball court to that they won't exceed the 40% lot coverage for the entire lot, and even if they did, there would only be required open space, of which they have more than an abundance.

Commissioner Komis asked if parking is considered to be open space.

Mr. Esquibel said no, it is a part of the infrastructure requirements to support the development.

Chair Brack asked if the practice field will be open space.

Mr. Esquibel said they could be. He said open space is an area that is defined, noting there is also common open space. He said private open space doesn't come into effect until a development breaches 40% lot coverage. He said, "At 4.9 acres, 52-60...no 43-560 as an anchor, I just don't think they're coming close to 40% lot coverage based on a 4.9 acre lot. They're well below that requirement to require private open space for this project."

Chair Brack asked if there homes abutting the practice field.

Mr. Esquibel said at the upper portion which would be the east property line, adjacent to residential, there is a road leading into that parking area and it integrates into the middle between the field and the school. He said the Fire Marshal has asked that they ensure that the access into those areas meets fire protection requirements as they're being developed.

Responding to Chair Brack referring to Exhibit D on the overhead, Mr. Esquibel said with the Application, as proposed, there is a roadway proposed right along "this area," along this "here" is where the residential is adjacent to the property. So, along this area "here" with one of their requests for variance, there would be a 15 ft. landscape buffer which be required for non-residential uses which would be the school. They are asking for a variance of that. In place of that, there is an access road that connects from "this" parking area, comes down into this "area," which he believes is their loading area.

Chair Brack asked if that is a 15 ft. gravel surface road.

Mr. Esquibel said this is correct. It is part of the proposal of the school that is being introduced by this Application which wasn't there before.

Mr. Osborn said the road in question is an existing easement with which the Santa Fe Public Schools has been in operation with the neighbors for years, and the neighbors have access to the back portions of their property through this easement. It is rarely used, and is essentially a weekend activity where they will pull boats or trailers out through this access. He said this isn't something new, it is a gravel road on the site which is used by the neighbors as an easement, and that's where "we're looking at a buffer zone." It also pertains to the 11 spaces "over here," where they get within 15 feet of the private property and that's one of the variances they're seeking.

Commissioner Ladd asked if the Applicant is proposing a fence around the property.

Mr. Osborn said the fence around the property was proposed at the ENN, but it was not favorably received so they dropped that.

Commissioner Ladd asked if the back yards of the property along the future field have fences.

Mr. Osborn said those all have fences, and access fences to get their vehicles, boats or other recreational devices out.

Commissioner Ladd said the landscape buffer refers to the 11 spaces "here," and asked if there are other areas where there is an issue with the buffer, and Mr. Osborn said no.

Commissioner Ladd said, in looking at the number of spaces shown on the proposed plan, there are 50 spaces in one lot and 35 in another, which is 85 spaces.

Chair Brack said there are 16 spaces in the front.

Commissioner Ladd asked where is the front.

Mr. Osborn said it is the loop "right here" [on the drawing on the overhead].

Commissioner Ladd said it appears the conditions of approval say you can't count those in the total parking spaces.

Mr. Osborn said this is correct, reiterating that those would be used for parking for a major event such as an open house, and the only time they would go in excess of the 85 spaces for 240 students.

Commissioner Ladd said, "Then what you're saying, is with 240 students, if the church parking doesn't work out, you have 85 full time, designated spaces which would meet your parking needs."

Mr. Osborn said this is correct.

Commissioner Ladd said, "But under Code, 118 would be required. Is that correct."

Mr. Olson said yes. He said they have a maximum of 65 available, and on any given day there are 5-10 open spaces at the school currently. He said if they didn't grow, they would maintain the lower level of 65 spaces.

Commissioner Komis said, "Then you're talking about your location right now, next to National Dance Institute. Am I correct, the 5 or 10 spaces."

Mr. Osborn said this is correct.

Commissioner Komis asked if the 11<sup>th</sup> and 12<sup>th</sup> graders park on campus too.

Mr. Osborn said the 11<sup>th</sup> and 12<sup>th</sup> graders do park on campus.

Mr. Osborn thanked the Board for its time and consideration.

Commissioner Ladd said the additional questions she has are for the school representatives.

Mr. Esquibel said, "Just so I can clarify. I know that when we were looking at this, our concern is mainly for the drop-off for the parking, so if that parking is to be used outside this operation of the school where it won't interfere with the operation, that's fine too. But during school time, during drop-off, if parking were to occur there, you definitely would have some problems. So, if they're not going to use those parking spaces during the operation of the schools, that's an option for additional parking during their events."

Commissioner Montoya asked if the parking spaces meet minimum Code requirements, the parallel parking in drop-off.



Mr. Esquibel said he didn't look at the minimum size standards for the drop-off parking, since staff wasn't recommending that they keep them. He said, "It wasn't until now, that I realized that they were not going to use them during school operation except for outside. I'll have to look at them to make sure that they would at least meet the size standards."

Commissioner Winston said she understood at this time we were going to hear from the City Engineer and such.

Chair Brack said he would like first to get the public speaking to the issue sworn.

### **Speaking in Favor of the Request**

*All those speaking in favor or against the Request were sworn en masse at this time*

*Kevin Chapman, Pastor, Berean Baptist Church [previously sworn].* Pastor Chapman said. "We do not have a covenant on our property like all the neighbors do, so I don't have standing like some of the other neighbors do on other legal proceedings. But, I want to make one absolutely, perfectly clear, public statement. You've received some letters from Peter McCarthy. He does not represent the church, he is not a member of the church, he does not speak for me. I've only had one conversation of any length with him, and I'm not real pleased with the way he phrased some of his statements regarding the church."

Pastor Chapman continued, "First off, whether or not the church is sold today, tomorrow or a hundred years from now is totally irrelevant to this discussion and this variance anyway, and that's just not a point of fact that's important. We don't know if it will be sold, or won't be sold. But I do know this, as a church in the neighborhood, we want to be as good a neighbor as we can to any facility that goes in there. And currently there is no one in there and that is a detriment to the neighborhood, and so we really believe it would be a positive thing to have that school be occupied.."

Pastor Chapman continued, "Now there are legal issues outside of this hearing to be decided, I agree. But, as to whether or not a variance is approved, I think the only issue is whether the changes they ask for substantially changes the use and purpose and the future use and purpose of this property. And the answer to that is blatantly no. And I think they're going to be good neighbors. They're not changing anything so significantly. A school is a school is a school. Yes the age of the students is different, but they are going to be good neighbors, I believe with all of my heart, and I think they are making every step possible to cooperate with the neighborhood and make things available to us as a neighborhood that will be of benefit to us that we did not necessarily get as neighbors to the Public School system."

Pastor Chapman continued, "So I want to make it clear that the future use of BBC, Berean Bible Church as we call it, or its occupants is not even relevant to this discussion. But we do believe that the changes that they want to make to the property are going to be good changes. And yes, we are in discussions, I'll affirm that, to allow them to use our parking lot. Whatever hurdles they've got to jump through to do it legally, that's their problem, not mine. And they will be able to take care of that at a later date, but we think that will be a good thing, not a bad thing. It'll help improve the neighborhood in the way

it appears and it will also add to the continuity of the way that whole street looks from what you see there right in front of the church to the far lower left side there. There's a roundabout from that point on. It will all have a great degree of continuity in appearance, and I think it'll be a great addition to it."

Pastor Chapman continued, "Furthermore, as a benefit to the church, if they do move in there and add these parking spots, it's my understand that we have come to terms, at least to the effect, that the church will be able to use those on rare occasions for maybe a Christmas play or something like that, where people need extra parking. So I think it's a good thing for the neighborhood. It is a positive thing. It does not substantially change the use or the appearance of the neighborhood, except to approve it. So, with that, I'll let that go, unless you have some questions that you've come up with based on what you've read."

**Stefanie Beninato [previously sworn].** Ms. Beninato said, "I want to point out that Ms. Ladd has not disclosed her conflicts of interest, nor has Ms. Montoya, and I believe that they should recuse themselves, not only from this vote but from the Board itself. Ms. Ladd had a contract with the City in 08 which she never has revealed, to administer a land use project, and her husband is on contract with the City, therefore she is financially profiting from the connection with the City. So, it's hard to imagine that she can be fair and biased. Ms. Montoya, herself, was a City employee and worked on contract through 07. She regularly comes before other land use boards, but she has to work with City staff, including the people who are sitting here today. And so, once again, one has to wonder how she can be fair and unbiased, when in fact she wants her projects approved by the same staff that are appearing here tonight. And I believe an example of her bias was... I talked to her before the meeting, and I asked her if she could rearrange the order, so there could be some input on the Findings from January nineteenth. She told me she would talk to the City Attorney, but she just took her seat and never said a word about it."

Commissioner Winston asked Ms. Beninato if she is speaking in favor of or against the request.

Ms. Beninato said, "Well, first I'm asking that these members recuse themselves. That's my first request. Then I am speaking in favor of the project because again, like the gentleman before me, I believe it is a school that has been a school, and its continued use as a school is appropriate. I believe that they do have adequate parking for the number of people that are going to be using it on a regular basis and in fact seemingly have another 16 spaces, those overflow spaces, the drop-off spaces. They seem to be extremely concerned about minimizing traffic and safety by having younger, inexperienced drivers have a minimal impact... have a minimal entry to the residential area. [break here for tape change]"

Ms. Beninato continued, "They are continuing in the tradition of allowing the school to continue to be used for neighborhood meetings. [inaudible] I know that people are extremely upset that there is no longer going to be a public elementary school, but the likelihood of that happening at this point is probably near zero. [inaudible] It's not something you want to continue for very long. I can say that I knew the founder and know the founder of Desert Academy, Marie Wright. She is a person of high integrity and high principle. I also have had the pleasure of knowing the founder, Terry Passalacqua, for close to 20 years. And he is also a person of high integrity and high principle. And the people, the ones who are in charge of this school, have made every effort to stay in dialogue with the neighbors and accommodate as much as possible. I can speak very well for this school, and so I would urge your approval. Thank you."

Chair Brack said at this time there are people from the Development Review Team [DRT] in attendance, and asked if they are prepared to speak.

Mr. Esquibel said the Board can choose to hear from John Romero, City Engineer and Justin Snyder of the Public Schools in any order they would like. He said, however, the Chair probably should ask to hear from the opponents before hearing from Mr. Romero and Mr. Snyder.

### **Speaking in Opposition to the Request**

Chair Brack asked those speaking in opposition to line up, and requested those speaking to avoid replicating the remarks of previous speakers.

**Stephen Carrillo, School Board Member-elect [previously sworn].** Mr. Carrillo said, "I'm here in my capacity on the School Board and as well as just a citizen. The one I would take great exception to the woman who spoke before me saying there is zero chance... in fact I think there's a very good chance that that's going to be an elementary school. And, whether it's an elementary school for the general population or something specialized, a charter-like school within the Public School system, I would say that it is very likely that it is going to be an elementary school again. Because, I know that's what my constituents want in District 1, and that a number of other Board Members are also interested in seeing that operate as an elementary school again. That neighborhood was designed to have an elementary school. There's walking paths to it, it's a natural fit, especially given the overcrowding in our south side schools, it makes sense to offer that as a magnet or charter type school within the elementary system. So, the zero, I don't know where you got that, but that's malarkey. And also, I think it's very important.... had I been a Board Member I wouldn't even have voted to close that school. I think that keeping the elementary schools in their communities is very important to our community. And finally, I take no exception with Desert Academy whatsoever. I think it's a fine school and I have many friends that attend Desert. Mostly, I take exception to the notion that an elementary school is out, that we've taken that off the table and that's why we're going forward. And that's what I take exception to. And as well, in terms of shoring up the finances for that property, they should be offered to the highest bidder and Desert Academy can be among those people that look at that property, and it needs to be offered nationally, not just locally."

**Emily Powell, 1421 Monterey Drive, previously sworn,** read her statement into the record, in opposition to the proposal. Please see Exhibit "8" for specifics of this presentation.

Commissioner Komis asked, when this was a public school, if staff and people who attended this school parked at the Berean Baptist, and if there were problems with residential parking.

Ms. Powell said it was designed to hold 300 students, and when it closed there were less than 200 students. She said there was on-street parking when there were events at the school. She said it was an inconvenience to the neighborhood, however they were public school children from our community so it didn't offend the neighborhood so much.

Commissioner Komis asked Ms. Powell to repeat what she said about covenants, and asked if this is a covenant controlled neighborhood and "was this donated to the best of your knowledge."

Ms. Powell said there are covenants in place which say the use of this land is supposed to be under the direct supervision of the Public School System.

Commissioner Komis asked Ms. Powell if she could provide copies of the covenants, which she did. [Exhibit "9"].

**Ann Barker, 1420 Santa Cruz Drive [previously sworn].** Ms. Barker said she and her husband live in the house which his parents purchased in 1947. She invited the Board to spend time in their neighborhood. It is a community of small homes, close together on very narrow streets, and occupied by the families who originally bought homes in this community as long ago as immediately after World War II. She said there is a lot of stake in the community, the way it is designed and the covenants that are so important. She takes issue with the idea that a school is a school. This is not a neighborhood school. This is not an elementary school and its use is going to change substantially. This is a commercial enterprise designed to grow. She said, "So, even though they're coming to you now with what they have, which they can barely operate on one acre, they don't fit within the constraints of the existing zoning code now, and they are committed to grow. And, we would ask you to take that into consideration. Even now, those of us residing in the neighborhood.... if you have more than two cars parked on either side of the narrow streets, it's not safe to get through there. Increased traffic through our neighborhood, it will most decidedly be unsafe traffic. I would also ask you to pay attention to what our newly-elected School Board member has said. This property, and the entire transaction is talking about transferring a piece of publicly owned property without the benefit of bid, and now without the benefit of residential zoning protections that all of us residing in the neighborhood are entitled to. So, I would ask you to consider those things and consider that we have the right to the protections of those residential zoning conditions that are in that Code. Please protect us. Thank you."

**Pete McCarthy, 1421 Monterey Drive [previously sworn].** Mr. McCarthy said, "As I sit at this hearing, what has become very obvious to me... I mean this is really about Codes. I'm kind of shocked at the kind of colloquial thing. They only have 60 parking spaces, but they only need this and they will do this at their end. I'm the person the Pastor referred to who wrote the letter. I don't know if you have gotten the insert I gave.... one of them was about delaying this, because this is a big thing to our neighborhood. I mean, we're talking about a special exception. We're talking about variances. We're talking about the fact that this.... we just had an election where an overwhelming mandate of people from Santa Fe said this School District is not doing a good job. They shouldn't have closed these schools. But the fact is, all these things are going on and I put these things in that notice, I hope, that you got in your packet."

Mr. McCarthy continued, "I put six reasons why it should be delayed right now. But on top of that, as I sit here and listen to it, I just hear the kind of.... you know, there are codes. And let me just read the Code, I mean the ordinance about the 10 acres and it literally says, if you go into it, 14-6.2 Specific standards, Public, Institutional and Civic Uses. 6. Schools. b. Private, gives the ordinance number.

Private schools shall have curriculum similar to conventional public schools and shall meet the following minimum requirements. That's a compound sentence. They're putting two things in that sentence. They're talking about curriculum and they're talking about size. So, these are not like... there's so much colloquial rhetoric about, oh, what does this mean. Well, I think it's a very specific meaning. And then you go, minimum size, Table 14-6.2.2 Elementary 5 acres with minimum yard, 25 acres. Secondary 10 acres with minimum yard 50 acres."

Mr. McCarthy continued, "I'm just saying you know, Kaune doesn't even come to one-half... I mean the first issue you're dealing with is site size. This isn't even  $\frac{1}{2}$  of the minimum requirement. And so, Desert Academy is saying, oh, we're so aggrieved, we're on 1.1, this is 5 acres. Well, what about Santa Fe Prep, 325 students, 33 acres; Santa Fe Waldorf, 250 students, 13 acres; St. Michael's, 750 students, 25 acres. You know, what about these people who have abided by the Codes. These Codes are there to create buffers for residential neighborhoods. You know, 10 acres with... look at this. This is totally surrounded by housing. You know the way that Stamm.... and Stamm was a master builder and a master developer, and that's why I wanted to live here. The way he did it, it was built like a race track and that's our center field, you know. He basically bought an old race track, and so in effect, I know you only can deal with Codes and all these other things, maybe about covenants... this might be out of your jurisdiction. But, I'm just saying on the basis of the Code, the minimum, it shouldn't even be considered, because it's not an appropriate site. And I'm sorry Desert Academy is only on 1.1 acres. I think they're a fine school. I know many people who go there. I know many people who work there, but they are not appropriate for their expansion plans."

Mr. McCarthy continued, "And the other thing I'd like to address... there's so many things I'd like to address, because there's been so many misstatements and assumptions in this Application. The other thing, I'm looking at the Board of Adjustment Application and it's totally changed from the one tonight. It was 92 parking spaces and they were going to pay the... it had a thing about the 18 spaces there. Everything's changing. And I'm just saying, I'm just trying to keep abreast of it, and that's what... I feel you are way behind the curve on this, if you haven't.... you know I think you're doing a catch-up game here on this, because there's so many issues that this brings up that aren't being addressed. Everything's just like, say, the traffic. If we go by Traffic Codes, the minimums, the City is saying 118. Well, let me see if I can just put something up here. [Mr. McCarthy put a document from the packet on the overhead]. [inaudible] if I wanted to do my math for how many spaces I think should be there. And there again, it's not about, well gee we only use 65, we think. I mean, there's Codes and the Codes say for a secondary high school you've got to have so many, you know, parking spaces per classroom. You've got to have so many square feet for gyms. You know, these things are laws, and that's what you're here for, is to protect us and make sure these laws are abided by."

*Mr. McCarthy moved away from the microphone and Commissioner Komis asked him to speak into the microphone.*

Mr. McCarthy continued, "Hold on. I've got too many papers here. Now, let me see where it is. I'm kind of jumping around. I'm sorry. Basically...."

*Mr. McCarthy again moved away from the microphone and Chair Brack asked him to speak into the microphone.*

Mr. McCarthy said, "Oh here it is. I'm sorry. Well in Chapter 14 Section 14-8.6 Off Street Parking. Parking Unloading Specific Parking Requirements. The exception of the BCD Parking Standards set forth in..... you know.... the following minimum number of off street parking spaces are required for each of the following uses. You know. Then it goes in parking for educational, high schools, 4 spaces for each classroom, workshop, laboratory or office, plus one space per square feet of auditorium, gymnasium, cafeteria. The minimum requirements that the City is saying is 118. Per my math, I think they need 148, because if you look at the 15 classrooms... and they want to create 5 more classrooms, so that would make 20 classrooms. So, let me just see, I'm messing up here... if you look at this, you can see there's 15 classrooms and if we took offices, there's one, two, three, four, well the lounge, well there's a minimum of four office in my calculations. I didn't even count the library. And so, if you look at the gymnasium through the square footage I have, it would be 27. Well, they're adding... they're going to need another 9 or 10 parking spaces. I mean this is all [inaudible]. And again, Dan and I could maybe go back and forth and he could show me where he got his 118 number, but I'm saying, you know, we're talking about a lot.... you know, the requirements here, they say they need this parking, and there's no way they can fulfill it."

Mr. McCarthy continued, "I know the reverend is mad at me, because I'm the person who wrote the letter on the conversation I had with him, and he told me the church, basically was for sale. He was going to some different congregations, and possibly going to sell the church in one to three months. I only wrote down exactly what he told me when I put it in my request for an extension. And the reason I said why are we going to decide this, when in the Application they say they're going to use these spaces. Now, they say they're not going to use them. But, in the meetings we had, they said they were going to chop down the trees and pave that for 18 spaces. So, I'm just saying there's a lot of stuff shifting here in the neighborhood, and there's a lot of resentment in the neighborhood, growing more and more. If you want to go to a website we've got up called Save Casa Linda, it's called SaveCasaLinda.com and I think it's on your thing I sent you."

Mr. McCarthy continued, "Anyway, I could go into many other things I call misstatements and assumptions, assumptions especially about the neighbors, well we've consulted with the neighbors. A very specific group of neighbors was consulted, but not the people who are going to be impacted the most on this. And there again, there were promises made. We're going to keep the playground. Boom. The playground is totally destroyed and gone. To tell the truth, I have a hard time trusting Desert Academy's word on any of what they say. But, in effect, like I say, I don't want to demean them, because they're a good school, but I just don't think they belong in our neighborhood. Like I say, I could talk a lot about... I've made so many notes, but I don't want to take up all the time here."

Mr. McCarthy continued, "The last thing I'm going to say here is basically, on this whole procedure, per the sales agreement between Kaune and the School, in Article 8, 8.01 Closing, it says, provided however, if the closing has not occurred by December 15, 2010, either party may, by notice to the other, terminate this agreement. The Santa Fe School Board can terminate this Agreement right now. It's two

months past that date. And I'm just saying, think of that when you're doing this too, because this has been rushed through, it's almost been ramrodded through and basically they didn't do their due diligence with the neighborhood, with the law, with the City you know, with the State, with anyone. Thank you."

Commissioner Komis said Mr. McCarthy provided the Board with a letter written on February 11, 2011, and then another letter to the City on February 14, 2011, and said there is no way he can read the February 14<sup>th</sup> letter because it is very thick and was given to the Board just prior to this meeting.

Mr. McCarthy said he was told that letter wouldn't be in the packet.

Commissioner Komis said it is okay, because it's an important piece of information that needs to be studied by everyone on the Board, and we need to read it rather than skim it, because "this is a very volatile issue involving a neighborhood, involving a very important school in Santa Fe." He said in Mr. McCarthy's letter of February 11<sup>th</sup>, Mr. McCarthy said, originally when Casa Linda neighbors were notified of the ENN meeting which occurred on December 7<sup>th</sup>, they were led to believe that, through numerous communications with William Lamboy, City Planner, that this BOA hearing would not take place until mid-March.

Mr. McCarthy said this is correct.

Commissioner Komis said in his letter, Mr. McCarthy said, "Mr. Lamboy informed me that he had been wrong about the March BOA date and they had filed their Application on December 17<sup>th</sup> and would be able to appear before the BOA in February." So, there was this confusion.

Mr. McCarthy said, "Well actually, and I put his response in there, he basically, and it was three or four times I spoke with him about this, because not only am I part of a.. it's called Save Casa Linda, I'm also the rep for the Neighborhood Association, so I sent out emails to everyone telling them about the meeting and whatever tonight. So, I was basically in that capacity, I talked to Bill [Lamboy] quite a few times, and Bill said, yeah, you don't have to worry, it's not going to be until March 15<sup>th</sup> because there's no way they'll be able to get an application in that would be applicable. But then, per that correspondence, and I put his exact correspondence in that letter, he said he realized he was wrong and that it was actually going to be a month earlier. And that's when I also, again, went into rather elaboration about how difficult it's been for a lay person like myself, who's not a lawyer, who's never read Chapter 14, who's basically, you know, not familiar with all these terminologies and what not, to mount what I would think, is an intelligent reply to what was happening. And, can I say one more thing. I'm not the rep from the Casa Linda Neighborhood Association, I'm just the liaison on this one issue. I volunteered that I would let everybody know about all the timetables and stuff like that, so no way am I speaking for that group. I'm just speaking for myself."

*Recess 9:15 p.m. to 9:40 p.m.*

**Glen Wykal, School Board Member-elect [previously sworn]** said he has nothing but respect for Desert Academy, it is an excellent school noting his son went there in 8<sup>th</sup> grade and the Academy does a great job of educating children. He is somewhat conflicted in making a statement against the approval of

variances, but will go ahead with that. He said it is a private institution, and as so, it has a great deal of freedom in its enrollment and how it chooses to operate its business. He said he has been involved with a lot of schools – charter, public and private – and he is often told that 400 students is an ideal number in terms of operating a 7-12 grade school such as Desert Academy. He sees a tendency for the enrollment of this school to want to move toward the 400 number.

Mr. Wykal said, "And I'll make the observation from hearing from others that the Kaune building was designed for 300 elementary school students, and classes in public schools would range from maybe 20 children in a classroom up to about 26-27. Whereas, secondary classes typically will be larger, and I can't say I know the exact number, but say 28 students per classroom. So, we are looking at a school that may want to have considerably more than 240 students, and I don't believe this Board has the authority to cap the enrollment of the schools, but it's something you might want to think about as the school wants to grow and deal with whatever financial issues they will need to deal with over the next 60 years, I guess we're talking about."

Mr. Wykal continued, "I've also read over the covenants for the Casa Linda Neighborhood and it is my interpretation that it was the will of Mr. Stamm who built this neighborhood, which actually is a very historic neighborhood because it's the first Stamm development in Santa Fe as far as I know, and the other Casa neighborhoods – Casa Alegre and Casa Solana are the later developments. So, this is more historic, it's from 1950. My understanding from reading those covenants is that he very clearly intended that this school building be operated under the authority of the Public Schools, and you can see that if you read over the covenants."

Commissioner Komis asked where that is located specifically in these covenants [Exhibit "9"].

Mr. Wykal said it is somewhere about 3/4 of the way into the covenants. He said back then they weren't called Santa Fe Public Schools, but it uses some other term which clearly refers to the public schools authority.

Mr. Wykal said, "I really appreciate the level of public involvement, that you guys allow this kind of public participation, because it's quite a contrast to what happens at Santa Fe Public Schools. There is also language in there about commercial activity. Yeah, okay, the very last sentence in the first paragraph on the second page provides, 'None of the property described in this article hereof shall be used for any business or commercial purpose other than one conducted by or under the supervision, direction and control of the public school authorities.' So, you know, that seems to represent a pretty clear intent from the original developer of the subdivision. And you know, that emphasizes my feelings also, that the best use, and I'm sort of speaking to land planning issues, which I assume is your domain, the best use of this school is as a neighborhood elementary school, and I understand Santa Fe Public Schools closed it as a neighborhood elementary school as the result of a budget crises. We are, you know, pulling out of the great recession, and I think for another two years, Santa Fe Public Schools will probably be struggling to get back on their feet financially."

Mr. Wykal continued, "And there was a combination of reasons for why this school was closed. Part of it was financial, the other part was we have this federal law called No Child Left Behind. And year



after year it rates the schools, a lot of our schools get rated as failing. If they fail too many years in a row, the school system has to do something about it. And, in this particular case, the do something was to close the school, but what often happens is you have a building and you can open a new school there and you get to start fresh. I don't particularly like a lot of things about this federal law, but that's what it encourages to happen. So, as a new Board Member, like Steve, we have the vision that we will reopen this school as an elementary school. And what it addresses is a situation where we have 250-300 students who go to school in portable classrooms every day in various other schools in the neighborhood going to school in portable classrooms. With a proper magnet school to attract children, other buildings or a rezoning policy can bring these students out of the portable classrooms and back into real brick and mortar schools and Kaune's School is a perfect example of a well maintained, brick and mortar public school which was built to be an elementary school, because that's what it was."

Commissioner Winston asked, "What I'm not clear about is, if our Board were to vote to approve the Special Exception and variances, my understanding is that has no affect... I mean the Santa Fe Board of Education can still vote to kill the deal. So, it keeps getting characterized... our approval or disapproval keeps being characterized as the be all, end all as to whether the sale will take place or not. It's actually not relevant."

Mr. Wykal said, "We have a zoning rule here that says we need 10 acres for a high school, and what we are saying that it doesn't have to be a high school. It can be an elementary school, which fits perfectly within the zoning."

Commissioner Winston said, "There are two Board Members here and I appreciate your testimony, but...."

Mr. Wykal said, "Our Board members have left, and we don't get sworn in until March 1<sup>st</sup>, so we haven't had any chance to make any action at all."

Commissioner Winston said, "But you do have the power to take that action, irregardless of the decision made today. If we vote to approve it, you still have the power to kill the deal is my understanding."

Mr. Wykal said, "It depends on whether it is a violation of the contract with Desert Academy, and I can't totally speak to that at this point."

Commissioner Winston said, "Neither can I."

Mr. Wykal said, "And... so, at any rate this new School Board will be taking a fresh look at how we use facilities, and certainly this could be a part of that mix. The last point I want to make is an observation that there seems to be a considerable amount of confusion about how many parking space were actually applied for in this paper work that you guys are considering right now, and it seemed to me that even Mr. Esquibel was confused about that, and I would hope that you would sort that all out. Just from sitting in the background, it's not really clear to me whether the variances for three different numbers for how many parking spaces it is. I just thought I'd bring that up as well. Thank you."

**Ron Wright, 1409 Santa Rosa, [previously sworn]**, said he is opposed to the Application. He said, "Rather than echo what has been said tonight so eloquently by several of the prior speakers, I'd just like to say that, in my mind, there is no question the use of a high school is going to adversely affect the neighborhood and the property values of the owners in that neighborhood. I guess I'm safe in assuming that all of us attended high school and there was probably a portion of the student body that were not rule followers in spite of the staff's effort. And I'm sure there is going to be a lot of students that do not park in the designated parking stalls, the limited designated parking stalls and it will impact the neighborhood, because they won't follow the rules, and it will adversely affect the property values when you have the streets loaded with cars that are parking there and coming and going. Another thing that I have not heard discussed, is if there has been a traffic impact study being conducted with the impact and the growth of this school and its staff and the number of staff members it will require, to say nothing of the student body. Right now the left turn lane off Cerrillos is highly impacted at certain times of day turning onto Monterrey causing traffic to back up on Cerrillos. So has there been a traffic impact study conducted."

Commissioner Ladd said the Traffic Engineer is here.

Chair Brack said we will ask that question of the Traffic Engineer.

Mr. Wright said he has no idea of the current current population of the school, nor the intended growth.

Mr. Esquibel said that question probably can be answered by John Romero who is working closely with the Applicant in term of the impacts concerning traffic..

**Hallie Neuman Love, 1409 Santa Rosa [previously sworn]**, said she has lived there since 1981, and she has seen Kaune operate as an elementary for many years, noting her son attended Kaune K-6. She said she as a property owner and mother would go to the school and volunteer her services, noting she directed different art projects with the students and knew the Principal and teachers quite well. She saw the orderliness of the children boarding the buses and being taken in and out of the school area, and children that walked home from school. There were few people who drove into the neighborhood other than to drop-off and pick-up students, and there were no traffic upsets in and out of the neighborhood. She said there will be issues in this situation, because the neighborhood is designed as a round racetrack. She said you go onto Monterey where there is a tiny bottleneck for ingress and egress into the neighborhood and the school. She said she is concerned about 240 cars bottlenecked on Cerrillos Road trying to get in and out of the neighborhood with this kind of situation of Desert Academy and the number of potential drivers.

Ms. Love said it will be a commuter school, and there are no buses and the students either drive themselves or are picked up and dropped off by their parents. She said she is an attorney licensed to practice law in New Mexico, but she currently doesn't practice law and is here only as a property owner and concerned citizen to make sure that things go correctly in terms of citizens and property owners rights, and that "our little tiny neighborhood has always been a tightly-knit community. She purchased her

property 29 years ago in reliance on the covenants, saying she read those documents and know what they say, and decided that she wanted to be a property owner based on the excellent housing. She said Stamm protected this neighborhood with his covenants. She said there are houses which abut the road which has been talked about. She said there is no buffer, there are back yards abutting the property you saw when they were talking about having a gravel road, and the soccer field.

Ms. Love said she believes the best use is for this little, teeny neighborhood school in this little teeny neighborhood is to have the covenants enforced and what the developer not only envisioned, but contractually wrote up in the documents that they rely on. She said there has been testimony that there is every possibility this could be explored and investigated to the fullest, and as a property owner and community member of this small, little community, to keep the value of our community and the consistency and the reliance of property owners, "I would ask you to please make sure that every investigation, every effort, nothing is ramrodded through, and everything be done to keep this school in this neighborhood as envisioned from the beginning."

**Charles Roseaker, previously sworn**, said he lived in the Kaune area for thirty something years, and the second generation of his family, attended Kaune school. He said for those who understand our culture, probably there will be some more "when I'm under." He hasn't met anyone from Desert Academy that is disrespectful, or not positive. The Berean Baptist Church has been a wonderful neighbor. However, people have an issue here which goes way beyond a variance. He said he can do nothing more than reiterate what other people have said. He hopes the Board decides, at the minimum to table this until the new Board members are in charge, commenting he believes it will change the whole, overall perspective of a lot of things. He spoke about what has happened to other schools, specifically Acequia Madre, which he believes is all about money. He said Desert Academy has good and caring people, but this isn't their neighborhood. He does have property rights issues about which both the Public Schools and Desert Academy are aware. He would like to see this tabled to a later date.

**Donald Serrano, [previously sworn]**, said he shares some of the previous sentiments saying he believes Desert Academy is sincere about making amends to what they can offer the subdivision. He also would like for the Board to consider tabling this. He grew up in the Kaune neighborhood and his children attended Kaune until the ill fated decision to close the school, noting that battle was fought long and hard last spring, and as Buddy indicated and a number of other speakers indicated, we have a new playing field on the School Board. He said you have heard plenty of testimony on the reasons Kaune should be kept as a public school as an elementary school, as a neighborhood community school. He has nothing against Desert Academy, noting he testified on behalf the Academy at the School Board to support their bid to be in Kaune, but "I'm backed up against the wall. It was either them or a school for troubled kids, and also, I believe, a high school." He said the community is faced with some hard choices and the School Board doesn't give them a lot of wiggle room. He said Allen Stamm envisioned a neighborhood elementary school, and the Desert Academy largely defeats that purpose.

Mr. Serrano said Taco Bell was placed in the neighborhood "under the radar screen," and we've already seen the impacts. He said he agrees that at times it is a challenge to get into the neighborhood

from the turning lane off southbound Cerrillos Road, and it will only get worse. It said it is a cumulative impact, and this Board needs to consider all the cumulative impacts that are going to occur in that neighborhood from the developments along Cerrillos Road as well as the Desert Academy and the high school kids coming into the neighborhood at the bottleneck. He said right now the volume of traffic would not and could not be supported with this proposal. He said at the end of the day, Desert Academy may get the bid. He would like to have some "breathing room," and asked the Board not to fail their way of life in this neighborhood. He said the overflow parking lot at the Berean Baptist Church would involve 3 large Cottonwoods which he considers historic, noting they will be removed under the proposal, so the face of the neighborhood would be changed.

**Steve Boyles, 1377 Santa Rosa Drive [previously sworn]**, thanked the Board for hearing everyone this evening. He said he would offer that if Desert Academy had only 50 students or were larger and had an elementary section, then it might be a good fit. He said his point of view is that the proposal is a size 5 function in a size 2 facility. He said there was an argument this evening that the building would be better used sooner, rather than later. He rejects that argument. He said he would rather the buildings sit empty for 3-5-10 years, rather than to have 60 years of a "shoe-horned" operation which is what we're considering here. He said since Desert Academy has to use other facilities to run its sports programs, he would submit this as evidence that this isn't the right size facility for them. He said if they find 10 acres it would better fit their operations. He said understands Desert Academy is on one acre and they're "starving," but that doesn't make this the right place for them. He said, "You are what stands between us and 60 years of a poor fit. So thank you. I would say that the three..."

Commissioner Winston said, "I'm sorry. You keep saying 60 years, and I'm curious... I don't understand that.

Mr. Boyles said we're told that's the length of the contract. If you grant this, they're in it for 60 years.

Commissioner Winston said she thought this was a sale.

Mr. Boyles said the land would be owned permanently by the School Board "forever," and Desert Academy would have rights to it for 60 years, and that is the big issue. He thanked the Board for its time.

**The public testimony portion of the public hearing was closed**

Chair Brack said the Committee would like to hear from John Romero, the City's Traffic Engineer.

Commissioner Ladd would like to hear from the person from the Schools.

**John Romero and Justin Snyder were sworn.**

Commissioner Ladd, referring to Exhibit B(1), Mr. Romero's Memorandum to Dan Esquibel, dated February 10, 2011, said the one issue on which she wants clarification is the #2 Recommended Action which provides, "So as to mitigate any potential pick-up/drop-off over problems, the Applicant shall agree to designate both parking areas "C" and "D," shown in the attached drawing, as areas only for pick-up and drop-off." She said this says to her that the cars can't stay parked there all day, and there are suggestions for the staggered pick-up. However, when she looks at the diagram on the back it appears that D is one of the permanent parking lots proposed by the Applicant that would be counted as permanent parking space inventory.

Mr. Romero said that is correct. He said, "One of the main issues I had with Desert Academy initially was their ability to drop-off and pick-up students. At numerous schools, elementary schools, high schools throughout the City, that's a major problem that we have. So, we wanted to demonstrate that they could accomplish that. So, we did that through several things. I had some of my guys go out to the current Desert Academy to see exactly what the situation is there, and to see if all 176 kids get let out in the p.m., after school and everybody leaves at once and how they do that. And what Desert Academy had explained to me is that there's a lot of before and after school activities. There's a lot of commuting, that type of stuff that reduces that amount by quite a bit."

Mr. Romero continued, "We went out there and observed it, in addition to counts that they had provided us, and it is consistent with what they said. Now, that being said, what we wanted to do to be conservative was assume that all 240 kids, each person was driven in by their parent, excluding the high schoolers that drive. That brings it to another number. What Desert Academy did was they presented me with a traffic plan and explained a possible way to fix this. First was to stagger their pick-up and drop-off, so the pick-up and drop-off for mid-school would have two tiers of pick-up and drop-off and the high school would have two tiers. And what they explained, and all the numbers jived, was during the worst drop-off time they had explained 33 vehicles... I think... let me see here... I apologize for not having that. Yes, 33 during the worst p.m. time, and that's ultra conservative. They further went on to explain that the primary pick-up and drop-off time which is the Location C, that's the primary. The secondary would be D, and worst case if they had to use their circulation in A, that would be their third tier of how to attack that problem. Anyway, with 33 students being picked up, C only has room for 16, so the remainder I assume would go to D, so that's why I explained that that would have to be reserved. I did ask Jud at Desert Academy for clarification if that is what he's saying and I assume... he verified that."

Mr. Romero continued, "Now as far as how that works into the schools' general parking requirements, I did not look at the School's parking requirements. All I looked at was the ability of the school to maintain pick-up and drop-off capabilities. That explains that."

Commissioner Ladd said, "Yes. What you're saying is you're looking at the traffic flow during the peak times of when people are trying to get off and on the campus to pick-up the kids."

Mr. Romero said, "And that was very conservative, but I tend to like to be conservative, because if something happens... you know this is a lot of guesswork... not necessarily guesswork, but it's very hard to get this exactly how traffic's going to work. One thing I'd like to point out though, is they... we fortunately had a Kaune count. The schools had contracted with Wilson & Company and they had done some exiting

volume counts, and so there's been debate on who generates more traffic. Does Kaune generate less because there's bus service. Or, does Desert Academy generate less because of some of the kids that drive there and they don't leave. It's not a coming and going type of trip."

Mr. Romero continued, "Well we had exiting volumes, and I think this is correct, but Kaune Elementary School had around 178-180 kids when it closed down, and counts were conducted at May 18, 2010, before it closed down. And in the p.m., the total exiting counts were 70. Now Desert Academy counted their total exiting at the current school with the current enrollment of 172, comparable. And again, I think Kaune's enrollment could arguably increase if it was still here. You know, 178 wasn't its cap. So, my point is with comparable population... student population they had comparable exiting trips. Another major thing to point out though is, we broke down the number of cars exiting in 15 minute intervals. Now I don't know, like one minute intervals, if everyone is trying to leave at once. That often happens at schools. But, in 15 minute intervals it gives us an idea of when everyone is coming and going and their worst 15 minutes at Kaune was at between 2:30 and 2:45, and they had 57 exiting cars. At Desert Academy, their worst time is from 3:30 to 3:45 and they have 45. So, all this points to is that there are comparable traffic patterns between both. I don't have any information about Kaune's pick-up and drop-off, if cars spilled over into a neighborhood, but I thought that was very important to point out."

Mr. Romero continued, "One last thing is, is we did go out to Kaune and we did our own count, and from 3:30 to 3:45, we counted....."

Commissioner Komis interrupted and asked what date "was this."

Mr. Romero said, "It was back... when we counted... in the afternoon we counted... February 8<sup>th</sup> of this year, so it was last week sometime."

Commissioner Komis asked if Kaune is still open.

Mr. Romero said no, noting Kaune was counted back in May of last year, May of 2010."

Commissioner Komis said, "Okay. Then between 3:00 and 3:45 p.m...."

Mr. Romero said, "No. Let me clarify that. May 18, 2010, when Kaune was counted, between 2:30 and 2:45 there were 57 exiting cars. At Desert Academy, it was counted on November 3, 2010, during the school hour, at their current site off Camino Alire, 3:30 to 3:45 there was 45 cars there exiting."

Mr. Romero said, "Back to Desert Academy. They had 45 exiting cars, and we counted, was it 20, about 30 cars, so it was a little less. But we did count the people that were picked up, and we tried to see how many students or parents were cheating, parking in the neighborhood, parking at the Dance Institute, who knows what. So, we noticed there were 13 kids picked up during the rush hour, and that was 3:30 to 3:45, 8 people walked, and we don't know where they walked to, so there were 8 people that walked. And we did set someone out at the back of the school. There's a gate at the current Desert Academy on where Aspen is, and in case someone was getting picked-up at Aspen at the dance barn. And, there was... we counted 1 staff member and 3 students. And the reason there was only one staff member is I'm sure staff

leaves a lot later than when we counted. You know, we try to count during that peak time. And the whole point of this was, is when we notice all of the problems of pick-up and drop-off is in the morning because parents trickle in and out at, whatever, eight. But in the afternoon, everyone trickles in, but they all leave at the same time, so they all pile up and leave when the bell rings. But according to all these numbers we've come up with, we've seen... it seems like with those two lots we would have more than enough parent pick-up/drop-off."

Commissioner Winston said she doesn't understand how designated parking... if there are ever overflow parking problems, how designating parking B as the only pick-up and drop-off... how that dovetails with parking's base requirement, which "wasn't considered, but I gather you did."

Mr. Esquibel said he is unsure if he looked at that with regard to leaving that as a pick-up only. I think for the most part, I'd have to consider that a little further.

Commissioner Komis said he is a bit confused with Mr. Romero's report and some of the numbers you are telling us today. The Taco Bell is not in operation in the morning, noting breakfast isn't served at that location, so it is open later in the day. He asked Mr. Romero if this is correct.

Mr. Romero said, "That's my understanding."

Commissioner Komis said Taco Bell is operational during school "let-out times." He asked if the traffic study considered the bottleneck on Cerrillos Road which has been redesigned once, and it now has the single access. He said there were 57 cars exiting between 2:30 and 2:45 when it was an elementary school, and between 3:30 and 3:45, that is a peak hour in the fast food industry, he believes. He said there is a new rush, but there still is a rush of people going in and out of Taco Bell. He said he sees them there all the time lining up at all hours of the day on Cordova Road, which is just down the street. He asked if the traffic study considered the Monterey/Cerrillos Road impact during that time period.

Mr. Romero said, "The evaluation of the fast foods .. 2:30 to 3:30 isn't close to their peak. When we did do Taco Bell and I want to say it was at the existing Taco Bell, and their peak time is noon time, that's their major peak. Their minor peak is in the p.m. when work lets out between 5 and 6 or 4:30, 5:30 or somewhere around there. And that wasn't, you know, that wasn't a fraction of their peak at noon. Noon is their guaranteed peak. In between those two times, which is when school lets out, traffic at Taco Bell is relatively low. That being said, when Taco Bell did their study, they did obtain counts at Monterey and Baca during... when Kaune School was in operation. And, of course at that time, Desert Academy wasn't a thought, and closing Kaune wasn't a thought, so that was the assumption: Kaune is going to stay open. But, now that it isn't open and Desert Academy is proposing, the counts are comparable. The counts are comparable, so the study that was done to account for Taco Bell traffic was Taco Bell with school traffic, be it Kaune traffic at the time. So, we did take into account, I guess indirectly, with the Taco Bell Traffic Study."

Commissioner Komis asked if there was discussion at all about the 11<sup>th</sup> and 12<sup>th</sup> graders going to Taco Bell, or driving there during the lunch, through the neighborhood, to the Taco Bell and then trying to

turn around in that parking lot, get onto Cerrillos Road and back to Monterey to the School. He asked if this was brought up at all.

Mr. Romero said no. He said he would like to point out, with regard to school traffic that leaves in the p.m., the counts at Desert Academy show a very low amount of vehicles that left during the noon hour. The number that was noted on November 3, 2010, between 11:15 and 11:30 a.m., there were 13 cars that left and between 11:30 and 11:45 a.m., there were 10 cars. He would assume, with regard to Taco Bell, that they would more than likely walk than to try to drive over there.

Commissioner Komis asked if the Traffic Impact Study reflected any of the times that the previous school or the current proposed school would have with evening extracurricular activities such as sports and special events such as open houses and such.

Mr. Romero said no. When they do traffic studies they analyze for a typical day, although there could be a special event. For example, in the downtown area, we don't time the signal to account for all the traffic that comes here for events such as Zozobra. He said it is difficult to accommodate all the special events, so they try to accommodate a typical day which is a day when school is in session – Tuesday, Wednesday, Thursday – and there is no adverse weather. He said these are the confines of the typical traffic study.

**Justin Snyder, Director of Property, Santa Fe Public Schools [previously sworn]**, said, for clarification he is a staff member and not a Board Member or Board-Elect, so he can't talk about his visions. He can provide background to assist the Board in its effort to make a decision. He said he feels obligated to point out that there is a letter in the Board packets from the School Board President which is the official position of the Santa Fe Public Schools representing the viewpoints of those most familiar with the challenges, for programming and budgeting with the District.

Commissioner Ladd said she doesn't have a concept of what the average school size per school population should be. She said the 10 acre number seems arbitrary and she isn't convinced there's a nexus for that number. She also thinks keeping schools within the heart of the community is a good idea rather than having to be built in the fringes. She asked if this is outrageous number of students to have in a facility of this size, and asked what is this being compared to and what is the yardstick.

Mr. Snyder said he has been in this position for about 3 years, and the Santa Fe Public Schools reports to the PSFA [Public Schools Facilities Authority] which sets the guidelines for the public schools for the buildings it builds. PSFA sets the guidelines and programmatic guidelines for schools. He said in 3 years there have been 3 variations, and suspects the City guideline was based on a variation prior to that. He said the first year he was here it was 10 acres minimum for an elementary school, and 15 or 20 acres minimum for a high school. The second year it 10 acres plus 1 acre for every 100 students, or 13 acres for a 300 student elementary school, while high school would require 18 or 28 acres, noting Santa Fe Prep is on 13 acres. He said since that time, the minimum lot size has been completely removed. He said there are several reasons for that including the cost. He said there also are cooperative efforts between the Schools and the Parks and County to have more thoughtful use of the fields, especially with water



shortage. Another factor are second stories, and we are starting to experience a terminal effect where schools are spread out so far they are not programmatic for school needs and it is better to built up. He said they are doing second stories on all new schools to meet programming needs. He said that will reduce the footprint which reduces the needs of the site. He said the demand to the PSFA is to highlight the programmatic needs and ensure they are met within the site.

Mr. Snyder said Kaune was designed for 352 students. He said there are a lot of factors involved, including the number of students per classroom which has increased because of budgetary numbers which is 25, so the design capacity would increase. Another issue is minimum square footage. He said no matter the allowance per classroom, it is still necessary to meet the minimum square footage or get an exemption. He said there is an alternative high school, the Career Academy, which is behind the Toney Anaya building, which services between 140 and 180 students depending on year and enrollment, and it is on 3 acres for a 9,000 sq. ft. facility.

Commissioner Ladd asked the square feet of the existing Kaune School.

Mr. Snyder said it is around 38,000 to 39,000 sq. ft.

Mr. Esquibel said, "Mr. Chair, I would like to answer Board Member Winston's initial question. I had a talk with both John and the Applicant, and to alleviate that issue just leaving it for a drop-off in Area D. He said what they would do is to breach the one tree along the landscape area and allow continued flow through that 15 ft. roadway easement and out through the other parking area, which would service the area and still allow it to be used for parking. Both the Applicant and John agreed to that."

Mr. Esquibel continued, "Number two I'd like to talk about our position on the covenant. You know, with respect to private covenants, and I understand the neighborhood's needs, but at this point, the City still does not enforce those covenants. That is a private issue that must be dealt with by the association that wishes to enforce those issues. As we all know, it's not uncommon for developers to purchase property subject to zoning. It goes through the process. They don't own the property but they still have the permission to go through that process. They have that purchase agreement and they are allowed to move forward through the special exception process, in order to see if they can obtain the necessary approvals from the local government."

Mr. Esquibel continued, "If the local School District were to decide at a later time to eliminate or cancel that Purchase Agreement, that, in effect cancels, ultimately, the special exception that would be granted by this body since the Public Schools would take over the property and we don't have jurisdiction anyway over the Public School System with regard to what they can or cannot do. So, if you were to approve this Application and it were to be taken away tomorrow, then it's ultimately over."

Mr. Esquibel continued, "With regard to the ENN that was brought up. The Early Neighborhood Notification occurred on December 7, 2010, the Application was submitted on December 17, 2010, which means the ENN process, the application process met the specific standards that are required by the Code.

There was more than a 10 day separation between the date of the ENN and the date of the application. The ENN did meet the appropriate requirements for the ENN. There was dialogue and everything went according to the standards. The Applicant did follow the rules to the letter."

Mr. Esquibel continued, "When it comes down to the parking, there was a concern that staff was not clear on the parking issues. Well, Mr. McCarthy is right, the calculations were made, and if you look actually on the 3<sup>rd</sup> to last page of the packet, they're on that particular site plan. There is a breakdown of the parking that was evaluated in order to determine the number of parking requirements needed. And, within the Code, there are two standards for parking. You have those standards that are required for elementary and junior high and then you have those standards that are required for high school. Both standards were taken into account based on the placement of kids within that facility and how much parking was going to be generated per classroom for the number of kids that they were providing. That number totaled 119 parking spaces. Now, unfortunately, that includes those parking spaces that are adjacent to the property which are 18 spaces on the church side. Well, we did not get a variance to that and we did not include those parking spaces in our grand number. But, since the variance they requested was for a variance to the parking standards, that means that the parking that they are requesting would be a total number of 101 parking spaces where they typically would be required to have 119 parking spaces which is rounded up by one."

Mr. Esquibel continued, "The other issue that we had were the 16 parking spaces for the drop-off area. That 16 parking spaces was also... we did not want to include that as part of the overall parking because it was the drop-off area and it would create a problem if you had parking on both sides of the street while people are trying to go in and out. I don't know if anyone has seen Carlos Gilbert at the time of peak traffic. We just didn't want that to happen here. So, we would rather not have parking along that area during those peak times, and if any thing, we would want it just on one side so it would allow for ingress/egress out of that area. Aside from that, that variance they are requesting still accommodates that particular need within this development plan."

Mr. Esquibel continued, "So, ultimately we're back down to the question, does the Board of Adjustment, are they going to allow this particular facility to locate on this property, which is a variance to site standards, allowing them to occupy this 4.9 acre lot."

Commissioner Ladd said she is comfortable with the size and with the traffic flow as being comparable and not imposing an impact on the community as the elementary school did. She said she is still stuck on the parking. She said, "The church parking, the 18 spaces at the church, we are not considering that tonight."

Mr. Esquibel said it is not part of the proposal. It was shown on the plans and something they probably will request at some point in the future, and included it in the overall numbers, but staff did catch it. Staff advised them that it is not part of this variance or the Application and we can't act on it.

Commissioner Ladd said, "The number that was given to us was 101 spaces, but first off we take out that 18."

Mr. Esquibel said. No. The number that was provided in the Application package was 119, which included the Church spaces which we eliminated down to 101. Staff further eliminated the 16 spaces at drop-off, bringing it to 85.

Commissioner Ladd said, "Okay, but I'm hearing there is an issue with needing some of those parking spaces in the corner lot as overflow to make the traffic circulation work.

Mr. Esquibel said this is true.

Commissioner Ladd said, "Then that's taking away from the 85."

Mr. Esquibel said that is true. Using the overhead projector, Mr. Esquibel demonstrated the parking on a drawing which is in the packet. He said, "This is the area in question that was brought up as an overflow/drop-off area. A simple relief of that problem would be to breach this area, rather than to close it off with landscaping, and allow continued flow out of this exit into the parking area. And, that will eliminate the stress that would be brought out by this area."

Commissioner Winston asked, "Is that area currently used as a road."

Mr. Esquibel said this is part of their actual development of the property, so they would be building all these areas to meet their needs.

Commissioner Ladd said, "I was just going to say that the Applicant said there is a dirt road there now that the neighbors use to get in and out of their back yards on occasion."

Mr. Esquibel said, "Mr Chair if I could just summarize. Ultimately, the application before you is to allow them this proposal, less what's on the church and less what's on the drop-off right at the front. The variance itself still accommodates that since those are conditions of staff, and still falls within the variance parameters. He said staff still feels the application still meets the criteria of the Code with the conditions we have put in place."

Mr. Esquibel would like to add an additional Condition of Approval: "That they provide that continued flow around the end, so that we can accommodate the issues brought up by John Romero concerning drop-off."

Chair Brack asked, for clarification, if Mr. Esquibel is speaking of the existing easement, the gravel road, as an additional overflow road.

Mr. Esquibel said, "What they would use is that road at the edge of the property to help the drop-off, because D was a secondary drop-off, it was overflow drop-off. So, with only one ingress into D, which is right off the original drop-off area, that creates a problem. But, if you have a continued flow so they can exit out into Parking Area A, that's going to eliminate some of the issues that may be brought up allowing Parking Area D to continue to be used as a parking area for the school and still accommodate overflow parking now and allow continued flow within that area."

Chair Brack said he will allow Charles Roseaker to provide some clarification on this specific issue.

Charles Roseaker said, pointing to the drawing on the overhead, "As you can see, one issue is this is not a continuous used road at this time. There are encroachments that have been made within this buffer zone or this road here. I own the two pieces of property here and here. As it stands now, there is already an encroachment of a security fence for myself and Mr. Miera, who is adjacent to me. Our particular walls are built 5 feet in from the existing property line. In order to keep this road going, if you cannot address the ingress/egress easement, you would actually be coming out into these parking lots or these parking spaces which in essence would eliminate those parking spaces."

Mr. Roseaker continued, "I have been approached by Jud to write a letter indicating that I would, you know, let them keep that there. I declined that."

Commissioner Komis interrupted to ask, "Who is Jud?"

Mr. Roseaker said, "The financial person, I guess."

Commissioner Komis said, "Oh, I thought it was John. That would be Jud Osborn."

Mr. Roseaker said, "So that does propose a problem and there are encroachments within this area."

Commissioner Komis said, "So there are problematic issues with that."

Mr. Roseaker said, "Yes. Property rights issues. And some other issues, too. But, I don't know if you only want me to talk about parking, that's all I'll talk about."

Chair Brack thanked Mr. Roseaker.

Mr. Esquibel said, "What we could do to make things work is identify some of the minor tweaks which need to be made prior to filing the development plan to ensure that it has continued flow and that it works well. And, I'm sure that the developer and the Applicant will work with staff to make those tweaks happy. Whether that means moving the field a couple of feet one way or another, or moving a parking area one way or another, or even eliminating that final parking area so it's not going to block anybody. Those are issues that can be resolved very easily, simply by looking at the development plan and making sure the flow works."

Commissioner Komis said Mr. Esquibel in his beginning comments, brought up covenants. He is glad he does so because there is a copy of the covenants. He said a member of the audience, speaking on behalf of the developer, said we can't use covenants as a basis. He said, "I also received a note saying Peter, cannot use covenants as a basis for our decision." And he believes this to be true. He said at the beginning of the testimony by the Applicant, Terry Passalacqua and Jud Osborn said they are willing to work with the neighbors.

Commissioner Komis said, "The reason why I'm bringing covenants up, and this is very important to the neighbors and to the school, because I really like the school, and I really believe in what Mr. Passalacqua said and Mr. Osborn said about working with the neighbors. But, I did want to hear everybody, because everybody's here tonight, and sometimes you sent people away and they can't come back, and that's just unfair too. So, I'm wondering, if the people here today would be willing to table it, have your discussion.... because there was a case six years ago involving the Planning Commission, and it was part of the Los Lovatos Land Grant. And it did get approved by the Planning Commission. It was a lot split. However, it's still stuck in the courts, and it took 5 or 6 years so far and it's still in the court. And we don't know... there's not going to be resolution in years to come. And I don't want a good school like Desert Academy to be spending money on attorney's fees when it will take 30 days for us to come back. We heard everything here. And I'm wondering how you would feel about tabling it. I don't think the Board is for it because I already made that proposal earlier, thinking maybe we should let the neighbors talk about this more."

Commissioner Komis continued, "And this covenant issue is going to come up and it's going to bite people where they're already bitten. And I'm wondering if the organizers would want to have more discussion on this, because it seems like there was a lack of discussion and a lack of presentation. And, if you guys could do that, I think it would make our job easier. What would the proponents..."

Chair Brack asked Commissioner Komis if he is asking the Applicant...

Commissioner Komis said, "Yes. If they would want to come forward with that. Yes, I am."

**James Wheeler, Desert Academy, previously sworn**, said he is a parent of two children at Desert Academy. He said, "One of the things I want the Board to know is that Santa Fe Public Schools and their attorneys did look at that covenant. And the decision was made that because the Board of Education governs not only the public schools but also private schools, that they felt comfortable in proceeding forward in terms of what is happening on this transaction. So what I'm saying is yes, there's no doubt about it, there is a covenant, but at the same time.... if you could speak on that Justin. He was familiar with that and they dealt with that. Both the Desert Academy and school attorneys spoke with the Board of Education attorney on that fact, and they both felt comfortable with the idea because both entities are under the direction of the State Board of Education. Consequently, that's why we moved forward, otherwise we wouldn't even be to this point where we are right now."

Mr. Wheeler continued, "In terms of if we meet again, can we you know meet on things, I think the bottom line of where the neighborhood is coming from and I can respect that, is that they would like this to be an elementary school. Will this happen again. You know, it's hard to say. But the one thing I will say, and this was a distinct possibility. We've had a lot of meetings with the neighbors, and a lot of the neighbors did say, we support Desert Academy. And part of that was they really did like Desert Academy, but there's another factor involved and that is, under the direction of the Santa Fe Public Schools, Santa Fe Public Schools can lease this school to any school. They could ease it to Desert Academy. They could turn it over to a charter school. They can do all these things. So, the thing I'm asking tonight is that in looking at this, you know, look at the request that's on the table. Can we work out things with the neighborhood. No, we can't do an elementary school there. We would love to, but that's not what we

have. Will there ever be another elementary school possible there – maybe. Can Santa Fe Public Schools do anything it wants to with this property in terms of any kind of school – yes. Do they have to come to the City of Santa Fe for any kind of adjustments – no.”

Commissioner Komis thanked Mr. Wheeler for his response. He said his point is that two members of the School Administration did say they are comfortable in proceeding. However, this probably very well will be stuck in a court of law, and he’s asking if the 30 days will help. He asked, “Do you think it would help. Do the neighbors think it will help. If that’s not the case, then I withdraw it. Mr. Osborn, Mr. Jed Osborn, you said you would work with the neighbors. I’m not quite finished. You said you would work with the neighbors. Is this part of working with the neighbors. I mean you brought up the playground, where you said you would keep the playground, but you had to remove it after you got it. I know the neighbors may have been a little disturbed about that, based on some of the findings that we had in our packet. Do you think this would be a situation where you would.... what is the problem in delaying 30 days. Is there a problem with that.”

Unidentified person asked to speak to this, and Commissioner Komis said he wants to hear from Mr. Osborn or Mr. Passalacqua.

Terry Passalacqua said, “We would like to get this resolved for a number of reasons.”

Commissioner Komis said, “Then the answer is no.”

Mr. Passalacqua said, “The playground equipment... we have no control over the playground equipment at all. We don’t own the facility, so whatever Public Schools decided to do with the equipment at Kaune, what they decided to do internally in the building, we have no say. In fact, they can do whatever they want. They can strip the building.”

Commissioner Komis said, “I understand.”

Mr. Passalacqua said, “What we did, we relied on the Santa Fe Public School Board of Education, our attorneys. We got a legal opinion. We did the same thing with our attorneys. We got a legal opinion. So, I would love to meet with the neighbors anytime about anything, but I don’t think meeting about the covenants is going to have any effect at all on what we want to do. So, for the covenants no, I don’t see that we can come to an agreement on the covenants. It’s a legal opinion.”

Commissioner Komis said, “I was just curious to see if you wanted to meet with your neighbors for another 30 days, based on your testimony to see if you could resolve this issue, because it’s really difficult if an entire neighborhood does not want the school. Desert Academy is a school I respect, and I thought maybe you could do that, and if it’s a negative, it’s a negative.”

Mr. Passalacqua said, “It is only a negative in regard to the covenants. Now when we went to the ENN meeting, my impression and the impression of most people there, is most of the neighbors in the Kaune neighborhood either were neutral or wanted us there, and I’m actually surprised none of those people showed up. But I don’t think the intent is, if you’re positive about something, that you come and

really work toward it. The fact that 7 or 8 or 10 of these neighbors.... and how courteous and polite they were about how they feel about it, makes me all the more resolved to be in that neighborhood, you know. Because, I think that these are neighbors that we can work with."

Chair Brack said there were some questions on easement issues, with regard to boundaries associated with this property that are still in question. He asked if 30 days would give Mr. Passalacqua a chance to resolve those issues.

Mr. Passalacqua said he is unsure of the easement problem, and asked if it was the one Mr. Roseaker was talking about.

Chair Brack said he meant encroachment.

Commissioner Komis said, "Well the road he just attested to when he explained the situation with his property and his neighbor Mr. Miera. Mr. Miera's property."

Mr. Passalacqua said, "We don't want that road to encroach on that property. I think what Mr. Esquibel was talking about is that there are probably other ways to help with ingress/egress, rather than using that road by Mr. Roseaker's property. I don't think we want to do that."

Commissioner Winston said, "To clarify, I think the encroachment is not a proposed encroachment on the part of Desert Academy, but rather a residential encroachment by the homeowner. But, can you clarify, because I thought we were discussing that road."

Mr. Esquibel said, "During our analysis and prior to filing the development plan, we will make sure that all of the development that is being proposed for this property is actually within the confines of the property. We would not propose that we would require that any easement, or any portion of this development be on someone else's property. We don't have the authority without their authority, and even that, we don't have that. So, we would need to be sure it is on the property proper."

Commissioner Winston said, "Right. But I think there's an issue of a residential homeowner having his property encroaching onto the School property, and that too affects the road. It might require some interference with that existing encroachment. I just want clarification."

Mr. Esquibel said, "I think with regard to the amount of space available and the fact that there are some issues that haven't been resolved yet, that there's a lot of different opportunities to provide alternatives to make it work. And, for the most part, if you take a look at that area, it's something that we would be able to address with the Applicant to insure there are no impacts to any encroachment."

Commissioner Winston said, "Commissioner Komis, I just want to point out that it is really outside our jurisdiction be considering the covenants. That is not within our purview"

Commissioner Komis said, "I'm not considering the covenants. I know the covenants aren't binding by this body. I was just trying to... because of certain things I've experienced as a Neighborhood

President and in my own neighborhood, that I wouldn't want Desert Academy to experience what I've seen a mile up the road or something like that. So, that's all it is. It has nothing to do with saying, these covenants are in place and you'd better obey them. I'm not saying that at all, and if that's the impression that either side thought, I do apologize. That's not what I intended. I just don't want to have any conflict between the parties later on in a court of law which could be very expensive and it would be a disservice to both the neighbors and Desert Academy."

Responding to a question from the audience, Chair Brack said that was a specific question that was being asked of that individual.

Chair Brack asked the Applicant if they would like to make a closing comment.

**CLOSING COMMENT:** Mr. Passalacqua said, "I can't express my desire enough to work with the neighbors if these variances and special exception are granted. That doesn't mean that we own the property, we still have some things we need to do. I just wanted [to say], on behalf of Desert Academy, administrators, students, parents, I know we can work with the neighbors and if there are any problems that are serious enough to bring to the table, you know, we will work with them. "Thank you."

Commissioner Ladd said she is very comfortable with two of the variances, but she is still struggling with the parking, and asked if it is possible to approve two of them tonight and ask the Applicant to come back and figure out the parking. She feels there are still discrepancies and isn't entirely comfortable in approving this and "we'll figure this out later."

Ms. Brennan said there is no problem with doing that from a practical viewpoint. She said it would be a postponement, because you will be asking them to come back before you make a final decision on that issue.

Commissioner Ladd asked if the case is automatically deferred to the next meeting.

Ms. Brennan said it is generally postponed to the next meeting or to a date certain.

Commissioner Winston asked the difference between postponement and tabling.

Ms. Brennan said tabling happens in this particular session, and postponement moves it into the next session.

The Board discussed the appropriate Motion and commented and asked questions as follows:

Commissioner Ladd said she would like to move that the decision on the parking be postponed until we can really get some of these issues nailed down in terms of how many spaces need to be left free for the circulation to work, if the easement really is a viable circulation option and also perhaps to figure out some of the stuff with the neighbors who are supporting the project at the next meeting as well.



Commissioner Komis said that was a clear reason for tabling it. He would like to see the neighbors come forward with this and Desert Academy has neighbors in favor of this, and we need to hear from them. This is why he is for the tabling of this.

Commissioner Ladd said, "I don't want to table the whole thing though. In fact, two of the variances are very well documented."

Commissioner Komis asked if that would be for the minimum lot size in 14-6.2(B)(6)(b), because he feels they did not meet the minimum standards on that. He agrees with Commissioner Ladd that the Applicant did not meet the minimum parking requirements. He asked about the landscape buffer next to the residential, Section 14-74(D)(4)(e) and if she feels they met those.

Commissioner Ladd said she doesn't feel that is a major issue.

Commissioner Komis said, "But that's part of the variance request."

Commissioner Ladd said right, and she is comfortable with that variance.

Commissioner Komis said they are required to provide a 15 ft. landscape buffer adjacent to residential, and that was brought up in testimony .

Chair Brack called for a motion.

Commissioner Ladd asked if this is a special exception for use , and Mr. Esquibel said yes.

Commissioner Ladd said then the variances are for the site size, landscaping and parking, and Mr. Esquibel said yes.

**MOTION:** Commissioner Ladd moved for approval of the special exception request, the variance request regarding site size and the variance request regarding the landscape buffer, and I'd ask for a postponement on the decision for the parking variance until some of these circulation issues can be worked out, until the next meeting. The motion was seconded by Commissioner Winston.

**DISCUSSION:** Commissioner Komis asked if this means if the parking issues are not resolved satisfactory to this Board that the other two approvals will go away, if this approval won't take place.

Commissioner Montoya said she believes it means they will just have to figure out a way to meet the minimum parking requirements on site.

Commissioner Komis asked, "And is that your belief in your motion, this last Ms. Montoya just said. Is that part of your motion."

Commissioner Ladd said terms of the parking variance she feels there is a discrepancy... they're these little floating parking spaces that are counted as permanent parking spaces. She wants the Applicant to figure

out how to come forward with the 85 permanent parking spaces they're going to have without compromising the circulation, because we know the circulation works if they have this extra space. But, we don't know how it works if all the spaces have cars on them.

Commissioner Komis said there is also the encroachment regarding that one road used for circulation.

Commissioner Ladd said she said nothing about encroachment.

Ms. Brennan said, "As a point of order, Chair Brack, an approval is an approval. Board Member Montoya was correct. Those approvals would stand and they would need to find a way to bring their parking into conformity."

Commissioner Ladd asked if it was conformity to the City's standard of 118 spaces.

Ms. Brennan said within the context of a variance or the 118 spaces.

Commissioner Ladd said that's what she's saying. She wants to know there are 85 spaces permanently available on-site, so if they get the church parking, that's great, that's extra, but we're not worrying about that.

**CLARIFICATION OF THE MOTION:** Ms. Helberg asked if the motion is to postpone the parking variance to the next meeting of the Board to allow the parties the opportunity to find out how to provide the minimum parking on site.

Commissioner Ladd said it sounds okay, she just wants to be sure it doesn't imply we're reverting to the City's Code requirement of 118. She is okay with a variance of fewer parking spaces than what is proposed by Code. However, the Applicant says they have 85 parking spaces, which isn't being demonstrated to her as clearly as she wants it to be. So, the language is good, except for the proposed variance to the City's requirement.

Matthew O'Reilly, Land Use Department Director, said the current proposal before the Board does show 85 parking spaces on the site. The City's requirement is 118. That is the variance which is being requested. If it is the Board's intention to deny that variance, then the proposal would go forward as Commissioner Ladd has moved, and they would have to somehow come with 118 spaces on their site, if that's what you're requiring.

Mr. O'Reilly said, if your motion intends to postpone this case so they can work out other parking issues, not necessarily their lack of spaces, but other issues of circulation, then you can make that as part of the motion and we can come back in a month and the applicant could attempt to address those issues. He said Commissioner Ladd's motion should be clear in terms of what she expects, and those should be clearly articulated in the motion.

Commissioner Ladd said the clarification of the motion would be to come back, staff, neighbors, whatever it takes, to come back with a proposal to meet the 85 permanent parking spaces, but to resolve the

circulation issue that the City Traffic Engineer pointed out, because he was approving the circulation plan, based on the fact that the corner lot would have some extra space added to allow overflow. However, the School is saying those are 35 permanent spaces. It doesn't sound permanent to her if they have to be available at certain times of the day, and then to, "well we'll just dash out the back of the parking lot and zip around." She wants to know the plan and wants to know that there are 85 permanent parking spaces, but then the circulation doesn't quite work.

Mr. O'Reilly suggested a restatement of the motion which Commissioner Ladd said meets her intent, and with which the second agreed.

**RESTATED MOTION:** Commissioner Ladd moved, seconded by Commissioner Winston, with respect to Case #2010-195, Desert Academy Special Exception and Variances, to approve the special exception for the use, and the variances for site size and landscaping, with all conditions of approval as recommended by staff, and to postpone action on the parking variance to the next meeting of the Board of Adjustment, so that circulation issues with regard to that parking can be worked out.

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

**For:** Commissioner Ladd, Commissioner Montoya and Commissioner Winston.

**Against:** Commissioner Komis

The Chair declined to cast a vote on this issue.

**Question prior to voting:** Commissioner Montoya asked about staff conditions, are those automatically incorporated into the motion. Commissioner Ladd would like that included and Ms. Helberg will include the appropriate wording. Commissioner Montoya said some of the issues that dealt with the neighbors, some of the conditions agreed to in the neighborhood process like the times of certain events and the fields and things of that nature, she would like to attach to the approval if she votes yes. She said, "I'm too late aren't I, Kelly." Ms. Brennan said yes. Ms. Montoya said, "Perhaps I can do that next month, and yes."

Chair Brack said if parties want to appeal this decision to the City Council, they can contact staff and they will work with them on the appeal.

## **H. BUSINESS FROM THE FLOOR**

**Arthur Firstenberg** said, "This is with respect to the Findings of Fact and Conclusions of Law that you adopted. With respect to Attorney Brennan, the Findings of Fact are not the same as the Motion to Deny. If they were the same thing, all you would have to do is to approve the minutes of the last meeting. The Code however, requires you to adopt separate Findings and Conclusions before the appeals period begins to run. To protect the City from liability, the Findings of Fact and Conclusions of Law, should reflect everything that the Board found during the meeting that justifies the denial. At the hearing, I heard AT&T

admit that it's application is incomplete in 3 or 4 different respects. That needs to be in the Findings of Fact to support the denial, as well as the Findings & Conclusions accurately reflect what is written in the minutes. The Board has a duty to change what the City Attorney drafted to reflect that. The Board should take the alternative Findings of Fact and Conclusions of Law written by Commissioner Komis, compare it with the minutes and come back month and approve them if they are justified by the minutes. Under Robert's Rules of Order, until this meeting adjourns today, one of the Commissions who voted to approve the Findings and Conclusions can make a motion to reconsider. I urge you to do so.

Mr. Firstenberg continued, "On another matter related to this hearing, last night, Tamara Baer wrote the staff report for the AT&T Application, and represented the City on this project before the Board. I have information that her husband, Allan T. Baer, is a part owner of Lloyd & Associates, which does architectural work for AT&T on its cell tower application. Mrs. Baer has a financial interest through her husband in getting AT&T's Application through. Her staff report and her testimony at the hearing should be stricken from the record. Thank you very much."

**Stefanie Beninato** said, "I find it really amazing that we spent 3½ almost 4 hours listening to virtually 12 people on this issue. Yet, when we have 100 people here, you rush us through, you only give us maybe 2 minutes each. I just think that kind of discrepancy makes us wonder about how you are really protecting our community and enforcing laws. I too, am urging you to reconsider the Findings that you are about ready to adopt on the Cell Phone Tower from January nineteenth. I believe that Mr. Komis's alternative findings are much more accurate. And the fact that Ms. Montoya wasn't here and Ms. Winston wasn't here, I don't really understand how they can vote on something.... excuse me, Ms. Montoya you did abstain from voting because you weren't here. I think that's the appropriate thing to do, because you don't know what all the circumstances were. I believe it really should be tabled, at least, until such time as Ms. Rooney is here, or Dr. Rooney is here, and there can be a better discussion of what happened. I also would reiterate what Arthur has just said, about that the Findings have to reflect the substantial evidence in the record. The substantial evidence in the record is that AT&T did not comply with the submittal requirement. The City, and I represented somebody who spoke to that very point, that said the City did not require certain submittals because certain networks were in existence. But, they were supposed to show where the new cell phone tower would connect in. They were supposed to show how it would affect the load on the system."

Ms. Beninato continued, "They didn't do things like that. They didn't show compliance with federal law. The City has routinely and arbitrarily allowed some people to get away with not fulfilling all submittals, like the owner at 502 Old Santa Fe Trail which never came in front of you, probably should have, given that he doesn't even have parking or bathrooms on the lot. But, again, the City and Ms. Brennan browbeat you into making very simplistic Findings of Fact last time, and then told you that you didn't make enough of them or didn't state enough reasons."

Ms. Beninato continued, "So, again, it is your Findings. And I am constantly appalled... when you have a Board and I believe the Board should make their own Findings. I believe that the minutes should really act as the Findings, and not have the City Attorney come back with Findings that are not support substantially in the record. This... AT&T, this very large corporation did not comply with all the submittals.

I believe that is the basis for an appeal, and I think that again, when you have people who weren't here voting and saying that they're fine... and you didn't allow us the opportunity to speak before you adopted them. I believe it is appropriate at this point to ask for a reconsideration of the motion, to adopt the alternative Findings which I believe much more accurately reflect the substantial evidence presented by several people, that the Application did not comply and that there was no attempt to address health and safety concerns which is in the Zoning Code and is part of the law. And I know Miss Winston wants to say that the Telecommunication Act prevails, but again, you're not denying the cell phone, you are simply conditioning it on meeting City requirements. You are allowed to do that. The law's very long, but if you read it, the law, the Telecommunication Act itself, says that it doesn't have to give... I'm sorry, it's late... that it has to give weight to other Acts. It can't just ignore those Acts, and so again, it is appropriate for you to, I believe, adopt Commissioner Komis's alternative Findings. Thank you."

**I. STAFF COMMUNICATIONS**

Ms. Helberg noted she is making a ministerial correction on 29 of the minutes of the Board of Adjustment of January 19, 2011, which is a typographical err in the written code citation – 14-16-2.(E)(1)(n) should be 14-6-2.(E)(1)(n), and will submit a corrected replacement page for the minutes.

**J. MATTERS FROM THE COMMISSION**

Commissioner Komis thanked staff for their work, and thanked Ms. Helberg for the copies and thanked his fellow Board members.

**K. ADJOURNMENT**

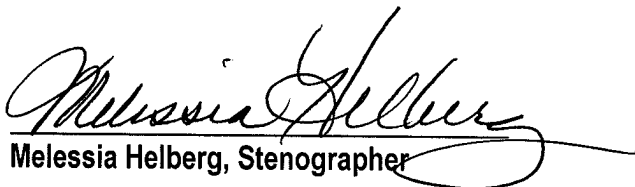
There was no further business to come before the Board of Adjustment.

**MOTION:** Commissioner Komis moved, seconded by Commissioner Brack, to adjourn the meeting.

**VOTE:** The motion was approved unanimously on a voice vote, and the meeting was adjourned at approximately 11:25 p.m.

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**James A. Brack, Chair**



**Melessia Helberg, Stenographer**