



Agenda

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BOARD OF ADJUSTMENT
Tuesday April 19, 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: February 15, 2011 minutes
- E. FINDINGS/CONCLUSIONS: None
- F. OLD BUSINESS:

1. Case #2010-195. 1409 Monterey Drive Variance. On February 15, 2011 Desert Academy, applicant, requested Special Exception for a private school use with variances from the minimum acreage requirements, minimum parking requirements and 15 foot landscape buffer. The Board of Adjustment postponed the parking variance to the March 15, 2011 Board of Adjustment meeting. The property is located at 1409 Monterey Drive and is zoned R-5 (Residential). (Dan Esquibel, case manager)

G. NEW BUSINESS

1. Case #2010-196. 2801 La Junta St. Variance. Heidi Kingsbury applicant, requests a variance from Code §14-8.5 Fences and Wall Standards to allow an eight foot high fence enclosing the southern half of the property. The property is zoned R-5 (Residential). (Dan Esquibel, case manager)
2. Case #2011-16. Cell Phone Task Force et alia appeals the Land Use Department's approval of building permit #10-1352 for Cricket on the grounds of violations of the Land Development Code, Santa Fe City Charter, Americans with Disabilities Act(ADA) and the US Constitution. The property is located at 2502 Camino Entrada within an I-1 (Light Industrial) zoned District.

- 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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**MINUTES OF THE MEETING OF THE
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
SANTA FE, NEW MEXICO
Tuesday, April 19, 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 Gary Friedman, Vice-Chair, at approximately 7:00 p.m., on Tuesday, April 19, 2011, in the Council Chambers, City Hall, Santa Fe, New Mexico.

MEMBERS PRESENT:

Gary Friedman, Vice-Chair
Daniel H. Werwath
Alexandra G. Ladd
Susan E. Rooney
Rachel L. Winston

MEMBERS EXCUSED:

James A. Brack, Chair
Monica Montoya

OTHERS PRESENT:

Daniel A. Esquibel, Land Use Planner Senior,
Kelley Brennan, Assistant City Attorney
Melessia Helberg, Stenographer

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

A copy of the Board of Adjustment Packet for the meeting of April 19, 2011, is incorporated herewith to these minutes as Exhibit "A."

B. PLEDGE OF ALLEGIANCE

C. APPROVAL OF AGENDA

MOTION: Commissioner Winston moved, seconded by Commissioner Rooney, to approve the agenda as presented.

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

D. APPROVAL OF MINUTES – February 15, 2011

MOTION: Commissioner Winston moved, seconded by Commissioner Ladd, to approve the minutes of the meeting of February 15, 2011, as presented.

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

Vice-Chair Friedman welcomed new Board member Daniel Werwath.

Mr. Werwath said he looks forward to serving on this Board.

E. FINDINGS/CONCLUSIONS – NONE

There were no Findings and Conclusions for approval.

F. OLD BUSINESS

CASE #2010-195. 1409 MONTEREY DRIVE VARIANCE. ON FEBRUARY 15, 2011, DESERT ACADEMY, APPLICANT, REQUESTED SPECIAL EXCEPTION FOR A PRIVATE SCHOOL USE WITH VARIANCES FROM THE MINIMUM ACREAGE REQUIREMENTS, MINIMUM PARKING REQUIREMENTS AND 15 FOOT LANDSCAPE BUFFER. THE BOARD OF ADJUSTMENT POSTPONED THE PARKING VARIANCE TO THE MARCH 15, 2011 BOARD OF ADJUSTMENT MEETING. THE PROPERTY IS LOCATED T 1409 MONTEREY DRIVE AND IS ZONED R-5 (RESIDENTIAL). (DAN ESQUIBEL, CASE MANAGER)

A copy of a Memorandum dated April 19, 2011, to the Board of Adjustment from the Current Planning Division, regarding additional correspondence, is incorporated herewith to these minutes as Exhibit "B."

A copy of an email dated April 18, 2011, to Daniel A. Esquibel, from Peter McCarthy, regarding BOA appeal process for Case #2010-195, is incorporated herewith to these minutes as Exhibit "C."

A Memorandum dated April 13, 2011, for the meeting of April 19, 2011, with attachments, to the Board of Adjustment, from Daniel A. Esquibel, Land Use Planner Senior, regarding Case No. 2010-195, as contained in Exhibit "A," is incorporated herewith to these minutes by reference.

Staff was sworn.

Staff Report

The staff report was presented by which is contained in Exhibit A. Please see Exhibit A for specifics of this presentation.

Mr. Esquibel said since the last meeting the Applicant has opened and allowed driving on the easement behind the field, along the fence line, between the school and the residential, and queuing will occur during pick up and drop off, which will allow parking on property, thereby not taking up any of the required parking. Therefore, there is no longer a need for a parking variance, and the Applicant has requested to withdraw its third variance. He said this is being brought forward to the Board to look at the traffic circulation and to finalize this application. He said the Findings of Fact and Conclusions of Law will be presented at the next meeting, and will be the only thing remaining for action by this Board.

Mr. Esquibel said one of the residents contacted him asking to speak to this issue.

Questions from the Board

Commissioner Winston asked if the new plan will need to use the adjacent Church parking lot.

Mr. Esquibel said no, that has been eliminated, noting staff did not allow that in the beginning, so it is not part of this Plan.

Public Hearing

Presentation by the Applicant

Jud Osborn, Finance Director, Desert Academy, was sworn. Mr. Osborn said he is here representing Desert Academy. He said Mr. Esquibel presented the case very well. He said Desert Academy has withdrawn its request for the final variance on the parking. He said there is information in this regard in the packet. He said Desert Academy is looking to increase the parking spaces to 146, which is well more than required for maximum capacity. He said the flow-through has been addressed very thoroughly to assure the neighbors there is no traffic flow issue onto Monterrey Drive. He said this sums-up what they are proposing. They will be coming back to City Land Use with a final development plan which is required before they can move forward with the project. He said they also are willing to look at the option of installing a possible paved area around the queue area to minimize dust to the neighborhood. They are willing to continue discussions and negotiations with the neighborhood.

Mr. Esquibel clarified that this is the final development plan, so this is the last time this will be seen.

Vice-Chair Friedman said then this Board doesn't have to vote on this case which is in compliance as far as the staff is concerned, and all that remains is approval of the Findings of Fact and Conclusions of Law.

Mr. Esquibel said all that is required by the Board this evening, is to close the public hearing and move forward to the next case. There is nothing to vote on because the decisions on the variances and special exceptions were made at the previous meeting. He said one person has indicated that that he has concerns about this chance to meet the new standards.

Speaking in Favor of the Request

Stefanie Beninato was sworn. Ms. Beninato said she is in favor of the project. She said she spoke in favor of this project the last time it was before this Board, and she is still in favor of the project. She knows Marie White, who was instrumental in starting the school. She said she has known Terry Passalacqua, the head of the School, for about 20 years. She believes they have a high of integrity and have addressed the issues from the neighborhood. She believes the traffic flow and parking, which were of concern, have been addressed adequately. She believes the Plan and the school should be allowed to go forward.

Speaking in Opposition to the Request

All those speaking were sworn en masse

Steve Coyles, 1377 Santa Rosa Drive [previously sworn], noted the location of his property on the map in the packet via overhead. He said this plan as he understands it would severely impact him and his family. He said he measured the distance and it is 21 feet from his back window to the fence line. He said the proposal is to put a road on the school yard, and to make a road from what currently is the school yard. He said this would severely impact him. He said he is sandwiched between the Road Runner rails and the school yard. He said the person who owned the house before him sold it because of the Rail Runner, and he may sell it because of the school yard. He said, "If you want to destroy a neighborhood, you're working on it pretty well."

Don Serrano, 1363 Santa Rosa Drive [previously sworn], said he lives behind the school. He said Alan Stamm meant for Kaune elementary meant to be a neighborhood school, but the School Board unfortunately "kind of destroyed that." He said that area in the playground has always been open space for the past 60 years. He said the road behind this neighborhood will "severely cause a major health and safety issue for a lot of kids," noting he has 3 children. He said teenagers will be driving back there. It is "over-filled to capacity," and every square inch is filled with parking lots, teenage drivers and a soccer field, which probably won't be available and accessible to us as a neighborhood which we have enjoyed as open space. He said Mr. Esquibel said this was brought up and clearly defined at the previous meeting which isn't absolutely clear in his mind. The road was an option because Berean Baptist Church was offering to lease parking to Desert Academy. He said that deal fell through because the church was sold to a very large church which will further increase the traffic to this neighborhood. He said the traffic plan to which Mr. Esquibel and John Romero alluded, doesn't fit the model that we'll be seeing. He said he would plead with the Board to leave this in the public forum and give this a hard look, because it is changing the character of this old, historic neighborhood. He said they want to keep the neighborhood family-friendly and this is not family friendly.

Charles Roseaker, 1359 Santa Rosa Drive [previously sworn], said he owns an adjacent property at 1357 Santa Rosa Drive. He has lived in the area for more than 30 years. And in those 30 years, there always was an elementary school, and the reason he bought the property. He spoke with Alan Stamm who told him this is where Mr. Roseaker acre should live because his kids can go outside the back gate and be at the school. He said never in the 60 years of Kaune School was there an every day use of the perimeter as a road. He said the property line of the road is common to our properties. He said they've had a good relationship with Santa Fe Public Schools. However, this will severely impact the neighborhood. He said the change in use will "fence us out, and is no longer part of our community." He said the kids go to this school for about \$15,000, but the Roseaker, Serranos, Pachecos and such won't go to this school. He said they are going to come in, use the neighborhood and leave, and he believes they have malice toward the neighborhood and there are serious issues. He has lived here all his life and this "rubs him the wrong way."

Mr. Roseaker said this is a completely different plan than what was proposed at the last meeting. He said there was an attempt by Desert Academy to have a meeting with the neighborhood on April 14th, but they couldn't get into the school. He doesn't think they are bad people, but he doesn't think they have tried to work with the neighborhood. He urged the Board to not okay this request which is "too big of an impact on the neighborhood."

Peter McCarthy, 1421 Monterey Drive, said he spoke with Dan for an hour yesterday about his concerns. He said in all of this Board's consideration, there is a stipulation in the variances and special exception which says the variances are included as part of the special exception, which provides the applicant alternative methods to meet minimum standards and interpretations to City standards. He said if he were to ask to build his home to 24 feet, and a variance to make his driveway wider and to put a 6 foot fence around his house, and he showed them a picture of those, and the Board approved the fence and the driveway, but postponed action on the house. He said he then pulls the house to make it look a certain way so you would approve the other two variances. He said this is a whole picture, and asked if this Board wouldn't have to go back and "repass the variances based on this new information coming up."

Mr. McCarthy said the stipulation says it was passed based on the fact that it was going to be integrated with the three other variances, and suddenly one of the variances which would be of most impact is suddenly being pulled. He said in the parking schematics you never see the neighborhood. *[STENOGRAPHER'S NOTE: Mr. McCarthy used a drawing projected on the overhead, to illustrate the neighborhood, but the drawing wasn't entered into the record.]* Mr. McCarthy said the road is going to run by these homes. He said it is interesting that Superintendent Gutierrez and the Board President used Larragoite as an example of how this might work. He said Sierra Academy is moving to Larragoite. He said Sierra Academy has 140 students, no sports, and all students use public transportation. He said Larragoite is on Agua Fria and backed up to the Indian School with an arroyo, and there are no houses around it. He said all of the information you have gotten is false, and you based the passage of the first two variances and the special exception on faulty information.

Mr. McCarthy said the traffic and new road are going to impact the neighborhood. He said when you look at their schematic, you have a stacking pattern. This is going to be a one-way street, and asked

what happens if there is a fire at 5:00 p.m. – everyone will be dead – there is no access here with this road. He said the 15 ft. easement is in the covenants, and is put there for two reason – to provide access to the houses from the back, and because there is a walkway, which you don't see on any of their drawings. He said what is beautiful about Casa Linda is that we connect all the blocks through walkways which is in our covenant. He said the walkways now empties into this. He said it is a covenant violation and a danger.

Mr. McCarthy suggested you go on Google Map and look at Larragoite which Bobbie Gutierrez suggested as a comparison, which there is none. It is not a good comparison in all ways.

Mr. McCarthy said there is a new School Board, two of whom spoke at the last meeting, and they would like that property back, and there might be a chance, because the Board of Finance made them go back today and change things in the contract and he hopes they will vote against the contract and this will be a non-issue.

Vice Chair Friedman asked Mr. McCarthy to keep his comments specifically to the land use issue with respect to the parking.

Mr. McCarthy said if we look at the Codes, they say that “granting the variance will be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.” He believes the new plan put forward, skipping the variance, will be detrimental to the health, safety and the public welfare, which is a #5 specification. It also says that “the variance request will not confer on the applicant any special privilege that is denied by this ordinance to owners of other land, structures or other buildings in the same district.” He said if you look at other high school and secondary schools, the private schools, are all on large acreages and none of this density. The most close parallel would be Monte del School which started as a small school and is now on 11 acres, and don't have parking in the same density totally packing this small little area.

Mr. McCarthy said he is concerned about fire access, and asked if you can change one thing without going back and reviewing them again in this context.

Vice-Chair Friedman asked how much more Mr. McCarthy has to present.

Mr. McCarthy said he has questions to ask, because in talking to Mr. Esquibel yesterday, there is a lot of confusion.

Vice-Chair Friedman said, “Just so you understand, it's not a matter the Board of Adjustment is voting on tonight, and the variance is now a moot issue, because the applicant increased their parking. Just so you understand it's not a matter we are voting on.”

Mr. McCarthy said but you will be voting on the findings.

Vice-Chair Friedman said we will be adopting them.

Mr. McCarthy said he was hoping in light of this information that the Board would reconsider the legal aspect. He said there is a paragraph this now violates because of safety concerns..

Vice-Chair Friedman said he appreciates the information and the Board will take that under advisement based on what counsel tells us. He asked Mr. McCarthy to please wrap up his presentation.

Mr. McCarthy said in talking with Mr. Esquibel yesterday about the appeals process, the minutes and the findings were presented together, and when they approve the minutes and the findings the appeal process starts. He asked if the appeals process starts now that the minutes have been approved.

Vice-Chair Friedman said no. "As Mr. Esquibel said, we will be adopting the Findings of Fact at our next Board of Adjustment meeting, which hopefully will be next month, and then you have 30 days from the time those are adopted to make an appeal to the City Council."

Mr. McCarthy said Mr. Esquibel said there are potential ordinance changes going on at this point in time.

Vice-Chair Friedman said the Board makes its decisions on the what the ordinances are at that point in time, so that's how the appeals process would work.

Mr. McCarthy said then the appeal would be based on whatever ordinance is in place in 30 days from approval of the Findings of Fact.

Kelley Brennan said the appeal on this would start with the adoption of the Findings, the appeal would be to the Governing Body, and the appeal period would be 30 days.

Mr. McCarthy said he would hope the Board would re-think this, noting there are emotional issues in the neighborhood, and there are all kinds of other issues, but he thinks this plan is dangerous and really doesn't work. He said you basically have given them an exception for an R-5 zoning area to put something that doesn't belong in an R-5 zoning area.

Mr. McCarthy said two new schools are going on. He said Tierra Contenta is going into Alvord which basically is a downtown area. He said the New Mexico School for the Arts is going downtown in the old St. Francis High School. He said even the Santa Fe School Board would not do this to one of their schools.

Remarks by the Applicant

Mr. Osborn clarified that the entirety of what is being called the easement, the queue which has the cars stacked around, is entirely on the school's property and none of that infringers on any of the neighboring properties. He said they have a very clear boundary survey that shows that. He said they are not fencing out, and they still would like the neighbors to participate and to be a part of the community. He said they would like to host neighborhood events and invite people to use the field and the track on

weekends and evenings when no one is there. He said they are installing a few basketball hoops in one of the parking lots so there is an area to play basketball in the evenings once the cars are gone.

Mr. Osborn said students won't be driving through the queue, that is for parent drop-off, and students will be "parking on the drawing there where the yellow, where the block is drawn in yellow, that's where the students will park."

Mr. Osborn said they held an informal meeting on April 14th and invited members of the community, but were not able to get in the facility. However, they held the meeting in the parking lot and a number of people from the neighborhood were there including Peter McCarthy, and stayed for the length of the meeting.

The public testimony portion of the public hearing was closed

Vice-Chair Friedman said he understands from Mr. Esquibel, that the proposed Findings of Fact and Conclusions of law, will be presented at the next meeting of the Board, and Mr. Esquibel said this is correct.

G. NEW BUSINESS

1. **CASE 2010- 196. 2801 LA JUNTA STREET. VARIANCE. HEIDI KINGSBURY, APPLICANT, REQUESTS A VARIANCE FROM CODE §14-8.5, FENCES AND WALLS STANDARDS, TO ALLOW AN EIGHT FOOT HIGH FENCE ENCLOSING THE SOUTHERN HALF OF THE PROPERTY. THE PROPERTY IS ZONED R-5 (RESIDENTIAL). (DAN ESQUIBEL, CASE MANAGER)**

A packet of letters in support of Ms. Kingsbury's eight foot fence, entered for the record by Ms. Kingsbury, are incorporated herewith to these minutes as Exhibit "D."

A Memorandum dated April 13, 2011, for the meeting of April 19, 2011, with attachments, to the Board of Adjustment, from Daniel A. Esquibel, Land Use Planner Senior, regarding Case No. 2010-196, as contained in Exhibit "A," is incorporated herewith to these minutes by reference.

Staff Report

The staff report was presented by Dan Esquibel, which is contained in Exhibit A. Please see Exhibit A for specifics of this presentation.

Staff recommendation: The Land Use Department does not support this variance request. The Applicant's responses to the five variance criteria presented have not provided a convincing case for an easing or variance of the Land Use Regulations.

Questions from the Board

Vice-Chair Friedman asked Mr. Esquibel if this is a circumstance where it would be helpful for the applicant to have more time and present further information to you, and to table this item.

Mr. Esquibel said it is hard to meet the standard for variances, and variances are really not designed to be given. He said as more variances are granted, it weakens the integrity of that section of the Code that we are trying to regulate. He said as a direct result of the way they're written, it is hard for any applicant to meet the standards for a variance, noting only 3 applicants have been able to comply with these standards. He said he is unsure what more the Applicant could provide in terms of legalese which would qualify this particular application as meeting minimum standards.

Public Hearing

Presentation by the Applicant

Heidi Kingsbury, 2801 La Junta Street, the Applicant, was sworn. Ms. Kingsbury said the biggest piece for her is she is requesting an 8 ft. fence. She said there is a park right across the street from her, which is Franklin Miles Park. She said when she moved in last summer the City was revamping the park and it was shut down, so there were no disturbances. She said once it was finished there was a lot of traffic, noise, people and pollution, people were coming into her yard over her existing fence. She said this 8 ft. fence will provide her with peace of mind and an ability to use her property. She has lived in Santa Fe since 1989, and it has taken a long time to be able to afford a house. She would like to enjoy her house, noting she works out of her home and is a licensed, professional dog trainer and trains service dogs. She said she does rescue work and always has one rescue canine. It is very frightening to have people who are drunk wandering around her property which happened with the 4-5 ft. fence. She said with the new fence she can do her job and the animals aren't stressed. She said the fence gives her safety, noting she is single and lives alone, reiterating it is very scary to have drunks wandering around her property. She is requesting to keep the 8 foot fence for her safety, the safety of her animals, and for her to be able to quietly do her job peacefully. She said there are neighbors in attendance this evening who live in close proximity across the street. She also has a map of the neighborhood. She has letters from neighbors saying they want her to get the fence.

Vice Chair Friedman asked if the letters of support were presented to staff.

Ms. Kingsbury said she sent certified letters to all neighbors as required, and she has letters of support with her this evening.

Vice Chair Friedman said she can make those letters part of the record, and Ms. Kingsbury said she would like to enter them for the record [Exhibit "B"].

Commissioner Ladd asked if the fence was red tagged during construction, or was it fully constructed.

Ms. Kingsbury said it was almost finished, but there is a portion yet to be completed. She said she will admit that she didn't know the process, but should have known that this should be done. However, all of her neighbors have tall fences, and the people behind her said it was okay. She said in retrospect, she should have been in compliance, and apologized for not doing that.

Commissioner Ladd asked Ms. Kingsbury if she hired a licensed contractor or builder.

She said yes.

Commissioner Ladd said the contractor should have known better.

Commissioner Winston asked the name of the contractor.

Ms. Kingsbury said her brother-in-law gave her the name, saying it was somebody he used, but she doesn't know the name.

Commissioner Ladd asked if it is a coyote fence and Ms. Kingsbury said yes.

Commissioner Ladd asked if it would be possible to shave two feet off and be in compliance.

Ms. Kingsbury said, "It is possible, but the whole point is..... Do you have the memo... there's a few issues. It says in Item 2, that the analysis of the Land Use Department concludes that the circumstances presented by the Applicant first, do not qualify as factor or circumstances that allow a waiver, a variance from the regulations, and second do not prevent or diminish in any way existing behavior and or actions of park goers. The fence structure in and of itself is not made of sound proofing material or constructed or located on the property to have any effect on noise. Further, a two foot rise in fence height would not prevent tossing of discarded material into the applicant's yard." She said this isn't true. She said having the 4.5 ft. wire fence – she heard everything and people were tossing bottles and garbage over the fence. She said now, with the 8 ft. fence, she is no longer getting bottles tossed over and she is no longer waking every morning and taking debris out of her yard, and she is no longer hearing loud noises of people being drunk and screaming and yelling. She used to hear guns at night last summer. The noise is no longer a factor with the additional fence height, which 3 of her neighbors have in close proximity.

Vice-Chair Friedman said he sees the coyote fence in the pictures and then a block cement wall.

Ms. Kingsbury said that is where she stopped building the fence and where she was going to add the last piece.

Vice-Chair Friedman asked if she was building the block wall in addition to the coyote fence, and then was stopped.

Ms. Kingsbury said there was a block wall there, built by the previous residents who "were doing illegal things there, I won't get into it, and that's where they had the block wall."

Speaking in Favor of the Request

All those speaking were sworn en masse

Andrew Perea, 2804 La Junta [previously sworn], said Ms. Kingsbury was nervous and failed to explain something. He said the Coronado Condominiums are behind us, and his fence gets attacked all the time. He said they literally have torn his metal fence to pieces. He said the neighbors on both sides of him have fences taller than Ms. Kingsbury, although he doesn't know whether they got a variance. He said the fences are there for a reason. There is a basketball court behind him and they kick the soccer balls over the fence and jump over the fence into his yard to get the soccer balls. He said they used to harass his pets, and would take his pet and wait for a reward to be posted, and then bring it back to him for the reward. He said this "kind of stuff" happens a lot. He has lived in this neighborhood longer than Ms. Kingsbury, and there have been shootings across from him. One of the houses they used to rent was Ms. Kingsbury's because it the most open, with a small chain link fence in front and the other houses around, including mine have high walls, so of course everybody runs to her house. He feels badly for Ms. Kingsbury because she is single, she takes care of her pets and it is a distraction for her because she does her training at the house. He said there are a large number of people who walk their dogs or ride their bicycles. He said people often cruise through the parking lots and there are always vehicles there when the Police come at 7:00 p.m. to shut it down from this kind of behavior. He said her property is the one everybody goes to if they need help, or if they're scared, and they will of course throw bottles over the fence because it is the smallest. He said he wants to request a variance later and is asking that the Board consider it because his fence is torn apart, and he gets scared because the kids use it as a byway going to high school and nearby schools. He said a high fence is a necessity in this neighborhood.

Norma Perez, 2816 La Junta [previously sworn], said she lives in the middle of the block. She said she is lucky because she is more protected and backs to a dead-end street on the other side. She said the fence would be an asset to the neighborhood. She said before Ms. Kingsbury bought the house there were lots of transients because it is on a corner where you turn to go to Franklin Miles Park. She said there have been shootings in that park, and there was a shooting last week at the Coronado Condominiums, and Ms. Kingsbury is in very close proximity and very exposed. She said until people living there are made to feel safe there won't be a permanent resident there like Ms. Kingsbury. She said Ms. Kingsbury has always picked the weeds. She said she and her husband have lived there for 15 years, and Ms. Kingsbury always keeps the front part "picked clean," and has rocks in the front yard, and it is good to have someone there that owns their own business, is quiet. She said we have a special neighborhood which is one block long which is curved, and we are a tight neighborhood, noting many people are related, and there are sweet people and they always try to take care of each other. She said previously the house was a rental, and people conducted drug activity. She said having a fence there keeps someone like Ms. Kingsbury in the neighborhood, noting the fence acts as a sound barrier. She said the fence would be an asset for everyone who lives on the block.

Caleb Gramer, 2816 La Junta [previously sworn], said he fully supports the fence and thinks it looks far better than what was there before, and it will provide additional protection for the house. He said

the surrounding houses have much taller fences, and this is the default dumping ground and escape route for those trying to escape activities in the park, or who just need a place to hide. The house had been an eyesore in the past, and the fence makes it look far, far better. He believes it is a good idea for multiple reasons which have been expressed.

Speaking in Opposition to the Request

Stefanie Beninato was sworn. Ms. Beninato said she is not speaking in opposition, but points out that it doesn't seem to be unique to that particular lot, and there is a problem in the whole neighborhood that probably needs to be addressed in other ways than building 8-9-10 ft. fences. She said this may be one of the first times she agrees with Mr. Esquibel that this allows a weakening of the ordinance. However, at the same time, she is amazed this person was red tagged at all. She said she has gone in many parts of the City and seen 8 ft. fences and nobody gets red-tagged. She is amazed that a City inspector actually was paying attention and red-tagged it. She said it is up to you to do what you think is appropriate.

The public testimony portion of the public hearing was closed

Commissioner Winston asked Mr. Esquibel if he has the name of the licensed contractor used by the applicant that the applicant can't remember.

Mr. Esquibel said this was red-tagged because there was no building permit, so he has no information on the contractor.

Commissioner Rooney said she thinks these people need "a Berlin wall around the community," not just a fence. She does know the neighborhood.

Commissioner Winston said, for the record, and believes she speaks for other members of the Board, she is sick and tired of licensed contractors who know better, going ahead and starting a project and saying, "I'll just go ahead and build this and then you can go before the Board and get a variance." She said if she comes across any of these licensed contractors in the future, she will be voting against any sort of variance, and she just wants that for the record.

Commission Ladd told Andrew Vigil to let this be a lesson, that we want you here before us before anything is built. She said we hear "do it and ask for forgiveness later," a lot at this Board and it is very frustrating.

MOTION: Commissioner Winston moved, seconded by Commissioner Rooney, with regard to Case No. 2010-196, to grant the request for a variance owing to special conditions, incorporating the remainder of the staff's Findings of Fact and Conclusions of law.

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

2. **CASE 2011- 16. CELL PHONE TASK FORCE ET ALIA APPEALS THE LAND USE DEPARTMENT'S APPROVAL OF BUILDING PERMIT #10-1352 FOR CRICKET ON THE GROUNDS OF VIOLATIONS OF THE LAND DEVELOPMENT CODE, SANTA FE CITY CHARTER, AMERICANS WITH DISABILITIES ACT (ADA) AND THE U.S. CONSTITUTION. THE PROPERTY IS LOCATED AT 2502 CAMINO ENTRADA WITHIN AN I-1 (LIGHT INDUSTRIAL) ZONED DISTRICT.**

A letter dated April 19, 2011, with attachments, to the Board of Adjustment, from Kelley Brennan, Assistant City Attorney, regarding Case No. 2011-16, Site A208 Dawson Tower, 2502 Camino Entrada, is incorporated herewith to these minutes as Exhibit "E."

A copy of the statement for the record by Arthur Firstenberg dated April 19, 2011, submitted for the record by Arthur Firstenberg, is incorporated herewith to these minutes as Exhibit "F."

A Memorandum dated April 13, 2011, for the meeting of April 19, 2011, with attachments, to the Board of Adjustment, from Daniel A. Esquibel, Land Use Planner Senior, regarding Case No. 2011-16, as contained in Exhibit "A," is incorporated herewith to these minutes by reference.

Staff Report

The staff report was presented by Daniel Esquibel, which is contained in Exhibit A. Please see Exhibit A for specifics of this presentation.

Mr. Esquibel noted the handouts to the Board include a letter with attachments [Exhibit "E"] from Kelley Brennan, which explains the Federal Court Case which eliminates No. 2 and No. 3 as grounds for appeals, since those have been dealt with by the Court, which leaves Item No. 1 with regard to notice. He said Ms. Brennan can elaborate on that correspondence.

Questions from the Board

Vice-Chair Esquibel asked Ms. Brennan to speak to the legal issues – give the Board some guidance.

Ms. Brennan said she distributed a case that was decided which disposed of a number of federal questions that the Appellants have raised. She said she covered it in her Memorandum in the packet, saying that these same issues are preempted by Federal law, and the only issue over which this Board has jurisdiction is the land use issue of notice.

Vice-Chair Esquibel said, "Then your counsel to us is that we are not to hear 2 and 3, and we're not even voting yes or no on it, we're just preempted."

Ms. Brennan said this is correct.

Public Hearing

Presentation by the Appellant

Arthur Firstenberg was sworn. Mr. Firstenberg provided two copies of his statement for the record [Exhibit "F"].

Prior to reading his statement, Mr. Firstenberg asked Commissioner Ladd to recuse herself. He said, "Your husband is Christopher Graeser, who is the attorney for a woman I have sued in State District Court for the same issues. I will briefly summarize the case because it illustrates why we are here today. A friend of mine who knew about my electrical sensitivity, rented the house next door to mine at my invitation and arrangement and then refused to turn off her wireless equipment, even at night, so I could remain living in the house that I own. The day after she moved in next door, I developed a heart arrhythmia and a heart murmur, neither of which I had ever had and I was afraid I was going to die. I had to move out to save my life and I have not been able to live in my own home for a year and a half. I negotiated with my neighbor unsuccessfully for three months, and then I took her to court for operating a nuisance. Commissioner Ladd, your husband is the attorney for that woman. He has argued in Court that wireless technology is perfectly safe, and that in any case, operators of wireless technology cannot be held liable for harming susceptible people. Through your husband, you have both a personal and financial conflict of interest in the outcome of the appeal before this Board today. Before I proceed any further, I ask you to recuse yourself."

Commissioner Ladd said, "Mr. Firstenberg if I felt like my ability to make an unbiased decision as a member of this Board was compromised, I would recuse myself. I do not feel that way."

Mr. Firstenberg read his entire statement into the record. Please see Exhibit "F" for the text of Mr. Firstenberg's statement.

Mr. Firstenberg said he is not planning to call any witnesses.

Vice-Chair Friedman said, "Thank you for your detailed and eloquent statement. I appreciate it. Did you have anything specific you wanted to say with regard to the failure to post notice?"

Mr. Firstenberg indicated that he did not.

Break – 8:35 to 8:45 p.m.

Speaking in Favor of the Appeal

All those speaking to the Appeal were sworn en masse

Vice-Chair Friedman gave each person 3 minutes to speak to the Appeal, and asked them to be as brief as possible, commenting that he understands people are passionate about this issue and have information they want to share, and he is sympathetic to that, as well as to the due process rights in the

USA. However, some things said may be redundant, and he wants to keep this hearing moving along, and he would greatly appreciate people keeping their remarks to 3 minutes.

Virginia Miller, 125 Calle Don Jose [previously sworn], said Dr. Stephen Sinatra, a practicing cardiologist has stated, "One of the biggest, yet silent health threats we face today is electro pollution. Electro pollution affects our physiology, contributing to a myriad of health issues." She said he is concerned about heart issues, but talks about a lot of other issues as well. She said Dr. Sinatra says a lot of people have poor heart rate variability making them less able to go with the flow. Electromagnetic disturbances can develop cardiac arrhythmia and cardiac arrest, and everyone is vulnerable, children particularly. She said in an article written by Arthur Firstenberg in a local newspaper, he said a Swedish surgeon has conducted years of research and for 18 years consistently found that two minutes on a cell phone disrupts the blood brain barrier. Two hours on a cell phone causes permanent brain damage, and second-hand radiation is almost as bad, and makes her want to talk to people all around her who are using cell phones and tell them, "Please, you are radiating me as well as yourself." She said we all need to take responsibility and learn more about this microwave radiation is doing to everyone.

Ms. Miller said independent studies show some symptoms of over-exposure to radiofrequency radiation are irritability, rage, sleep disorders, short term memory loss, lowered fertility male and female, headaches, nausea, accelerated aging and abnormal growth of cells and brain tumors. She has noticed these symptoms in herself since last Fall. She said the accelerated aging, irritability and rage have become very prominent in her life, noting she is no longer a patient person. She said the difference is amazing. She thought about what could be contributing to this since last Fall when "they" upgraded to 3G, AT&T upgraded. She said this may be contributing to what is happening to her, although she doesn't know for sure. She said it is happening to all of us in a lot of different ways. Every new antenna upgrade and new cell tower increases the level of microwave radiation impacting people and children in our own community. She said those who suffer electromagnetic sensitivity will find it increasingly difficult to continue to live in Santa Fe as wireless technology proliferates. She said, "Their health is being compromised and their civil rights denied as many public spaces are no longer available them. We need to protect Santa Fe's citizens, this special class of citizens which is growing every day in larger and larger numbers." She said there are laws to protect people. She asked the Board to uphold the appeal and deny the permits.

John McPhee, private individual [previously sworn], said to clarify for the record, he works for the Department of Health, and he is the Consumer Product Safety Commission representative for the State, but he is not here on behalf of either agency. He said his boss asked him to clarify that he does not represent all of the children of New Mexico, when in fact for the last 15 years he specialized in Childrens safety. He said we have been talking about people with immunity issues who are adults, but the complete unknown is the effect of exposure from 3G to 4G on small children and fetuses of pregnant women. He said they have seen some effect of behavioral effects on young children whose mother used cell phones for some time during the day. He suggested, for the record, in reference to what Arthur was talking about, in terms of a lot of health implications, to google the Freiburger Appeal, which was a minimum of 300 German doctors who signed an appeal to petition the government to start restricting wireless, giving the exact indication of health indicators, that they had seen an uptick and spike since conversion of digital

technology in 1997. He would also reference the Selentun Statement, released in a press release on February 3, 2011, where Dr. Olle Johansson, a coworker of Dr. Lee Selford in Stockholm, Sweden at the Karolinska Institute, where he appealed with other scientists around the world to stop all further rollout of wireless technology until, one, we assess the radiation we've already created in the last decade and two, we establish new standards because they are out of date or don't exist in terms of non-thermal frequencies.

Mr. McPhee said he went to Airport and Cerrillos Road, and looked at the site, saying his estimate is about 5,000 people reside or work within 1 mile of the cell phone tower. He noted there already is a day care center about 100 ft. from the cell tower. He is concerned that no one is doing any measurements, or has been trained by the FCC to do measurements. He said the Radiation Control Bureau was never give the authority to do this by Congress. There is not even one FCC employee to consult about this in the States of New Mexico, Arizona or Texas.

Dr. Felicia Trujillo, 3004 Jemez Road [previously sworn], said she lives very near the proposed addition to an "already horrific tower." She spoke about the tradition of honorably serving the community in her family, which helped her to get support for HM32, sponsored by Representative Brian Egolf, which authorizes the New Mexico Department of Health to examine the research on microwave technology, and would like this Board to wait until that data is available on November 1, 2011. She said despite her family and background, she has increasingly become a second class citizen in her own home town. She can understand that from people who move here and don't understand our history, but to be marginalized by you on this Board isn't acceptable, and to be marginalized by the City, City staff and attorneys is not acceptable. She said you are placing a tower in my neighborhood because locals and ordinary working people just don't count. She said we will suffer the elderly having their medical implants fail, the dads dying of sudden heart attacks, the moms getting cancers, the kids dying of leukemia and the rise in suicides. She said those from the better part of town can point and say, "What can you expect. Those people." She believes the City is intentionally discriminating against working class people of color. She will support whatever trials happen that "bring this home to roost right in your lap. And I know that everyone on Arthur's list and in this room will be happy to be witness at those trials. Thank you. And may God have mercy on you."

Janice Simmons [previously sworn] said she is representing herself. She said, in defense of people with EMS, it is very unfair that no one protecting them. She said these people have no choice, because the towers cover 30 miles, it covers our City. She said where do you go when you have a sensitivity like this. She said, "I would think that Santa Fe would be a City different and protect these people. That would be just the fair thing to do." She lives less than a mile from the tower on Entrada and she isn't happy about the addition, and worries about her health. She said there are effects we don't yet know about and they are really pushing consumerism all along Agua Fria. It's not about health or education, and Santa Fe needs to look at that.

Anita Xtejas, P.O. Box 6634, said in May 2009, the Governors of Florida, Connecticut and Colorado, declared May 2011 Electromagnetic Hypersensitivity Awareness Month. She wants people to take a note that this is an issue of which governmental bodies are taking note. She said the studies of wireless radiation indicating adverse effects of this technology are increasing to the point that it is impossible to ignore. She hopes "all of you honorable Commissioners" will take note and listen to the testimony and revoke the permit to Cricket for additional cell phone antennas. She doesn't live far from 2502 Camino Entrada – Cerrillos/Airport Road. She worries about the health effects to her, noting she can't go on vacations, can't sleep in a hotel because they all have wireless. She worries about the health of her family and school age children living nearby this area. She asked the Board to "please consider the options you have under Section 27-2.1(B)(6) to the extent permitted by federal and state law, and to exercise other powers of the City to protect the health, welfare and safety, and preserve the rights of consumers.

Andrew Plyatt, Camino San Patricio [previously sworn], said he and his partner live close to Camino Carlos Rey. He has testified many times before that his partner was disabled by radiation emitted from telecom equipment. He said with each upgrade and addition, her symptoms worsened, and she is unable to work, and they are unable to find safe housing. He said this situation impacts his life every day, and it is increasing. He asked the Board not to permit any additional antennas or antenna upgrades.

Mary Layne, 132 Romero Street [previously sworn], said when we have City Council meetings, we salute the State flag of New Mexico, "the Zia symbol of perfect friendship among united cultures." She said with respect to the people of Zia Pueblo from whom the symbol is taken, because she googled New Mexico State Flag, she found that the Zia also believe that with life come 4 sacred obligations: development of a strong body, clear mind, a pure spirit and devotion to the welfare of people and family. She would love it in years to come if we are all devoted to the welfare of people and family in Santa Fe. She said that family has to include nature. She said in an effort to provide for the welfare of her family, the Board of Adjustment and "you guys and you guys," there is now a wonderful tincture called Yarrow Environmental Solution which helps our physiognomy deal with electromagnetic pollution, microwave radiation. She said it can be purchased at Wild Oats. She said, "I wish you luck because it's only going to get worse as we get more and more antennae. Please don't let us have any more."

Monica Steinhoff Ofrio, Lejano Lane [previously sworn], said she has very important things to say. She said she came to New Mexico at age 5, when her father became head of White Sands Missile Range, and has lived in New Mexico most of the time since then. She has three adopted children one of whom is Brazilian. One child's mother used cell phones and he was born with one ear. One child has no birth defects, and another has cystic fibrosis. She said she took one of her children in the building where she works and he said his ear was broken and started crying. She said she was born in Nazi Germany. She said for the last 5 years she has had terrible allergies, and went to a practitioner and eliminated things from her system including rat poison, which they believe happened in her early childhood in a destroyed house in Germany trying to find food. She cleared her liver and kidneys. She said with the upgrade of the 3G and she could feel the cell tower. She can't go to the library any more. She has low blood sugar and

one protection is eating, noting the loss of the sugar makes you crave more. Her allergies have come back. She can't use the Dale Ball Trail because there is a lot of wi-fi, and people are using the arroyo. On Sunday she hit a pipe across the arroyo. She talked about the neighbor who wasn't feeling well, and about her experience falling while walking, and a well known artist friend passed out while driving. She asked the Board to rule against this "Cricket thing." She said because of the allergies, three weeks ago she was driving through town her eyes were burning, particularly where there are fiberoptics, and the next thing she knew her air bag had deployed because she hit the person in front of her.

Valerie Morris, 144 Alamo Drive [previously sworn], said she is a technical writer, and concerned about the massive number of cell towers in Santa Fe. She has been looking at a lot of environmental health and safety documents, noting she researches Occupational Safety and Health Administration [OSHA] in her work which is set up to protect workers in the U.S. Jeff Lybrook, an OSHA physicist for nuclear radiation told her the U.S. lagging behind in regulation for radiofrequency and ionizing radiation. She said the 1970s were the last time the OSHA regulations were updated. He told her that paying fines is considered by many companies as a cost of doing business. She said the precautionary principle says "when an action or policy has a suspected risk of causing harm to the public or the environment, in the absence of consensus that the action or policy is harmful, the burden of proof that it is not harmful falls on those taking action." She in this case these are the various cell phone companies who are coming into Santa Fe.

Ms. Morris said another statement is, "when an activity raises harm to the human health or the environment, precautionary measures should be taken, even if some cause and effect relationships are not fully established scientifically." She said *The New York Times Magazine* listed the precautionary principle as one of the most influential ideas of the year, and looks at the intellectual, ethical and policy aspects of it. She has a granddaughter and Taco Bell is giving kids free magazines with cell phones as cartoon characters, which is a well developed campaign/propaganda sponsored by telecommunications companies to start indoctrinating children at a young age. She said she will no longer go to the Childrens Museum if the cell tower is installed in the Methodist Church. She is continually surprised when our City representatives vote a certain way because the City advises them to vote that way. She would like to see representatives actually represent the people of Santa Fe, not corporations, the City government and vote based on your own research and understanding. It is a complex issue, but it is worth your time to dig into the issue. She was shocked that the City Council has gutted so many Codes in favor of the telecommunications companies and doesn't know how they can explain that.

Lola Moon Frog, P.O. Box 8019, was sworn. Ms. Moon Frog said she has lived in New Mexico since 1970, and in Santa Fe since 1981. She first became aware of the EMS problem without knowing what it was, when her mother got a microwave and she had to leave. She has an extremely fast heart beat, she becomes dysfunctional and it feels like her brain isn't working and she starts to get a headache. She said she normally doesn't get headaches. She tried to have a cell phone in the late 1990s, but she was unable. She said if she has to borrow someone's cell phone it is the same thing. She tried to rent a Prius in California and felt nauseated. She can't rent a Prius and can't own an electric car because they aren't shielded. She had to retrieve a rent deposit below the big tower on Marcy years ago, because she

had difficulty walking and had a "screaming headache" by the time she left. She learned about the time she tried to rent a Prius that there is a term for this. She said her friends who use cell phones don't have this problem. Her most recent experience was walking into the Bodhi Restaurant to get something to eat because she is vegetarian. She got a headache immediately, and noted a lot of people on computers and learned they just got wi-fi. She said she finished her lunch, but she is unhappy that she can no longer eat there. She is unhappy about any additions to cell towers. She said, "I'm a canary. And I don't like to feel disabled and disconnected from everyone else who isn't feeling this stuff." She said we're all connected and "some of us are feeling it before the wave."

Stefanie Beninato, P.O. Box 1601, [previously sworn], said she wants to go on the record in asking Commissioner Ladd to recuse herself. She said, "You have said you think you're not going to be unfair, but there is a case, Reed v. the Board of Optometrists, which says it doesn't matter what you think, it matters about perception." She said a reasonable person could think she could not be fair, and she needs to excuse herself from discussion and vote. She said we know that Mr. Graeser has had perennial contracts with the City to redo the Land Use Code, which is a paid position and it's been going on and off for years, so therefore you do have a financial conflict beyond him just representing somebody who is in conflict with Mr. Firstenberg. She does not believe that reasonable people would think she would endanger hers or her husband's livelihood by standing up to the Assistant City Attorney and voting against her recommendation.

Ms. Beninato said Boards are supposed to be looking at their own expertise not the Assistant City Attorney's expertise and using that to make a vote. She said, with regard to Commissioner Winston, there was no basis for granting the exception, saying no findings were made conforming with the variance requirement.

Vice-Chair Friedman reminded Ms. Beninato that we are done with that case.

Ms. Beninato said understands, but she is appealing to Commissioner Winston to tell us that she is a lawyer and she has to allow the ADA preemption over everything else.

Vice-Chair Friedman said Ms. Beninato had the opportunity to speak on that matter and the public hearing is closed on that matter.

Ms. Beninato said she is asking Commissioner Winston to look at the 14th Amendment, and asked her if she believes that Judge Parker will not be over-ruled, that the Telecommunications Act has precedence over the ADA, and seemingly obliterates the ADA.

Ms. Beninato said everyone swore to uphold "liberty and justice for all when you saluted the flag tonight, and she is asking that you also think about that. The City has consistently discriminated, intentionally discriminated against a class of people, which are the people who have electromagnetic sensitivity. They have deliberately and systematically treated telecommunications companies differently than any other entity or person in the City when it comes to land use matters. In many cases, they don't even have to do an application to have a tower approved. They're going to gut the ordinance, so that

basically, there will be no administrative appeal, you will have to go in and take it to Court, but not on an appeal." She said, as an individual, if she wants to put a shed on her property, she has to jump through a bunch of hoops, yet the telecommunication companies do not. They are required to meet with the City. The City has removed any reference to mediation in land use appeals.

Ms. Beninato said, "You have misinformation when you are told that cell phones and cell phone towers do not have any effect. There have been many articles, and *The New York Times* is picking up on them with increasing frequency, the statement that there are no effects from cell phones and cell phone towers is false. There was a study recently of brain scans."

Vice-Chair Friedman asked Ms. Beninato to wrap-up her presentation.

Ms. Beninato said, "I will, but you let some people go on for 20 minutes. I'm just asking to finish, I have just this more."

Vice Chair Friedman said, "Okay."

Ms. Beninato said, "There are studies on brain scans that show that having a cell phone by your head for 50 minutes will change your brain chemistry. What that might result in, the study is conservative, and they have not drawn any conclusions. They are calling for more study. If we are believing the government and corporations, we are mistaken. We just had an article in the paper on Sunday about the serious cancer clusters found around the Tularosa basin because of testing of the atomic bomb there and then people being allowed to go to ground zero and play with titanium, which are the chemicals of sand left afterward. She is asking that if you don't know what is going on, you should stop and fine out what's going on. Look at the studies." She asked the Board to allow the State Health Department to review the numerous studies that have been done that show the health effects.

Ray Ristorcelli, [address inaudible] [previously sworn], said the year is 2011, and he has scientific credentials from Cornell, Princeton, physicist. He is speaking for himself. He said, "I want you to ask yourselves how you will feel in 10 years when this turns out to be the largest health crisis of the decade."

Speaking in Opposition to the Appeal

There was no one speaking in opposition to the appeal.

The public testimony portion of the public hearing was closed

Vice-Chair Friedman thanked everyone who spoke this evening, and said, "as a group you are extremely intelligent, well spoken, informative" and he appreciates everything you had to say. He asked people to please understand we are the Board of Adjustment and we have limited jurisdiction both from a City perspective, based on Chapter 14, the Land Use Code, as well as based on federal preemption of what we can and can't consider. He said it isn't that we have a deaf ear to what you have to say, it is just

that we are limited in our ability to rule on what you're asking us to rule on, and based on jurisdictional limits.

Commissioner Winston said Mr. Firstenberg in his testimony, indicated that the City Council has deleted the section of the Appeals Ordinance allowing citizens to undertake certain appeals for violation of state and federal law and constitution. He also mentioned Section 14-3.17(A)(2) and (B)(2) and asked Ms. Brennan to speak to that.

Ms. Brennan said the Appeals Ordinance was approved by the City Council at the last Council meeting, and they did narrow the appeals rights to the jurisdiction of the bodies hearing the appeal.

Commissioner Ladd said we haven't discussed the notice issue, and she is concerned about that. She sees the claim that notice wasn't given, and she sees pictures with a sign and pictures which don't show a sign, and the pictures without the sign are "really really hard to see."

Mr. Esquibel said the process by which an administrative building permit is given to those that qualify for administrative process, the first thing we do is issue them a sign. The existing Ordinance requires them to post it on the property, with the exception that the sign is expected to stay posted through the time of the appeal, noting it could be longer depending on when the permit was issued. They are not required to come in continually and get another poster every time it is removed or falls down. She said it requires that people do their best to keep the sign up, and in this case, the Applicants indicated they did their best to keep the yellow sign up. This is the only requirement for an administrative permit, aside of the white permit sign which has to be posted within 24 hours of obtaining the permit, and remain posted until the construction is complete. He said this was done, but he cannot respond to whether the yellow sign continued to be posted.

Commissioner Winston said she would reiterate what the Vice-Chair said in terms of letting people know the level of her appreciation for the testimony, and it is important to have it on the record. She said it is important for people to exercise their due process right to be heard.

Commissioner Rooney agrees, and said unfortunately she voted with the group that testified here tonight in previous hearings, and knows it really wasn't what we were voting on. She said the bottom line is that we don't have the jurisdiction to decide any of these federal issues, and said "the fact that this overrides the ADA, no, I'm not in agreement with it. I'm not in agreement with the Judge's decision either. But I think the only way we're going to be able to change this and make an impact /will be at a federal level, and to contact your Senator and the people that represent us and give them as much information as possible, continually."

Commissioner Winston said she absolutely agrees and urges everyone to strongly pursue that avenue. She understands and hears the anger and disappointment with City staff. She said, personally, and from a legal standpoint, she believes it is somewhat misplaced. She hopes people reserve the same anger for the federal agencies that aren't doing the research, the Congress that isn't passing laws and regulations to regulate this at the federal level where the power resides.

MOTION: Commissioner Winston moved, seconded by Commissioner Ladd, regarding Case No. 2011-16, Site A208 Dawson Tower, located at 2502 Camino Entrada, to affirm the issuance by the City of Santa Fe Land Use Director of Building Permit #10-1352.

VOTE: The motion was approved on a voice vote, with Commissioners Ladd, Winston and Werwath voting in favor of the motion, and Commissioner Rooney voting against.

Mr. Esquibel asked for confirmation that the motion was a denial of the appeal.

RESTATED MOTION: Commissioner Winston moved, seconded by Commissioner Ladd, regarding Case No. 2011-16, Site A208 Dawson Tower, located at 2502 Camino Entrada, to deny the appeal in this case, and to affirm the issuance by the City of Santa Fe Land Use Director of Building Permit #10-1352.

VOTE: The motion was approved on a voice vote, with Commissioners Ladd, Winston and Werwath voting in favor of the motion, and Commissioner Rooney voting against.

Mr. Esquibel said the Appellant has 15 days from the Findings of Fact and Conclusions of Law, to make the appeal to District Court.

H. BUSINESS FROM THE FLOOR

There was no business from the floor.

I. STAFF COMMUNICATIONS

Mr. Esquibel noted the packet is a new format, and asked the Board if they like this new format.

The Board said they like the packet saying, "I like it a lot," and it's "nifty-looking."

Mr. Esquibel welcomed Daniel Werwath to the Board.

J. MATTERS FROM THE COMMISSION

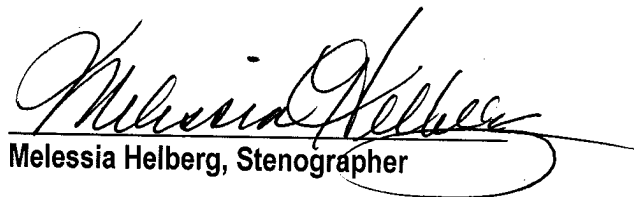
Commissioner Winston welcomed Mr. Werwath to the Board

K. ADJOURNMENT

MOTION: Commissioner Ladd moved, seconded by Daniel Werwath, to adjourn the meeting.

VOTE: The motion was approved unanimously on a voice vote, and the meeting was adjourned at 9:40 p.m.

James A. Brack, Chair



Melessia Helberg, Stenographer